APPENDIX D

RESPONSES TO COMMENTS ON THE DRAFT 2002 SUPPLEMENTAL EA

Introduction

The draft supplemental EA for the renewal of 2002 interim contracts for two years (from March 2, 2002 through February 29, 2004) was circulated for public and agency review for 30 days from December 7, 2001 to January 7, 2002. The final Supplemental EA provides response to comments received on the draft. This appendix includes a list of the comment letters (Table 1), the comment letters, and the responses to the substantive environmental issues raised in the comments.

No new impacts were identified, nor was there an increase in the severity of previously identified impacts.

Table 1
List of Comment Letters Received

Letter Reference	Commentor
DPWD	William D. Harrison, General Manager, Del Puerto Water District
USEPA	Joshua Baylson, Acting Deputy Director, Cross Media Division, Region IX, US Environmental Protection Agency
SLDMWA	Diane V. Rathmann, Linneman, Burgesss, Telles, Van Atta, Vierra, Rathmann, Whitehurst & Keene, On behalf of the San Luis & Delta-Mendota Water Authority
TCS	Aileen D. Roder, Taxpayers for Common Sense
SCVWD	Kellye J. Kennedy, Santa Clara Valley Water District

Del Puerto WATER District

P.O. Box 1596 • Patterson, CA 95363-1596 Fax (209) 892-4469 • Phone (209) 892-4470

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CODE	ACTION	SIGNAME DATE
150		JW

December 18, 2001

Bureau of Reclamation
Mid-Pacific Regional Office
ATTN: Mr. Frank Michny
2800 Cottage Way
Sacramento, CA 95825-1898

Re: Request for Review and Comment on Draft Supplemental Environmental Assessment and Draft Finding of No Significant Impact for Interim Renewal Water Service Contracts - Central Valley Project, California

Dear Mr. Michny:

On behalf of the Del Puerto Water District, an Interim Renewal Contractor for Central Valley Project water service from the Delta-Mendota Canal, I am writing to comment on the Draft Supplemental Environmental Assessment (DSEA).

We have reviewed the DSEA and agree with the conclusion reached that interim renewal of the proposed water service contracts for up to two years, with only minor changes, will result in no significant impact to the quality of the human environment including Water Resources, Land Use, Biological Resources, Threatened or Endangered Species, Cultural Resources, Recreation Resources, Demographics and Environmental Justice, Indian Trust Assets, Economic Resources. Neither will this action result in significant cumulative impacts. A Finding of No Significant Impact for the proposed action is therefore appropriate. DPWD 1

Thank you for the opportunity to review and comment on this document and finding.

Sincerely,

William D. Harrison, General Manager
DEL PUERTO WATER DISTRICT

cc: Board of Directors
Ernest Conant

Response to Comments by Del Puerto Water District (DPWD)

DPWD-1 Comment noted.

MP150 Frank

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION IX
75 Hawthorne Street
San Francisco, CA 94105

January 4, 2002

Frank Michny
Regional Environmental Officer
Bureau of Reclamation
Mid-Pacific Regional Office
2800 Cottage Way
Sacramento, California 95825

Dear Mr. Michny:

The Environmental Protection Agency (EPA) has reviewed the **Draft Supplemental Environmental Assessment for the 2002 Renewal of Interim Water Service Contracts through February 29, 2004 - Central Valley Project, California.** Our review is pursuant to the National Environmental Policy Act (NEPA), Council on Environmental Quality (CEQ) regulations (40 CFR Parts 1500-1508), and Section 309 of the Clean Air Act.

The Bureau of Reclamation (Bureau) proposes to execute 42 interim renewal water service contracts for up to two years between March 1, 2002 and February 29, 2004. Execution of interim contracts is needed to continue delivery of Central Valley Project (CVP) water until long-term contracts can be executed.

The renewal of interim water service contracts was first evaluated in a 1994 environmental assessment (EA) with supplemental EAs (SEAs) issued in 1998, 2000, and 2001 for subsequent interim renewals (i.e., "roll-overs"). The current SEA is tiered to these previous EAs and relies on the evaluation of environmental consequences provided in the 2000 and 2001 SEAs. The proposed interim contracts include the same terms as those executed in 1994, and renewed in 1998, 2000, and 2001. If long-term contracts are not executed by March 1, 2003, a one-year extension of these interim contracts (March 1, 2003 through February 29, 2004) may be executed. Prior to a second year extension, the Bureau will determine if additional NEPA analysis is necessary.

As you know, EPA has had a long institutional interest in the Bureau's renewal of interim and long-term contracts. We provided comments on the 1994 draft guidelines for interim renewal of long-term CVP contracts and on the 1994 EA for interim renewal of 67 CVP water service contracts. In that many of our earlier comments are still relevant to the proposed contracts and current SEA, these letters are hereby incorporated by reference. Copies are attached.

EPA continues to be concerned that the "roll-overs" of the interim contracts have compromised the Bureau's NEPA process for the following reasons:

- The present SEA is the fourth "roll-over" since 1994. In effect, many of these interim renewal contracts have been continued for 7 years. The current renewal would extend these interim renewal contracts to a period of 10 years. Therefore, the premise that the contracts are of a limited duration with minor environmental impacts, is no longer valid. USEPA 1

- The status quo perpetuates and aggravates environmental degradation and constitutes an irretrievable commitment of resources which should be fully evaluated pursuant to NEPA. We note that the Central Valley Project Improvement Act Programmatic Environmental Impact Statement did not evaluate water quality impacts at any level, nor did it evaluate other environmental impacts at the district level. We continue to believe there is a compelling need for detailed evaluation of long-term and cumulative impacts of district-level water quality, groundwater, and water supply reliability effects of the continuing action. USEPA 2 USEPA 3

We urge the Bureau to stop continual "roll-overs" of the interim contracts and to pursue execution of long-term contracts based on a sound NEPA process which informs environmentally responsive contract design. To do so would be in the best interests of California, the public, and sound water supply management. We believe an adequate NEPA process for district-level contracts should include evaluation of the long-term and cumulative impacts of the status quo and continual roll-over of interim renewal contracts. We also urge the Bureau to create strong incentives to move contractors from interim renewal contracts to long-term contracts. We consider these NEPA compliance issues to be significant and we will work with you to resolve our concerns to avoid elevation of these issues. USEPA 4 USEPA 5

EPA wishes to acknowledge the significant efforts made by Bureau staff over the past several years in developing an approach to CVP contracts that is fair to the districts involved and implements the reforms envisioned by the CVPIA. Our detailed comments (attached) discuss a number of issues which we believe should be considered in the environmental documentation for interim renewal of water service contracts. We stand ready to offer our support on working through the issues raised in our comments or on other issues raised during the comment period. If you have any questions about these comments, please call Lisa Hanf at (415) 972-3854 or Laura Fujii at (415) 972-3852.

