



October 10, 2022

Ernest Conant
 Regional Director
 U.S. Bureau of Reclamation
 2800 Cottage Way
 Sacramento, CA 95814

RE: Request that Reclamation Submit a Written Request to Renegotiate the Terms of the San Joaquin River Exchange Contract

Dear Regional Director Conant:

On behalf of California Outdoors, California Sportfishing Protection Alliance, California Water Impact Network, Center for Biological Diversity, Defenders of Wildlife, Friends of the River, Golden State Salmon Association, Golden West Women Flyfishers, Institute for Fisheries Resources, Natural Resources Defense Council, Northern California Council Fly Fishers International, Pacific Coast Federation of Fishermen’s Associations, Planning and Conservation League, Restore the Delta, Sacramento River Council, San Francisco Baykeeper, Save California Salmon, Sierra Club California, The Bay Institute and Tuolumne River Conservancy, we are writing to request the U.S. Bureau of Reclamation submit a written request to the San Joaquin River Exchange Contractors formally requesting renegotiation of the terms of the 1968 Second Amended Contract for Exchange of Waters (“Exchange Contract”), pursuant to Article 13 of the Exchange Contract. Article 13 provides that all of the terms of the Exchange Contract are subject to renegotiation and possible revision every five years. **The U.S. Bureau of Reclamation should use its time-limited and rare opportunity in 2022 to reform this unreasonable and unsustainable water supply contract no later than October 18, 2022.**¹

¹ The U.S. Bureau of Reclamation has time-limited opportunity to begin the process of reforming these unreasonable and unsustainable water supply contracts. In order to renegotiate the terms of the contract, the Bureau of Reclamation must submit a written request to the Exchange Contractors between 180 and

The terms of the Exchange Contract have not been modified since 1968, making this contract not only outdated but also devoid of applicable environmental protections that are now incorporated in other California water law and policy. Such protections include, but are not limited to, section 5937 of the Fish and Game Code, the public trust doctrine, and any consideration for the ongoing impacts of climate change on California's hydrology.

As you are well aware, California is suffering from extreme aridification. This is due to the continuation and enforcement of unreasonable water management in the state, which is exacerbated by ongoing climate change impacts. Entire communities have run out of water, threatened and endangered fisheries are in severe decline, and our rivers are warm and low, toxic or even dry. Despite these conditions, the U.S. Bureau of Reclamation has given the Exchange Contractors more water from the already overallocated and declining Bay-Delta than anyone else this year, the legacy of California's deeply inequitable water rights system.

This practice is not new. In six of the past ten years, the U.S. Bureau of Reclamation has allocated as much water as or more water than the entire flow of the San Joaquin River to the San Joaquin River Exchange Contractors, despite the fact that their contract provides water from the Delta to "substitute" for their unquantified rights to divert water from the San Joaquin River.²

Given these circumstances, it has become clear that the terms of the Exchange Contract are unreasonable under Article X, section 2 of the California Constitution. Therefore, we request that the U.S. Bureau of Reclamation provide written notification to the San Joaquin River Exchange Contractors of the intent to renegotiate the Exchange Contract pursuant to Article 13 as soon as possible.

Thank you for your time and consideration of our request.

Sincerely,



Ashley Overhouse
Water Policy Advisor, California Program
Defenders of Wildlife



Doug Obegi
Senior Attorney, Water Program
Natural Resources Defense Council

120 days before the anniversary of the execution of the Exchange Contract on February 14, 1968. With the 5 year anniversary of the contract on February 14, 2023, Reclamation must send a letter requesting renegotiation between August 19, 2022 and October 18, 2022.

² See Table in attached letter from NRDC to the U.S. Bureau of Reclamation dated May 26, 2022, attached as Exhibit A, at p. 1-2. As that letter explains, diverting 100% of the flow and dewatering the San Joaquin River would constitute an unreasonable use of water and violate the public trust, as well as violating section 5937 of the Fish and Game Code.



Chris Shutes
Acting Executive Director
California Sportfishing Protection Alliance



Dr. Jon Rosenfield
Senior Scientist
San Francisco Baykeeper



Dr. C. Mark Rockwell
President
Northern California Council, Fly Fishers International



Gary Bobker
Program Director
The Bay Institute



Howard Penn
Executive Director
Planning and Conservation League



Barbara Barrigan-Parilla
Executive Director
Restore the Delta



Jann Dorman
Executive Director
Friends of the River



John McManus
Executive Director
Golden State Salmon Association



Tryg Sletteland
Founder
Sacramento River Council



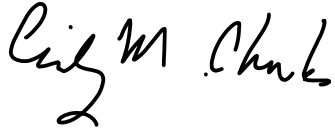
Regina Chichizola
Executive Director
Save California Salmon



Glen Spain
NW Regional Director/Legal Counsel
Institute for Fisheries Resources
Pacific Coast Federation of Fishermen's Associations



Nathan Rangel
Executive Director
California Outdoors



Cindy Charles
Conservation Chair
Golden West Women Flyfishers



Erin Woolley
Policy Advocate
Sierra Club California



Carolee Krieger
President and Executive Director
California Water Impact Network



Elizabeth Reid-Wainscoat
Urban Wildlands Campaigner
Center for Biological Diversity



Allison Boucher
Program Manager
Tuolumne River Conservancy, Inc.

