



California Sportfishing
Protection Alliance

"An Advocate for Fisheries, Habitat and Water Quality"

October 29, 2009

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

**Subject: Supplemental Comments on FEIS/EIR for Grasslands Bypass Project
2010-2019**

Dear Ms. McDonald:

The California Water Impact Network and the California Sportfishing Protection Alliance submit these comments in addition to our October 7, 2009, comments on the subject Final Environmental Impact Statement and Report on the Grasslands Bypass Project 2010-2019.

We find the environmental documentation continues to be grossly inadequate, and part of a larger fragmented and failed approach to resolve drainage problems associated with the San Luis Unit of the Central Valley Project, as required by the federal courts in the consolidated Firebaugh/Sumner Peck litigation.

Given the significant uncertainty over technical and economical feasibility of drainage management, Interior should only renew the Grasslands Bypass Project for 2 years and fully fund the U.S. Geological Survey's (USGS) *Decision Analysis Framing Study for In-Valley Drainage Management Strategies for the Western San Joaquin Valley, California* (Decision Analysis). An independent Decision Analysis process will help identify the most prudent strategy for managing the drainage water problem in the entire San Luis Unit and the larger western San Joaquin Valley drainage problem area, not the piecemeal approach used for Grasslands and Westlands.

Concurrently, a supplemental NEPA/CEQA process should be initiated to incorporate the Grasslands Bypass Project and the San Luis Drainage Feature Re-evaluation into one environmental document that takes a realistic look at land retirement, which is the most economical and technically reliable method of reducing drainage from the San Luis Unit. The lead agencies admit in response to C-WIN 16 *"that land retirement has played a role in the Project's success in reducing the volume of drainage requiring active management."*

However, the Final Environmental Impact Statement and Report (FEIS/R) for the Grasslands Bypass Project 2010-2019 completely fails to examine a reasonable range of alternatives, including, but not limited to land retirement, conversion to solar farms and Integrated Farm Drainage Management (IFDM). The analysis includes an unrealistic No Action Alternative that skews the analysis toward the Proposed Action, rather than an Environmentally Preferred Alternative, as identified in our October 7, 2009 letter.

The FEIS/R includes deferred mitigation that has yet to be disclosed to the public because the Biological Opinions by the U.S. Fish and Wildlife Service have still not been released. In particular, mitigation measures for impacts to wildlife are not fully disclosed. Both NEPA and CEQA require full disclosure of mitigation measures in the draft Environmental Impact Statement and Report, yet that information still has not been released with the FEIS/R. Reclamation appears to be making the same mistake it made in the Trinity River litigation in failing to disclose required mitigation measures contained in Biological Opinions, some of which may have inherent significant impacts.

Reclamation's Feasibility Report for the San Luis Drainage Feature Re-evaluation (SLDFRE), March 2008, makes a clear case that neither the technology nor the funding is available if the San Luis Unit contractors desired to deal with the drainage problem through a fully reimbursable program. In the case of the Grasslands Bypass Project, over \$100 million has been spent to date, with at least \$66 million being a public subsidy. Clearly, more public subsidies are on the way through California's Integrated Regional Water Management Grant Program and Reclamation's non-reimbursable appropriations.

The National Economic Development (NED) Report Summary for the San Luis Drainage Feature Re-evaluation Record of Decision (SLDFRE ROD) concluded that any alternative with less than 300,000 acres of land retirement would be a net economic loss. The Grasslands Bypass Project 2010-2019 FEIS/R, by contrast, refuses to look at the overall economics through an NED-like approach, let alone consider land retirement. It narrowly looks at costs to local farmers only, when potential public subsidies are also obvious costs to taxpayers.

In either case, neither environmental document analyzed land retirement of San Luis Unit lands within the Grasslands Drainage Area. The U.S. Fish and Wildlife Service recommended such a consideration in its Fish and Wildlife Coordination Act Report on for SLDFRE. Given that the SLDFRE EIS alternative with the most land retirement was the most cost effective, it can only be assumed that retiring the 79,000 acres of the Grasslands Drainage Area within the San Luis Unit would increase cost effectiveness and decrease drainage water creation, yet there has been a complete failure by the lead agencies to recognize and analyze such an alternative.

