



WATER AND RESOURCE CONSERVATION

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Paul Gosselin, Director

May 21, 2013

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

Dear Mr. Hubbard:

Butte County appreciates the opportunity to provide comments on Draft Environmental Assessment and Finding of No Significant Impact (FONSI) for the 2013 Central Valley Project (CVP) Water Transfer program. Butte County has a vested interest to ensure that the transfer programs, particularly out-of-basin groundwater substitution transfer programs, have the least impact upon its community, agricultural economy and environment. Much of our local water supply comes from the various groundwater basins throughout the region that are generally in hydraulic connection with local creeks and rivers.

We appreciate the oversight that the United States Bureau of Reclamation (Bureau) is attempting to bring to the 2013 CVP Water Transfer Program. However, the environmental documents, transfer guidelines, and oversight lack completeness, clarity and transparency. The Finding of No Significant Impact must be rescinded and replaced with an Environmental Impact Assessment/Environmental Impact Report (EIS/EIR). The Bureau must adopt rules governing its procedures and criteria for approving water transfer programs. As proposed, the 2013 CVP Water Transfer program will continue to pave the way towards unsustainable water resource management. In various areas throughout the valley, groundwater levels are at or near historic lows. Additional demand on the basin through groundwater substitution transfer programs needs to be evaluated on a comprehensive basis.

The 2013 Water Transfer Program should not be viewed as an isolated one-year water transfer program. The 2013 Water Transfer Program is another in a series of one-year transfer programs that the Bureau has implemented in the past four out of five years. The relationship of the 2013 CVP Water Transfer Program to its proposed 10 Year North-South Water Transfer Program must be disclosed. Although the 2013 Water Transfer Program proposes an upper boundary limit of

37,505 acre feet, the 2013 CVP Water Transfer Program is linked to the broader Long Term Transfer Program that is reported to involve up to 600,000 acre feet. The Bureau would be negligent to limit the environmental impact assessment to a one year program when the Bureau has planned for and has begun to implement larger, long term water transfer programs.

The 2013 Water Transfer Program meets the criteria for potentially causing a significant adverse effect. The 2013 Water Transfer Program incorporates by reference the 2010-11 Water Transfer Program Environmental Assessment document. The 2010-11 Water Transfer Document (Section 3.18.3) states, “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.”

Although that document assessed cumulative impacts (Section 3.18) based on transfer programs only during those years, the facts demonstrate that the 2013 Water Transfer Program is a part of a multi-year transfer program. The Bureau has implemented multi-year (four out of five years) groundwater substitution transfer programs in similar areas of the Sacramento Valley. For example, a comparison of the 2010-11 and 2013 water transfer programs show that the same “willing sellers” and “willing buyers” participated in the water transfer programs and are likely to continue in the future. The result is the utilization of a small number of wells concentrated in some portions of the basin. Those impacts must be assessed. The presumption that there would not be growth inducing impacts cannot be supported. The proposed program must address how it will avoid an expectation of a permanent reliance (e.g., “growth inducing impacts”) on water delivered through this program.

In addition to conducting an adequate environmental review, there are a number of steps the Bureau could take to assure adequate protections. One option would be for the Bureau to adopt specific limitations on the frequency that specific wells could participate in out-of-basin groundwater substitution transfer programs to avoid impacts to the basin. Such an action would not be unprecedented since limitations have been placed on following transfer programs to address economic impacts.

