

AQUALLIANCE

DEFENDING NORTHERN CALIFORNIA WATERS



California Sportfishing
Protection Alliance

"An Advocate for Fisheries, Habitat and Water Quality"



January 19, 2010

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Subject: Comments on the Draft Environmental Assessment and Findings of No Significant Impact for the 2010-2011 Water Transfer Program

Dear Messrs. Hubbard and Messer:

AquAlliance, the California Sportfishing Protection Alliance, and the California Water Impact Network ("the Coalition") submit the following comments and questions for the Draft Environmental Assessment ("EA") and Findings of No Significant Impact ("FONSI"), for the *2010-2011 Water Transfer Program* ("Project"). We also provide comments about the purpose and need for the 2010-2011 state and federal water transfer programs that are mirror images of the 2009 Drought Water Bank.

The Bureau of Reclamation's draft environmental review of the Project does not comply with the requirements of National Environmental Policy Act ("NEPA"), 42 U.S.C. §4321 *et seq.* First, we believe that the Bureau needs to prepare an environmental impact statement ("EIS") on this proposal, as we believed for the 2009 Drought Water Bank ("DWB") that allowed up to 600,000 acre-feet (AF) of surface water transfers, up to 340,000 AF of groundwater substitution, and significant crop idling. The *2010-2011 Water Transfer Program* seeks approval for 200,000 AF of CVP related water and suggests that the EA covers non-CVP transfer water. Unfortunately, the non-CVP water appears late in the EA (section 3.18 Cumulative impacts), where the table identifies the non-CVP water (p. 3-107), but does not supply a sub-total. When added, non-CVP water equals 195,910 AF of additional water for transfers. The EA reveals that "the cumulative total amount potentially transferred from all sources would be up to 392,000 acre feet," (p. 3-108) but the actual cumulative number is 395,910 AF of CVP and non-CVP water. The failure to

supply sub-totals and the mathematical carelessness leaves the reader wondering what other liberties have been taken within the 2010-2011 Water Transfer Program.

Bureau reliance on the EA itself violates NEPA requirements because, among other things, the EA fails to provide a reasoned analysis and explanation to support the Bureau's proposed finding of no significant impact. The EA contains a fundamentally flawed alternatives analysis, and treatment of the chain of cause and effect extending from project implementation leading to inadequate analyses of nearly every resource, growth inducing impacts, and cumulative impacts. An EIS would afford the Bureau, DWR, the State Water Resources Control Board, and the California public far clearer insight into how, where, and why the *2010-2011 Water Transfer Program* might or might not be needed. The draft EA/FONSI as released this month fails to provide adequate disclosure of these impacts.

Second, California Environmental Quality Act (CEQA) analysis of the 2010-2011 Water Transfer Program is completely absent at the programmatic level. Is the negligence in this regard due to the present litigation that challenges the 2009 Drought Water Bank exemption? The Project's actual environmental effects—which are similar to the 2009 DWB, the Sacramento Valley Water Management Agreement, and the proposed 1994 Drought Water Bank (for which a final Program Environmental Impact Report was completed in November 1993) – are not presented in the EA, FONSI, or in any CEQA document. The Sacramento Valley Water Management Agreement was signed in 2002 and the need for a programmatic EIS/EIR was clear and initiated, but never completed. In 2000, the Governor's Advisory Drought Planning Panel report, *Critical Water Shortage Contingency Plan* promised a program EIR on a drought-response water transfer program, but was never undertaken. Twice in recent history, the state readily acknowledged that CEQA review for a major drought water banking program was appropriate. So, the Bureau's failure to conduct scientifically supported environmental review in an EIS and DWR's negligence to provide CEQA review reflects an end-run around established law through the use of water transfers, and is therefore vulnerable to legal challenge under the National Environmental Protection Act ("NEPA") and CEQA.

Finally, we also question the merits of and need for the Project itself. The existence of drought conditions at this point in time is highly questionable and reflects the state's abandonment of a sensible water policy framework. Our organizations believe the Bureau's EA/FONSI and the absence of DWR's programmatic review go too far to help a few junior water right holders at the expense of agriculture, communities, and the environment north of the Delta. The 2010-2011 Water Transfer Program will directly benefit the areas of California whose water supplies are the least reliable by operation of state water law. Though their unreliable supplies have long been public knowledge, local, state, and federal agencies in these areas have failed to stop blatantly wasteful uses and diversions of water and to pursue aggressive planning for regional water self-sufficiency.

The proposed Project will have significant effects on the environment—both standing alone and when reviewed in conjunction with the multitude of other plans and programs (including the

non-CVP water that is mentioned in the EA cumulative impacts section) that incorporate and are dependent on Sacramento Valley water. Ironically, the Bureau appears to recognize in its cumulative impacts discussion that there is potential for significant adverse impacts associated with the Project, but instead of conducting an EIS as required, attempts to assure the public that the 2010-2011 Water Transfer Program will be deferred to the “willing sellers” through individual “monitoring and mitigation programs” as well as through constraining actions taken by both DWR and Bureau professional staff whose criteria ought instead be incorporated into the Proposed Action Alternative (EA at p. 2-1, FONSI at p. 1-9). It is impossible to evaluate whether or not the mitigation and monitoring plans will be adequate to relieve the Bureau and DWR of responsibility for impacts from the Project (including the non-CVP water transfers). The language used in the EA (p.3-25) and the *Draft Technical Information for Water Transfers in 2010* (November 2009) (p. 26-31) fail to pass the blush test (details below). Of course, this is not a permissible approach under NEPA; significant adverse impacts should be mitigated—or avoided altogether as CEQA normally requires.¹ Moreover, in light of the wholly inadequate monitoring and mitigation planned for the 2010-2011 Water Transfer Program’s extensive water transfer program, the suggestion that the public should be required to depend on the insufficient monitoring to provide the necessary advance notice of “significant adverse impacts” is an unacceptable position.

We incorporate by reference the following documents:

- Butte Environmental Council’s comments on the Supplemental Environmental Water Account EIR/EIR, 2006.
- Butte Environmental Council’s letter to DWR regarding the Drought Water Bank Addendum from Lippe Gaffney Wagner LLP, 2009.
- Butte Environmental Council’s letter to DWR regarding the Drought Water Bank Addendum.
- Multi-Signatories letter regarding the Drought Water Bank, 2008.
- Professor Kyran Mish’s White Paper, 2008.
- Professor Karin Hoover’s Declaration, 2008.

¹ Perhaps even more telling, the Bureau actually began its own Programmatic EIS to facilitate water transfers from the Sacramento Valley and the interconnected actions that are integrally related to it, but never completed that EIS and now has impermissibly broken out this current segment of the overall Program for piecemeal review in the present draft EA. See 68 Federal Register 46218 (Aug 5, 2003) (promising a Programmatic EIS on these related activities, “include[ing] groundwater substitution in lieu of surface water supplies, conjunctive use of groundwater and surface water, refurbish existing groundwater extraction wells, install groundwater monitoring stations, install new groundwater extraction wells...” *Id.* At 46219. See also http://www.usbr.gov/mp/nepa/nepa_projdetails.cfm?Project_ID=788 (current Bureau website on “Short-term Sacramento Valley Water Management Program EIS/EIR”).

I. The Bureau and DWR Must Prepare an Environmental Impact Statement/ Environmental Impact Report on the Proposed 2010-2011 Water Transfer Program

We strongly urge the Bureau to withdraw this inadequate environmental document and instead prepare a joint EIS/R on the 2010-2011 Water Transfer Program, before approval by the State Water Resources Control Board (SWRCB), in order to comply with both NEPA and CEQA requirements for full disclosure of human and natural environmental effects.

NEPA requires federal agencies to prepare a detailed environmental impact statement on all “major Federal actions significantly affecting the quality of the human environment” 42 U.S.C. §4332(2)(C). This requirement is to ensure that detailed information concerning potential environmental impacts is made available to agency decision makers and the public before the agency makes a decision. *Robertson v. Methow Valley Citizens Council*, 490 U.S. 332, 349 (1989). CEQA has similar requirements and criteria.

Under NEPA’s procedures, an agency may prepare an EA in order to decide whether the environmental impacts of a proposed agency action are significant enough to warrant preparation of an EIS. 40 C.F.R. §1508.9. An EA must “provide sufficient evidence and analysis for determining whether to prepare an [EIS]” (*id.*), and must demonstrate that it has taken a “‘hard look’ at the potential environmental impact of a project.” *Blue Mountains Biodiversity Project v. Blackwood*, 161 F.3d 1208, 1212 (9th Cir. 1998) (internal quotation marks omitted). However, the U.S. Court of Appeals for the Ninth Circuit has cautioned that “[i]f an agency decides not to prepare an EIS, it must supply a convincing statement of reasons to explain why a project’s impacts are insignificant.” *Id.* (internal quotation marks omitted). The Bureau has not provided a convincing statement of reasons explaining why the DWB’s impacts are not significant. So long as there are “substantial questions whether a project *may* have a significant effect on the environment,” an EIS must be prepared. *Id.* (emphasis added and internal quotation marks omitted). Thus, “the threshold for requiring an EIS is quite low.” *NRDC v. Duvall*, 777 F. Supp. 1533, 1538 (E.D. Cal. 1991). Put another way, as will be shown through our comments, the bar for sustaining an EA/FONSI under NEPA procedures is set quite high, and the Bureau fails to surmount it on the 2010-2011 Water Transfer Program.

NEPA regulations promulgated by the Council on Environmental Quality identify factors that the Bureau must consider in assessing whether a project may have significant environmental effects, including:

- (1) “The degree to which the possible effects on the human environment are highly uncertain or involve unique or unknown risks.” 40 C.F.R. §1508.27(b)(5).
- (2) “The degree to which the effects on the quality of the human environment are likely to be highly controversial.” *Id.* §1508.27(b)(4).
- (3) “Whether the action is related to other actions with individually insignificant but cumulatively significant impacts. Significance exists if it is reasonable to anticipate on a cumulatively significant impact on the environment. Significance

- cannot be avoided by terming an action temporary or by breaking it down into small component parts.” *Id.* §1508.27(b)(7).
- (4) “The degree to which the action may establish a precedent for future actions with significant effects or represents a decision in principle about a future consideration.” *Id.* §1508.27(b)(6).
- (5) “The degree to which the action may adversely affect an endangered or threatened species or its habitat that has been determined to be critical under the Endangered Species Act of 1973.” *Id.* §1508.27(b)(9).

Here, the Bureau has failed to take a hard look at the environmental impacts of the Project. As detailed below, there are substantial questions about whether the 2010-2011 Water Transfer Program’s proposed water transfers will have significant effects on the region’s environmental and hydrological conditions especially groundwater, the interactions between groundwater and surface streams of interest in the Sacramento Valley region, and the species dependent on aquatic and terrestrial habitat. There are also substantial questions about whether the 2010-2011 Water Transfer Program will have significant adverse environmental impacts when considered in conjunction with the other related water projects that have occurred in the last decade and that are underway and proposed in the region. The Bureau simply cannot rely on the EA/FONSI for the foreseeable environmental impacts of the proposed 2010-2011 Water Transfer Program and still comply with NEPA’s requirements.

A. The Proposed Action Alternative is poorly specified making it difficult to identify chains of cause and effect necessary to analyze adequately the alternative’s environmental effects.

The Proposed Action Alternative is poorly specified and needs additional clarity before decision makers and the public can understand the human and environmental consequences of the 2010-2011 Water Transfer Program. The EA describes the Proposed Action Alternative as one reflecting the Bureau’s intention to approve transfers of Central Valley Project water from willing sellers who contract with the Bureau ordinarily to use surface water on their croplands. Up to 200,000 AF of CVP water are offered from these sellers, according to Table 2-1 of the EA. In contrast to the EA/FONSI for the 2009 Drought Water Bank, the EA contains no “priority criteria” to determine water deliveries and simply acknowledges that water will be transferred to agricultural and urban interests (p. 3-88). The EA fails to indicate how much water has been requested by the buyers of CVP or non-CVP water, which is also in contrast to the EA/FONSI and DWR’s addendum for the 2009 Drought Water Bank. This denial of information further obfuscates the need for the Project.

The EA/FONSI’s statement of purpose and need (p. 1-1) states specifically that, “To help facilitate the transfer of water throughout the State, Reclamation and the Department of Water Resources (DWR) are considering whether they should approve and facilitate water transfers between willing sellers and buyers.” This paragraph omits coherent discussion of need. Merely stating that, “The transfer water would be conveyed, using CVP or SWP facilities, to water users

that are at risk of experiencing water shortages in 2010 and 2011 due to drought conditions and that require supplemental water supplies to meet anticipated demands,” lacks specificity and rigor. The purpose and need should also state that this transfer program would be subject to specific criteria for prioritizing transfers.

The EA’s description of the proposed action alternative needs to make clear what would occur if sale criteria are in fact applied and if exceptions will be allowed, and if so, by what criteria would exceptions be made.. Do both Project agencies lack criteria to prioritize water transfers? What is the legal or policy basis to act without providing priority criteria? Without foundational criteria, the public is not provided with even a basic understanding of the need for the Project.

There is considerable ambiguity over just how many potential sellers there are and how much water they would make available. The EA states that, “Entities that are not listed in this table [2-1] may decide that they are interested in selling CVP water, but those transfers may require supplemental NEPA analysis to allow Reclamation to complete the evaluation of the transfers,” (p. 2-3 and 2-4). Allowing a roving Project location is not permissible and avoids accurate analysis of all impacts including growth inducing and cumulative impacts.

Absent buyers’ request numbers and the potential for the participation of unknown additional sellers signals that neither the Bureau nor DWR have a clear idea what the 2010-2011 Water Transfer Program is intended to be. This problem contributes greatly to and helps explain the poorly rendered treatment of causes and effects that permeate the Bureau’s EA. The project agencies, decision-makers, and the public all face a moving target with the 2010-2011 Water Transfer Program. Such discrepancies reflect hasty consideration and poor planning by project proponents. Nor can the agencies reasonably attribute their inadequate environmental reviews on lack of warning. The Governor, Senator Dianne Feinstein, and congressional representatives from the San Joaquin Valley have all made fear of drought a centerpiece of their water statements in 2008 and 2009. Yet DWR and the Bureau apparently are not able to present a stable Project with clear needs and criteria.