Yours truly,

Joshua Baylson,
Acting Deputy Director
Cross Media Division

Attachments: Detailed comments (3 pages)
EPA Comments on 1994 Draft Guidelines for Interim Renewal of CVP Contracts
EPA Comments on 1994 Interim Renewal EA

MI002218
Filename: interimcvpcontracts.wpd

cc: Donna Tegelman, BOR, MP-400
Gary Stern, National Marine Fisheries Service, Santa Rosa
Michael Aceituno, National Marine Fisheries Service, Sacramento
US Army Corps of Engineers, San Francisco & Sacramento
Pat Port, Department of the Interior
Wayne White and David Wright, US Fish and Wildlife Service
Jim White, Department of Fish and Game
Victoria Whitney, State Water Resources Control Board
Mary Nichols, California Resources Agency
Patrick Wright, CALFED

DETAILED COMMENTS

Impact of No Action (Status Quo)

The 1994 Environmental Assessment (EA) and subsequent Supplemental Environmental Assessments (SEAs) measure impacts of the proposed action relative to the status quo scenario, or "no action." However, the Bureau has failed to place the status quo in the context of historical biological resource losses or actual on-the-ground environmental conditions associated with CVP water delivery (e.g., reduced flows in the San Joaquin River). Thus, the conclusion that there are no significant impacts since the proposed action represents a continuation of the existing action is flawed.

USEP 6

Recommendation:

We urge the Bureau to evaluate potential impacts of the continuing action in comparison to existing environmental conditions and trends. As we have stated before, "no action" does not equate with "no impact." Therefore, the Bureau should determine whether the continuation of the action will contribute to a declining, stable, or improving environmental condition.

Environmental Consequences

An underlying assumption of the SEA appears to be that there are no changes in land use, canal maintenance procedures, cropping patterns, or other agricultural and irrigation practices because the contracts are of a limited duration, represent a continuation of existing conditions, and will not provide for additional water supplies that could lead to shifts in agricultural practices or land use (draft Finding Of No Significant Impacts (FONSI), pg. 3). However, changes in existing conditions have occurred which could affect agricultural practices. These changes should be taken into account.

Recommendations:

USEP 7

We recommend the Bureau reevaluate the assumption of no change in agricultural or irrigation practices that occur with market and other economic shifts, regulatory reform, and environmental dynamics. In examining the incremental impacts of roll-overs, the Bureau should consider the cumulative impacts from changed agricultural conditions. Conditions to consider include changes in herbicide use for aquatic plant control in irrigation canals, the increased focus on invasive species control, new air quality standards (e.g., PM2.5), new water quality actions (e.g., California Regional Water Quality Control Board waste discharge requirements), and projected growth and development within the Central Valley.

The 2000 SEA (pg. 3-4) states that the Bureau has undertaken a number of commitments to monitor and address any impacts from the previous interim contracts. We urge the Bureau to include the most recent monitoring results in the final environmental documentation. USEPA 8

Alternatives

1. It appears that Alternative 2, as presented in the 2000 SEA, is no longer being evaluated as an alternative. Therefore, only Alternative 1, the No Action alternative, is considered in the 2001 and 2002 SEAs (2002 SEA, pg. 2-2).

Recommendation:

Given the fact that many of the interim contracts have been in place for 7 years and may be continued into the indefinite future, we strongly believe the Bureau should consider evaluation of other reasonable alternatives as required by NEPA [40 CFR Section 1502.14(a) and (c)]. USEPA 9

2. As presented in the 2000 SEA, Alternative 2 would specify water quantities using two water supply categories. The first, more reliable water category, would be the quantity of water that would be reasonably likely to be available during a year for delivery and would be the "contract total." The second category of water would be any additional water that may be delivered to contractors in excess of the first category of water.

EPA has frequently expressed our concern that the contract quantities included in the current contracts do not accurately reflect the delivery capability of the CVP, especially after regulatory actions under the Clean Water Act, the CVPIA and the Endangered Species Act are considered. In many years -- and for some districts, in most years -- the CVP is unable to deliver the entire amount of water called for in the current contracts. EPA is concerned that this "over commitment" of CVP supplies has the potential to adversely affect the Bureau's ability to effectively assist in addressing California water and environmental needs. USEPA 10

Recommendation:

We urge the Bureau to consider including the dual water category approach in their interim contract renewals, especially since these contracts may continue into the indefinite future. We suggest that the Bureau develop a consistent process for determining, on a contract by contract basis, the proper allocations of "base" and "supplemental" quantities. We believe the "base" amount should reflect recent historical realities but also factor in the anticipated future limitations on CVP supplies noted and evaluated in the CVPIA Programmatic EIS.

3. Alternative 2 also included the concept of tiered water pricing for the first category of water (contract total) where the first 80 percent of the contract total would be priced at the contract rate. Subsequent 10 percent increments would be priced at higher rates. The second category of water would be priced at the full cost rate.