As stated in the Grasslands FEIS/R, there is no way to farm these drainage problem lands without creating some type of drainage. Even if a technically feasible treatment system is created, the 412,772 tons salt/year of created by continued irrigation of the San Luis Unit, minus 100,000 acres currently retired, would amount to a pile of salt 50 ft high on 311 acres. An equivalent amount would be produced each 50 years into perpetuity. See *Technical Analysis of In-Valley Drainage Management Strategies for the Western San Joaquin Valley, California*, U.S. Geological Survey **Open-File Report 2008-1210. Page 27, second paragraph**¹.

Responses to comments also make larger, undocumented statements and assumptions that must be subject to public and peer review in a recirculated Draft EIS/EIR. The statement that salinity Water Quality Objectives at Vernalis have always been met contrasts starkly with language in the State Water Resources' Control Board's D 1641 (p 89) as follows:

“Salinity problems in the southern Delta result from low flows in the San Joaquin River and discharges of saline drainage water to the river. The actions of the CVP are the principal causes of the salinity concentrations exceeding the objectives at Vernalis.”

The FEIS/R also fails to provide public or peer-reviewed analysis when it responds to comments that there will be no significant impacts from selenium discharges to salmon restoration in the San Joaquin River, despite the analyses by William Beckon et al (USFWS) identifying that juvenile Chinook salmon are very sensitive to selenium. Such analyses should be subject to review in the Draft EIS/R.

Similarly, there was no opportunity for the public or a peer review of claims in the FEIS/R responses to comments that selenium loading and bioaccumulation of selenium in the Bay-Delta food chain and ecosystem is not a problem. Given that the San Joaquin River from the Merced River to the Delta Boundary and Suisun Bay are listed as impaired for selenium under Section 303(d) of the Clean Water Act (SWRCB 2006), the claims are farfetched, at best. The FEIS does not address the overall problem of continued selenium loading and contamination of the food chain in the Bay-Delta. As the SWRCB noted in the 303(d) listing of waters in the North Bay, *“exotic species may have made food chain more susceptible to accumulation of selenium; health consumption advisory in effect for scaup and scoter (diving ducks)...”*

C-WIN and CSPA recommend that an independent expert such as Dennis Lemly be retained to prepare an independent assessment and review of these claims of no significant impact from continued selenium discharges into the San Joaquin River.

Furthermore, the recent monitoring report on the Grasslands reuse area by HT Harvey and Associates identified a deformed black necked stilt and abandoned stilt nests in 2008, in addition to the findings of selenium contamination we noted in our October 7,

¹ <http://pubs.usgs.gov/of/2008/1210/>

2009 letter on this subject, which we incorporate by reference. The stilt deformity is a direct violation of the Migratory Bird Treaty Act! It is clear that selenium poisoning is still causing environmental harm to wildlife in the reuse area.

As stated in our October 7 letter, the FEIS/R fails to identify how Reclamation intends to meet salinity objectives in the San Joaquin River without New Melones dilution flows, as a consequence of the recent legal decision favoring the Stockton East Water District. It is clear that land retirement is one tool in Reclamation's tool box to deal with salinity problems in the San Joaquin River.

The FEIS/R fails to incorporate a watershed/sediment management plan to **prevent** further sedimentation of the San Luis Drain and the subsequent need to remove sediment from the Drain, as requested by the U.S. Environmental Protection Agency and other commenters. Upslope land management activities such as overgrazing, cultivation in seasonal watercourses, and lack of erosion control actions all contribute to periodic loading of selenium of sediment and water into the San Luis Drain, Mud Slough and the San Joaquin River.