From data available in the EA and the Addendum, it is not possible to determine with confidence just how much water is requested by potential urban and agricultural buyers. There is no attempt to describe how firmly tendered are offers of water to sell or requests to purchase. Guessing at the possible requests based on the 2009 DWB where there were between 400,000 and 500,000 AF of presumably urban buyer requests² alone (which had priority over agricultural purchases, according to the 2009 DWB priorities) and a cumulative total of less than 400 TAF from willing sellers, which is also true for the 2010-2011 Water Transfer Program (with just over half that coming from CVP water), it would appear that many buyers are not likely to have their needs addressed by the 2010-2011 Water Transfer Program. If so, the Bureau and DWR should state

² Neither DWR’s Addendum nor the Bureau’s EA specify numerical requests for the cities of Huron, Avenal, Coalinga, and the Avenal State Prison making it impossible to have a firmer number for the amount of urban request for water. Our estimate assumes SCVWD’s 30,000 AF and MWD’s 300,000 AF requests are for entirely urban uses of DWB-purchased water.

the likelihood that many requests will not be fulfilled in order to achieve a full and correct environmental compliance treatment of the proposed action. Such an estimate is necessary for accurate explication of the chains of cause and effect associated with the 2010-2011 Water Transfer Program—and which must propagate throughout a NEPA document for it to be adequate as an analysis of potential natural and human environmental effects of the proposed project. We have additional specific questions:

- What are the requests of the San Luis and Delta Mendota Water Authority (SLDMWA)? Is the request for an agricultural use or an urban use of Project water? If it is entirely for agricultural uses, how likely is it to be fulfilled under the non-stated Project priorities for water sales?
- What are the specific urban requests for water made by Avenal State Prison, and the cities of Avenal, Huron, and Coalinga, nested within the SLDMWA request?
- Will sale criteria be premised on full compliance with all applicable environmental and water rights laws? If so, how will cumulative impacts be analyzed under CEQA?

If priority criteria were revealed, how will intervening economic factors beyond the control of the Project be analyzed? Given the added uncertainty, an EIS should be prepared to provide the agencies with advance information and insight into what the sensitivity of the program's sellers and buyers are to the influences of prices—prices for water as well as crops such as rice, orchard and vineyard commodities, and other field crops. It is plausible that crop idling will occur more in field crops, while groundwater substitution would be more likely for orchard and vineyard crops. However, high prices for rice—the Sacramento Valley's largest field crop—would undermine this logic, and could lead to substantial groundwater substitution. These potential issues and impacts should be recognized as part of the 2010-2011 Water Transfer Program description and should directly apply to the Agriculture and Land Use, and Socioeconomic sections of the EA, because crop prices are key factors in choices potential water sellers would weigh in deciding whether to idle crops, substitute groundwater, or decline to participate in the DWB altogether. The EA is inadequate because it fails to identify and analyze the market context for crops as well as water that would ultimately influence the size and scope of the 2010-2011 Water Transfer Program.

Rice prices are high because of conditions for the grain in the world market. Drought elsewhere is a factor in reduced yields, but growing populations in south and east Asia demand more rice and the rice industry has struggled to meet that demand.³

This is very important. The Bureau tacitly admits that the Bureau—and by logical extension, DWR—has no idea how many sales of what type (public health, urban, agricultural) can be expected to occur. Put another way, there is a range of potential outcomes for the 2010-2011 Water Transfer Program, and yet the Bureau has failed utterly to use the EA to examine a

³ "Panic over rice prices hits California," *AZCentral.com*, April 24, 2008; UN News Service, "Bumper rice harvests could bring down prices but poor may not benefit, warns UN," 25 February 2009; "Era of cheap rice at an end in Taiwan: COA," *The China Post*, March 5, 2009; Jim Downing, "Sacramento Valley growers see rice prices soar," *Sacramento Bee*, 18 January 2009.

reasonable and representative range of alternatives as it concerns how the priority criteria would be established and affect Project transfers. And DWR has not bothered to conduct an appropriate level of review under CEQA...

Nor does the 2010-2011 Water Transfer Program prevent rice growers (or other farmers) from “double-dipping.” It appears to us they could opt to turn back their surface supplies from the CVP and the State Water Project and substitute groundwater to cultivate their rice crop—thereby receiving premiums on both their CVP contract surface water as well as their rice crop this fall when it goes to market. There appear to be no caps on water sale prices to prevent windfall profits to sellers of Sacramento Valley water in the event that groundwater is substituted in producing crops—especially for crops where market prices are high, such as in rice. The DWB in the 1990s capped water prices at \$125/acre-foot, much to the disappointment of some water sellers at that time. Why are the state and federal projects encouraging such potential windfall profits at a time when many others suffer through this recession?

As stated, neither the Bureau nor DWR state how much of these transfers would go to public health, urban or agricultural buyers. The EA must also (but fails to) address the ability and willingness of potential buyers to pay for Project water given the supplies that may be available. Historically, complaints from agricultural water districts were registered in the comments on the Draft EWA EIS/R and reported in the Final EIS/R in January 2004 indicating that they could not compete on price with urban areas buying water from the EWA. Given the DWB’s priority criteria, will agricultural water buyers identified in Table 2-2 of the EA be able to buy water when competing with the likes of the Santa Clara Valley Water District and the Metropolitan Water District, representing two of the wealthiest regions of California? As a matter of statewide water, infrastructure, and economic policy, is it wise to foment urban versus agricultural sector competition for water based solely on price? Shouldn’t other factors be considered in allocating water among our state’s regions? This fails dramatically to encourage regions to develop their own water supplies more efficiently and cost-effectively without damage to resources of other regions.

Full disclosure of each offer of and each request for 2010-2011 Water Transfer Program water should be provided as part of the EA. This is necessary so the public can understand and have confidence in the efficacy of the Project’s purpose and need, benefit from full disclosure of who requests what quantity of water and for what uses, and so that the public may easily verify chains of cause and effect. Urban application of transferred surface water is not examined in the EA/FONSI, as though how urban buyers would use their purchased water had no environmental effects. Since the dry period in California has lasted for over three years, how will purchased water be used and conserved? What growth inducing impacts will transferred water facilitate?

Nor is a hierarchy of priority uses among urban users for purchasing Project water presented. Could purchased water be used for any kind of landscaping, rather than clearly domestic purposes or strictly for drought-tolerant landscaping? We cannot tell from the EA/FONSI narrative. How can the citizens of California be assured that water purchased through the 2010-

2011 Water Transfer Program will not be used wastefully, in violation of the California Constitution, Article X, Section 2?

Will urban users need their Project purchased water only in July through September, or is that the delivery period preferred in the DWB because of ecological and fishery impact constraints on conveyance of purchased water?

Should agricultural water users be able to buy any Project water, how will DWR and the Bureau assure that transferred water for irrigation is used efficiently? Many questions are embedded within these concerns that DWR and the Bureau should address, especially when they approach the State Water Resources Control Board to justify consolidating their places of use in their respective water rights permits:

- How much can be expected to be purchased by agricultural water users, given the absence of any criteria, let alone priority criteria, in the 2010-2011 Water Transfer Program?
- How much can be expected to be consumptively used by agricultural water buyers?
- How much can be expected to result in tailwater and ag drainage?
- How much can be expected to add to the already high water table in the western San Joaquin Valley?
- What selenium and boron loads in Mud Slough and other tributaries to the San Joaquin River may be expected from application of this water to WSJ lands?
- What mitigation measures are needed to limit such impacts consistent with the public trust doctrine, Article X, Section 2 of the California Constitution, the Porter-Cologne Water Quality Control Act, and California Fish and Game Code Section 5937?

In other words, the most important chains of cause and effect—extending from the potential for groundwater resource impacts in the Sacramento Valley to potential for contaminated drainage water from farm lands in the western San Joaquin Valley where much of the agricultural buyers are located—are ignored in the Bureau’s EA/FONSI and completely missing due to DWR’s failure to comply with CEQA.

Will more of surface water transfers go to urban users than to ag users? The EA’s silence on this is disturbing, and highlights the absence of priority criteria. What assurances will the Bureau and DWR provide that criteria exist or will be developed and how will these criteria be presented to the public and closely followed?

- The more that goes to urban water agencies the less environmental impacts there would be on drainage impaired lands of the San Joaquin Valley, a neutral to beneficial impact of the Project’s operation on high groundwater and drainage to the SJR.
- However, the more Project water goes to agricultural users than to urban users, the higher would be groundwater levels, and more contaminated the groundwater would be in the western San Joaquin Valley and the more the San Joaquin River would be negatively affected from contaminated seepage and tailwater by operation of the Project.

The EA fails to provide a map indicating where the cumulative sources of the Project are located, and where the service areas are to which water would be transferred under the 2010-2011 Water Transfer Program.

Two issues concerning water rights are raised by this EA/FONSI:

- **Consolidated Place of Use.** Full disclosure of what the consolidated places of use for DWR and USBR would be, since the permit request to SWRCB will need NEPA coverage. Why is the flexibility claimed for the consolidated place of use necessary to this year's water transfer program? Couldn't the transfers be facilitated through transfer provisions of the Central Valley Project Improvement Act? Will the consolidation be a permanent or temporary request be limited to the duration of the governor's 2009 emergency declaration or of just the 2010-2011 Water Transfer Program? When is the 2010-2011 Water Transfer Program scheduled to sunset? How do the consolidated place of use permit amendments to the SWP and CVP permits relate to their joint point of diversion? Why doesn't simply having the joint point of diversion in place under D-1641 suffice for the purpose of the Project?
- **Description of the water rights of both sellers and buyers.** This would necessarily show that buyers clearly possess junior water rights as compared with those of willing sellers. Lack of full disclosure of these disparate rights is needed to help explain the actions and motivations of buyers and sellers in the 2010-2011 Water Transfer Program, otherwise the public and decision makers have insufficient information on which to support and make informed choices.
 - **Sacramento Valley water rights** – correlative groundwater rights, riparian rights and CVP settlement contract rights
 - **San Joaquin Valley water rights** – CVP contract rights only, junior-most contractors within the CVP priority system (especially Westlands Water District).
 - **Priority of allocations among water contractors within the CVP and SWP.**

To establish a proper legal context for these water rights, the Project Action Alternative section of the EA/FONSI should also describe more extensively the applicable California Water Code sections about the treatment of water rights involved in water transfers.

Thus, there are many avenues by which the 2010-2011 Water Transfer Program is a poorly specified program for NEPA and CEQA purposes, leaving assessment of its environmental effects at best murky, and at worst, risky to all involved, especially users of Sacramento Valley groundwater resources.

B. Correcting the EA's poorly specified chains of cause and effect forces consideration of an expanded range of alternatives.

The Proposed Action Alternative need not have sophisticated forecasts of prices for rice and other commodities. Instead, for an adequate treatment of alternatives, the EA should have examined several reasonable scenarios beyond simply the 2010-2011 Water Transfer Program

and a “no action” alternative. Three reasonable permutations would have considered relative proportions of crop idling versus groundwater substitution (e.g., high/low, low/high, and equal proportions of crop idled water and groundwater substitution). Other reasonable drought response alternatives that can meet operational and physical concerns merit consideration and analysis by the Bureau includes:

- Planned permanent retirement of upslope lands in the western San Joaquin Valley where CVP-delivered irrigation water is applied to lands contaminated with high concentrations of selenium, boron and mercury, and which contribute to high water table and drainage problems for lowland farmers, wetlands and tributaries of the San Joaquin River. Retirement of these lands would permanently free up an estimated 3 million acre-feet of state and federal water during non-critical water years. Ending irrigation of these lands would also result in substantial human environmental benefits for the San Joaquin River, the Bay-Delta Estuary, and the Suisun Marsh from removal of selenium, boron, and salt contamination. Having such reasonable and pragmatic practices in place would go a long way to eliminate the need for drought water banks in the foreseeable future.
- More aggressive investment in agricultural and urban water conservation and demand management among CVP and SWP contractors even on good agricultural lands, including metering of all water supply hook-ups by all municipal contractors, statewide investment in low-flush toilets and other household and other buildings’ plumbing fixtures, and increased capture and reuse of recycled water. Jobs created from such savings and investments would represent an economic stimulus that would have lasting job and community stability benefits as well as lasting benefits for water supply reliability and environmental stabilization.

C. The 2010-2011 Water Transfer Program EA fails to specify adequate environmental baselines, or existing conditions, against which impacts would be assessed and mitigation measures designed to reduce or avoid impacts.

The 2010-2011 Water Transfer Program environmental review by the Bureau incorporate by reference for specific facets of their review the 2003/2004 and 2007/2008 Environmental Water Account EIS/R documents. In both cases, these environmental reviews were conducted on a program whose essential purpose is to “provide protection to at-risk native fish species of the Bay-Delta estuary through environmental beneficial changes in State Water Project/Central Valley Project operations at no uncompensated water cost to the Projects’ water users. This approach to fish protection involves changing Project operations to benefit fish and the acquisition of alternative sources of project water supply, called the ‘EWA assets,’ which the EWA agencies use to replace the regular Project water supply lost by pumping reductions.”

The two basic sets of actions of the EWA were to:

- Implement fish actions that protect species of concern (e.g., reduction of export pumping at the CVP and SWP pumps in the Delta); and

- Increase water supply reliability by acquiring and managing assets to compensate for the effects of the fish actions (such as by purchasing water from willing sellers for instream flows that compensates the sellers for foregone consumptive use of water).

Without going into further detail on the EWA program, there is no attempt by the EWA agencies to characterize its environmental review as reflective of water transfer programs generally; the EWA was a specific set of strategies whose purpose was protection of fish species of concern in the Delta, not drought aid for junior water right-holding areas of California. One consequence of this attempt to rely on the EWA EIS/R is that it makes the public's ability to understand the environmental baseline of the 2010-2011 Water Transfer Program impossible, because environmental baselines, differing purpose and need for the project, and many relevant mitigation measures are not readily available to the public. Merely referring to the EWA documents (e.g.) p. 3-47) mocks NEPA and CEQA missions to inform the public adequately about the environmental setting and potential impacts of the proposed project's actions. Moreover, a Water Transfer Program for urban and agricultural sectors is plainly not the same thing as an Environmental Water Account.