Recommendation:

EPA has often expressed our support for the concept of tiered pricing as a mechanism for encouraging economically efficient water uses in both the agricultural and urban sectors. EPA appreciates that implementing tiered pricing in the real world is difficult, given the vastly different circumstances of irrigation districts and the various approaches to managing water supplies in diverse hydrologies. Nevertheless, we urge the Bureau to reconsider including tiered water pricing in interim renewal contracts and to develop carefully tailored, district or unit level approaches to tiered pricing. USEPA 11

General Comments

1. We recommend the Bureau clearly state in the environmental documentation the most realistic schedule for execution of long-term contract renewals. We ask that the Bureau confirm that interim contract renewals will not be continued into the indefinite future. We also strongly urge the Bureau to include language in each interim contract stating a specific schedule and date for finalizing and executing the long-term contract. USEPA 12

2. We are concerned that NEPA review of the major environmental issues involved in water delivery under these contracts is being carried out in an increasingly fragmented way through different NEPA processes. We urge the Bureau to more explicitly articulate (a) how the various long-term contract EISs (e.g., American River Unit) will tier from the CVPIA PEIS, (b) how these interim contract SEAs will tier from the CVPIA PEIS (now that there is a final Record Of Decision on the PEIS), and (c) how the many local efforts, such as the San Luis Drain EIS and the Westside Integrated Resource Plan (WIRP), will tier from the CVPIA PEIS and relate to the various contract renewal evaluations. USEPA 13

3. The final environmental documentation should include updated information on the status of current water transfers and assignments; implementation of CVPIA requirements of Section 3405, as already incorporated into the interim contract provisions (e.g., installation of water measurement devices, conservation plans, meeting water quality standards, payment provisions); US Fish and Wildlife and National Marine Fisheries Service concurrence letters on meeting Endangered Species Act requirements; and status of Interim Contracts Renewal Biological Opinion commitments. USEPA 14

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION IX
75 Hawthorne Street
San Francisco, Ca. 94105-3901

April 22, 1994

APR 22 1994

John Davis
Repayments Branch Chief
Bureau of Reclamation, Mid-Pacific Region
2800 Cottage Way
Sacramento, CA 95825

Dear Mr. Davis:

Enclosed are Environmental Protection Agency (EPA) comments on the March 10, 1994 draft Guidelines for interim renewal of long-term Central Valley Project contracts under P.L. 102-575.

The EPA has submitted comments on two previous drafts of the guidelines (letters to James Moore, dated March 5, 1993 and August 13, 1993). We appreciate the efforts which Reclamation has made to solicit and respond to public comments. The present draft of Interim Contract Renewal Guidelines is an improvement over earlier versions. However, we continue to have concerns with several sections.

If you would like to discuss these comments with us, please call Thomas Hagler, Office of Regional Counsel (415-744-1375) or Carolyn Yale, Office of Federal Activities, Environmental Review Section (415-744-1580).

Yours truly,

Harry Seraydarian
Director
Water Management Division

Enclosure

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EPA Comments:
Interim Draft Guidelines: Implementation of the Interim Contract Renewal Provisions, P.L. 102-575

1. **Water shortage.** The current language states that shortages may be caused by "drought or other unavoidable causes." It is not clear how "unvoidable causes" might be interpreted, or whether compliance with state and federal environmental laws could somehow be construed as "avoidable." We strongly recommend that the section be revised to clearly state that shortages may occur when necessary to comply with legal obligations, including obligations under P.L. 102-575, the Federal Clean Water Act, and Endangered Species Act. The language of the July 14, 1993 draft of these guidelines is a clearer expression of these responsibilities.

2. **Water supply.** Draft guidelines section (V.B) on water supply states that the quantity of water under contract will be reviewed for "reasonable beneficial use." The procedures and standards used to determine reasonable beneficial use should be identified in more detail in the guidelines. We believe that determination of reasonable beneficial use should include an evaluation as to whether the water uses unreasonably interfere with the attainment of state and federal water quality standards and water conservation measures.

Additionally, the guidelines provide that evaluation of water supply may include projected needs, without identifying the time frame for this analysis of future conditions. We stated in our letter of August 13, 1993, that we believe the water supply determination should be based on the contractor's historical use, rather than projected use beyond the interim renewal period. Please refer to the August comment letter for more details on this subject.

3. **Water quality.** The currently proposed guidelines state that provisions contained in Section 3405(c) of P.L. 102-575 will be added to interim renewal contracts. However, the guidelines add the nuance that the requirement for compliance with all State and Federal water quality standards will apply to agricultural drainage discharges "generated *through the use of Federal or Contractor facilities or CVP water provided by the Contractor* within its boundaries." This language is more limited than Section 3405(c). As we noted in our March 5, 1993 letter, implementation of this section should impose on a district the responsibility for meeting applicable water quality standards with respect to "drainage discharges generated within its boundaries."

4. **Conservation.** As you know, P.L. 102-575 grants Reclamation discretionary authority to renew contracts for an interim period until completion of the programmatic EIS. Having an approved water conservation plan in place should be a clearly stated prerequisite for interim contract renewal; any subsequent interim

renewals should be contingent on satisfactory implementation of the plan. While there may be "extenuating circumstances" which prevent meeting these requirements, these should be defined narrowly in the guidelines.

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION IX
75 Hawthorne Street
San Francisco, Ca. 94105-3901

October 19, 1994

Rick Breitenbach
Office of Water Policy and Allocation, MP-180
Mid-Pacific Region
Bureau of Reclamation
2800 Cottage Way
Sacramento, CA 95825

Dear Mr. Breitenbach:

The Environmental Protection Agency (EPA) Office of Federal Activities would like to submit comments on the Draft Environmental Assessment (EA) for interim renewal of 67 Central Valley Project (CVP) repayment or water service contracts. These comments are provided in accordance with responsibilities under the National Environmental Policy Act (NEPA) and Section 309 of the Clean Air Act.

EA Approach and Findings

According to the EA, interim renewal of expired contracts is intended not only to provide continuing water deliveries to existing CVP contractors but to implement the Central Valley Project Improvement Act (CVPIA). The interim renewals cover a period of time until all necessary environmental documentation for long-term water contract renewals, including the programmatic environmental impact statement on implementation of the CVPIA (ES-1), is completed. In the two action alternatives considered in the EA, Reclamation proposes to renew 67 contracts, pursuant to the Central Valley Project Improvement Act, for a maximum of three years each. Alternative #1 (preferred alternative, p. II-9) tracks most closely, but not exactly, the Final Interim Guidelines for Implementation of Interim Renewal Contracts (May 20,1994). The second action alternative is closer to pre-CVPIA contract provisions, and represents a version favored by CVP contractors (p. II-4). Finally, "no action" reflects "continuation of existing contract terms"-- a mixture of pre-CVPIA and CVPIA provisions. The EA analysis of effects of the three alternatives suggests that there would be no appreciable differences among them with respect to water deliveries or water use, or other impacts on the environment.

