

AQUALLIANCE

DEFENDING NORTHERN CALIFORNIA WATERS



February 28, 2011

Mr. Brad Hubbard
Bureau of Reclamation
2800 Cottage Way, MP-410
Sacramento, CA 95825

Subject: Scoping Comments and Questions regarding the Ten-Year, 600,000 Acre-Feet, North-to-South Water Transfer Program

Dear Mr. Hubbard:

AquAlliance, the California Sportfishing Protection Alliance, and the California Water Impact Network (“the Coalition”) submit the following scoping comments and questions for the Ten-Year, 600,000 Acre-Foot, North-to-South Water Transfer Program (“Project”) Environmental Impact Statement and Environmental Impact Report (“EIS/EIR”). The EIS/EIR will address transfers of 600,000 acre-feet (“af”) of Central Valley Project (CVP) and non-CVP water. The Bureau of Reclamation (Bureau) and the San Luis/Delta Mendota Water Authority (SLDMWA), the lead agencies (agencies) as defined by the National Environmental Policy Act (NEPA) and the California Environmental Quality Act (CEQA), must provide the public with a clear project description, properly define and quantify the impacts, provide enforceable mitigation measures, consider adequate alternatives, and propose a detailed monitoring plan.

For the majority of the twentieth century, the Sacramento Hydrologic Region supported family farming, healthy salmon runs, and a diverse environmental heritage. We hope that the agencies will seek to not only remember the heritage, but actively participate in efforts to defend what remains and restore what has been degraded for the health of California and future generations. That legacy and culture are now in the crosshairs of water policies that have repeatedly failed in the San Fernando, Owens, and San Joaquin valleys of California.

Lead Agencies

Please explain why the California Department of Water Resources is not the lead agency for the Project review under the California Environmental Quality Act. Clearly, DWR facilities are instrumental pieces of the Project as stated in the Federal Register: “Reclamation and DWR would facilitate water transfers involving CVP contract water supplies and CVP and SWP facilities.” Moreover, how will SLDMWA enforce the state’s role as trustee of the public’s resources in California? DWR has the statutory duty to serve as lead agency in assessing the environmental consequences of projects involving the SWP.¹

Project Description

The draft EIS/EIR must provide an accurate description of the proposed Project and its relationship to myriad other water transfer and groundwater extraction projects. An accurate and complete project description is necessary to evaluate the potential environmental impacts of the agencies’ actions. ‘Only through an accurate view of the project may affected outsiders and public decision-makers balance the proposal’s benefit against its environmental cost, consider mitigation measures, assess the advantage of terminating the proposal . . . and weigh other alternatives in the balance.’” (City of Redlands v. County of San Bernardino (2002) 96 Cal.App.4th 398, 406-407, quoting County of Inyo v. City of Los Angeles (1977) 71 Cal.App.3d at pages 192-193.

A) The public’s ability to comment in this scoping process has been severely hampered by the lack of a definable project. The Federal Register notice dated December 28, 2010 provides very limited information:

The EIS/EIR will address transfers of Central Valley Project (CVP) and non-CVP water supplies that require use of CVP or State Water Project (SWP) facilities to convey the transferred water. Water transfers would occur through various methods, including, but not limited to, groundwater substitution and cropland idling, and would include individual and multiyear transfers from 2012 through 2022..... Current operational parameters applicable to the transfer water include:

- *Conveyance of a maximum of 600,000 acre feet per year; and*
- *Use of the SWP’s Harvey O. Banks Pumping Plant and CVP’s C.W. ‘Bill’ Jones Pumping Plant during July through September only.*

As we await a project description, many questions come to mind such as, who are the potential sellers and buyers? Under what conditions will the Project be implemented and at what scale? What is the baseline? Repeated water transfer projects in the last decade have all occurred without the benefit of comprehensive federal or state environmental analysis, which prompts us to suggest that the baseline should precede all this activity – approximately the year 2000 (see chart below).

¹ <http://ceres.ca.gov/ceqa/cases/2000/PCLvDWR-2000.html>

84 Cal.App.4th 315A, 100 Cal.Rptr.2d 173, 00 Cal. Daily Op. Serv. 7782, 2000 Daily Journal D.A.R. 10,331

Past Water Transfers from the Sacramento Valley Through the Delta in TAF Annually										
Program	2001	2002	2003	2004	2005	2006	2007	2008	2009	Potential 2010
DWR Drought Water Banks/Dry Year Programs	138	22	11	0.5	0	0	0	0	74	0
Environ Water Acct	80	145	70	120	5	0	147	60	60	60
Others (CVP, SWP, Yuba, inter alia)	160	5	125	0	0	0	0	173	140	370
Totals (TAF)	378	172	206	120.5	5	0	147	233	274	430

Source: *Western Canal Irrigation District's Negative Declaration, 2010 Water Transfer Program*

B) The use of ground water substitution is very controversial (see Impacts). The Coalition brought this to your attention in our comments for the 2010-2011 Water Transfer Program. Members of the Coalition have also raised alarm over ground water substitution through comments submitted on numerous individual CVP and SWP contractor's water transfer and ground water extraction projects over many years. The controversy must be addressed in the EIS/EIR.