Another consequence is that the chains of cause and effect of an EWA versus a 2010-2011 Water Transfer Program are entirely different because of their different purposes. While the presence of water purchases, willing sellers, and requesting buyers is similar, the timing of EWA water flows are geared to enhancing and protecting fish populations; the water was to flow in Delta channels to San Francisco Bay and the Pacific Ocean. In stark contrast, the DWB's water flows focus water releases from the SWP and CVP reservoirs to be exported for deliveries in the July through September period, whereas EWA assets would be "spent" year-round depending on the specific need to protect fish. EWA was about purchasing water to provide instream flows in the Delta, while the DWB is to acquire water to serve consumptive uses outside of the Delta.

Furthermore, to tease out the various ways in which the EWA review—itsself a two-binder document consisting of well over 1,000 pages—could be used to provide appropriate environmental compliance for the DWB is not even attempted by DWR and the Bureau which at least has staff that could have been assigned to undertake it; yet they do not. It is therefore well beyond the reach of non-expert decision-makers and the public, and the use of the EWA EIS/R as the basic environmental review for the DWB therefore violates both NEPA and CEQA.

Nor is any attempt made in the EWA EIS/R to characterize the EWA as a "program level" environmental review off of which a Water Transfer Program-like project could perhaps legitimately tier. In our view, this reliance on the EWA EIS/R obscures the environmental baselines of the DWB from public view, inappropriately conflates the purposes of two distinct environmental reviews, and flagrantly violates NEPA and CEQA. This could only be redressed by preparation of an EIS/R on the 2010-2011 Water Transfer Program.

Finally, the most significant baseline condition omitted in the Bureau's inadequate and DWR's negligent reporting relates to Sacramento Valley groundwater resources, discussed in the next section.

D. Scientific uncertainties and controversy about Sacramento Valley groundwater resources merit consideration that only an EIS can provide.

There is substantial evidence that the 2010-2011 Water Transfer Program may have significant impacts on the aquifer system underlying the project and the adjacent region that overlies the Tuscan Formation. This alone warrants the preparation of an EIS.

Additionally, an EIS is necessary where “[a] project[’s] ... effects are ‘highly uncertain or involve unique or unknown risks.’” *Blue Mountains Biodiversity Project*, 161 F.3d at 1213 (quoting 40 C.F.R. §1508.27(b)(5)). Here, the draft EA/FONSI fails to adequately address gaps in existing scientific research on the hydrology of the aquifer system and the extent to which these gaps affect the Bureau's ability—and by logical extension, DWR's ability—to assess accurately the Project's environmental impacts.

1. Existing research on groundwater conditions indicates that the 2010-2011 Water Transfer Program may have significant impacts on the aquifer system.

The EA fails to describe significant characteristics of the aquifers that the 2010-2011 Water Transfer Program proposes to exploit. These characteristics are relevant to an understanding of the potential environmental effects associated with the 2010-2011 Water Transfer Program's potential extraction of up to 154,237 AF of groundwater (p, 2-4 and 3-107). First, the draft EA/FONSI fails to describe a significant saline portion of the aquifer stratigraphy of the 2010-2011 Water Transfer Program area. According to Toccoy Dudley, former Groundwater Geologist with the Department of Water Resources and former director of the Butte County Water and Resources Department, saline groundwater aquifer systems of marine origin underlie the various freshwater strata in the northern counties of Butte, Colusa, Glenn, and Tehama (“northern counties”). The approximate contact between fresh and saline groundwater occurs at a depth ranging from 1500 to 3000 feet. (Dudley 2005) (A list of all references cited in these comments can be found at the end of this letter.)

Second, the EA fails to discuss the pressurized condition of the down-gradient portion of the Tuscan formation, which underlies the northern counties Project area. Dudley finds that the lower Tuscan aquifer located in the Butte Basin is under pressure. “It is interesting to note that groundwater elevations up gradient of the Butte Basin, in the lower Tuscan aquifer system, are higher than the ground surface elevations in the south-central portion of Butte Basin. This creates an artesian flow condition when wells in the central Butte Basin are drilled into the lower Tuscan aquifer.” (Dudley 2005). The artesian pressure indicates recharge is occurring in the up-gradient portions of the aquifer located along the eastern margin of the Sacramento Valley.

Third, the EA fails to describe the direction of movement of water through the Lower Tuscan Formation that underlies the northern counties. According to Dudley: “From Tehama County south to the city of Chico, the groundwater flow direction in the lower Tuscan is westerly toward the Sacramento River. South of Chico, the groundwater flow changes to a southwesterly direction along the eastern margin of the valley and to a southerly direction in the central portion of the Butte Basin.” (Dudley 2005)

Fourth, the draft EA fails to disclose that the majority of wells used in the Sacramento Valley are individual wells that pump from varying strata in the aquifers. The thousands of domestic wells in the target export area that are vulnerable to groundwater manipulation and lack historic monitoring. The Bureau’s 2009 DWB EA elaborated on this point regarding Natomas Central MWC (p. 39) stating that, “Shallow domestic wells would be most susceptible to adverse effects. Fifty percent of the domestic wells are 150 feet deep or less. Increased groundwater pumping could cause localized declines of groundwater levels, or cones of depression, near pumping wells, possibly causing effects to wells within the cone of depression. As previously described, the well review data, mitigation and monitoring plans that will be required from sellers during the transfer approval process will reduce the potential for this effect.”

As the latter statement makes clear (even though this information was excluded from the Project EA), the Bureau hopes that individual mitigation and monitoring plans created by the sellers will reduce the potential for impact, but there is no assurance in the EA that it will reduce it to a level of insignificance for the thousands of well owners in the Sacramento Valley. The Coalition questions the adequacy of individual mitigation and monitoring plans and suggests that an independent third party, such as USGS, oversee the mitigation and monitoring program and not the Bureau and DWR. After the fiasco in Butte County during the 1994 Drought Water Bank and with the flimsy, imprecise proposal for mitigation and monitoring in the 2010-2011 Water Transfer Program (see details below), the agencies lack credibility as oversight agencies.

Fifth, the draft EA fails to provide recharge data for the aquifers. Professor Karin Hoover, Assistant Professor of hydrology, hydrogeology, and surficial processes from CSU Chico, found in 2008 that, “Although regional measured groundwater levels are purported to ‘recover’ during the winter months (Technical Memorandum 3), data from Spangler (2002) indicate that recovery levels are somewhat less than levels of drawdown, suggesting that, in general, water levels are declining.” According to Dudley, “Test results indicate that the ‘age’ of the groundwater samples ranges from less than 100 years to tens of thousands of years. In general, the more shallow wells in the Lower Tuscan Formation along the eastern margin of the valley have the ‘youngest’ water and the deeper wells in the western and southern portions of the valley have the ‘oldest’ water,” adding that “the youngest groundwater in the Lower Tuscan Formation is probably nearest to recharge areas.” (Dudley 2005). “This implies that there is currently no active recharge to the Lower Tuscan aquifer system (M.D. Sullivan, personal communication, 2004),” explains Dr. Hoover. “If this is the case, then water in the Lower Tuscan system may constitute fossil water

with no known modern recharge mechanism, and, once it is extracted, it is gone as a resource,” (Hoover 2008).

All of these aquifer characteristics are important to a full understanding of the environmental impacts of the 2010-2011 Water Transfer Program because there are numerous indications that other aquifer strata associated with the Lower Tuscan Formation are being operated near the limit of overdraft and could be affected by the 2010-2011 Water Transfer Program (Butte County 2007). The Bureau has not considered this important historic information in the draft EA. According to Dudley, the Chico area has a “*long term average decline in the static groundwater level of about 0.35 feet-per-year.*” (2007) (emphasis added.) Declining aquifer levels are not limited to the Chico Municipal area. This trend of declining aquifer levels in Chico, Durham and the Cherokee Strip is illustrated in a map submitted with this comment letter (CH2M Hill 2006).

Declining groundwater elevations have been observed specifically in Butte County. A 2007 Butte Basin Groundwater Status Report describes the “historical trend” in the Esquon Ranch area as showing “seasonal fluctuation (spring to fall) in groundwater levels of about 10 to 15 feet during years of normal precipitation and less than 5 feet during years of drought.” The report further notes: “Long-term comparison of spring-to-spring groundwater levels shows a decline of approximately 15 feet associated with the 1976-77 and 1986-94 droughts (Butte Basin Water Users Association, 2007). The 2008 report indicates that, “The spring 2008 groundwater level measurement was approximately three feet higher than the 2007 measurement, however it was still four feet lower than the average of the previous ten spring measurements. Fall groundwater levels are approximately nine feet lower than the averages of those measured during either of the previous drought periods on the hydrograph. At this time it appears that there may be a downward trend in groundwater levels in this well,” (Butte Basin Water Users Association, 2008). Thus, “*it appears that there may be a downward trend in groundwater levels in this well.*” *Id.* (emphasis added).

Groundwater elevations in the Pentz sub-area in Butte County also reveal significant historical declines. The historical trend for this sub-area “...shows that the average seasonal fluctuation (spring to fall) in groundwater levels averages about 3 to 10 feet during years of normal precipitation and approximately 3 to 5 feet during years of drought. Long-term comparison of spring-to-spring groundwater levels shows a decline in groundwater levels during the period of 1971-1981, perhaps associated with the 1976-77 drought. Since a groundwater elevation high of approximately 145 feet in 1985 the measured groundwater levels in this well have continued to decline. Recent groundwater level measurements indicate that the groundwater elevation in this well is approximately 15-25 feet lower than the historical high in 1985. *Id.* Water elevations at the Pentz sub-area well have been monitored since 1967. “Since 1985 spring groundwater levels in this well have been declining and the spring 2009 measurement hit an historic low level ten feet below historical high levels and continues the downward trend on the hydrograph.” *Id.* The Pentz area is located east of U.S. 99, in the eastern, upslope portion of the Tuscan aquifer. Further evidence of changing groundwater levels appear in the Vina sub-region of Butte County, where water elevations have been monitored since 1947 at well 23N/01W09E001M . The

historical averages, including 2008 data, are; Spring=156 feet and Fall=150 feet (Butte County p. 37-38). Unfortunately, the groundwater level measurement at this well in 2008 was the lowest recorded since 1994 (Butte County p. 38). Rock Creek, which is also in the Vina sub-unit once held water all year and salmon fishing was robust prior to the 1930s (Hennigan 2010). Declining groundwater levels have caused the valley portion of Rock Creek to run completely dry each year and have also been noticed with Hennigan Farms' wells since the 1960s. For example, a 1968 well had to be lowered 40 feet in 1974, another well constructed in 1978 had to be lowered 20 feet in 2009, and an old 1940s flood pump was lowered in the early 1960s, lowered again in 1976 when it was converted to a pressure pump, and lowered again in 1997 (Hennigan 2010).

In light of this downward trend in regional groundwater levels, the Bureau's EA should closely analyze replenishment of the aquifers affected by the proposed 2010-2011 Water Transfer Program. The draft EA fails to provide any in-depth assessment of these issues. For example, the EA fails to discuss the best available estimates of where groundwater replenishment occurs. Lawrence Livermore National Laboratory analyzed the age of the groundwater in the northern counties to shed light on this process: "Utilizing the Tritium (H3) Helium-3 (He3) ratio, the age of each sample was estimated. Test results indicate that the "age" of the groundwater samples ranges from less than 100 years to tens of thousands of years, (Dudley et al. 2005). As mentioned above, Dudley opines that the youngest groundwater in the Lower Tuscan Formation is probably nearest to recharge areas. (2005).

Are isotopic groundwater data available for other regions in the Sacramento Valley? If so, they would be crucial for all concerned to understand the potential impacts from the proposed 2010-2011 Water Transfer Program. For example, the EA states, "The WFA area that could be affected by the proposed action includes only the 'North Area' bounded on the north and east by the Sacramento County line, by the Sacramento River on the west, and by the American River on the south." EA at p. 34. If this is the area in Sacramento County that is identified as most vulnerable to groundwater impacts, yet two major rivers surround it, shouldn't the Bureau understand the hydrologic relationship between the groundwater basin and the rivers? If that understanding exists, where is it presented in the EA? It is well known that the Sacramento River is already a losing river south of Princeton.

The City of Sacramento proposes to transfer surface water into the state water market and substitute 3,000 AF of groundwater (EA p.2-4), but the *Sacramento County Water Agency Water Management Plan* indicates that intensive use of this groundwater basin has resulted in a general lowering of groundwater elevations that will require extensive conservation measures to remediate. The Sacramento County Water Agency has devised a plan to help lead the city to a sustainable groundwater use to avoid problems associated with unrestrained overuse. The most reliable strategy is to reduce demand. Integrating the City's water supply into the state water supply would obviously increase demand and make the SCWA goals impossible to achieve.

The Bureau should prepare an EIS that discloses the fallacies inherent in its policies and actions. The need for almost 400,000 AF of water south of the Delta springs from failed business

planning. The Bureau and DWR must acknowledge this and further disclose that their agencies are willing to socialize the risks taken by corporate agribusiness and developers while facilitating private profit. Instead of asking northern California water districts and municipal water purveyors to place their own water at risk as well as the water of their neighboring communities and thousands of residential well owners, water quality, fisheries, recreation, stream flow, terrestrial habitat, and geologic stability, the Bureau and DWR must disclose all the uncertainty in the 2010-2011 Water Transfer Program and then evaluate the risks with scientific methodology. This has clearly not been done.

2. The 2010-2011 Water Transfer Program proposes to rely on inadequate monitoring and mitigation to avoid the acknowledged possibility of significant adverse environmental impacts.

The draft EA and the Draft Technical Information for Water Transfers in 2010 referenced in the EA (Bureau and DWR 2009) require “willing sellers” to prepare individual monitoring and mitigation plans and to conduct the monitoring with oversight provided by the Bureau and DWR (p. 3-24 and 3-25). This fails to provide the most basic framework for governmental authority to enforce the state’s role as trustee of the public’s water in California, let alone a comprehensive and coordinated structure, for a very significant program that could transfer up to 154,239 AF of water from the Sacramento Valley. (Recall that DWR believes it has environmental compliance coverage for up to 600,000 AF of water sales from the Sacramento Valley, including 340,000 AF in groundwater substitution alone under the Governor’s 2009 emergency exemption) The draft EA further defers responsibility to “willing sellers” for compliance with local groundwater management plans and ordinances to determine when the effects of the proposed extraction become “adverse,” (p. 3-25). “Each district will be required to confirm that the proposed groundwater pumping will be compatible with state and local regulations and groundwater management plans,” (EA at p. 3-25). It is not acceptable that the draft EA and the Draft Technical Information for Water Transfers in 2010 merely provide monitoring direction to “willing sellers” without identifying rigorous standards for the risks at hand, specific actions, acceptable monitoring and reporting entities, or funding that will be necessary for this oversight.