CC: Camille Touton, Commissioner, U.S. Bureau of Reclamation
Yana Garcia, Secretary, CalEPA

Attached: NRDC Letter to U.S. Bureau of Reclamation regarding Exchange Contract May 26, 2022



May 26, 2022

Ernest Conant
Regional Director
U.S. Bureau of Reclamation
2800 Cottage Way
Sacramento, CA 95814

RE: Request that Reclamation Submit a Written Request to Renegotiate the Terms of the San Joaquin River Exchange Contract

Dear Regional Director Conant:

On behalf of the Natural Resources Defense Council, I am writing to request that the Bureau of Reclamation submit a written request to the San Joaquin River Exchange Contractors formally requesting renegotiation of the terms of the 1968 Second Amended Contract for Exchange of Waters (“Exchange Contract”), pursuant to Article 13 of the Exchange Contract. The United States should use its time-limited opportunity in 2022 to reform this unreasonable and unsustainable water supply contract.

The Exchange Contract was originally entered into in 1939 as part of a transaction in which four irrigation districts conveyed their unquantified rights to divert water from the San Joaquin River in exchange for a contract with the U.S. Bureau of Reclamation for substitute water to be delivered from the Sacramento River and Bay-Delta estuary. To our knowledge, the terms of the Exchange Contract have not been modified since 1968, despite the ongoing effects of climate change on California’s hydrology, the decline of salmon and other native fish species because of unsustainable water management, and the ongoing efforts to restore the San Joaquin River.

Given these changes, it has become clear that the terms of the Exchange Contract are unreasonable under Article X, section 2 of the California Constitution. In particular, in six of the past 10 years the Bureau of Reclamation has allocated as much or more water to the San Joaquin River Exchange Contractors than the entire flow of the San Joaquin River, despite the fact that their contract provides water from the Delta to “substitute” for their unquantified rights to divert water from the San Joaquin River:¹

¹ Of course, diverting 100% of the flow and dewatering the San Joaquin River would constitute an unreasonable use of water and violate the public Trust, as well as violating section 5937 of the Fish and Game Code.

Year	USBR Water Supply Allocation²	Full Natural Flow of the San Joaquin River³	Water Allocation as a Percentage of Full River Flows
2021	656,717 acre feet (75%)	521,853 acre feet	126%
2020	875,623 acre feet (100%)	886,706 acre feet	99%
2019	875,623 acre feet (100%)	2,734,772 acre feet	32%
2018	875,623 acre feet (100%)	1,348,979 acre feet	65%
2017	875,623 acre feet (100%)	4,395,400 acre feet	20%
2016	875,623 acre feet (100%)	1,301,252 acre feet	67%
2015	656,717 acre feet (75%)	327,437 acre feet	201%
2014	569,155 acre feet (65%)	509,635 acre feet	112%
2013	875,623 acre feet (75%)	856,626 acre feet	102%
2012	875,623 acre feet (75%)	831,656 acre feet	105%

Articles 7 and 8 of the Exchange Contract generally provide that Reclamation may reduce the water supply allocation by 25% in years with low inflow to Shasta Dam. Yet this shortage provision continues to result in deeply inequitable and unreasonable water supply for the Exchange Contractors, at the expense of the environment and other water contractors, except in very wet years. For instance, while the Bureau of Reclamation is providing water supply to the Sacramento River Settlement Contractors equivalent to an 18% allocation in 2022, Reclamation has allocated 75% of the maximum contract amounts to the San Joaquin River Exchange Contractors this year, despite the nearly identical terms of these contracts regarding water shortages (Shasta Critical Years). In addition, the unsustainable and unreasonable amount of water promised under the Exchange Contract has resulted in Reclamation having to release water from Friant Dam for the Exchange Contractors in 4 of the past 10 years (2022, 2016, 2015, 2014), harming other interests including other water contractors. These unsustainable water allocations harm the Bay-Delta environment, increasing water releases from upstream reservoirs during droughts and increasing pumping from the Delta, and in several recent years (2014 and

² See Bureau of Reclamation, Summary of Water Supply Allocations, online at: https://www.usbr.gov/mp/cvo/vungvari/water_allocations_historical.pdf.

³ See, e.g., California Department of Water Resources, California Data Exchange Center, Basin Summary of Full Natural Flows – Acre Feet (AF) – Water Year 2021, online at: <https://cdec.water.ca.gov/reportapp/javareports?name=FNFSUM.2021>.

2022) the San Joaquin River has been dewatered and dried up as a result of water deliveries from Friant Dam to the Exchange Contractors.⁴

The United States has time-limited opportunity later this year to begin the process of reforming these unreasonable and unsustainable water supply contracts. Article 13 of the Exchange Contract provides that all of the terms of the Exchange Contract are subject to renegotiation and possible revision every five years. In order to renegotiate the terms of the contract, the United States must submit a written request to the Exchange Contractors between 180 and 120 days before the anniversary of the execution of the Exchange Contract on February 14, 1968. With the 5 year anniversary of the contract on February 14, 2023, it appears that Reclamation must send a letter requesting renegotiation between August 19, 2022 and October 18, 2022.

Therefore, we request that the U.S. Bureau of Reclamation provide written notification to the San Joaquin River Exchange Contractors of the intent to renegotiate the Exchange Contract pursuant to Article 13 later this year.

Sincerely,



Doug Obegi

cc: Camille Touton, Commissioner, U.S. Bureau of Reclamation
Jared Blumenfeld, Secretary, CalEPA

⁴ While current operations may be consistent with the Settlement Act, the Exchange Contractors' operations of Sack Dam in 2022 (as well as in 2014) violates sections 5935 and 5937 of the California Fish and Game Code, and nothing in the Settlement Act immunizes the Exchange Contractors from liability under these provisions of state law. *See also* P.L. 111-11, § 10006(b). In addition, while the release of Restoration Flows under the San Joaquin River Restoration Program is limited to avoid groundwater seepage (resulting in maximum downstream flows that are less than 10% of the maximum flows called for under the Settlement), water releases from Friant Dam to the Exchange Contractors are currently allowed to violate these seepage limits.