

To Whom It May Concern:

The California Water Impact Network (C-WIN), a California 501(c) (3) non-profit corporation working to promote the equitable and environmentally sensitive use of water in California submits comments on the Department of the Interior's Bay-Delta Work Plan and MOU. Our website is <http://www.c-win.org/>.

Our comments are focused on most of the issues listed in your September 15, 2009 MOU. While we appreciate the opportunity to provide the federal agencies with our perspective on the goals of the MOU, we believe that a number of federal agencies, including the Department of the Interior would need to reverse their present and contemplated actions to find true short and long term sustainable solutions to the Bay-Delta crisis.

Most federal actions thus far, with the exception of the salmon and Delta smelt Biological Opinions on the Central Valley Project Operations Criteria and Plan, further exacerbates destruction of the Bay-Delta ecosystem, rather than leading to a "*healthy and sustainable Bay-Delta ecosystem...*" as envisioned by the MOU. C-WIN sees politics driving federal decisions in the Bay-Delta, but neither science nor law. This summer's manufactured hysteria over farmers denied water and farm laborers denied work has politicized three years of drought and a poor economy has led to the complete abandonment of the rules of law and science. Lost in the haze of this pseudo-drama is the reality of California water rights and contracting priorities functioning properly, and the reality of San Joaquin Valley's agricultural economy actually increasing employment over 2008 (see C-WIN's letter to Deputy Secretary of the Interior David Hayes). Meanwhile, continued blatant violation of environmental commitments has resulted in a complete lack of trust regarding any federal program in the Bay-Delta.

We focus our comments on several projects that C-WIN has been involved in. These include the following:

- ❖ Grasslands Bypass Project 2010-2019
- ❖ San Luis Drainage Record of Decision
- ❖ California SWRCB D-1641 Water Quality requirement violations
- ❖ Bay-Delta Conservation Plan
- ❖ Two Gates Fish Protection Demonstration Project
- ❖ CVP/SWP Consolidated Places of Use Petition to the SWRCB
- ❖ CVP Water Permit Time Extension Petition to the SWRCB
- ❖ Drought Water Bank

Grasslands Bypass Project 2010-2019

C-WIN and the California Sportfishing Protection Alliance submitted comments on the draft and final EIS/EIR for the Grasslands Bypass Project 2010-2019 (GBP). Our comments on the GBP EIS/EIR (see <http://www.c-win.org/poisoned-lands-and-grasslands-bypass-project.html>) discuss that another ten years of discharging of agricultural drainage water from the northerly area of the San Luis Unit into Mud Slough

and the San Joaquin River will fatally contaminate the San Joaquin River and southern Delta with salt, selenium, mercury and boron. Selenium and mercury discharges will cause further bioaccumulation of these two toxic elements in the ecosystem. Furthermore, the project will doom restoration of San Joaquin River juvenile Chinook salmon and steelhead through exposure to selenium contamination. There has been no peer review of the assumptions or limited analyses regarding selenium and mercury bioaccumulation. Land retirement, the most effective form for reducing or eliminating seleniferous drainage, was not even analyzed as an alternative, even though the proponents readily admit that their dream of a reverse osmosis treatment system lacks both the technology and funding to be successful. The federal agencies should not approve a 10 year extension on this project. At most, two years should be granted in order to fully evaluate options, including land retirement, through a Decision Analysis process already initiated by U.S. Geological Survey. If after two years no feasible option comes to light, we recommend the Department of the Interior order the Bureau of Reclamation to retire the questionable lands from irrigation and initiate transitions of the local economy to other feasible land uses, such as solar energy production and dryland farming.