The Coalition proposes instead that the Bureau and DWR require, at a minimum, that local governments select independent third-party monitors, who are funded by surcharges on Project transfers paid by the buyers, to oversee the monitoring that is proposed in lieu of Bureaus and DWR staff, and that peer reviewed methods for monitoring be required. If this is not done, the Project’s proposed monitoring is insufficient and cannot justify the significant risk of adverse environmental impacts.

For example, the EA and the Draft Technical Information for Water Transfers in 2010 fail to identify standards that would be used to monitor the 2010-2011 Water Transfer Program’s impacts. It fails to identify any specific monitoring protocols, locations (particularly in up-gradient recharge portions of the groundwater basins), and why chosen locations should be deemed effective for monitoring the effects of the proposed groundwater extraction. It also fails

to describe how the objectives in the Draft Technical Information for Water Transfers in 2010 will be met and by whom (EA at p.3-24 and 3-25). Moreover, it fails to provide a mitigation strategy for review and comment by the public, but defers this vital mitigation planning effort to future documents created by “willing sellers,” (EA at p.3-24 and 3-25) despite the fact that the EA acknowledges the potential for significant impacts. For example:

- Surface water and groundwater interact on a regional basis, and, as such, gains and losses to groundwater vary significantly geographically and temporally. In areas where groundwater levels have declined, such as in Sacramento County, streams that formerly gained water from groundwater now lose water to the groundwater system through seepage (EA at p. 3-12).
- *Groundwater substitution transfers would alter ground water levels and potentially affect natural and managed seasonal wetlands and riparian communities, upland habitats and wildlife species depending on these habitats.* As a part of groundwater substitution transfers, the willing sellers would use groundwater to irrigate crops and decrease use of surface water. Pumping additional groundwater would decrease groundwater levels in the vicinity of the sellers’ pumps. Natural and managed seasonal wetlands and riparian communities often depend on surface water/groundwater interactions for part or all of their water supply. Under the Proposed Action, subsurface drawdown related to groundwater substitution transfers could result in hydrologic changes to nearby streams and marshes, potentially affecting these habitats. Reduced groundwater elevations could also affect trees that access groundwater as a source of water through taproots in addition to extensive horizontal roots that use soil moisture as a water source. Decreasing groundwater levels could reduce part of the water base for species within these habitats (EA at p. 3-53 and 3-54).

The reader is directed to the Draft Technical Information for Water Transfers in 2010 to discover the minimal objectives and required elements of the monitoring and mitigation component of the Project. “The seller must implement an effective mitigation program to verify and correct problems that could arise due to transfer-related groundwater pumping,” but the reader and possibly the sellers are left wondering what exactly is an “effective mitigation plan” since there is no particular guidance to manage and analyze the very complex hydrologic relationships internal to groundwater and connected to surface waters. Certainly the public has no idea or ability to comment, which fails the full disclosure mandate in NEPA and CEQA. Located on pages 30 and 31 of the Draft Technical Information for Water Transfers in 2010 is a brief list of a “number of potential impacts [that] are sufficiently serious that they must be avoided or mitigated for a project to continue.”

- Contribution to long-term conditions of overdraft;
- Dewatering or substantially reducing water levels in nonparticipating wells;
- Measurable contribution to land subsidence;
- Degradation of groundwater quality that substantially impairs beneficial uses or violates water quality standards; and
- Affecting the hydrologic regime of wetlands and/or streams to the extent that ecological integrity is impaired.

The Draft Technical Information for Water Transfers in 2010 continues with suggestions to curtail pumping lower bowls, and pay higher energy costs to ease the impacts to third party wells owners (p. 30 and 31). While this bone thrown at mitigation is appreciated, the glaring omissions are notable. The Draft Technical Information for Water Transfers in 2010 completely fails to mention, even at a very general level, how individual well owners will determine and prove where the impacts to their wells are coming from, that water quality and health could become a significant impact for impacted wells and users and streams, and that there are no mitigation measures even mentioned for streams and wetlands. There also appears to be no consideration for species monitoring, just “practices” or “conservation measures” to “minimize impacts to terrestrial wildlife and waterfowl,” (Draft Technical Information p. 16). And please disclose why the 2009 DWB Biological Opinion is a reference to guide “specific practices on page 17 of the Draft Technical Information for Water Transfers in 2010.

Another example of the inadequacy of the proposed monitoring is that the draft EA fails to include any coordinated, programmatic plan to monitor stream flow of creeks and rivers located in proximity to the “willing sellers” that will evacuate more water than used historically. The potential for immediate impacts would be very close to water sellers’ wells, but the long term impacts could be more subtle and more geographically diverse. What precautions has the Bureau and DWR made for the cumulative impacts that come not only from this two-year Project, but in combination with the water sales from the last three years and those that are planned by the Bureau into the future (see list in g, iv below)? Bureau and DWR water transfers are not just one or two year transfers, but many serial actions in multiple years by the agencies, sellers, and buyers without the benefit of comprehensive environmental analysis under NEPA and CEQA.

As discussed above, adequate monitoring is vital to limit the significant risks posed by the Project to the health of the region’s groundwater, streams, and fisheries (more discussion below). One unfortunate example is the EA’s focus on groundwater substitution impacts that reflect the priority for water accounting and payment accuracy as opposed to the impacts to the groundwater system and streams. “The implementation of groundwater substitution pumping can lower the groundwater table and may change the relative difference between the groundwater and surface water levels. This change has a direct impact on the volume that a seller receives credit for being transferred,” (EA p.3-22 and 3-23). Moreover, to the extent this Project is conceived as a two-year drought or hardship program that will provide knowledge for future groundwater extraction and fallowing, its failure to include adequate monitoring protocols is even more disturbing and creates the risk of significant long-term and even irreversible impacts from the Project.

a. The Bureau’s assertion that the Project may be modified or halted in the event of significant adverse impacts to hydrologic resources is an empty promise in light of the wholly inadequate monitoring provided for in the 2010-2011 Water Transfer Program. Knowing that the Bureau and DWR knowingly violated the X2 standard in the Delta in February 2009 does little to instill confidence from the Coalition in non-specific program and mitigation criteria.

The EA repeatedly illustrates that there is potential for significant injury to other groundwater users, water quality, streams, flora and fauna, and the soil profile (p. 3-12, 3-23, 3-24, 3-53, 3-54). Chapter three contains numerous examples that illustrate the need for an EIS since there is insufficient, comprehensive planning for, let alone preparation to mitigate, adverse environmental impacts:

- *Acquisition of water via groundwater substitution or cropland idling would change the rate and timing of flows in the Sacramento River compared to the No Action Alternative.*
- *In Figure 3.2-2, groundwater substitution pumping results in a change in the groundwater/surface water interaction characteristics. In this case, the water pumped from a groundwater well may have two impacts that reduce the amount of surface water compared to pre-pumping conditions. These mechanisms are:*
 - *Induced leakage. The lowering of the groundwater table causes a condition where the groundwater table is lower than that the water level in the surface water. This conditions causes leakage out of the surface water.*
 - *Interception of groundwater. The placement of groundwater substitution pumping may intercept groundwater that may normally have discharged to the surface water (i.e., water that has already percolated into the ground may be pumped out prior the water reaching the surface water and being allowed to enter the “gaining” stream).*
- *The changes in groundwater flow patterns (e.g., direction, gradient) due to increased groundwater substitution pumping may result in changes in groundwater quality from the migration of reduced quality water.*
- *Groundwater substitution transfers would alter ground water levels and potentially affect natural and managed seasonal wetlands and riparian communities, upland habitats and wildlife species depending on these habitats.*
- *Rice land idling transfers would reduce habitat and forage for resident and migratory wildlife populations.*
- *Water transfers could change reservoir releases and river flows and potentially affect special status fish species and essential fish habitat.*
- *Water transfers could affect fisheries and aquatic ecosystems in water bodies, including Sacramento and American River systems, the Sacramento-San Joaquin Delta, San Luis Reservoir, and DWR and Metropolitan WD reservoirs in southern California.*
- *Increased groundwater pumping for groundwater substitution transfers would increase emissions of air pollutants.*

The Bureau thus recognizes the potential for significant decline in groundwater levels as a result of the proposed activity (EA at p. 3-23, 3-24, 3-53, 3-54). This acknowledgement alone is sufficient to require a full EIS. Moreover, as detailed below, the monitoring proposed by the 2010-2011 Water Transfer Program is so inadequate that there can be no guarantee that adverse impacts will be discovered, or that they will be discovered in time to avoid significant environmental impacts.

Glenn County will have groundwater substitution if the Project moves forward. The County realizes that its management plan may not be sufficient for the challenges presented by this Project and the myriad others and cautions that “[s]ince the groundwater management plan is relatively new and not fully implemented, the enforcement and conflict resolution process has not been vigorously tested,” (http://www.glenncountywater.org/management_plan.aspx). Moreover, the Glenn County Groundwater Management Plan does not have any provisions to monitor or protect the environment. The 2010-2011 Water Transfer Program EA fails to disclose the inadequacies of this and other local ordinances and plans.

b. Monitoring based on the Glenn County Groundwater Management Plan is inadequate. Since the Bureau omitted discussion of the Glenn County Groundwater Management Plan in the 2010-2011 Water Transfer Program, we refer to the language used in the 2008 Stony Creek Fan EA/FONSI that explained that the existing Glenn County groundwater management plan will ensure the testing project will have no significant adverse effects on groundwater levels: “This Finding of No Significant Impact (FONSI) is based upon the following: ... Implementation of the Glenn County Groundwater Management Plan during the aquifer performance testing plan will ensure that the proposed action will not result in any significant adverse effect to existing groundwater levels.” Stony Creek Fan EA/FONSI at p. 2.

But the Butte County Department of Water and Resource Conservation explains that local plans are simply not up to the task of managing a regional resource:

Glenn County does not have an export ordinance because it relies on Basin Management Objectives (BMO) to manage the groundwater resource, and subsequently to protect third parties from transfer related impacts. Recently, Butte County also adopted a BMO type of groundwater management ordinance. Butte County, Tehama County and several irrigation districts in each of the four counties have adopted AB3030 groundwater management plans. All of these groundwater management activities were initiated prior to recognizing that a regional aquifer system exists that extends over more than one county and that certain activities in one county could adversely impact another. Clearly the current ordinances, AB3030 plans, and local BMO activities, which were intended for localized groundwater management, are not well suited for management of a regional groundwater resource like that theorized of the Lower Tuscan aquifer system.

(Butte County DWRC 2007)⁴

c. The EA fails to propose real time monitoring for land subsidence. Third-party independent verification, perhaps by scientists from the U.S. Geological Survey, should be incorporated by DWR and the Bureau into the project description of the 2010-2011 Water Transfer Program. We applaud the initiation of a regional GPS network in the Sacramento

Valley, but remain concerned about the 13 existing extensometers in the Sacramento Valley that measure land subsidence, and a Global Positioning System land subsidence network established by one county (EA p. 13). The remaining responsibility is again deferred to the “willing sellers.” Unfortunately, voluntary monitoring by pumpers does not strike us as a responsible assurance given the substantial uncertainties involved in regional aquifer responses to extensive groundwater pumping in the Sacramento Valley.

Not only is there a failure to discuss real time monitoring for subsidence, there also is no discussion regarding delayed subsidence that should also be monitored according to the findings of Dr. Kyran Mish, Presidential Professor, School of Civil Engineering and Environmental Science at the University of Oklahoma. Dr. Mish notes: “It is important to understand that *all* pumping operations have the potential to produce such settlement, and when it occurs with a settlement magnitude sufficient enough for us to notice at the surface, we call it *subsidence*, and we recognize that it is a serious problem (since such settlements can wreak havoc on roads, rivers, canals, pipelines, and other critical infrastructure),” (Mish 2008).. Dr. Mish further explains that “[b]ecause the clay soils that tend to contribute the most to ground settlement are highly impermeable, their subsidence behavior can continue well into the future, as the rate at which they settle is governed by their low permeability.” *Id.* “Thus simple real-time monitoring of ground settlement can be viewed as an *unconservative* measure of the potential for subsidence, as it will generally tend to underestimate the long-term settlement of the ground surface.” *Id.* (emphasis added).

The EA acknowledges the existence and cause of serious subsidence in one area of the valley. “The area between Zamora, Knights Landing, and Woodland has been most affected (Yolo County 2009). Subsidence in this region is generally related to groundwater pumping and subsequent consolidation of aquifer sediments,” (EA p. 3-13). This fact alone illustrates the need for more extensive analysis throughout the export area in an EIS.

d. The 2010-2011 Water Transfer Program EA fails to require streamflow monitoring. The 2009 DWB EA/FONSI deferred the monitoring and mitigation planning to “willing sellers,” but even that requirement has been completely eliminated. We can’t emphasize enough the importance of frequent and regular streamflow monitoring by either staff of the project agencies or a third, independent party such as the USGS, paid for by Project transfer surcharges mentioned above. It is clear from existing scientific studies and the EA that the Project may have significant impacts on the aquifers replenishment and recharging of the aquifers, so the 2010-2011 Water Transfer Program should therefore require extensive monitoring of regional streams. The radius for monitoring should be large, not the typical two to three miles as usually used by DWR and the Bureau. Though not presented for the 2010-2011 Water Transfers Program, the *Stony Creek Fan Aquifer Performance Testing Plan*, which is a much smaller project, recognized that there may be a drawdown effect on the aquifer by considering results from a DWR Northern District spring 2007 production well test (EA/FONSI p. 28). However, it did not assess the anticipated scope of that effect—or even what level of effect would be considered acceptable. Moreover, the results from that test well indicate that the recharge source for the solitary

production well “is most likely from the foothills and mountains, to the east and north”—which at a minimum is more than fifteen miles away. (DWR, Glenn-Colusa Irrigation District Aquifer Performance Testing Glenn County, California).

The Butte County Department of Water and Resource Conservation have identified streams that must be monitored to determine impacts to stream flows that would be associated with pumping the Lower Tuscan Aquifer. These “[s]treams of interest” are located on the eastern edge of the Sacramento Valley and include: Mill Creek, Deer Creek, Big Chico Creek, Butte Creek, and Little Dry Creek (The Butte County DWRC 2007). The department described the need and methodology for stream flow gauging:

The objective of the stream flow gaging is to determine the volume of surface water entering into or exiting the Lower Tuscan Aquifer along perennial streams that transect the aquifer formation outcropping for characterization of stream-aquifer interactions and monitoring of riparian habitat. Measurement of water movement into or out of the aquifer will allow for testing of the accuracy of the Integrated Water Flow Model, an integrated surface water-groundwater finite differential model developed for the eastern extent of the Lower Tuscan aquifer.