The very narrow Purpose and Need statement "*To facilitate drainage management that maintains the viability of agriculture in the Project Area and promotes continuous improvement in water quality in the San Joaquin River*" is not met, even by the proposed action. The selenium load limits in the proposed Use Agreement for wet and above normal years fail to show continuous improvement in the first five years of the proposed extension and therefore conflict with the project purpose and need for continuous improvement of water quality in the San Joaquin River. This is hardly "continuous improvement in water quality" called for in the purpose and need statement. Furthermore, Mud Slough contributes 50 percent of the San Joaquin's River's mercury load at Vernalis, but only 10 percent of the flow. The project in no way attempts to monitor, let alone improve water quality for mercury discharges, despite requests by various commenters, including the U.S. Environmental Protection Agency.

The Purpose and Need Statement for the Grasslands 2020-2019 project differs vastly from the Purpose and Need Statement for SLDFRE below:

"The project purpose is to provide agricultural drainage service to the San Luis Unit and the general area, of which lands served by the Unit are a part, that achieves long-term, sustainable salt and water balance in the root zone of irrigated lands. Drainage service is defined as managing the regional shallow groundwater table by collecting and disposing of shallow groundwater from the root zone and/or reducing contributions of water to the shallow groundwater table through land retirement. A long-term sustainable salt and water balance is needed to ensure sustainable agriculture in the Unit and the region.

In order to meet this overall purpose and need, the Bureau of Reclamation (Reclamation) used four related project objectives to develop the alternatives evaluated in this EIS:

- *Drainage service will consist of measures and facilities to provide a complete drainage solution, from production through disposal, and avoid a partial solution or a solution with undefined components.*
- *Drainage service must be technically proven and cost-effective.*
- *Drainage service must be provided in a timely manner.*
- *Drainage service should minimize adverse environmental effects and risks.”*

Reclamation has the same legal authority for the entire San Luis Unit, yet the two portions (Grasslands Drainage Area and the Westlands Water District area) analyzed have vastly different project purposes. The Grasslands 2010-2019 FEIS/R contains none of the elements of the SLDFRE through its unlawfully narrow Purpose and Need. Consider the following:

- Nothing was considered other than to treat a portion of the drainage through the reuse area and discharge the remainder to the San Joaquin River. IFDM, land retirement, regulation, conversion to solar farms and hydroponic farms were all rejected out of hand.
- Admittedly there was no technically proven or cost effective solution considered.
- It defers the hard decisions to a later time frame and a subsequent environmental document.
- The risks are severe and immediate- selenium, salt, boron and mercury are proposed to continue discharging through the Grassland Bypass Project into Mud Slough and the San Joaquin River for another 10 years, with no solution in sight. Increasing evidence of wildlife selenium contamination from the reuse area is now available. Boron will continue to build up in the soil.

This analysis is not intended to imply that the SLDFRE ROD is without fault. The SLDFRE EIS analysis states that discharges from the Grasslands Bypass Project will cease in 2010 when the existing Use Agreement expires, yet the SLDFRE ROD calls for continued discharges through the Grasslands Bypass Project. For SLDFRE, the conclusions in the ROD are not supported by the information analyzed in the EIS. This is another reason to prepare a supplemental NEPA/CEQA document which looks at the entire San Luis Unit, not the piecemeal approach used to date.

The comment letter from Revive the San Joaquin River was not identified as being received in the FEIS/R and there is no response available. A time extension is hereby requested to submit additional information on the FEIS/R when an appropriate response has been received for Revive the San Joaquin River's comment letter.

The Grasslands 2010-2019 FEIS/R fails to even consider adding other drainage problem lands not now part of the existing Grasslands Drainage Area, despite the fact that the Regional Water Quality Control Board could easily require inclusion of those polluting lands. Bureau of Reclamation water contracts also specify that the recipient must comply with all applicable water quality standards and requirements, yet there is no discussion of Reclamation's authority, only excuses why the Grasslands Drainers cannot annex those other lands themselves.

