CONTRA COSTA WATER DISTRICT

1331 Concord Avenue
P.O. Box H2O
Concord, CA 94524
(510) 688-8000 FAX (510) 688-8122

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Directors

Joseph L. Campbell
President

James Pretti
Vice President

Elizabeth R. Anello
Bette Boatmun
Noble O. Elcenko, D.C.

Walter J. Bishop
General Manager

July 22, 1996

Mr. John Davis
United States Bureau of Reclamation
2800 Cottage Way
Sacramento, California 95825

Subject: CCWD Comments on the CVPIA Draft Administrative Proposals

Dear Mr. Davis:

The Contra Costa Water District (CCWD) appreciates the opportunity to respond to the Central Valley Project Improvement Act Draft Administrative Proposals ("Proposals") and to participate with other stakeholders in the "Garamendi Process".

One concept of central importance, underling many of the proposals, pertains to how the U.S. Bureau of Reclamation (Reclamation) will interpret and incorporate "area of origin" provisions into the implementation of the CVPIA. CCWD strongly encourages that this interpretation includes reference to and satisfies the provisions of the Delta Protection Act. We are aware that Reclamation is revising their paper on the area of origin and is considering the concerns of stakeholders, including those expressed in our April 12, 1996 letter to Roger Patterson (attached).

For your review, specific comments regarding the Urban Reliability, Water Transfers, and the Restoration Fund Draft Proposals are attached. Our comments on the remaining Proposals will be submitted by the appropriate deadline.

If you have any questions related to our comments, please contact Richard Denton, Water Resources Manager, at (510) 688-8187. We appreciate the consideration of our concerns and the efforts of the Bureau of Reclamation to coordinate and incorporate stakeholder interests.

Sincerely,

Walter J. Bishop

Walter J. Bishop

Attachments

WJB/DAB

Control No. 96006237

CCWD Comments on the
6/14/96 Urban Reliability Draft Administrative Proposal

CCWD's comments on this Proposal pertain to the minimum reliability guaranteed to urban contractors and the methodology used to determine shortage allocations. CCWD is particularly concerned that the Proposal represents a step backward from the provisions in its current contract with the Bureau of Reclamation. CCWD strongly opposes a policy which diminishes its previously established level of reliability. However, for the purpose of determining general guidelines, CCWD considers a 75% allotment of historical use to be the level of absolute minimum reliability for urban contractors in general - assuming a proper determination of "historical use" is used.

The Urban Reliability Proposal cites a number of reasons why urban contractors should have a firm commitment on reliability but it ignores an important statutory one: California law gives priority to domestic use (California Water Code, section 106). Although the CVP water rights are combined, giving all contractors a common seniority (without distinguishing between different uses), urban contractors have priority under California law and should get no less than the best of the agricultural shortage provisions, namely at least 75% of historical use. Furthermore, allocations should be tied to the Shasta Criterion as with Sacramento River Water Rights Settlement contracts.

The adjustments to historical use made for growth, as mentioned in this Proposal, can be improved. Currently, the way historical use is calculated does not encourage conservation, reclamation and acquisition of other supplies (local and otherwise). All of these actions benefit other CVP contractors in normal years and help everyone in dry years. CCWD suggests that historical use be adjusted for growth, as it is now, but also adjusted up for any reductions in use due to conservation (drought related or otherwise), reclamation or acquisition of external supplies. This would allow the allocation to increase, not decrease, as a result of these water management actions.

For example, the base historical use could be tied to 1990 levels, adjusted for growth (with periodic adjustments, every 15 years or so, to a new base level), to encourage conservation. Suppose an urban contractor that uses 100 TAF in 1990, has 10% growth and 5% conservation by 1995. This contractor would be allocated at least 75% of 110 TAF, not 75% of 105 TAF in a severe drought. In this case, the CVP benefits in the normal years, and everyone, CVP included, benefits in dry years.

The method that Reclamation proposes for accounting for other water supplies in determining the allocation penalizes contractors that develop other supplies. These other supplies actually benefit the CVP. Consequently, a contractor should be able to account for other normal-year supplies in a way that benefits both the contractor and the CVP. In CCWD's case, non-CVP supplies are not available in dry years, in part because of project actions. These are accounted for in CCWD's current contract in a way that benefits both CCWD and the CVP. CCWD supports a final policy which will allow such considerations to continue. Reductions in CVP delivery, based on the availability of non-CVP supplies, should only be initiated by the contractor. Many scenarios exist which are mutually beneficial to the contractor and the CVP.

CCWD believes that under no circumstances, other than a declared emergency or severe drought (of the health-and-safety level), should a contractor get a CVP allotment that is based in whole or in part on the fact that the contractor has acquired water through transfers or obtained other supplies for use in a drought. The Draft Proposal could lead to the following unfair situation where urban contractor A buys transfer water from agricultural contractor B. Under the current USBR Proposal, the CVP would reduce urban contractor A's allocation by the amount of the transfer, allowing more water to go to other CVP users. Urban A gets no net increase in water supply, despite paying Ag B for the

transferred water. Ag customer B makes money on the sale and receives a portion of the water back from the reduced allocation made to urban A. Under this proposal, the benefit of acquiring a transfer is taken away and passed to someone who did not pay for it. This policy is not acceptable.