Two stream gages will be installed on each of five perennial streams crossing the Lower Tuscan Formation to establish baseline stream flow and infiltration information. The differences between stream flow measurements taking upstream and downstream of the Lower Tuscan Formation are indications of the stream-aquifer behavior. Losses or gains in stream volume can indicate aquifer recharge or discharge to or from the surface waters.

Id.

As evident in the following conclusory assertions, the draft EA/FONSI fails to define the radius of influence associated with the aquifer testing and thus entirely fails to identify potential significant impacts to salmon:

“An objective in planning a groundwater substitution transfer is to ensure that groundwater levels recover to their typical spring high levels under average hydrologic conditions. Because groundwater levels generally recover at the expense of stream flow, the wells used in a transfer should be sited and pumped in such a manner that the stream flow losses resulting from pumping peak during the wet season, when losses to stream flow minimally affect other legal users of water,” (EA p. 2-7).

As mentioned above, streamflow monitoring is not a requirement of the Project, which is unfathomable. Monitoring of flow on streams associated with the Lower Tuscan Formation is particularly important to the survival of Chinook salmon which use these “streams of interest” to spawn and where salmon fry rear. Intensive groundwater pumping would likely lower water table elevations near these streams of interest, decreasing surface flows, and therefore reducing

salmon spawning and rearing habitat through dewatering of stream channels in these northern counties. This would be a significant adverse impact of the Project and is ignored by the EA.

A similar effect has been observed in the Cosumnes River, where “[d]eclining fall flows are limiting the ability of the Cosumnes River to support large fall runs of Chinook salmon,” (Fleckenstein, et al 2004). This is a river that historically supported a large fall run of Chinook Salmon. *Id.* Indeed, “[a]n early study by the California Department of Fish and Game . . . estimated that the river could support up to 17,000 returning salmon under suitable flow conditions.” *Id.*, citing CDFG 1957 & USFWS 1995. But “[o]ver the past 40 years fall runs ranged from 0 to 5,000 fish according to fish counts by the CDFG (USFWS 1995),” and “[i]n recent years, estimated fall runs have consistently been below 600 fish, according to Keith Whitener,” (Fleckenstein, *et al.* 2004). Indeed, “[f]all flows in the Cosumnes have been so low in recent years that the entire lower river has frequently been completely dry throughout most of the salmon migration period (October to December).” *Id.*

Research indicates that “groundwater overdraft in the basin has converted the [Cosumnes River] to a predominantly losing stream, practically eliminating base flows...” (Fleckenstein, *et al.* 2004). And “investigations of stream-aquifer interactions along the lower Cosumnes River suggest that loss of base flow support as a result of groundwater overdraft is at least partly responsible for the decline in fall flows.” *Id.* Increased groundwater withdrawals in the Sacramento basin since the 1950s have substantially lowered groundwater levels throughout the county.” *Id.*

The draft EA acknowledges the potential for impacts to special status fish species from altered river flows and commits to maintaining flow and temperature requirements already in place (p. 3-59). The coalition would like to have greater assurance of a commitment considering that the Bureau and DWR failed to meet the X2 standard in February 2009. The Bureau and DWR should make X2 compliance and streams of interest monitoring in real time part of their permit amendment applications to the SWRCB this spring. If stream levels are affected by groundwater pumping, then pumping would cease.

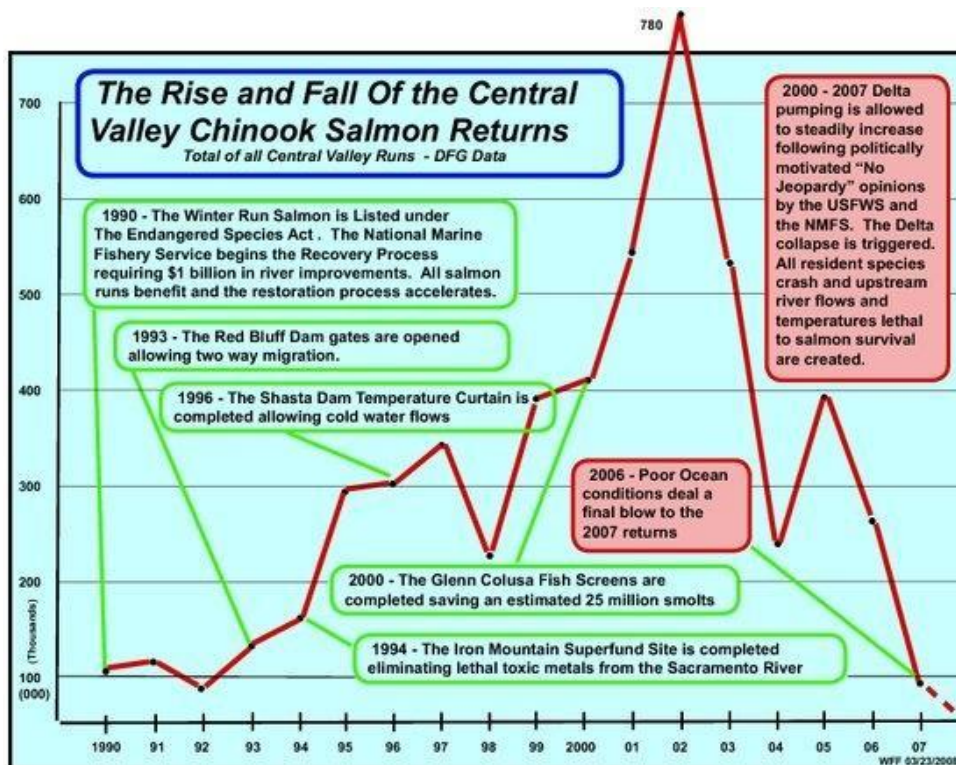
Unfortunately, the draft EA fails to anticipate possible stream flow declines in important salmon rearing habitat in the 2010-2011 Water Transfer Program area. Many important streams, such as Mud Creek, are located within the 2010-2011 Water Transfer Program and flows through probable Tuscan recharge zones, yet are not mentioned in the EA (also see comments above regarding Rock Creek). While a charged aquifer is likely to add to base flow of this stream, a dewatered aquifer would pull water from the stream. According to research conducted by Dr. Paul Maslin, Mud Creek provides advantageous rearing habitat for out-migrating Chinook salmon (1996). Salmon fry feeding in Mud Creek grew at over twice the rate by length as did fry feeding in the main stem of the Sacramento River. *Id.*

Another tributary to the Sacramento River, Butte Creek, hosts spring-run Chinook salmon, a threatened species under the Endangered Species Act. 64 Fed. Reg. 50,394 (Sept. 16, 1999).

Butte Creek contains the largest remaining population of the spring-run Chinook and is designated as critical habitat for the species. *Id.* at 50,399; 70 Fed. Reg. 52,488, 52,590-91 (Sept. 2, 2005). Additionally, Butte Creek provides habitat for the threatened Central Valley steelhead. *See* 63 Fed. Reg. 13,347 (Mar. 19, 1998); 70 Fed. Reg. at 52,518. While Butte Creek is mentioned in the EA (p. 2-11, 3-4, 3-49, 3-57), the only protection afforded this vital tributary are statements that cropland idling will not occur adjacent to it, yet that is contradicted on page 3-19. The Bureau should not overlook the importance of rearing streams, and should not proceed with this Project unless and until adequate monitoring and mitigation protocols are established.

Existing mismanagement of water in California’s rivers, creeks, and groundwater has already caused a precipitous decline in salmon abundance. There is no mention of the fall-run salmon numbers in the main stem Sacramento River or its essential tributaries despite the fact that their numbers dropped precipitously in 2007 (see graphic below) 2008, and 2009. After the commercial salmon fishery was closed for two years for fear of pushing these fish to extinction, scientists are waiting until February 2010 to determine if the commercial and sport fishing seasons will open this year. As noted above, the EA casually asserts that maintaining flow and temperature requirements in the main stem will be sufficient to protect aquatic species, but it fails to consider the impacts of almost 400,000 AF of water transfers, fallowing, and groundwater substitution on the tributaries. How much additional pumping does the Project represent, given CVP and SWP contractual commitments, available reservoir supplies, and other environmental restrictions south of the Delta? The EA and DWR’s missing environmental review are silent on this.

Where are the data to support assertions that impacts to aquatic species will be below a level of significance? Habitat values are also essential to many other special status species that utilize the aquatic and/or riparian landscape including, but not limited to, giant garter snake, bank swallow, greater sandhill crane, American shad, etc. Where is the documentation of the potential impacts to these species?



Graphic is courtesy of Dick Pool.

In addition to the direct decline in the salmon populations is the food chain affect that will influence species such as killer whales.

3. The EA fails to address the significant unknown risks raised by the 2010-2011 Water Transfer Program's proposed groundwater extraction.

The EA fails to identify and address the significant unknown risks associated with this Project. There are substantial gaps in scientists' understanding of how the aquifer system recharges.

The EA fails to reveal the scientifically known and unknown characteristics of the Lower Tuscan aquifer. Expert opinion and experience is offered by Professor Karin Hoover from CSU Chico who asserts that: "[T]o date there exists no detailed hydrostratigraphic analysis capable of distinguishing the permeable (water-bearing) units from the less permeable units within the subsurface of the Northern Sacramento Valley. In essence, the thickness and extent of the water-bearing units has not been adequately characterized." (p. 1)

Though the Project fails to disclose the limitations in knowledge of the geology and hydrology of the northern counties, it was disclosed in 2008 in the EA for the *Stony Creek Fan Aquifer Performance Testing Plan* (Testing Plan EA). It revealed that there is also limited understanding of the interaction between the affected aquifers, and how that interaction will affect the ability of the aquifers to recharge. The Testing Plan EA provides:

The Pliocene Tuscan Formation lies beneath the Tehama Formation in places in the eastern portion of the SCF Program Study Area, although its extent is not well defined. Based on best available information, it is believed to occur at depths ranging between approximately 300 and 1,000 feet below ground surface. It is thought to extend and slope upward toward the east and north, and to outcrop in the Sierra Nevada foothills. The Tuscan Formation is comprised of four distinct units: A, B C and D (although Unit D is not present within the general project area). Unit A, or Upper Tuscan Formation, is composed of mudflow deposits with very low permeability and therefore is not important as a water source. Units B and C together are referred to as the Lower Tuscan Formation. Very few wells penetrate the Lower Tuscan Formation within the SCF Program study area.

(The Testing Plan EA/FONSI at p. 23). The Tehama Formation, however, generally behaves as a semi-confined aquifer system and the EA contains no discussion of its relationship with the adjoining formations. Nor is there any discussion of the role of the Pliocene Tehama Formation as "the primary source of groundwater produced in the area," (DWR 2003).

The EA fails to offer any in-depth analysis of which strata in the aquifers will be most likely affected by the 2010-2011 Water Transfer Program's proposed extraction of groundwater. Thousands of domestic wells in the upper layers of the aquifers are not even considered in the EA. In addition, the EA provides no assessment of the interrelationship of varying strata in the aquifers in the Sacramento Valley or between the aquifers themselves.

The EA fails to provide basic background information regarding the recharge of groundwater. The documents states, "Groundwater is recharged by deep percolation of applied water and rainfall infiltration from streambeds and lateral inflow along the basin boundaries," (EA p. 3-10). How was the conclusion reached that applied water leads to recharge of the aquifer? Where are the supporting data? This claim is unsubstantiated by any of the work that has been performed to date. For example, the RootZone water balance model used by a consultant with Glenn Colusa Irrigation District, Davids Engineering, was designed to simulate root zone soil moisture. It balances incoming precipitation and irrigation against crop water usage and evaporation, and whatever is left over is assigned to "deep percolation." Deep percolation in this case means below the root zone, which is anywhere from a few inches to several feet below the surface, depending on the crop. There is absolutely no analysis that has been performed to insure that applied water does, indeed, recharge the aquifer. For example, if the surface soils were to dry out, water that had previously migrated below the root zone might be pulled back up to the surface by capillary forces. In any case, the most likely target of the "deep percolation" water in the Sacramento Valley is the unconfined, upper strata of the aquifer and possibly the Sacramento River. The EA has not demonstrated otherwise.

A public hearing concerning the Monterey Agreement was held in Quincy on November 29, 2007 and hosted by DWR. At the hearing Barbara Hennigan presented the following testimony: "So for the issues of protecting the water quality, protecting the stream flow in the Sacramento, one of the things that we have learned is that the Sacramento River becomes a permanently losing stream at the Sutter buttes. When I first started looking at the water issues that point was at Grimes south of the [Sutter B]uttles, now it is at Princeton, moving north of the buttes. As the Sacramento becomes a losing stream farther and farther north because of loss of the Lower Tuscan Aquifer, that means that it, there will be less water that the rest of the State relies on," (http://www.water.ca.gov/environmentalservices/docs/mntry_plus/comments/Quincy.txt). How and when will the Bureau and DWR address this enormously important condition and amplify the risk to not only the northstate, but the entire State of California?

4. The EA contains numerous errors and omissions regarding groundwater resources.

There are numerous errors, omissions, and negligence in addressing existing conditions before and with the Project in Section 3.2 Groundwater Resources. The failure to address stated problematic conditions and the lack of accuracy in this section of so many elemental issues and

facts raises questions about the content of the entire EA and FOSI. A partial list of statements and questions follows.