EPA Comments

EPA is extremely interested in seeing that contract provisions designed to support CVPIA are faithfully negotiated in interim renewal contacts. To this end, we submitted comments on the Interim Guidelines on several occasions (letters to James Moore dated March 5, 1993 and August 13, 1993; letter to John Davis, April 22, 1994). The EA, the Interim Guidelines, and the proposed contracts are inextricably linked; EPA's detailed comments on these matters are enclosed. EPA's major concerns are as follows:

(1) While the final Interim Guidelines did not respond fully to certain issues we raised, they were formally endorsed by the Regional Director after a public process and should be represented in the EA. In some instances, the preferred alternative #1 contains proposed contract provisions which are weaker than the final Guidelines with respect to environmental protection. EPA believes that these changes need to be justified, and that the EA should include an alternative fully reflecting the Interim Guidelines as approved.

(2) EPA is concerned that the EA does not provide a range of alternatives satisfying 40 CFR Sec. 1508.9(b) [see also NEPA Sec. 102(2)(C), 42 USC Sec. 4332]. In the purpose and need statement (p. I-1) the first purpose of interim contract renewals cited is "protecting, restoring, and enhancing fish, wildlife and associated habitats" in affected areas. In large measure this depends on improving water supplies and, in certain areas, water quality for biological resources. However, all three of the alternatives (no action plus two action alternatives) propose contract renewals for approximately the same water quantities (equal or close to full existing contract quantity). Additionally, the alternatives do not evaluate contract provisions to address quality problems associated with Central Valley Project water use.

(3) Finally, EPA is concerned about the direction of Bureau policy implied by the EA and the proposed contract language. We are concerned that these documents do not explicitly state that water allocations will be made for fish and wildlife purposes (under the Endangered Species Act, under state and federal water quality standards, and to some extent under other provisions of the CVPIA), and that these allocations will reduce water available for contract deliveries. Absent reduced contract water quantities or a clear contractual provision recognizing and restating the Secretary's authority to meet these fish and wildlife objectives, the Bureau may be restricting its ability to implement fish and wildlife measures during the period covered by these interim contracts.

Details on recommended changes in the EA and proposed contract provisions are enclosed. If you would like to discuss these comments, please call Carolyn Yale (415-744-1580). We would appreciate receiving two copies of any subsequent documentation for this EA.

Yours truly,

David Farrel, Chief
Environmental Review Section

ID 002218

cc: Jim McKevitt, U.S. Fish and Wildlife Service
Mike Hoover, U.S. Fish and Wildlife Service
Jim White, California Department of Fish and Game
Jim Bybee, National Marine Fisheries Service
Nanette Engelbrite, Western Area Power Administration
Robert Franklin, Hoopa Valley Tribe
Jeannine Jones, California Department of Water Resources
Wendy Pulling, Natural Resources Defense Council
Dave Yardas, Environmental Defense Fund

Interim renewals should clearly support CVPIA

Interim renewals should be designed to promote CVPIA purposes, such as environmental restoration and mitigation, and water conservation. Although interim renewals are for a short term only, they should support policies intended to make a difference over the longer run. While the EA identifies CVPIA goals in the purpose and need statement (see p. ES-1), it is not clear how the alternatives would achieve these objectives. For example, the analysis of water deliveries concludes there would be no difference among the three alternatives [that is, deliveries could be 1.694 million acre feet (maf), slightly below the current contract quantity, 1.735 maf]. These water contract and delivery quantities predate CVPIA and recent Bay/Delta protective measures: The analysis of contract water supply and impacts does not allow for environmental water allocations.

The EA also implies that water conservation has no potential effects on water quality or quantity used (p. III-15). There is no way of distinguishing between status quo conservation plans and Reclamation's new conservation plan criteria. The EA should provide comparative information regarding short and longer-term objectives, and potential longer-term effects, of these options.

In summary, the EA should analyze an alternative which promotes CVPIA objectives of protecting fish, wildlife, and habitat and improving water conservation. The relationship between these policies and implementing contract provisions should be stated clearly. As it is, the alternatives appear to be designed to narrow the differences from no action/status quo. There are no clear policies distinguishing the two action alternatives from each other, or from no action. This fact, combined with the EA analysis that there may be no significant impacts to distinguish one alternative from another, provides little guidance for selecting a course of action.

Provide water for environmental protection

The policy statements, contract provisions and water supply analysis in the EA do not unequivocally support Reclamation's legal obligations to operate the Central Valley Project to protect fish and wildlife, pursuant to such laws as the Endangered Species Act and Clean Water Act. EPA believes that the principle of operating the CVP to meet all legal requirements for environmental protection applies in all alternatives (including "no action"). Contract provisions should support this principle. Water requirements for environmental resources should be reflected in the discussion of water available for deliveries

to contractors.

Policy statements: The EA alternatives provide only limited compliance: For "no action" and alternative 2 contractors would be required to comply with D-1485 and the existing biological opinions for winter-run salmon and delta smelt; Alternative 1 would require contractor compliance with any biological opinions developed pursuant to Section 7 of the Endangered Species Act. Other measures, including "implementation of the CVPIA... and development of water quality standards for the Delta" are regarded by Reclamation as too speculative for inclusion in the EA (p. III-62). The EA should express a commitment to meet all legal requirements.

Contract provisions: The EA version of the shortage provision (which is the same for both action alternatives) would "allow water shortages to be caused by drought or other physical or legal causes that are beyond the control of the United States" (p. III-3). This is a significant departure from the final Interim Guidelines, which provide that shortages of water available to the contractor may occur with drought or "other causes including but not limited to, compliance with federal and state laws and regulations. The interim contracts will contain language that gives the United States the authority on how Project water is allocated within the CVP" (emphasis added). We believe very strongly that the EA should include a shortage provision which follows the Guidelines.

