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). AquAlliance 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 GGS are not mentioned even if fallowing is not used although the statement from the EA on page 12 leaves some confusion. Increased groundwater extraction will impact the aquatic and terrestrial environment that GGS depend upon. The Bureau should also prepare an EIS because the *2013 Water Transfer Program* will, in combination with all its past and reasonably foreseeable plans, programs, and projects, 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).

In addition to GGS, as discussed above, unsupported assertions, that impacts to aquatic species will be below a level of significance, ring hollow and lack foundational data (EA at pp. 10, 12, 17). 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, and more. Where is the documentation of the potential impacts to these species?

II. Purpose and Need Issues of the *2013 Water Transfer Program*

A. The Purpose and Need Section of the EA/FONSI fails to specify the policy framework upon which the *2013 Water Transfer Program* is based.

As mentioned many times, the Project's EA/FONSI fails to provide a statement of purpose, and the need statement on page 4 is cursory at best. Avoiding the requirements of NEPA, and for DWR – CEQA, for the *2013 Water Transfer Program* does not reflect the actual environmental effects of the proposal—which are similar to the proposed 1994 Drought Water Bank 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 it 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 *2013 Water Transfer Program* reflects an ongoing end-run around established water law and CEQA.

We question the merits of and need for the *2013 Water Transfer Program* itself. The need for transfers reflects less on the type of water year than on the failures by the Agencies to pursue a sensible water policy framework, given that California has a Mediterranean climate with major fluctuations in precipitation and long periods of drought (Anderson, 2009). AquAlliance believes that the Agencies continue to avoid the inconvenient truths about California's climate, the current and future needs from climate change, and go too far to help a few junior water right holders. 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 fails to provide a statement of purpose and the need statement on page 4 is cursory at best. At a minimum, a purpose statement must be presented in the EA and clearly identified. The purpose and need statements should also include specific criteria and a delineation of priorities that the Project must adhere to, but they are absent.

The EA/FONSI makes no attempt to place the *2013 Water Transfer Program* into the context of the 2009 California Water Plan that the state most recently completed, which contains many recommendations for increasing regional water self-sufficiency, but it appears that this plan is largely on the shelf now. Pursuing watershed self-sufficiency would be a proactive and sustainable through the many types of water years, which is why many coastal communities are aggressively meeting this challenge. It is distressing to see that the Bureau and the state of California resist such as strategy and continue to pursue multi-year, serial, "temporary" water transfers and large engineering projects that are prohibitively costly and low in water and environmental benefits. This is not a sustainable water policy for California.

The missing purpose section and weak need sections of the Project's EA/FONSI, the *2010/2011 Water Transfer Program, and the 2009 Governor's drought emergency declaration* cry out for a cogent policy framework. What is the state doing to facilitate regional water self-sufficiency for these areas with the least reliable water rights and how is the Bureau assisting or motivating such action? Instead, the state and federal response to another dry year falls back on the continuation of multi-year, serial, "temporary" water transfers.

B. The *2013 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 in 2009, 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. As we mentioned above we are supplementing these comments on this matter of wasteful use and diversion of water by incorporating by reference the 2011 complaint to the State Water Resources Control Board of the California Water Impact Network the California Sportfishing Protection Alliance, and AquAlliance 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 April 21, 2011 (attached).

We question the Bureau and DWR's desire for the Project, since reservoir levels throughout California are quite decent and groundwater is and will be necessary to support river and stream flows, aquatic and terrestrial species, and economic activity in the areas origin as California grapples with unpredictable, but well known, precipitation patterns and climate change. Don Pedro Reservoir on the Tuolumne River is at 98 percent of historic average. (CDEC, May 20, 2013)[9] The CVP's Millerton is at 99% and Folsom is at 90%. *Id* 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 receiving full deliveries from the CVP's Shasta reservoir (88% of historic average) and their Yuba River water supplies. *Id* 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 91 percent of normal for this time of year. *Id*

Moreover, the SWP's terminal reservoirs at Pyramid (104 percent of average) and Castaic (93 percent of average) Lakes are slightly above and below normal levels for this time of year, presumably because DWR has been releasing water from Oroville (96% historic average) for delivery to these reservoirs. *Id*

We acknowledge that the snowpack is very poor this year.[10] The fact that reservoirs of the CVP and SWP with more senior responsibilities in the water rights hierarchy are doing so well, but

[9] http://cdec.water.ca.gov/cdecapp/resapp/getResGraphsMain.action

[10] http://cdec.water.ca.gov/snow/

admittedly there is so little to refill them, certainly suggests caution for deliveries. Still, given what is known, these reservoir levels indicate that most major cities and most Central Valley farmers are very likely to have enough water for this year. The demands by junior water rights holders, who expect 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.

The efforts of the Bureau and DWR to initiate water sales from the Sacramento, Feather, and Yuba rivers with groundwater substation are only intended to benefit 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. Since these growers have chosen to harden demand by planting permanent crops, a very questionable business decision, will the Bureau please explain why this "tail" in water rights is wagging the dog? Compounding the insanity of growing perennial crops in a desert is the result where 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. 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 stop wasteful use of precious fresh water resources and help stem further bioaccumulation of these toxins that have settled in the sediments of these water bodies.