- On pages 3-10, 3-12, and 3-13 of the EA the Sierra Nevada [mountain range] and “Coast ranges” are identified, but there is no mention of the southern Cascade Range that is a prominent geologic feature of the northern Sacramento Valley and a significant contributor to the hydrology of the region.
- Page 3-12 mentions “major tributaries” to the Sacramento River, but omits the northern rivers the McCloud and the Pit. It also mentions “Stony, Cache, and Putah Creeks,” but fails to mention Battle, Mill, Big Chico, and Butte creeks. These omissions again reflect an odd lack of understanding of the Cascade Range.
- The EA states quite straightforwardly on page 3-12 that, “Surface water and groundwater interact on a regional basis, and, as such, gains and losses to groundwater vary significantly geographically and temporally. In areas where groundwater levels have declined, such as in Sacramento County, streams that formerly gained water from groundwater now lose water to the groundwater system through seepage.” This knowledge alone requires substantive environmental review under NEPA and CEQA.
- Page 3-12. “Groundwater production in the basin has recently been estimated to be about 2.5 million acre-feet or more in dry years.” What is the citation for this assertion?
- Page 3-12. “Historically, groundwater levels in the Basin have remained steady, declining moderately during extended droughts and recovering to pre-drought levels after subsequent wet periods. DWR extensively monitors groundwater levels in the basin. The groundwater level monitoring grid includes active and inactive wells that were drilled by different methods, with different designs, for different uses. Types of well use include domestic, irrigation, observation, and other wells. The total depth of monitoring grid wells ranges from 18 to 1,380 feet below ground surface.”. As presented above, groundwater levels have been changing, historically. Since the Bureau and DWR have access to a monitoring grid, for NEPA and CEQA compliance, they must present current facts, not general statements that relate to social science.
- Page 3-12. “In general, groundwater flows inward from the edges of the basin and south parallel to the Sacramento River. In some areas there are groundwater depressions associated with extraction that influence local groundwater gradients.” Where are the groundwater depressions? How have they affected groundwater gradients? How will the Project exacerbate a negative existing condition?
- Page 3-12. “Prior to the completion of CVP facilities in the area (1964-1971), pumping along the west side of the basin caused groundwater levels to decline. Following construction of the Tehama-Colusa Canal, the delivery of surface water and reduction in groundwater extraction resulted in a recovery to historic groundwater levels by the mid to late-1990s.” Please provide the citation(s).
- Pg 3-15 "According to the SWRCB, there are no elevated concentrations of arsenic or selenium in the Sacramento Groundwater Basin." The GAMA domestic well Project, Tehama County Focus Area, 2009, Arsenic in Domestic and Public Wells indicates variable levels of arsenic in the cited basin. The study found that, "Fourteen percent of

the wells [in the Tehema County focus area] had concentrations of both arsenic and iron above their associated CDPH MCLs or secondary MCLs."

- Page 3-15. "The State Water Code (Section 1745.10) requires that for short term water transfers, the transferred water may not be replaced with groundwater unless the following criteria are met (SWRCB 1999)..." The Project is not a short term water transfer, but a set of serial actions in multiple years by the agencies, sellers, and buyers without the benefit of comprehensive environmental analysis under NEPA and CEQA.
- Page 3-16. "California Water Code Section 1810 and the CVPIA protect against injury to third parties as a result of water transfers. Three fundamental principles include (1) no injury to other legal users of water; (2) no unreasonable effects on fish, wildlife or other in-stream beneficial uses of water; and (3) no unreasonable effects on the overall economy or the environment in the counties from which the water is transferred. These principles must be met for approval of water transfers." The disclosures and analyses contained in the EA, FONSI, and its appendices are inadequate to satisfy the California Water Code requirements and the Bureau's requirements under NEPA. DWR has clearly failed its obligations under CEQA by providing no disclosure or analysis.

E. Other resource impacts flowing from corrected chains of cause and effect are unrecognized in the EA and should be considered in an EIS instead.

Regarding surface water reservoir operations in support of the 2010-2011 Water Transfer Program, we have several questions and concerns:

- Regarding fisheries, we note that the Bureau intends to comply with the State Water Resources Control Board's Water Rights Orders 90-05 and 91-01 in order to provide temperature control at or below 56 degrees Fahrenheit for anadromous fish, their redds, and hatching wild salmonid fry, and to provide minimum instream flows of 3,250 cubic feet per second (cfs) between September 1 and February 28, and 2,300 cfs between March 1 and August 31. How will the Bureau and DWR comply with Fish and Game Code Section 5937—to keep fish populations below and above their dams in good condition, as they approve transfers of CVP water from willing CVP contractors to willing buyers? We urge this compliance effort be integrated with the streams of interest and groundwater monitoring programs we recommended above.
- We also find confusing the EA's treatment of instream flows for fisheries. On one hand, minimum flows and temperature criteria established in the above-mentioned water rights orders is to be adhered to by the Bureau for the Sacramento River. The necessity for April and May storage is not well explained.
- Concerning the social and economic effects of the proposed 2010-2011 Water Transfer Program, crop idling transfers will delete fields from production and result in employment impacts on Sacramento Valley's agricultural labor market at a time when the

national recession is at its worst. The lack of descriptive information about what crops are to be idled by specific "willing sellers" means that a reasonably plausible estimate of employment impacts in the Sacramento Valley are unavailable, rendering the EA inadequate from this standpoint. Has the Bureau reviewed the President's policies on economic recovery to be certain that its water transfer program that would shift employment impacts from one Valley to another rather than work to increase employment generally is consistent with the intent of the President and Congress? What would be the effects of employment shifting on the poverty rates of Sacramento Valley counties? Such an estimate, provided with basic information about what acreages of specific crops are to be idled, is within the reach of the Bureau to make.

- On its own terms, the Bureau's EA makes no attempt to establish baseline agricultural crop acreages for each agricultural county offering or seeking DWB water in order to calculate and apply its 20 percent threshold for limiting economic impacts to agriculture in selling counties. Moreover, this 20 percent threshold needs to be incorporated into the description of the Proposed Action Alternative, since it appears to be an integral part of DWB actions.
- Regarding public health and safety, the EA negligently denies the potential for impacts (p.3-1). Fluctuating domestic wells can lead to serious contamination from heavy metals and non-aqueous fluids. Additionally, there are numerous hazardous waste plumes in Butte County, which could easily migrate with the potential increased groundwater pumping proposed for the Project. All of this must be disclosed and analyzed.

In general, the 2010-2011 Water Transfer Program EA/FONSI—and by logical implication, DWR's actions—consistently avoids full disclosure of existing conditions and baseline data, rendering their justifications for the 2010-2011 Water Transfer Program at best incoherent, and at worst, dangerous to groundwater users and resources, and to vulnerable fisheries in tributary streams of the Sacramento River.

F. The 2010-2011 Water Transfer Program is likely to have a cumulatively significant impact on the environment.

The draft EA/FONSI does not reveal that the current Project is part of a much larger set of plans to develop groundwater in the region, to develop a "conjunctive" system for the region, and to integrate northern California's groundwater into the state's water supply. These are plans that the Bureau, together with DWR and others, have pursued and developed for many years. Indeed, one of the plans—the short-term phase of the Sacramento Valley Water Management Program—is the subject of an ongoing scoping process for a Programmatic EIS that has not yet been completed.

In assessing the significance of a project's impact, the Bureau must consider "[c]umulatively actions, which when viewed with other proposed actions have cumulatively significant impacts

and should therefore be discussed in the same impact statement.” 40 C.F.R. §1508.25(a)(2). A “cumulative impact” includes “the impact on the environment which results from the incremental impact of the action when added to *other past, present and reasonably foreseeable future actions* regardless of what agency (Federal or non-Federal) or person undertakes such other actions.” *Id.* §1508.7. The regulations warn that “[s]ignificance cannot be avoided by terming an action temporary or by breaking it down into small component parts.” *Id.* §1508.27(b)(7).

An environmental impact statement should also consider “[c]onnected actions.” *Id.* §1508.25(a)(1). Actions are connected where they “[a]re interdependent parts of a larger action and depend on the larger action for their justification.” *Id.* §1508.25(a)(1)(iii). Further, an environmental impact statement should consider “[s]imilar actions, which when viewed together with other *reasonably foreseeable or proposed agency actions*, have similarities that provide a basis for evaluating their environmental consequences together, such as common timing or geography.” *Id.* §1508.25(a)(3) (emphasis added).

As detailed below, instead of assessing the cumulative impacts of the proposed action as part of the larger program that even the Bureau has recognized should be subject to a programmatic EIS (but for which no programmatic EIS has been completed), the Bureau has attempted to separate this program and approve it through an inadequate EA. Further, the Bureau has failed to take into account the cumulative effects of other groundwater and surface water projects in the region, the development of “conjunctive” water systems, and the anticipated further integration of Sacramento Valley surface and ground water into the state water system.

G. The Environmental Assessment Fails to Meet the Requirements of NEPA.

Even if an EIS were not clearly required here, the draft EA/FONSI prepared by the Bureau violates NEPA on its own. As discussed above, the draft EA does not provide the analysis necessary to meet NEPA’s requirements and to support its proposed finding of no significant impact. Further, as outlined above, the draft document fails to provide a full and accurate description of the proposed Project, its relationship to myriad other water transfer and groundwater extraction projects, its potentially significant adverse effects on salmon critical habitat in streams of interest tributary to the Sacramento River, and an assessment of the cumulative environmental impacts of the 2010-2011 Water Transfer Program when considered together with other existing and proposed water programs.

Additionally, the draft EA/FONSI fails to provide sufficient evidence to support its assertions that the 2010-2011 Water Transfer Program would have no significant impacts on the human or natural environments, neither decision makers nor the public are fully able to evaluate the significance of the 2010-2011 Water Transfer Program’s impacts. These informational failures complicate the Coalition’s efforts to provide meaningful comments on the full extent of the potential environmental impacts of the DWB and appropriate mitigation measures. Accordingly, many of the Coalition’s comments include requests for additional information.

1. The EA Fails to Consider a Reasonable Range of Alternatives.

NEPA's implementing regulations call for analysis of alternatives is "the heart of the environmental impact statement," 40 C.F.R. §1502.14, and they require an analysis of alternatives within an EA. *Id.* §1408.9. The statute itself specifically requires federal agencies to:

study, develop, and describe appropriate alternatives to recommended courses of action in any proposal which involves unresolved conflicts concerning available uses of resources.

42 U.S.C. §4332(2)(E). Here, because the Bureau's EA considers only the proposed Project and a "No Action" alternative, the EA violates NEPA.

The case law makes clear that an adequate analysis of alternatives is an essential element of an EA, and is designed to allow the decision maker and the public to compare the environmental consequences of the proposed action with the environmental effects of other options for accomplishing the agency's purpose. The Ninth Circuit has explained that "[i]nformed and meaningful consideration of alternatives ... is ... an integral part of the statutory scheme." *Bob Marshall Alliance v. Hodel*, 852 F.2d 1223, 1228 (9th Cir. 1988) (holding that EA was flawed where it failed adequately to consider alternatives). An EA must consider a reasonable range of alternatives, and courts have not hesitated to overturn EAs that omit consideration of a reasonable and feasible alternative. *See People ex rel. Van de Kamp v. Marsh*, 687 F.Supp. 495, 499 (N.D. Cal. 1988); *Sierra Club v. Watkins*, 808 F.Supp. 852, 870-75 (D.D.C. 1991).

Here, there are only two alternatives presented: the No Action and the Proposed Action. The lack of *any* alternative action proposal is unreasonable and is by itself a violation of NEPA's requirement to consider a reasonable range of alternatives.

Even more significantly, there are numerous other alternative ways to ensure water is allocated reliably when California experiences dry hydrologic years. We described several elements of reasonable alternatives above. These are the alternatives that should have been presented for the Bureau's draft EA/FONSI on the 2010-2011 Water Transfer Program to comply with NEPA. 42 U.S.C. § 4332(2)(E).

2. The EA Fails to Disclose and Analyze Adequately the Environmental Impacts of the Proposed Action

The discussion and analysis of environmental impacts contained in the EA is cursory and falls short of NEPA's requirements and stems from having an unclear and poorly described narrative for the proposed 2010-2011 Water Transfer Program. It obscures realistic chains of cause and effect, which in turn prevent accurate and comprehensive accounting of environmental baselines and measurement of the DWB's potential impacts. NEPA's implementing regulations require that an EA "provide sufficient evidence and analysis for determining whether to prepare an

[EIS].” 40 C.F.R. §1508.9(a). For the reasons discussed above, the EA fails to discuss and analyze the environmental effects of the water transfers, crop idling, and groundwater substitution proposed by the 2010-2011 Water Transfer Program. The Bureau must consider and address the myriad of environmental consequences that are likely to flow from this proposed agency action.

Along with our significant concerns about the adequacy of the proposed monitoring, the draft EA/FONSI also fails to explain what standards will be used to evaluate the monitoring data, and on what basis a decision to modify or terminate the pumping would be made. In light of the document’s silence on these crucial issues, the draft EA/FONSI’s conclusion that there will not be significant adverse impacts withers quickly under scrutiny.

3. The EA Fails to Analyze Cumulative Impacts Adequately.

The Ninth Circuit Court makes clear that NEPA mandates “a useful analysis of the cumulative impacts of past, present and future projects.” *Muckleshoot Indian Tribe v. U.S. Forest Service*, 177 F.3d 800, 810 (9th Cir. 1999). Indeed, “[d]etail is required in describing the cumulative effects of a proposed action with other proposed actions.” *Id.* The very cursory cumulative effects discussion contained in the EA plainly fails to meet this standard.

As discussed in Part I.C. above, the proposed DWB does not exist in a vacuum, and is in addition to a broader program to develop regional groundwater resources and a conjunctive use system. The 2010-2011 Water Transfer Program is also only one of several proposed and existing projects that affect the regional aquifers. The existence of these numerous related projects makes an adequate analysis of cumulative impacts especially important.

4. The Bureau Has Failed to Consider the Cumulative Impact of Other Groundwater Development and Surface Water Diversions Affecting the Region

In addition to the improper segmentation evident in the draft EA/FONSI, the assessment of environmental impacts is further deficient because the Bureau has failed to consider the cumulative impacts of the proposed groundwater extraction when taken in conjunction with other projects proposed for the development of groundwater and surface water.

The Bureau and its contractors are party to numerous current and reasonably foreseeable water programs that are related to the water transfers contemplated in the DWB including the following:

- Sacramento Valley Integrated Regional Water Management Plan (2006)
- Sacramento Valley Regional Water Management Plan (January 2006)
- Stony Creek Fan Conjunctive Water Management Program
- Sacramento Valley Water Management Agreement (Phase 8, October 2001)

- Draft Initial Study for 2008-2009 Glenn-Colusa Irrigation District Landowner Groundwater Well Program
- Regional Integration of the Lower Tuscan Groundwater Formation into the Sacramento Valley Surface Water System Through Conjunctive Water Management (June 2005)
- Stony Creek Fan Aquifer Performance Testing Plan for 2008-09
- Lower Tuscan Integrated Planning Program, a program funded by the Bureau that will “integrate the Lower Tuscan formation aquifer system into the management of regional water supplies.”
- Annual forbearance agreements (2008 had an estimated 160,00 acre feet proposed).