San Luis Drainage Record of Decision

Land retirement was shown to be the most cost effective solution to resolve drainage problems in the San Luis Drainage Plan Formulation Re-evaluation Record of Decision National Economic Development Report (see http://www.usbr.gov/mp/nepa/documentShow.cfm?Doc_ID=2240, Table N-10 on page N-17). The Feasibility Report for this project found the Proposed Action to be neither technically, financially or economically feasible (see http://www.usbr.gov/mp/scca/sld/docs/sldfr_report/index.html). Drought and declining land prices have made land retirement even more economically feasible, yet Interior is planning on implementing the Proposed Action, which will build expensive, costly and untested evaporation ponds, digesters, and reverse osmosis systems. A Decision Analysis process, already initiated by the U.S. Geological Survey, and integrated with the Grasslands Bypass Project above, should be used to determine the most cost effective alternative, including land retirement. To date, neither science nor economics has been used to select the Proposed Action.

Continuing USBR Violation of Southern Delta Salinity Standards

In 2005, the State Water Board began enforcing its 1995 Bay-Delta Water Quality Control Plan salinity standards that were to protect the southern Delta (an area from Manteca and Tracy to Stockton, including the federal Central Valley Project and the State Water Project pumps near Clifton Court Forebay). The Plan required the US Bureau of Reclamation and the California Department Water Resources to be responsible for meeting the salinity standards, which are required under the federal

Clean Water Act. Almost immediately, the Central Valley Project and the State Water Project announced they would violate the salinity standards.

In 2006, the State Water Board issued a [Cease and Desist Order](#) against the projects which required them to use all available means to meet the standards along the San Joaquin River, Middle River and Old River in the south Delta, including purchases of water, releases of water from upstream dams they own (in the Bureau's case), recirculation of water through the pumps to the San Joaquin River, or physical gated barriers. By 2009, the Bureau and the Department had only attempted to make the temporary barriers in the south Delta work, but the salinity standards continued to be violated by the big projects.

The National Marine Fisheries Service's salmonid biological opinion on the Operations Criteria and Plan from June 2009 declined to approve continued barrier operation or construction of permanent tidal gates because they would disrupt critical habitat of migratory salmonid fisheries. Testimony from Bureau and state staff showed that neither project was interested in doing anything but construct permanent barriers in south Delta channels. No other alternative suggested by the State Water Board in its 2006 Cease and Desist Order was attempted by either water agency.

In April 2009, C-WIN and its allies in the Delta fishing and farming communities protested the petitions by the Department and the Bureau to relax the salinity standards. [We testified to the State Water Board in June](#) against relaxing the standards, and provided testimony showing the Board's unfortunately consistent tendency to relax or ignore salinity standards and flow standards that would protect both migratory salmon fisheries and Delta farming interests. We also urged the Board to require the Bureau of Reclamation to implement other options such as recirculation, water purchases, and flow releases from upstream reservoirs that would enable the Bureau of meet the salinity standards in the south Delta.

See

http://www.waterboards.ca.gov/waterrights/water_issues/programs/hearings/wr2006_0006/index.shtml

Bay-Delta Conservation Plan

C-WIN regards the Bay-Delta Conservation Plan as a plan for conveyance that masquerades as a habitat conservation plan. The overall strategy for the Plan is to use restoration strategies that make the Delta more of a salt water environment, enabling a new conveyance system to avoid significant unavoidable impacts findings in future environmental reviews. Such a habitat conservation plan would allow a status quo ante to continue wherein the California Department of Water Resources and the US Bureau of Reclamation could operate the Delta export pumps with allowed takes of endangered species—just as they do now, but with their killing of fish “legalized” through the habitat conservation plan. We don't see how this makes possible meaningful ecosystem restoration or endangered species recovery in the Delta. We believe the US Department of the Interior should withdraw from this process, and instead direct the Bureau of

Reclamation and the Fish and Wildlife Service to prepare a joint implementation plan for the Anadromous Fisheries Restoration Program, with generous—and long overdue—funding to see it through.