C) It is crucial that the EIS/EIR disclose the current over subscription of our natural water supply as well as the over subscription of legally designated surface water rights in the state, i.e. "paper water."

D) The Federal Register does not mention directly the use of State Water Project water. Please specify what is considered "non-CVP" water that may be used in the Project.

Impacts

The proposed Project will have significant effects on the environment—both standing alone and when reviewed in conjunction with the multitude of other plans, projects, and programs that incorporate and are dependent on Sacramento Valley water.

A) The Bureau understands the seriousness of the potential impacts as presented in the Environmental Assessment ("EA") for the 2010-2011 Water Transfer Program cumulative impacts section. The EA disclosed 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. Ground water 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).

It is unacceptable and would be irresponsible for the agencies to move forward with the ground water substitution component in light of the potential impacts. However, if the agencies decide to move forward with ground water substitution as a part of the Project, an exhaustive and detailed description of the probable and possible impacts must be included in the EIS/EIR and the mitigation and monitoring plan, with all the component parts, must be presented for public review with the EIS/EIR.

B) The EIS/EIR must also provide, but isn't limited to, data and peer reviewed analysis for the following:

- The draft EIS/EIR must thoroughly analyze the potentially significant adverse effects on listed species, species of concern, critical habitat, and species recovery plans in the area of origin, areas of conveyance, and area(s) of delivery.
- Air quality impacts in the area of origin, areas of conveyance, and area(s) of delivery could be severe with the increased pumping that may be necessary to implement the Project. These probable impacts must be thoroughly analyzed.
- Significant projects of this size have the potential to create serious growth inducing impacts in the area of origin, areas of conveyance, and area(s) of delivery. These probable impacts must be thoroughly analyzed.
- Discussion and analysis of the legal and practical implications of artificial recharge, in lieu recharge, and replenishment districts must be presented in the EIS/EIR.
- Recharge data for all aquifers in the area of origin.
- Aquifer levels and trends in the area of origin and the area(s) of delivery for the past 40 years.
- Impacts to native hardwood trees (terrestrial habitat) that may result from alluvial aquifer leakage into dewatered aquifer layers.
- Detailed understanding of the interaction between surface and ground waters in the area of origin and the area(s) of delivery.
- Isotopic ground water data available for the area of origin.
- Ground and surface water quality in the area of origin, areas of conveyance, and the area(s) of delivery for the past 40 years and how the Project may improve or degrade water quality. Examples include hazardous waste plumes in ground water basins and selenium laden runoff.
- Detailed descriptions of local regulations and management plans and explicitly state how they might or might not protect the public trust and private property resources in the area of origin from 600,000 af per year water transfers.

Cumulative Impacts

Cumulative impacts analyses are required by both CEQA and NEPA and require the cumulative effects analysis to include past, present, and foreseeable future actions and projects that can be reasonably predicted to occur within the term of the proposed project. The cumulative effects analyses in this EIS/EIR must evaluate the combined effects of the Project and other water acquisition programs that could engage in water transfers similar to those of the Project as well as all ground water stress tests (see Monitoring for examples). The cumulative effects analyses must also consider projects proposing physical changes to water quality, storage, export, or conveyance facilities in the areas of origin, areas of conveyance, and the receiving area(s). The existence of these numerous related projects makes an adequate analysis of cumulative impacts especially important.

The Project's surface water transfers and ground water substitution program do not exist in a vacuum, as the agencies well know, and instead are actually integrated, important parts of a broader scheme to develop regional surface and ground water resources into a conjunctive use system. For example, "GCID shall define three hypothetical water delivery systems from the State Water Project (Oroville), the Central Valley Project (Shasta) and the Orland Project reservoirs sufficient to provide full and reliable surface water delivery to parties now pumping from the Lower Tuscan Formation. The purpose of this activity is to describe and compare the performance of three alternative ways of furnishing a substitute surface water supply to the current Lower Tuscan Formation groundwater users to eliminate the risks to them of more aggressive pumping from the Formation and to optimize conjunctive management of the Sacramento Valley water resources." (U.S. Bureau of Reclamation, September 2006. Grant Assistance Agreement) This example is only one many projects and programs that must be evaluated cumulatively in the EIS/EIR.