We briefly describe some of their key elements here.

Stony Creek Fan Conjunctive Water Management Program. The SCF Aquifer Plan is part of and in furtherance of the Stony Creek Fan Conjunctive Water Management Program (“SCF Program”). This program is being carried out by GCID, Orland-Artois and Orland Unit Water Association.

The long-term objective of the SCF Program is the development of a “regional conjunctive water management program consisting of a direct and in-lieu recharge component, a groundwater production component, and supporting elements....” (SVWMA: Project 8A Stony Creek Fan Conjunctive Water Management Program (“SVWMA Project 8A”), at 8A-1). The potential supply from such a program was estimated at 50,000 af per year to 100,000 af per year. *Id.*

The SCF Program has 3 Phases: (1) a feasibility study; (2) a demonstration project; and (3) project implementation. Phase I of the SCF Program has already been completed. The SCF Aquifer Plan described in a draft EA/FONSI is part of Phase II of the larger SCF Program. Phase III of the SCF Program will implement the program’s goal of integrating test and operational production wells into the water supply systems for GCID, Orland-Artois, and Orland Unit Water Association for long-term groundwater production in conjunction with surface water diversions.

The Bureau is well aware of the SCF Program, but declined to analyze the environmental effects of the program as a whole, and simply considered the effects of an isolated component of the larger program. Indeed, the Bureau recently awarded a grant to GCID to fund the SCF Program. The Bureau’s grant agreement states that the SCF Program “target[s] the Lower Tuscan Formation and possibly other deep aquifers in the west-central portion of the Sacramento Valley ... as the source for all or a portion of the additional groundwater production needed to meet [the SCF Partners’] respective integrated water management objectives.” BOR Assistance Agreement No. 06FG202103 at p. 2. The agreement further provides that provides that “[a]dditional test wells and production wells will be installed within the Project Area.” *Id.*

Moreover, the Bureau's own description of the reasons for not choosing the "No Action" alternative indicate the Bureau's recognition that the primary goal of the SCF Aquifer Plan is to realize the objectives of the SCF Program – "increas[ing] reliable water supplies through conjunctive management of groundwater and surface water" at a fast pace. *See* EA/FONSI at p. 5. The Bureau was obligated to assess the potentially significant environmental impacts associated with such conjunctive management of groundwater and surface water, and wholly failed to do so.

There are serious concerns raised by the proposal to engage in conjunctive management of groundwater and surface water that are not addressed in the EA. For example, in 1994, following seven years of low annual precipitation, Western Canal Water District and other irrigation districts in Butte, Glenn and Colusa counties exported 105,000 af of water extracted from the Tuscan aquifers to buyers outside of the area. This early experiment in the *conjunctive use* of the groundwater resources – conducted without the benefit of environmental review – caused a significant and immediate adverse impact on the environment (Msangi 2006). Until the time of the water transfers, groundwater levels had dropped but the aquifers had sustained the normal demands of domestic and agricultural users. The water districts' extractions, however, lowered groundwater levels throughout the Durham and Cherokee areas of eastern Butte County (Msangi 2006). The water level fell and the water quality deteriorated in the wells serving the City of Durham (Scalmanini 1995). Irrigation wells failed on several orchards in the Durham area. One farm never recovered from the loss of its crop and later entered into bankruptcy. Residential wells dried up in the upper-gradient areas of the aquifers as far north as Durham.

The SCF Program is a Component of the Sacramento Valley Water Management Program. The Sacramento Valley Water Management Program (Phase 8) ("SVWMP") also includes the SCF Program as one of its elements. (SVWMA Project 8A at pp. 8A-1 to 8A-13).

The SVWMP recognizes that the SCF Program "has the potential to improve operational flexibility on a regional basis resulting in measurable benefits locally in the form of predictable, sustainable supplies, *and improved reliability for water users' elsewhere in the state.*" *Id.* at p. 8A-2 (emphasis added). By piecemealing this program improperly and analyzing only the small component of the SCF Program, the Bureau has failed to assess the environmental impacts associated not just with the anticipated conjunctive use of the groundwater, but also the effect of the anticipated export of water to other regions of the state.

Additionally, approximately seven years ago, on August 5, 2003, the Bureau published a notice in the Federal Register announcing its intention to prepare a programmatic EIS to analyze the short-term phase of the SVWMP. 68 Fed. Reg. 46218, 46219 (Aug. 5, 2003). Like the SVWMP, this "Short-term Program" for which the Bureau stated its intent to conduct a programmatic EIS included implementation of the SCF Program. *Id.* at 46219, 46220.

The SCF Program is Also a Component of the Sacramento Valley Integrated Regional Water Management Program. The Bureau has been working with GCID and others to realize the

Sacramento Valley Integrated Regional Water Management Program (“SVIRWMP”). SVIRWMP is comprised of a number of sub-regional projects, including the SCF Program. *See* SVIRWMP, Appendix A at A-5; BOR Assistance Agreement No. 06FG202103. Here again, even though the SCF Aquifer Plan is clearly a necessary component of the SCF Program – which is in turn a component of the SVIRWMP – the draft EA/FONSI failed to even acknowledge, let alone assess, the cumulative impacts of these related projects.

Most obviously, the draft EA wholly fails to assess the impact of the Bureau’s *Sacramento Valley Regional Water Management Plan (2006)* (SVRWMP) and the forbearance water transfer program that the Bureau and DWR facilitate jointly. As noted above, the Programmatic EIS for the 2002 Sacramento Valley Water Management Agreement or Phase 8 Settlement was initiated, but never completed, so the SVRWMP was the next federal product moving the Phase 8 Settlement forward. The stated purpose of the Phase 8 Settlement and the SVRWMP are to improve water quality standards in the Bay-Delta and local, regional, and statewide water supply reliability. In the 2008 forbearance program, 160,000 af was proposed for transfer to points south of the Delta. To illustrate the ongoing significance of the demand on Sacramento Valley water, we understand that GCID alone entered into “forbearance agreements” to provide 65,000 af of water to the San Luis and Delta Mendota Water Association in 2008, 80,000 af to State Water Project contractors in 2005, and 60,000 af to the Metropolitan Water District of Southern California in 2003.

Less obvious, but certainly available to the Bureau, are the numerous implementation projects that Phase 8 signatories are pursuing, such as Glenn Colusa Irrigation District’s (GCID) 2008 proposal to divert groundwater pumped from private wells to agricultural interests in the District. *See* Attach. (GCID Proposed Negative Declaration, GCID Landowner Groundwater Well Program for 2008-09). Additionally, the draft EA does not consider the cumulative effect of the Lower Tuscan Integrated Planning Program, a program funded by the Bureau that will “integrate the Lower Tuscan formation aquifer system into the management of regional water supplies.” Grant Agreement at 4. This program, as described by the Bureau, will culminate in the presentation of a proposed water management program for the Lower Tuscan Formation for approval and implementation by the appropriate authorities. Clearly, the cumulative impact of this program and the 2010-2011 Water Transfer Program’s proposed groundwater extraction should have been assessed.

Finally, with the myriad projects and programs that are ignored in the EA and have never been analyzed cumulatively, the EA finally discloses that there could be a *devastating* impact to groundwater: “The reduction in recharge due to the decrease in precipitation and runoff in the past years in addition to the increase in groundwater transfers would lower groundwater levels. Multi-year groundwater acquisition under cumulative programs operating in similar areas of the Sacramento Valley could further reduce groundwater levels. Groundwater levels may not fully recover following a transfer and may experience a substantial net decline in groundwater levels over several years. This would be a substantial cumulative effect,” (EA p. 3-108). While the

honesty is refreshing, the lack of comprehensive monitoring, mitigation, and project cessation mechanisms is startling. This alone warrants the preparation of an EIS.

Here again, the current document does not discuss or analyze these potential impacts, their potential scope or severity, or potential mitigation efforts. Instead, it relies on the existence of local ordinances, plans, and oversight with the monitoring and mitigation efforts of individual “willing sellers” to cope with any adverse environmental effects. However, as we have shown above, for example, the Glenn County management plan is untested and does not provide adequate protection and monitoring of the region’s important groundwater resources. To further clarify the inadequacy of relying on local plans and ordinances, Butte County’s Basin Management Objectives have no enforcement mechanism and Butte County’s Chapter 33, while it requires CEQA review for transfers that include groundwater, has never been tested. As one can see, there is very limited local protection for groundwater and no authority to influence pumping that is occurring in a different county.

5. The 2010-2011 Water Transfer Program is likely to serve as precedent for future actions with significant environmental effects.

As set forth above, this Project is part of a broader effort by the Bureau and DWR to develop groundwater resources and to integrate GCID’s water into the state system. For these reasons, the 2010-2011 Water Transfer Program is likely to “establish a precedent for future actions with significant effects or represents a decision in principle about a future consideration” (40 C.F.R. §1508.27(b)(6)), and should be analyzed in an EIS.

6. The 2010-2011 Water Transfer Program has potential adverse impacts for a threatened species.

As the Bureau of Reclamation is well aware, the purpose of the ESA is to conserve the ecosystems on which endangered and threatened species depend and to conserve and recover those species so that they no longer require the protections of the Act. 16 U.S.C. § 1531(b), ESA § 2(b); 16 U.S.C. § 1532(3), ESA §3(3) (defining “conservation” as “the use of all methods and procedures which are necessary to bring any endangered species or threatened species to the point at which the measures provided pursuant to this chapter are no longer necessary”). “[T]he ESA was enacted not merely to forestall the extinction of species (i.e., promote species survival), but to allow a species to recover to the point where it may be delisted.” *Gifford Pinchot Task Force v. U.S. Fish & Wildlife Service*, 378 F.3d 1059, 1069 (9th Cir. 2004). To ensure that the statutory purpose will be carried out, the ESA imposes both substantive and procedural requirements on all federal agencies to carry out programs for the conservation of listed species and to insure that their actions are not likely to jeopardize the continued existence of any listed species or result in the destruction or adverse modification of critical habitat. 16 U.S.C. § 1536. See *NRDC v. Houston*, 146 F.3d 1118, 1127 (9th Cir. 1998) (action agencies have an “affirmative duty” to ensure that their actions do not jeopardize listed species and “independent obligations” to ensure that proposed actions are not likely to adversely affect listed species). To accomplish this goal, agencies must consult with the Fish and Wildlife Service whenever their actions “may affect” a listed species. 16 U.S.C. § 1536(a)(2); 50 C.F.R. § 402.14(a). Section 7 consultation is required for “any action [that] may affect listed species or critical habitat.” 50 C.F.R. § 402.14. Agency “action” is defined in the ESA’s implementing regulations to “mean all activities or programs of any kind authorized, funded, or carried out, in whole or in part, by Federal agencies in the United States.” 50 C.F.R. § 402.02.

The giant garter snake (“GGS”) is an endemic species to Central Valley California wetlands. (Draft Recovery Plan for the Giant Garter Snake (“DRP”) 1). The giant garter snake, as its name suggests, is the largest of all garter snake species, not to mention one of North America’s largest native snakes, reaching a length of up to 64 inches. Female GGS tend to be larger than males. GGS vary in color, especially depending on the region, from brown to olive, with white, yellow, or orange stripes. The GGS can be distinguished from the common garter snake by its lack of red markings and its larger size. GGS feed primarily on aquatic fish and specialize in ambushing small fish underwater, making aquatic habitat essential to their survival. Females give birth to live young from late July to early September, and brood size can vary from 10 to up to 46 young. Some studies have suggested that the GGS is sensitive to habitat change in that it prefers areas that are familiar and will not typically travel far distances. The EA discloses that one GGS study in Colusa County revealed the “longest average movement distances of 0.62 miles, with the longest being 1.7 miles, for sixteen snakes in 2006, and an average of 0.32 miles, with the longest being 0.6 miles for eight snakes in 2007. However, in response to droughts and other changes in water availability, the GGS has been known to travel up to 5 miles in only a few days,

but the impacts on GGS survival and reproduction from such extreme conditions are unknown due to the deficiency in data and analysis.

Flooded rice fields, irrigation canals, and wetlands in the Sacramento Valley can be used by the giant garter snake for foraging, cover and dispersal purposes. The draft EA fails to comprehensively analyze the movements and habitat requirements for the federal and state-threatened giant garter snake and yet again defers responsibility to a future time. The 2009 Biological Assessment acknowledged the failure of Bureau and DWR to complete the Conservation Strategy that was a requirement of the 2004 Biological Opinion. (BA at p. 19-20) [The BA appears to have no page numbers] What possible excuse delayed this essential planning effort?

The 2010-2011 Water Transfer Program also proposes to delete or modify other mitigation measures previously adopted as a result of the EWA EIR process to substantially reduce significant impacts, but without showing they are infeasible. For example, the Bureau and DWR propose to delete the 160 acre maximum for “idled block sizes” for rice fields left fallow rather than flooded and to substitute for it a 320 acre maximum. (See 2003 Draft EWA EIS/EIR, p. 10-55; 2004 Final EWA EIS/EIR, Appendix B, p. 18, Conservation Measure # 4.) There is no evidence to support this change. In light of the agencies failure to complete the required Conservation Strategy mentioned above and the data gathered in the Colusa County study, how can the EA suggest that doubling the fallowing acreage is in any way biologically defensible? The agencies additionally propose to delete the mitigation measure excluding Yolo County east of Highway 113 from the areas where rice fields may be left fallow rather than flooded, except in three specific areas. (See 2004 Final EWA EIS/EIR, Appendix B, p. 18, Conservation Measure # 2.) What is the explanation for this change? What are the impacts from this change?

Deleting these mitigation measures required by the EWA approval would violate NEPA and CEQA’s requirements that govern whether, when, and how agencies may eliminate mitigation measures previously adopted under NEPA and CEQA. (See *Napa Citizens for Honest Government v. Napa County Board*.)