Water supply analysis: The EA water supply analysis should distinguish between stated contract quantity and amount of water which would be available to contractors after meeting legal environmental requirements. The EA bases the interim renewal water contract quantity on the highest historical "beneficial" use over a period of 1980-1993 (Alt. 1-- totalling 1.694 million acre feet) or the same amount as in the existing long-term contracts (no action, Alt. 2-- 1.735 million acre feet). (For most contractors, the interim renewal contact quantities are the same under both alternatives.) The analysis of water deliveries to contractors refers to these maximum quantities, without considering environmental needs which could reduce water availability to contractors (see for example, pp. III-16-17).

Improve water conservation and management

We support the provision in Alternative 1 which requires contractors to prepare and begin implementing water conservation plans conforming to Reclamation's Criteria for Evaluating Water Conservation Plans (April 30, 1993). To effectively implement conservation, and for Reclamation to evaluate the plans and

implementation efforts, adequate documentation of water supplies, use and quality of seepage and return flows is required. This includes adopting and enforcing water use measurement and reporting requirements.

Reclamation has repeatedly stated that in reviewing a contract for renewal, the Bureau evaluates whether water has been put to "*reasonable beneficial use*" (see pp. II-9 and II-16). In commenting on the Interim Renewal Guidelines we have asked what this determination entails in terms of documentation from the contractor and evaluation procedures and standards on Interior's part. The EA Technical Appendix D, "Descriptions of Affected CVP Contractors," indicates that in many instances information is missing on such topics as groundwater use and accurate water measurement. Under these circumstances, it is difficult to conclude that an exacting evaluation of reasonable beneficial use of Central Valley Project water has been conducted. Given limited documentation and regulation of ground water use, we are also concerned about the implications of including "groundwater recharge" as a beneficial use of irrigation water (discussed in Alt. 2).

We believe that determination of reasonable beneficial use should include an evaluation as to whether the water uses unreasonably interfere with the attainment of state and federal water quality standards and water conservation measures (see letter to John Davis from Harry Seraydarian, April 22, 1994). We strongly recommend that Reclamation develop effective methods and standards for evaluating reasonable beneficial use. Contract provisions should give Reclamation authority to reduce water supplies where water use has not been reasonable and beneficial.

Water pricing

The EA observes that for all alternatives "ability to pay" rate reductions will be available to irrigators. As a result, the irrigation water rates and Restoration Fund charges identified in the EA may not in fact be paid in full by irrigators, but shifted to power users. (See pp. I-7 and III-55.) In a previous letter we raised questions regarding the legal and policy basis for continued use of ability to pay rate reductions in the CVP (letter from Jacqueline Wyland to Kirk Rodgers, July 8, 1994). Further, we would like to know if ability to pay relief could be implemented for the action analyzed in this EA, given the short time frame for interim renewals and, as we understand it, the substantial documentation and review procedures for ability to pay. If ability to pay reductions could be implemented, the potential effects on water use should be discussed.

Impacts of no action (status quo)

The EA measures impacts of alternatives in terms of change from status quo (see, for example, pp. III-16-17). However, when using the status quo/no action alternative as a reference point for effects of alternatives, it is essential to place this in the context of historical biological resource losses. Failure to begin implementation of the CVPIA may result in additional impacts simply by supporting ongoing activities which continue to degrade the environment. Given the need-- and CVPIA requirement-- to correct for past and current Project impacts, the interim renewals should be evaluated in terms of likely contribution to longer-term environmental consequences.

Response to Comments by US Environmental Protection Agency (USEPA)

USEPA-1 Reclamation anticipates completing the environmental compliance and the execution of long-term water service contract within this interim period. The complexity of the analysis associated with the Programmatic Environmental Impact Statement (PEIS) extended its completion until October 1999 with the Record of Decision approved on January 9, 2001. The PEIS evaluated CVP-wide impacts of long-term contract renewal. Environmental compliance documents tiered from the PEIS are at various stages of completion. Friant Division, Hidden Unit, and Buchanan Unit long-term contract have been executed. Interim contracts are necessary until completion of the contract negotiation and environmental compliance processes. The interim renewal of these contracts essentially maintains the status quo.

USEPA-2 Comment Noted. See section 1.1, second paragraph, of this environmental assessment which explains our environmental analysis approach. Reclamation believes the NEPA analysis is appropriate for the action at hand.

USEPA-3 The final PEIS, partly based on comments on the draft PEIS, did evaluate impacts to Delta water quality in Technical Appendix Volume Ten, October 1999, and habitat and water quality conditions that affect fish in the Central Valley streams in Attachment B of the Fish Habitat Water Quality Technical Information, September 1997. Regional and district level water quality impacts as they may relate to the approval of long-term water service contracts have or will be evaluated in the long-term contract renewal NEPA documents tiered from the PEIS.

USEPA-4 See USEPA-1 and 2. Reclamation and the contractors have made and will continue efforts to complete the appropriate environmental compliance process for long-term contracts.

USEPA-5 Section 3404 (c)(3) of the CVPIA provides the incentives to renew interim and "encourage early renewal" of all CVP water service contracts. Reclamation intent is to aggressively pursue completion of long-term contract renewals.

USEPA-6 See section 1.1, second paragraph, of this final EA. The EA and the scope of analysis were developed consistent with NEPA regulations and guidance for the Council on Environmental Quality. The proposed action is the continuation of the existing interim contracts with only minor, administrative changes to the contract provisions. Only minor change in actions, circumstances, or information has occurred. See response to comment USEPA-2.

Response to Comments by US Environmental Protection Agency (USEPA)

USEPA-7 With interim contract renewal, the continuation of the same amount of water being provided to the same lands for the existing/ongoing purpose does not result in a significant new impact. Other activities may be affecting agricultural practices, but the renewal of existing interim water service contracts for up to 2 years will not shift agricultural practices or land use. For the renewal of interim contracts, we believe it would be a unproductive exercise to analyze impacts on natural resources from activities such as changes in herbicide use for aquatic plant control or increased focus on invasive species control which interim water service contracts have little if any relationship to the action at hand.

