



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:<sup>1</sup>

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<sup>1</sup> 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.

<b>Year</b>	<b>USBR Water Supply Allocation<sup>2</sup></b>	<b>Full Natural Flow of the San Joaquin River<sup>3</sup></b>	<b>Water Allocation as a Percentage of Full River Flows</b>
2021	656,717 acre feet (75%)	521,853 acre feet	<b>126%</b>
2020	875,623 acre feet (100%)	886,706 acre feet	<b>99%</b>
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	<b>201%</b>
2014	569,155 acre feet (65%)	509,635 acre feet	<b>112%</b>
2013	875,623 acre feet (75%)	856,626 acre feet	<b>102%</b>
2012	875,623 acre feet (75%)	831,656 acre feet	<b>105%</b>

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

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<sup>2</sup> See Bureau of Reclamation, Summary of Water Supply Allocations, online at: [https://www.usbr.gov/mp/cvo/vungvari/water\\_allocations\\_historical.pdf](https://www.usbr.gov/mp/cvo/vungvari/water_allocations_historical.pdf).

<sup>3</sup> 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.<sup>4</sup>

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

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<sup>4</sup> 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.