The 2010-2011 Water Transfer Program fails to include sufficient safeguards to protect the giant garter snake and its habitat. The EA concludes, “The frequency and magnitude of rice land idling would likely increase through implementation of water transfer programs in the future. Increased rice idling transfers could result in chronic adverse effects to giant garter snake and their habitats and may result in long-term degradation to snake populations in the lower Sacramento Valley. In order to avoid potentially significant adverse impacts for the snake, additional surveys should be conducted prior to any alteration in water regime or landscape,” (p. 3-110). To address this significant impact the Bureau proposes relying on the 2009 DWB Biological Opinion, which was a one-year BO. The expired BO highlights the Bureau and DWR’s avoidance of meeting federal and state laws stating, “This office has consulted with Reclamation, both informally and formally, approximately one-half dozen times over the past 8 years on various forbearance agreements and proposed water transfers for which water is made available for delivery south of

the delta by fallowing rice (and other crops) or substituting other crops for rice in the Sacramento Valley. Although transfers of this nature were anticipated in our biological opinion on the environmental Water Account, that program expired in 2007 and, to our knowledge, no water was ever made available to EWA from rice fallowing or rice substitution. The need to consult with such frequency on transfers involving water made available from rice fallowing or rice substitution suggests to us a need for programmatic environmental compliance documents, including a programmatic biological opinion that addresses the additive effects on giant garter snakes of repeated fallowing over time, and the long-term effects of potentially large fluctuations and reductions in the amount and distribution of rice habitat upon which giant garter snakes in the Sacramento Valley depend,” (p.1-2). The Coalition agrees with the U.S. Fish and Wildlife Service that programmatic environmental compliance is needed under the Endangered Species Act, NEPA, CEQA, and the California Endangered Species Act.

It is conspicuously noticeable that there isn’t a claim of a less-than-significant impact for the Giant Garter Snake (*Thamnophis gigas*), in the EA/FONSI. There is really no conclusion reached due to the fundamental absence of science for the species. The Bureau should also prepare an EIS because the 2010-2011 Water Transfer Program will likely have significant environmental effects on the Giant Garter Snake, a listed threatened species under the federal Endangered Species Act and California Endangered Species Act. 40 C.F.R. §1508.27(b)(9).

II. Purpose and Need Issues of the 2010-2011 Water Transfer Program

A. The Purpose and Need Section of the EA/FONSI fails to specify the policy framework upon which the 2010-2011 Water Transfer Program is based.

Avoiding the requirements of the California Environmental Quality Act (CEQA) for the 2010-2011 Water Transfer Program does not reflect the actual environmental effects of the proposal—which are similar to the proposed 1994 Drought Water Banks and for which a final Program Environmental Impact Report was completed in November 1993. In 2000, the Governor’s Advisory Drought Planning Panel report, *Critical Water Shortage Contingency Plan* promised a program EIR on a drought-response water transfer program, but was never undertaken. Twice in recent history, the state readily acknowledged that CEQA review for a major drought water banking program was appropriate. So, the 2009 DWB Notice of Exemption and complete avoidance of CEQA review for the 2010-2011 Water Transfer Program reflects an end-run around established water law through the use of water transfers, and is therefore vulnerable to legal challenge under the California Environmental Quality Act.

We question the merits of and need for the 2010-2011 Water Transfer Program itself. The existence of drought conditions at this point in time is highly questionable and reflects the state’s abandonment of a sensible water policy framework given our state and national economic recession and tattered public budgets. Our organizations believe the agencies continue to go too far to help a few junior water right holders, and that at bottom the 2010-2011 Water Transfer Program is not needed. The Project intends to directly benefit the areas of California whose

water supplies are the least reliable by operation of state water law. Though their unreliable supplies have long been public knowledge, local, state, and federal agencies in these areas have failed to stop blatantly wasteful uses and diversions of water and to pursue aggressive planning for regional water self-sufficiency.

The EA/FONSI's statement of purpose and need on page 1-2 states specifically that, "The purpose of the Proposed Action is to help facilitate the transfer of water throughout the State from willing sellers of CVP water upstream of the Delta to buyers that are at risk of experiencing water shortages in 2010 and 2011." This paragraph and the section that it is in omit a coherent discussion of need. The purpose and need should also state that this transfer program would be subject to specific criteria and delineate priorities, but they are absent.

The EA/FONSI makes no attempt to place the 2010-2011 Water Transfer Program into the context of the 2005 California Water Plan that the state recently completed. It appears to us that this plan is largely on the shelf now, perhaps because of the state's dire fiscal problems. It does contain many good recommendations concerning increasing regional water self-sufficiency. However, our review of the 2005 California Water Plan reveals no mention of the 2000 Critical Water Shortage Reduction Marketing Program or any overarching drought response plan that the state could have planned for in 2005, but did not. We sadly conclude that the state of California has no meaningful adopted drought response policy, save for gubernatorial emergency declarations to suspend protective environmental regulations. This is not a sustainable water policy for California.

The purpose and need section of the EA/FONSI *and the 2009 Governor's drought emergency declaration* cry out for placing the 2010-2011 Water Transfer Program into a policy framework. What is the state doing otherwise to facilitate regional water self-sufficiency for these areas with the least reliable water rights? How does the 2010-2011 Water Transfer Program fit into the state and federal government's water and drought policy framework? Instead, the state and federal response to this third consecutive dry year falls back on simply the Drought Water Bank model that ran into environmental and water users' opposition in 1991 and 1992. Is anybody home at our water agencies?

B. The 2010-2011 Water Transfer Program is not needed because the state's current allocation system—in which the federal Bureau of Reclamation participates—wastes water profligately.

The incentive from the state's lax system of regulation of California's State Water Project and Central Valley projects is to deliver the water now, and worry about tomorrow later. Indeed, the State Water Resources Control Board (SWRCB) has been AWOL for decades. In response to inquiries from the Governor's Delta Vision Task Force last fall, the SWRCB acknowledged that while average runoff in the Delta watershed between 1921 and 2003 was 29 million acre-feet annually, the 6,300 active water right permits issued by the SWRCB is approximately 245 million acre-feet. In other words, **water rights on paper are 8.4 times greater than the real**

water in California streams diverted to supply those rights on an average annual basis. *And the SWRCB acknowledges that this “water bubble” does not even take account of the higher priority rights to divert held by pre-1914 appropriators and riparian water right holders, of which there are another 10,110 disclosed right holders. Many more remain undisclosed.*

Like federal financial regulators failing to regulate the shadow financial sector, subprime mortgages, Ponzi schemes, and toxic assets of our recent economic history, the state of California has been derelict in its management of scarce water resources here. This in no way justifies suspension of environmental and water quality regulations, for which the Governor’s drought emergency declaration calls. We supplement our comments on this matter of wasteful use and diversion of water by incorporating by reference the joint complaint to the State Water Resources Control Board of the California Water Impact Network and the California Sportfishing Protection Alliance on public trust, waste and unreasonable use and method of diversion as additional evidence of a systematic failure of governance by the State Water Resources Control Board, the Department of Water Resources and the U.S. Bureau of Reclamation, filed with the Board on March 18, 2008 (attached).

We question the Bureau and DWR’s contention of continued dry conditions, since the current storms have greatly increased reservoir levels throughout California. Non-state and non-federal reservoirs indicate conditions fast approaching normal for their facilities: Bullard’s Bar in Yuba County is at 99 percent of the 15-year average for this time of year, EBMUD’s Pardee Lake is at 97 percent of normal, San Francisco’s Hetch Hetchy Reservoir on the Tuolumne River is at 152 percent of normal, while Don Pedro Reservoir on the same river is at 106 percent. The CVP’s Millerton and Folsom reservoirs are below average for this time of year, but with the strong storms California is now getting through this week and into next, their storage figures are likely to improve dramatically when snowpack melts. These two reservoirs must provide water to the agricultural San Joaquin River Exchange Contractors first, and they have among the most senior rights on that river. Rice growers in the Sacramento Valley are generally expecting close to full deliveries from the CVP and their Yuba River water supplies. The CVP’s own New Melones Reservoir on the Stanislaus River, which contributes to Delta water quality as well as to meeting eastern San Joaquin Valley irrigation demands, is at 87 percent of normal for this time of year.

Moreover, the SWP’s terminal reservoirs at Pyramid (104 percent of average) and Castaic (99 percent of average) Lakes are right at about normal storage levels for this time of year, presumably because DWR has been releasing water from Oroville for delivery to these reservoirs.

The fact that reservoirs of the CVP with more senior responsibilities in the water rights hierarchy do well with storage for this time of year suggests that at worst this will be a year of below normal runoff in 2010—hardly a drought scenario. Low storage levels at Oroville, Shasta and San Luis may easily be attributed to redirected releases to terminal reservoirs or groundwater banks in the San Joaquin Valley and Tulare Lake Basin—these latter storage venues and their

current performance are not disclosed on DWR's Daily Reservoir Storage levels web site. Still, given what is known, from what these reservoir levels indicate many major cities and most Central Valley farmers are very likely to have enough water for this year.

The ones expecting to receive little water this year do so because of the low priority of their water service contracts within the Central Valley Project—their imported surface supplies are therefore less reliable in dry times. It is the normal and appropriate functioning of California's system of water rights law that makes it so. Among those with more junior water contractor allocations, the Metropolitan Water District and the Santa Clara Valley Water District are the wealthiest regions and the agencies most capable of undertaking aggressive regional water self-sufficiency actions. They should be further encouraged and assisted to do so through coherently formulated state and federal water policies and programs.

On the agricultural side, the Bureau and DWR's efforts appear to benefit mainly the few western San Joaquin Valley farmers whose contractual surface water rights have always been less reliable than most—and whose lands are the most problematic for irrigation. In excess of 1 million acres of irrigated land in the San Joaquin Valley and the Tulare Lake Basin are contaminated with salts and trace metals like selenium, boron, arsenic, and mercury. These lands should be retired from irrigation to stop wasteful use of precious fresh water resources. This water drains back—after leaching from these soils the salts and trace metals—into sloughs and wetlands and the San Joaquin River carrying along these pollutants. Retirement of these lands from irrigation usage would help stem further bioaccumulation of these toxins that have settled in the sediments of these water bodies.

The 2010-2011 Water Transfer Program would exacerbate pumping of fresh water from the Delta, which has already suffered from excessive pumping in earlier years of this decade. Pumped exports cause reverse flows to occur in Old and Middle Rivers and can result in entrainment of fish and other organisms in the pumps. Pumping can shrink the habitat for Delta smelt as well, since less water flows out past Chipps Island through Suisun Bay which Delta smelt often prefer. Our organizations share the widely held view that operation of the Delta export pumps is the major factor causing the Pelagic Organism Decline (POD) and in the deteriorating populations of fall-run Chinook salmon. The State Water Resources Control Board received word in early December that the Fall Midwater Trawl surveys for September and October showed the lowest abundance indices for Delta smelt, American shad, and striped bass in history. The index for longfin smelt is the third lowest in history. 2009 was the second consecutive year where no commercial fishing of fall-run Chinook fish will be allowed because of this species' population decline. While it is too early to know, 2010 could be the third straight year where no commercial fishing will be allowed, which would be unprecedented. Operation of the DWB at a time when others refrain from taking these fish and other organisms strikes us as a consummate unwillingness on the part of the State of California and the U.S. Bureau of Reclamation to share in the sacrifices needed to help aquatic ecosystems and anadromous fisheries of the Bay-Delta Estuary recover.

New capital facilities should be avoided to save on costly, unreliable, and destructive water supplies that new dams and canals represent. Moreover, these facilities would need new water rights; yet the most reliable rights in California are always the ones that already exist—and of those, they are the ones that predate the California State Water Project and the federal Central Valley Project. We should apply our current rights far more efficiently—and realistically—than we do now. California should instead pursue a “no-regrets” policy incorporating aggressive water conservation strategies, careful accounting of water use, research and technological innovation, and pro-active investments.⁵

III. Conclusion

The Bureau’s EA/FONSI states on page 3-16:

California Water Code Section 1810 and the CVPIA protect against injury to third parties as a result of water transfers. Three fundamental principles include (1) no injury to other legal users of water; (2) no unreasonable effects on fish, wildlife or other in-stream beneficial uses of water; and (3) no unreasonable effects on the overall economy or the environment in the counties from which the water is transferred.

We unreservedly state to you that the draft EA/FONSI on the proposed 2010-2011 Water Transfer Program appears to describe a project that would fail all three of these tests as currently described. The 2010-2011 Water Transfer Program clearly has the potential to affect the human and natural environments, both within the Sacramento Valley as well as in the areas of conveyance and delivery. It is entirely likely that injuries to other legal users of water, including those entirely dependent on groundwater in the Sacramento Valley, will occur if this project is approved. Groundwater, fishery and wildlife resources are likely also to suffer harm as instream users of water in the Sacramento Valley. And the economic effects of the proposed DWB are at best poorly understood through the EA/FONSI. To its credit, at least the Bureau studied the proposed project, while DWR has completely avoided CEQA, thereby enabling the agency to ignore these potential impacts.

Taken together, the Bureau and DWR treat these serious issues carelessly in the EA/FONSI, and in DWR’s specious avoidance of CEQA review. In so doing, they deprive decision makers and the public of their ability to evaluate the potential environmental effects of this Project, and violate the full-disclosure purposes and methods of both the National Environmental Policy Act and the California Environmental Quality Act.

⁵ See especially, Pacific Institute, *More with Less: Agricultural Water Conservation and Efficiency in California, A Special Focus on the Delta*, September 2008; Los Angeles Economic Development Corporation, *Where Will We Get the Water? Assessing Southern California’s Future Water Strategies*, August 2008, and Lisa Kresge and Katy Mamen, *California Water Stewards: Innovative On-farm Water Management Practices*, California Institute for Rural Studies, January 2009.

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None of the signatory organizations to this letter received notice from the Bureau that this EA/FONSI had been released on January 5, 2010. With the Coalition's 2009 DWB comments on the EA/FONSI, we had the following request: *Our organizations request advance notification of any meetings that address this proposed Project or any other BOR projects in Butte, Colusa, Glenn, or Tehama counties that require consideration of NEPA/CEQA as well as water rights applications that will be needed as the 2010-2011 Water Transfer Program moves forward. Please add C-WIN, CSPA, BEC, and the Center for Biological Diversity to your basic public notice list on this Project, and send us each any additional documents that pertain to this particular Project.* While we do find record of a news release about the EA/FONSI on the Bureau's Mid-Pacific Region web site, we believe the Bureau has not met its obligations under NEPA for providing adequate public outreach to solicit review and comment of its environmental review documents in this matter. We learned of the Water Transfer Program on January 14th more than halfway through the review period set by the Bureau. Bureau staff rejected our request for additional time to review the documents, much to our disappointment. Please add our names and email addresses to all future environmental review news releases.

Sincerely,



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