Two-Tiers of Reliability

Reclamation's Proposal to set up a two-tier system to improve reliability is viable and should be explored in greater detail. This system allows the CVP to start a water bank for CVP contractors and leaves room for individual contractors to negotiate a larger allocation. The methodology could be used to settle, in a way beneficial both to the CVP and CCWD, the issues related to the Delta Protection Act (DPA).

In general, we believe that Reclamation needs to provide an institutional mechanism for a higher level of reliability for urban contractors in the Delta who are entirely reliant on the Delta, as required under the DPA. CCWD's recent comments to the USBR on this matter are attached. Under the Coordinated Operations Agreement (COA), the CVP could work out an arrangement with the SWP to share responsibility for providing CCWD with "an adequate water supply" as required by the DPA. The SWP recognizes 100% reliability for water users in the area of origin. The CVP should also recognize its responsibility under the DPA.

CCWD believes that the issues presented in the Urban Reliability Draft Administrative Proposal are of paramount importance. We encourage Reclamation to expand its policies in this area by considering the situation of individual contractors. An absolute minimum reliability of 75% of historical use is generally reasonable provided that, along with growth, "historical use" reflects conservation and reclamation efforts and other supplies obtained which offset CVP dependence. However, CCWD believes the policy should not result in a diminution of the terms in its current contract and, in fact, should provide a higher reliability level because of the DPA.

In summary, the policy should reflect growth, conservation, reclamation, offsetting supplies, and the requirement to provide an adequate supply to water users in the Delta under the DPA. Taking the latter measures into account produces a win-win situation, promoting conservation rather than penalizing it. The two-tier system for shortages will hopefully evolve into a mechanism for contractors to obtain higher reliability based on the individual district's situation. CCWD believes that the needs of in-Delta contractors warrant the special consideration provided by the Delta Protection Act, including a higher reliability level to CCWD than is stipulated in its current contract.

CCWD Comments on the 6/14/96 Water Transfers Draft Administrative Proposal

Similar to many urban contractors, water transfers will be an integral part of CCWD's future water supply. Therefore, our comments specifically address those portions of the Proposal which may, from our perspective, render transfers prohibitively expensive, complicated, or otherwise impractical.

Right of First Refusal

CCWD strongly disagrees with Reclamation's proposed solution of applying the $25 M&I surcharge to those CVP contractors who exercise the right of first refusal. This surcharge is unreasonable considering the $13 per acre-foot that urban contractors already pay to the Restoration Fund. The surcharge should only apply to water moving out of the CVP.

CCWD supports the consensus opinion expressed in the workgroup and current Proposal which pertains to the exercise of the right of first refusal on a portion, rather than on the entire amount, of the proposed water transfer. In addition, CCWD recommends that the Bureau adopt the right of first refusal as a permanent element of its final water transfer policy. This will assure that demands within the CVP service area are met prior to the transfer of water outside of the service area.

Third Party Impacts

CCWD is concerned about the policy that will develop for third party mitigation. Currently, the Proposal refers to the mitigation for third party impacts in general terms only. The Proposal should clarify the extent of required mitigation and the type of third party impacts which qualify. CCWD believes that the district approval limitations and the $25 surcharge associated with transferring CVP water to non-CVP contractors are safeguards which represent significant concessions to third parties who may be affected by transfers. However, a forum should be created to monitor impacts associated with transfers to ensure that mitigation for individual transfers is appropriate.

Area of Origin

CCWD strongly disagrees with Reclamation's statement that area of origin is not a CVPIA implementation issue (please refer to the attachment). The USBR should consider the Delta Protection Act protections in all contract renewals and in the determination of M&I shortage provisions. Furthermore, the applicability of third party mitigation payments and water transfer surcharges to transfers within the area of origin should be considered separately from external transfers.

CCWD Comments on the 5/31/96 Restoration Fund Draft Administrative Proposal

CCWD generally supports the solutions outlined in the Restoration Fund Draft Proposal.

Expenditures

CCWD agrees with Reclamation's proposals related to priority setting, water acquisition and related reserve funds, and the annual apportionment split.

Collections

CCWD supports the exemption of additional payments to the Restoration Fund for CVP contractors with Warren contracts. Because this provision could have significant impact on proposed water transfers, CCWD recommends that this payment exemption for these contractors become a permanent part of the CVPIA.

The proposals related to rate stability and cash flow are agreeable to CCWD.

Non-Federal Funding

CCWD supports the effort to acquire additional funds from the State.

Institutional Considerations

CCWD strongly encourages all efforts to combine and streamline the institutional programs that are responsible for ecosystem restoration. Funds which have been collected for environmental purposes can be utilized more rapidly with a coordinated approval process.

CCWD supports the effort to include a peer-review process into the Restoration Roundtable. Involvement from the academic community would create a forum in which program selection and priority setting decisions could be made more objectively. Some consideration should be made to link this effort to the Bay-Delta Modeling Forum, a previously established group which encourages scientific exchange and peer-review with an emphasis on policy applications.