USEPA-8 Monitoring results of previous interim contracts have shown no significant affects from Reclamation's discretionary actions related to interim contract renewals. Appendix C of this Supplemental EA provide the latest report on the interim contract renewal US Fish and Wildlife Service's biological opinion.

USEPA-9 Other alternatives are being evaluated as part of the long-term contract renewal process. So far, twenty-seven long-term contracts have been renewed. Unless unforseen complications arise, Reclamation and the interim contractors will execute long-term contracts, which will include completing all environmental compliance, within the next two years.

USEPA-10 The Reclamation Project Act of 1956 and Reclamation Project Act of 1963 mandate renewal of existing contract amounts when beneficially used. Needs analysis have been completed to identify the amount or water that could be beneficially used by each water service contractor. The contract amounts were constrained to not exceed the beneficial use or the existing contract amount, whichever is less.

CVPIA required CVP to institute environmental management as part of the CVP operations, such as allocation of 800,000 acre-feet for fish and wildlife purposes, refuge water supply, and acquisition of water from willing sellers. These requirements in addition to existing Federal and State requirements of CVP operations constrain the actual delivery amounts. These existing legal constraints provide regulatory/environmental use of CVP water.

USEPA-11 Alternatives, including tiered pricing, are being developed through the negotiations process for long-term contracts. Appropriate alternatives will be evaluated as part of the environmental compliance process for long-term contract renewals.

USEPA-12 See response USEPA-1 and 5. Various unforseen circumstances have delayed the execution of long-term contracts for the interim contractors.

Response to Comments by US Environmental Protection Agency (USEPA)

USEPA-13 With the completion the CVPIA PEIS and the ROD (1/9/01), Reclamation has continued with the process to complete the contract negotiations and tiered regional environmental documents necessary to executed long-term water service contracts, many of which are also interim contracts. The environmental process is complete for the 25 of the 28 Friant Division contracts, the Hidden Unit contract, and the Buchanan Unit contract and also near completion for the Cross Valley Canal Unit contracts.

USEPA-14 No water transfers or assignments of water are part of the proposed action. They are separate independent actions. Appropriate environmental compliance and documentation will be completed for any request from interim contractors for Reclamation approval of water transfers or water assignments.

This Supplemental EA provides the US Fish and Wildlife Service biological opinion (Appendix F), the National Marine Fisheries Service concurrence letter (Appendix E), and the interim contracts status report for US Fish and Wildlife Service's biological opinion (Appendix C).

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EA 1/7

January 4, 2002

Mr. Frank Michny
Regional Environmental Officer
Department of the Interior
Bureau of Reclamation
2800 Cottage Way
Sacramento, CA 95825-1898

Re: December 7, 2001 Draft Supplemental Environmental Assessment and Draft Finding of No Significant Impact for Renewal of Interim Water Service Contracts – Central Valley Project

Dear Frank:

I am writing on behalf of the San Luis & Delta-Mendota Water Authority, which has 16 members with Interim Renewal Contracts for Central Valley Project water service from the Delta-Mendota Canal, or assigned interests in such contracts, to comment on the above Draft Supplemental Environmental Assessment (DSEA).

We agree with the conclusion reached in the DSEA that interim renewal of the proposed water service contracts for additional terms of up to two years, with only minor changes, will not have a significant impact on Water Resources, Land Use, Biological Resources, Cultural Resources, Recreation Resources, Demographics and Environmental Justice, Indian Trust Assets, Economic Resources, or Cumulative Impacts. Therefore, a Finding of No Significant Impact for the proposed action is appropriate. SLDMW 1

In addition, we offer for your consideration a few comments on portions of the DSEA, which we attach. Thank you for your opportunity to provide this input.

Very truly yours,

LINNEMAN, BURGESS, TELLES,
VAN ATTA, VIERRA,
RATHMANN, WHITEHURST & KEENE

By Diane V. Rathmann

Diane V. Rathmann

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DVR:jb

January 4, 2002

Specific Comments
of the
San Luis & Delta-Mendota Water Authority

Comments on the Draft FONSI:

Page 1: Paragraph 5, last sentence-should read, "interim contracts renewals,"

Page 1: Paragraph 6, second sentence-term should be plural, " The terms and conditions . . ."

SLDM 2

Pages 2 and 3: In describing the support for the finding of no significant impact, the draft FONSI needs to more clearly explain that the new renewal contracts will not result in any significant incremental change over existing contracts, but that changes in water use within historical parameters will occur from year to year. As written, the FONSI could be interpreted too narrowly as meaning that no changes or increases in water use will occur or that there will be no changes in any policies or programs intended to benefit fish and wildlife under the IRC's from the last IRC. In fact, there may be a lesser or greater water allocation, and some changes in policies and programs will inevitably take place. The following changes are suggested:

1. Water resources - Renewal of the interim contracts will not ~~result in a~~ change ~~in~~ contract water quantities from the quantities in existing contracts and will therefore not cause any increased ~~or~~ use and therefore there will be no effect on surface water supplies or quality. For the same reason, renewal ~~Renewal~~ of interim contracts will not result in any growth-inducing impacts that will increase water demand during the up to two-year time frame of this renewal.

SLDM 3

2. Land use - The renewal of contracts will not provide for additional water supplies that could act as an incentive for conversion of native habitat for increased acreage of agricultural production, ~~conversion of land to~~ municipal and industrial development ~~use~~, or other activities. ~~resulting in land use changes.~~ The amount and types of crops will vary according to the annual water allocation and farming practices, and a small quantity of irrigation use may be changed to M&I purposes where the existing contract and governing laws and regulations allow. Given the two-year time frame of this renewal, there will be no net effect on land use.

3. Biological resources - The amount and timing of storage at CVP reservoirs and flows in rivers and streams that convey CVP water during the two-year contract renewal period are expected to be similar to the amount and timing of storage and flows under historic CVP operations ~~conditions~~ and will be in conformance with all biological opinions and with regulatory requirements. Renewal of the interim contracts will not cause changes in existing ~~Existing~~ programs to protect biological resources, and programs will continue to be implemented to ensure

that no significant impacts to biological resources will occur. **[Strike rest of paragraph–item 4 covers threatened and endangered species specifically, and the same conclusion has already been reached as to biological resources in general.]**

4. **[No suggested changes.]**

5. Cultural resources - the proposed action will not cause ~~result in~~ activities that could affect cultural resources, such as permanent changes in reservoir elevations~~, changes in land use,~~ development of native habitat for agricultural or M&I use, or the construction of any new facilities. No impacts to cultural resources are expected.