The Grasslands 2010-2019 FEIS/R also fails to mention the problem of boron in Reverse Osmosis (RO) treated product water and its suitability for irrigation use. Studies conducted for the SLDFR FEIS indicated that RO product water intended for agricultural use would need to be diluted by up to 36 parts of CVP water to obtain a boron concentration that would not impair plant growth (SLDFR EIS, Response to Comments). Despite admission that no feasible or cost effective solution exists, the FEIS holds to claims for a future solutions that is over-optimistic and unsubstantiated.

The Grasslands 2010-2019 FEIS/R tries to point out that Jose Faria of the California Department of Water Resources has recommended a new type of drainage treatment. However, the document fails to admit that he is recommending treatment prior to reuse, thereby increasing the volume of drainage water to be treated, as well as the costs. Also, the fate of boron is not disclosed under such a scenario.

The Grasslands 2010-2019 FEIS/R also contains deferred mitigation for the water supply for impacts to Department of Fish and Game wetlands. As indicated by more than one commenter, a clean source of water has not been identified and may be problematic because of selenium contamination of groundwater in the area. If a suitable source of water cannot be found, how will the mitigation be fulfilled, or what will be the impacts of using water from another source?

C-WIN is also concurrently filing a FOIA Request for information related to the U.S. Geological Survey's (USGS) Decision Analysis Framing Study for In-Valley Drainage Management Strategies for the Western San Joaquin Valley, California (Decision Analysis). We feel very strongly that the Decision Analysis is the only way to ensure an objective assessment of potential solutions for the ongoing problem of drainage management.

Thank you for your consideration of our comments. We urge you to agree to only a two year extension of the Use Agreement, reinitiating of the USGS Decision Analysis, and recirculation of a Draft EIS/EIR which includes consideration of drainage for the entire San Luis Unit and additional land retirement in the Grasslands Drainage Area.

Ms. Shauna McDonald, Bureau of Reclamation; C-WIN/CSPA comments on FEIS for
Grasslands Bypass Project 2010-2019
October 29, 2009
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Respectfully submitted,



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Protection Alliance

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October 7, 2009

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Sent via FAX and e-mail

Re: Comments on Final Environmental Impact Statement/Report for the Proposed
Grasslands Bypass Project Extension 2010-2019 (SCH No. 2007121110)

Dear Ms. Tapia and Mr. McGahan;

The California Water Impact Network (C-WIN) and the California Sportfishing Protection Alliance (CSPA) submit these joint comments on the Grasslands Bypass Project (GBP) Final Environmental Impact Statement and Report.

We recommend that a revised/recirculated EIS/EIR be prepared because the document does not adequately address comments, nor fully disclose impacts on the environment, as described in the September 3, 2009 letter by the City of Stockton, which we hereby incorporate by reference. Additionally, there is new information which is relevant to this project which must be evaluated prior to approval related to recent findings of wildlife toxicity in the reuse areas and the Stockton East Water District's recent court victory. Finally, there are no Biological Opinions issued by the U.S. Fish and Wildlife Service, National Marine Fisheries Service nor the California Department of Fish and Game from which to evaluate effective mitigation measures and provide opportunity for the public to comment upon.

City of Stockton Comments

C-WIN and CSPA agree with the City of Stockton's comments of September 3, 2009 regarding the need for clearer Thresholds of Significance and the inadequate alternatives analysis. C-WIN and CSPA agree that further review under NEPA and CEQA are required. In particular, the No Action Alternative is not accurate because absent the proposed action, regulatory enforcement would be used to alleviate the water quality problems associated with drainage. We agree with the City of Stockton regarding the deficiencies of the No Action Alternative (page 4, City of Stockton letter of 9/3/2009) as follows:

C-WIN/CSPA Comments on Grasslands Bypass Project Extension FEIS/EIR

“The City of Stockton also noted several flaws in the description of the “No Action Alternative” in the DEIR/DEIS. Specifically the City questioned whether the No Action Alternative should be assumed to include no continuing source control management, no tailwater policy, and would be inconsistent with governing General Plan policies. The City’s comments were echoed in the Regional Board’s letter...”