The document “Draft Technical Information for Preparing Water Transfer Proposals” has a number of areas that lack clarity and provide inadequate protection. In section 2.2.3, Potential Water Transfer Methods, the document states that Reclamation will approve transfers consistent with provision of state law and/or the CVPIA that protect against third party impacts as a result of water transfers. Unfortunately there are no specifics on what would constitute third party impacts or criteria that would be the basis for determining third party impacts. The process expects that the impacted party would self-identify their impact to the transferee and be responsible for carrying the burden and cost to prove their claim. The mitigation actions listed on page 38 (e.g., “lowering of pump bowls”) demonstrate that the Bureau would allow inadequate upfront assurances to protect third parties. The 2010-11 Water Transfer Program FONSI (p. 3) states that “Reclamation will not approve transfers without adequate mitigation and monitoring plans. Therefore, the Proposed Action will not have a significant adverse impact on groundwater resources.” Unfortunately, no details are provided regarding what constitutes an adequate monitoring program or what benchmarks would be established to prevent adverse

impacts. The Bureau proposes that an undefined mitigation plan would be sufficient to prevent adverse impacts. Relying on undefined plans, goals and actions cannot lead to a conclusion that there will not be any adverse impacts. The Bureau must establish specific rules that define the specifications of an adequate monitoring program and significant adverse impact thresholds.

Section 2.2.3.1 identifies that an objective of groundwater substitution transfer is to ensure that groundwater levels recover to their typical spring high levels under average hydrologic conditions and that the recovery does not come at the expense of stream flow during balanced conditions. The proposed project must approach northern Sacramento Valley with a high degree of caution especially during below average hydrologic periods. The assessment of transfer programs must include evaluating groundwater conditions and whether they are currently impacted beyond routine seasonal fluctuations as well as take into consideration projected impacts from climate change. How will the Bureau handle proposals in areas that could impact locations already experiencing groundwater elevation decline? What actions will the Bureau take if monitoring in 2014 does not demonstrate a recovery?

Section 3.5, Monitoring Programs states, “Groundwater substitution transfers have the potential to cause injury to local groundwater users due to the additional groundwater pumping needed to allow the substitution transfer to take place. Injury to other surface water users could also occur if the additional groundwater extraction results in a significant reduction in streamflow when those users need it.” Again, the document recognizes that the potential exists for injury and harm from groundwater substitution programs. This acknowledgement runs counter to the Finding of No Significant Impact. The environmental assessment should provide the opportunity to describe how those potential impacts would be monitored and mitigated. In reviewing proposed monitoring programs, the Bureau must recognize that certain areas lack adequate monitoring infrastructure. The number, location and screening of monitoring wells must be determined to accurately assess the impacts from the production wells.

The Bureau proposes to base its review and approval of specific transfer programs upon the Bureau’s 1993 document, “Interim Guidelines for Implementation of Water Transfers Under Title XXXIV of Public Law 102-575” and the “Draft Technical Information for Preparing Water Transfer Proposals” (2013). The Bureau’s review and approval process relies upon two draft guidance documents. The reliance on draft guidance documents to base approval of transfer programs constitutes an ‘underground’ regulatory process. The Bureau must take necessary steps to adopt rules for approving water transfer programs. Certain aspects of the technical guidance could remain as guidance but should be finalized and referenced in the adopted rules. The Bureau’s review and approval process should be open and transparent. The Bureau should establish a process to disclose proposed transfer program proposals, the details of their review and decision. Otherwise the process will be meaningless if relegated behind closed doors. The promulgation of rules would provide fairness and equity to everyone.

In conclusion, the 2013 CVP Water Transfer Program lacks adequate environmental assessment, clarity and transparency. The Finding of No Significant Impact must be rescinded and replaced with a complete EIS/EIR. The EIS/EIR must reflect the potential for significant adverse impacts and a need for mitigation. It is our expectation that the EIS/EIR will assess project impacts

including localized groundwater conditions over a long term period, assess growth inducing impacts and incorporate appropriate mitigation actions. Before any individual out of basin groundwater substitution transfer program is authorized, the Bureau must comprehensively address the environmental risks and assure adequate protections to third parties.

Thank you for your consideration.

Sincerely,

A handwritten signature in black ink, appearing to read "Paul Gosselin". The signature is fluid and cursive, with the first name "Paul" being larger and more prominent than the last name "Gosselin".

Paul Gosselin, Director

cc: Butte County Board of Supervisors