Our July 30, 2009, letter to David Hayes is located at:
<http://www.c-win.org/sites/default/files/FullDHLetter20090730.pdf>

Two Gates Fish Protection Demonstration Project

C-WIN submitted comments with CSPA on this project (see <http://www.c-win.org/two-gates-project-expedient-delta-conveyance.html>). This project is a water export/supply project disguised as a science experiment. The NEPA review is a proposed Finding of No Significant Impact. The science behind the project has serious deficiencies, according to the CalFed Independent Science Review Panel (see http://www.science.calwater.ca.gov/events/reviews/review_2gates.html). The Draft Environmental Assessment should be withdrawn and a full Environmental Impact Statement and Report should be prepared. The Proposed Action conflicts with the San Joaquin River Restoration Program/Settlement Agreement because it will increase predation and entrainment of San Joaquin River Chinook salmon and steelhead.

2009 Drought Water Bank and CVP/SWP Consolidated Places of Use Petition to the SWRCB

On February 27, 2009, Governor Arnold Schwarzenegger declared a drought emergency that really only affected San Joaquin Valley counties. As part of the declaration, he called for implementation of a 2009 Drought Water Bank. The Drought Water Bank is intended to provide water-short irrigators with low priority water contracts in the Central Valley Project and the State Water Project with water from areas of California with surpluses.

The idea of a drought water bank in California is to seek water right holders in the Sacramento Valley willing to forego their surface water rights from the CVP's Shasta Lake or the SWP's Lake Oroville so that the water can be delivered for a price to water-short irrigators, largely in the western San Joaquin Valley.

After two and half years of relatively dry weather in California, the federal Central Valley Project and State Water Project had emptied their reservoirs during 2007 and 2008, even though there was no assurance of a wet year in 2009. With a record-dry January 2009, the projects became deeply worried they would have to cut deliveries to irrigators dramatically in 2009's irrigation season (June through September).

Claiming a drought emergency, the Bureau and the Department of Water Resources also declared they needed to “consolidate places of use” in their respective water right permits to enable needed water transfers to occur.

C-WIN partnered with Sacramento Valley and fishing interests to challenge the mismanagement of the water projects during the previous two dry years. The environmental documentation was done poorly, and did not even cover the projects'

desire to "consolidate the places of use" of the water they each deliver. In effect, they sought a merger of all of the places of use for their water so that Drought Water Bank water could be shunted to any part of the San Joaquin Valley from either water project. C-WIN and its partners sued the state government over the implementation of the Drought Water Bank. You may read our [environmental documents](#) and [our testimony online](#) at http://www.waterboards.ca.gov/waterrights/water_issues/programs/hearings/usbr_dwr/.

Interior's Bay-Delta Work Plan should include policy planning and implementation of immediate and long-term water conservation incentives and programs for agricultural water contractors served by the US Bureau of Reclamation. It is not in the public interest to have water allocated to the highest bidder and the lowest water right and contractor priorities just because they yell the loudest. Conservation should be the federal government's default policy position that protects all US taxpayers and rivers from profiteering among California's quasi-public water agencies in dry times

CVP Water Permit Time Extension Petition to the SWRCB

The US Bureau of Reclamation requested extensions of time on 32 of its [Central Valley Project](#) water right permits from the [State Water Board](#) on September 3, 2009, in order to fully apply water allocated through these permits to beneficial uses.

The Bureau wants to expand its diversions on the Trinity, Sacramento, American, Old River (in the Delta), and Stanislaus rivers. The timing of these petitions suggests the Bureau may be looking for a source of water with which to fill the Peripheral Canal, should it be built. [C-WIN filed 32 protest petitions](#) in response, arguing that there is no surplus water in these streams when senior water rights are accounted for, and that current operations have been ruinous to salmon fisheries in all of these streams.

California Department of Fish and Game and the National Marine Fisheries Service also filed protests on the Bureau's petitions.

The Bureau's attempt to gain more time to fulfill its water rights is [paper water in action](#): the state water rights permit promises more water to the Bureau than there is water in any of the five streams available to fulfill them, especially when other priority water right users and the destruction of fisheries and ecosystems in these watersheds are taken into account.

We urge that the Bay-Delta Work Plan include withdrawal of the Bureau's 32 petitions to extend time for full appropriation of waters to beneficial use in these watersheds.

See <http://www.c-win.org/central-valley-project-protests.html>