“Because the No Action Alternative makes unreasonable and unsupported assumptions about agricultural and water management practices in the Project Area under the no-action scenario, many if not all the EIS/EIR’s determinations regarding the significance of Project-related environmental impacts are undermined. The failure to evaluate a credible No Project Alternative is a fatal flaw that requires that the EIS/EIR be revised and recirculated to evaluate a No Action Alternative that is grounded on evidence and reasonable assumptions regarding likely future management and drainage control actions in the absence of Project implementation. Based on the reconfigured No Action Alternative, the significance determinations in the EIS/EIR should be reevaluated.”

New Information

The recent decision by the federal courts on the Stockton East case is extremely relevant to the Grasslands Bypass Project. The appeals court ruled that the Bureau of Reclamation does have discretion as to the use of water from New Melones for dilution of salt in the San Joaquin River, and remanded it back to the federal District Court. Therefore, a land retirement alternative is even more relevant and would be an alternative discretionary action by Reclamation to meet salinity water quality requirements for the San Joaquin River through reduction of contaminated drainage from the Grasslands drainers.

Subsequent to the issuance of the Draft and Final EIS/R, information has become available that indicates much more significant impacts to wildlife from exposure to selenium in the reuse area than previously recognized. A significant expansion of the reuse area as proposed in the EIS/R, as well as for the San Luis Drainage Record of Decision would increase risks to wildlife that is not disclosed nor analyzed in the Final EIS/R. Recent field review results on the reuse area from the consulting firm HT Harvey should be disclosed. It is C-WIN and CSPA’s understanding that the findings show increased concentrations of selenium in shorebird eggs, the presence of 5 abandoned Swainson Hawk nests (a state protected species) in or near the perimeter of the reuse area, small mammal body concentrations of selenium that would be considered hazardous to predators such as the Swainson Hawk, and the existence of numerous other birds in the reuse area, including, but not limited to burrowing owls (a state special status species) and tri-colored blackbirds (a candidate formerly considered for listing).

Final Biological Opinions are Lacking


C-WIN/CSPA Comments on Grasslands Bypass Project Extension FEIS/EIR

The project cannot be approved under CEQA or NEPA because the Biological Opinions from the US Fish and Wildlife Service, National Marine Fisheries Service and the California Department of Fish and Game have not yet been submitted. If the Biological Opinions contain new mitigation measures/Reasonable and Prudent Alternatives, they should be subject to full disclosure, public review and public comment through reissuance of a Draft Environmental Impact Statement and Report. Both Reclamation and the San Luis Delta Mendota Water Authority should be well aware of this requirement for public review of mitigation measures contained in Biological Opinions, as it was a key issue in the Trinity River litigation before Judge Oliver Wanger in 2000 through 2004 that both entities were involved in.

C-WIN and CSPA urge you to reissue a revised Draft Environmental Impact Statement and Report which addresses the above issues. Failure to do so would be a violation of both the California Environmental Quality Act and the National Environmental Policy Act by failing to disclose impacts, failing to include appropriate mitigation measures, and failure to adequately analyze reasonable alternatives to the proposed project.

If you have any questions regarding these comments, please contact C-WIN Water Policy Coordinator Tom Stokely at (530) 524-0315 or Bill Jennings of CSPA at (209) 464-5067.

Sincerely,



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Attachment: City of Stockton Letter, 9/3/2009

cc: David Hayes, Deputy Interior Secretary
Board of Directors SLDMWA, c/o Dan Nelson
Don Glaser, Regional Director, BOR
Charles Hoppin, Chairman SWRCB
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Rod McGinnis, NMFS
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Don Koch, Department of Fish and Game

C-WIN/CSPA Comments on Grasslands Bypass Project Extension FEIS/EIR

Lester Snow, Department of Water Resources
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Interested parties