6. Recreation resources - ~~No changes in CVP reservoir storage or modifications in the amount or timing of water deliveries, which could affect recreational resources, will occur under the proposed action.~~ The proposed action will not cause changes in historic CVP operations that determine reservoir storage or the amount or timing of water deliveries. Therefore, no ~~No~~ impacts to recreational resources are anticipated.

SLDM\
3

7. Demographics and environmental justice - The proposed action will not cause changes in historical water supplies or CVP operations and, as a result, no changes in population and the various indicators of social well being will result from the contract renewal. ~~No changes in water supplies or CVP operations will occur under the proposed action and, as a result, no changes in population and the various indicators of social well being that will result are expected to occur.~~ The proposed action will support continued agricultural production and therefore will not cause ~~will not result in~~ changes to employment of minority and low-income populations. No disproportionate impacts to minority or low-income populations are expected to occur as a result of renewing these contracts.

8. **[No suggested changes.]**

9. Economic resources - The renewal of interim CVP contracts will not cause changes from existing contracts in deliveries or pricing of CVP water, CVP facility operations, CVP power generation and use, or recreation use, and will therefore not cause economic impacts. ~~Existing water deliveries and CVP facility operations will continue under the proposed action. No changes in power generation, recreational opportunities, or agricultural economies are expected and no economic impacts are anticipated to occur under the extended period of renewal.~~

10. **[No suggested changes.]**

Comments on Draft SEA:

Comments on Chapter 1:

Page 1-1, first paragraph, third sentence: "If negotiations and the required environmental review necessary to execute long-term renewals to replace interim contracts . . . "

Page 1-3, first sentence: " . . . renewal of the contracts is in essence a continuation of the 'status quo,' that is, they continue ~~perpetuate~~ the existing use and allocation, . . ."

SLDMW 4

Comments on Chapter 2:

Page 2-2, second complete paragraph, third sentence: "The current contract provisions are those that are included in the existing interim renewal contracts and specified in the 2001 Supplemental EA. They contain only minor variations from the provisions described in the 1994 EA, the 1998 Supplemental EA, and the 2000 Supplemental EA. "

Page 2-2: Second complete paragraph, last paragraph, last sentence should read "2002 Supplemental EA."

Page 2-3: Since the Friant interim contracts are no longer in the group to be renewed, the discussion of storage of water in wetter years is weaker. Suggested revision of entire paragraph 2.2.2 as follows:

"Reduction in contract amounts due to current delivery constraints on the CVP system identified in the PEIS was considered in certain cases, but rejected from analysis for several reasons. ~~The reason is twofold.~~ First, water needs analysis have been completed for all contracts, and in almost all cases, the needs exceed or equal the total contract amount. Second, the shortage provision of the contract protects the Contracting Officer from liability from the shortages in water allocations that exist due to drought, other physical constraints, and actions taken to meet legal or regulatory requirements. Such actions include, for example, actions to implement the CVPIA, which has dedicated significant amounts of CVP water to environmental uses and which provides funding from the contractors to improve habitat and to acquire water for environmental purposes. Third, retaining the full historic water quantities under contract provides the contractors with assurance the water will be made available in wetter years and helps to support investments for local storage, water conservation improvements and capital repairs. ~~Second, in order to implement good water management, the contractors need to be able to store or immediately use water available in wetter years when more water is available. By quantifying contract amounts in terms of the needs analysis and the CVP delivery capability, the contractors can make their own economic decisions. Allowing the contractors to retain the full water quantity gives them assurance that the water will be available to them for storage investments. In addition the~~

SLDMW 5

~~CVPIA, in and of itself, achieves a balance, in part through its dedication of significant amounts of CVP water and actions to acquire water for environmental purposes.~~ SLDMW 5

Response to Comments by
San Luis and Delta-Mendota Water Authority (SLDMWA)

SLDMWA-1 Comment noted.

SLDMWA-2 Text revised.

SLDMWA-3 The text of the draft Finding of No Significant Impact will be reviewed and revised to more clearly explain the identified issues when a finding is approved.

SLDMWA-4 Text revised as suggested.

SLDMWA-5 Text revised as suggested.

TAXPAYERS FOR COMMON $ENSE

January 7, 2002

VIA FAX (916) 978-5055 AND REGULAR MAIL

Mr. Frank Michny
United States Bureau of Reclamation
2800 Cottage Way
Sacramento, CA 95825-1898

RE: Central Valley Project Interim Renewal Contracts

Dear Mr. Michny:

With this letter Taxpayers for Common Sense (TCS), a national non-profit dedicated to stopping wasteful government spending, submits our comments regarding Central Valley Project interim contract renewals.

TCS urges Bureau of Reclamation to conduct the most comprehensive study possible of these interim contracts renewals in order to fully evaluate the economic impacts related to renewals. The Central Valley Project Improvement Act (CVPIA) and CALFED signified a commitment by stakeholders to end the era of big subsidies and waste in California water policy. Bureau of Reclamation must stay true to the spirit of both the CVPIA and CALFED by renewing CVP contracts in a way that represents a responsible vision of future water needs in California. Central Valley Project contract promises should reflect realistic water delivery amounts at far less subsidized prices. TCS 1

TCS is extremely concerned by Bureau of Reclamation's rejection of the possible alternative of Reduction in Interim Contract Amounts (Section 2.2.2) in its Draft Supplemental Environmental Assessment. We strongly urge Bureau of Reclamation to reconsider its decision regarding levels of water promised in its interim and long-term contracts. We believe a reduction in interim contract amounts is a feasible and an important alternative that should not have been rejected. Bureau of Reclamation must ensure that contracts do not continue to promise impossible levels of water that the CVP cannot deliver and lock the taxpayer into providing huge subsidies. Specifically, deeper analysis must be given as to how much water should actually be promised to contractors in renewing their contracts. While certain water levels were promised to these contractors in negotiations for their original contracts, the time has come for these promises to be reassessed based on current and future water needs in a rapidly changing water system. Water allocations must demonstrate an assessment of water actually TCS 2

available in the system and how to distribute that water to best meet many competing water needs. TCS 2