Alternatives

The agencies should consider direct alternatives and reduced-demand alternatives to the ten-year, 600,000 acre-feet per year water transfer program.

Direct Alternatives to the Proposed Project

- Thoroughly scrutinize the no project alternative.
- Thoroughly scrutinize the no project alternative or a **delay of the Project alternative** in conjunction with:
 - Conservation in the area(s) of delivery.
 - Retirement of farmland in the San Joaquin Valley that produces polluted runoff.
 - Bringing the CVP and SWP contract amounts in line with **historic firm yields** and eliminating "paper water."
- Allow 600,000 acre-feet per year over ten years, but **exclude ground water substitution**.
- Consider a smaller amount, such as **300,000 acre-feet per year** over ten years **and exclude ground water transfers**.
- Use of water transfers only within the basin(s) of delivery (excluding north of delta to south of delta transfers).

Additional Reduced-Demand Alternatives to the Proposed Project

- Change crop patterns in the San Joaquin Valley to less water intensive crops. For example, change from perennial tree crops to annual crops that can be left fallow during normal to sub-normal precipitation patterns.
- Enforce the existing seniority system to manage deliveries, demand, and expectations.
- Create a policy of no net increase in water availability for urban or agricultural expansion.

Monitoring

Adequate monitoring is particularly important in light of the significant risks posed by the Project to the health of the area of origin's ground water. Moreover, this Project is occurring concurrently with other past, present, and reasonably foreseeable projects like the Drought Water Bank, the SCF *Stony Creek Fan Aquifer Performance Testing Plan*, the Butte County aquifer performance testing program, and more. A clear and explicit adaptive management strategy must be integrated into the EIS/EIR from the outset and available for public comment; its description cannot be left undefined or left as a "next step."

A) If ground water substitution is used in the Project, how will individual well owners be protected from impacts and notified of Project pumping? The EIS/EIR must disclose that the majority of wells used in the Sacramento Valley are individual wells that pump from varying strata in the aquifers and that there are thousands of domestic wells in the target export area that are vulnerable to ground water manipulation and lack historic monitoring.

The Bureau's 2009 Drought Water Bank Environmental Assessment 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." There must be a monitoring protocol that is sufficient to draw real time conclusions regarding area-wide impacts and a notification process and for all well owners in any basin that uses ground water substitution.

B) The Coalition believes that individual selling districts' mitigation and monitoring plans, which have been used previously by the Bureau and DWR, are inadequate. They fail 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 600,000 af of water from the Sacramento Valley.

We suggest that an independent third party, such as USGS, oversee the mitigation and monitoring program. The Bureau, DWR, SLDMWA, and the selling districts are interested parties and should not "guard the henhouse" as it were. 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, the agencies and districts lack credibility as oversight agencies.

C) Monitoring of the area of origin's hydrology must include measurement and analysis of the alluvial (shallow) aquifer layers that contribute to stream-flow and sustain deep-rooted native valley oak trees. In addition, interaction between these shallow layers and the pressurized underlying semi-confined aquifer layers must be disclosed and analyzed.

Conclusion

As our alternatives section suggests, we believe that the “need” for this project is driven by demand from junior water rights holders south of the Delta. The need for 600,000 af of water south of the Delta springs from failed business planning that has been supported with political influence. The Bureau, SLDMWA, and DWR, the “silent partner” in this Project, 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 and water quality for neighboring communities, thousands of residential well owners, fisheries, recreation, stream flow, terrestrial habitat, and geologic stability, the agencies must disclose all the uncertainty in the Project and then evaluate the risks with scientific methodology.

Please inform our organizations of any information regarding this Project and send us all future environmental review news releases.

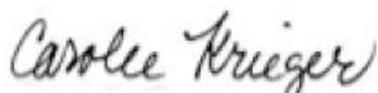
Sincerely,



Barbara Vlamis
Executive Director
AquAlliance
P.O. Box 4024, Chico, CA 95927
(530) 895-9420
info@aqualliance.net



Bill Jennings
Chairman
California Sportfishing Protection Alliance
3536 Rainier Avenue, Stockton, CA 95204
(209) 464-5067
deltakeep@aol.com



Carolee Krieger
Executive Director
California Water Impact Network
808 Romero Canyon Road, Santa Barbara, CA
93108
(805) 969-0824
caroleekrieger@cox.net