The *2013 Water Transfer Program* would exacerbate pumping of fresh water from the Delta, which has already suffered from excessive pumping over the last 12 years. 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. AquAlliance shares 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 2012 showed horrendous numbers for the target species. The indices for longfin smelt, splittal, and threadfin shad reveal the lowest in history.[11] Delta smelt, striped bass, and American shad numbers remain close to their lowest levels. *Id*

New capital facilities should be avoided to save on costly, unreliable, and destructive water supplies that new dams and massive, 40-foot diameter "peripheral tunnels" 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-

[11] http://www.dfg.ca.gov/delta/data/fmwt/Indices/index.asp

regrets" policy incorporating aggressive water conservation strategies, careful accounting of water use, research and technological innovation, and pro-active investments.[12]

III. General Comments

1. Where are the materials required in the Criteria Checklist for Complete Written Transfer Proposals, Appendix 1 of the 1993 *Interim Guidelines for Implementation of the Water Transfer Provisions of the Central Valley Project Improvement Act (Title XXXIV of Public Law 102-575)*? In particular, where are the following: "Comprehensive ground-water basin study or evaluation of ground-water supplies demonstrating transfer will have no significant long-term adverse impacts on ground-water conditions, inter-related surface streams, or other ground-water supplies in Project service area; OR Comprehensive evaluation of the potential impact on ground-water supplies accompanied by an adopted ground-water management plan?"
   (3) Location map of ground-water well(s) to be utilized.
   (4) Drillers log for ground-water well(s) to be utilized.
   (5) Provide location of other ground-water wells in Project service area.
   (6) Identify and document area(s) normally irrigation by wells."
2. How is the EA cumulative total for transfers, 190,906 AF, reached (p. 29)? The direct Project impacts are listed as 37,505 AF (EA at p. 9), the non-CVP groundwater substitution is 92,806, non-CVP reservoir water is 95,000, and other non-CVP water is 3,100 (EA at p. 31). It would help the public understand the proposed Project if the total quantity of water involved in the Project wasn't so opaque.
3. The following paragraph in the EA raises numerous questions and concerns.
   "Reclamation approves transfers consistent with provisions of state law and/or the CVPIA that protect against injury to third parties as a result of water transfers. Several important CVPIA principles include requirements that the transfer will not violate the provisions of Federal or State law, will have no significant adverse effect on the ability to deliver CVP water, will be limited to water that would have been consumptively used or irretrievably lost to beneficial use, will have no significant long-term adverse impact on groundwater conditions, and will not adversely affect water supplies for fish and wildlife purposes. Reclamation will not approve any transfer of water for which these basic principles have not been adequately addressed." (EA at p. 10)
   a. How is water for the Project considered, "[c]onsumptively used or irretrievably lost to beneficial use," with groundwater substitution in the Sacramento Valley? Page 4 of the *Interim Guidelines for Implementation of the Water Transfer Provisions of the Central Valley Project*

[12] 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.

Improvement Act (Title XXXIV of Public Law 102-575) define irretrievable loss to beneficial use as "[d]eep percolation to an unusable groundwater aquifer (e.g., saline sink or a groundwater aquifer that is polluted to the degree that water from the aquifer cannot be directly used." The groundwater basins that are part of the Project do not fit this definition.

b. The groundwater pumped for the Project is a substitute and would not have been used consumptively except for the sale of river water. This violates section H of the *Interim Guidelines for Implementation of the Water Transfer Provisions of the Central Valley Project Improvement Act (Title XXXIV of Public Law 102-575)* (p. 4)

If the Project is approved, it flies in the face of CVPIA requirements.

4. Shasta County is not listed in the Affected Environment section although Anderson Cottonwood Irrigation District is participating in the proposed Project (EA at p. 21). If the Bureau intended to identify the counties by groundwater basin, the EA must call out the Redding Basin and Shasta County.

IV. Conclusion

The Bureau's *2010/2011 Water Transfer Program's* EA/FONSI stated 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.*

The current Project's EA/FONSI presents this differently:

- "Reclamation approves transfers consistent with provisions of state law and/or the CVPIA that protect against injury to third parties as a result of water transfers." (EA at p.12)
- "[w]ill not adversely affect water supplies for fish and wildlife purposes." (EA at p.12)
- Adds, "[w]ill have no significant long-term adverse impact on groundwater conditions…" (EA at p. 12)
- Omits, "[n]o unreasonable effects on the overall economy or the environment in the counties from which the water is transferred." 2020/2011 Water Transfer Program EA at p. 3-16)

We unreservedly state to you that the two draft EA/FONSIs, since the *2010/2011 Water Transfer Program's* EA/FONSI is incorporated by reference, appear to describe a project, since they are quite similar, that would fail all of the tests required by the CVPIA and state law as currently described. The *2010/2011 Water Transfer Program* had and the *2013 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 also likely to suffer harm as instream users of water in the Sacramento Valley as well as terrestrial habitat upon which fishery and wildlife resources depend. And the economic effects of the proposed Project 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 outside a courtroom.

Taken together, the Bureau and DWR treat these serious issues carelessly in the EA/FONSI, the *Draft Technical Information for Water Transfers in 2013* and in DWR's specious avoidance of CEQA review. In so doing, the Agencies 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.

Sincerely,

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