If an additional one to two-year interim contract period is truly needed (something that should be fully studied prior to implementation), then the Bureau of Reclamation should use that interim period to do the difficult work of reassessing the entire Central Valley Project. Water in the Central Valley Project is vastly over allocated. The federal government cannot continue to make unrealistic promises of water to the expense of all federal taxpayers. TCS 3

Inflated promises of water and large subsidies will increase pressure for new dam projects and threaten the delicate balance negotiated in the CALFED Record of Decision (ROD). Such promises will continue a vicious cycle of the federal government promising unreachable amounts of water at cheap prices to CVP contractors and then federal taxpayers being forced to build and pay for massive new water projects to try to meet these assurances. Promising water at an incredibly subsidized rate will further remove market pressures to conserve water and lead to the building of massive water projects that water users cannot afford to fund. TCS 4

If CVP contract renewals promise inflated levels of water, the policy that was intended to encourage the wise use of water (i.e. tiered pricing as mandated by the CVPIA) will be rendered all but meaningless. Under CVPIA, CVP contracts should be written to initiate tiered water pricing when water consumption exceeds 80% of the annual contract maximum. However, Bureau of Reclamation rarely delivers annual contract maximums, as demonstrated by historical deliveries, thereby making tiered water pricing ineffective. As Bureau of Reclamation continues through the process of contract renewals, we ask that annual contract maximums be reduced to more realistic levels that the CVP will actually be able to achieve. TCS 5

Long-term CVP contracts are not permanent entitlements. Instead, CVP contracts must receive full review in order to consider the constantly evolving needs of California's diverse set of water users. Bureau of Reclamation should require CVP contracts to go through a rigorous public review process and include clear accountability provisions on the part of the water contractors before contracts are renewed. California's water needs are constantly in flux and full review of these contracts renewals is the only responsible policy. TCS 6

Mr. Frank Michny
January 7, 2002

TCS strongly urges Bureau of Reclamation to draft Central Valley Project interim and future contract renewals to ensure that the Central Valley Project Improvement Act of 1992 is accurately and legally implemented. Continuing to issue interim contract renewals helps the Bureau of Reclamation avoid making the tough decisions necessary to follow CVPIA. The only way to achieve CVPIA compliance is to conduct a comprehensive and complete study of the full economic impacts of these renewals and renewals of future long-term contracts. TCS 7

Sincerely,

Aileen D. Roder
California Water Project Coordinator
Taxpayers for Common Sense
651 Pennsylvania Avenue SE
Washington, DC 20003
(202) 546-8500 x130

cc: Environmental Protection Agency
Office of Management and Budget
Fish and Wildlife Service
National Marine Fisheries Service
Council for Environmental Quality

Response to Comments by Taxpayers for Common Sense (TCS)

TCS-1 NEPA regulations require Federal agencies to study the proposed action's effects on the human environment. NEPA defines human environment as the natural and physical environment and the relationship of people with that environment. Economic effects are not intended by themselves to require preparation of an EIS. An EA need not include an analysis of purely economic effects. Under NEPA, economic effects are discussed if these effects are interrelated with effect of the natural or physical environment.

TCS-2 The use of Reclamation project water is subject to state and Federal laws requiring beneficial use. The Reclamation Project Act of 1956 and Reclamation Project Act of 1963 mandate renewal of existing contract amounts when beneficially used. Water needs analysis have been completed to identify the amount or water that could be beneficially used by each water service contractor. The contract amounts are constrained to not exceed the beneficial use or the existing contract amount, whichever is less.

TCS-3 Reclamation is implementing Section 3405 of the CVPIA which addresses water pricing reform and water conservation standards.

TCS-4 See response TCS-2 and USEPA-10. We believe the action of contract renewal comport with ongoing CALFED efforts.

TCS-5 See responses TCS-2 and 3.

TCS-6 Public participation requirements are established in Section 9(f) of the Reclamation Project Act of 1939, 43 U.S.C. 485h, and by RRA rules and regulations (43 CFR 426.22). Public participation procedures for water service, repayment, and other water-related contracts are composed of two basic elements: 1) publicize proposed contract actions, and 2) provide an opportunity for public comment. Generally Reclamation provides public notices of proposed contract actions at least 60 days prior to execution of contracts with a term of greater than 1 year.

TCS-7 The Central Valley Project Improvement Act Final Programmatic Environmental Impact Statement (PEIS) completed in October of 1999 included programmatic evaluations of Wildlife & Recreation Economics, Agricultural Economics & Land Use, Municipal Water Costs, and Regional Economics. Provisions of the CVPIA covered in the PEIS included CVP water contract renewals.

Santa Clara Valley
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January 7, 2002

Mr. Frank Michny
Regional Environmental Officer
Bureau of Reclamation
2800 Cottage Way
Sacramento, CA 95825-1898

Dear Mr. Michny:

SUBJECT: Draft Supplemental Environmental Assessment and Draft Finding of No Significant Impact for Renewal of Interim Water Service Contracts – Central Valley Project

The Santa Clara Valley Water District is pleased to provide comments on the subject Draft Supplemental Environmental Assessment (DSEA). We agree with the conclusion reached in the DSEA that interim renewal of the proposed water service contracts for additional terms of up to two years, with only minor changes, will not have a significant impact on Water Resources, Land Use, Biological Resources, Cultural Resources, Recreation Resources, Demographics and Environmental Justice, Indian Trust Assets, Economic Resources, or Cumulative Impacts. Therefore, a Finding of No Significant Impact for the proposed action is appropriate. SCVW 1

In addition, we offer for your consideration a comment on Section 1.3 of the DSEA. Contract negotiations and site-specific environmental documentation is being completed for interim contractors and those contractors that have signed a Binding Agreement. Therefore, it is suggested that the second paragraph of Section 1.3 be revised as follows: SCVW 2

"Reclamation is completing the contract negotiations and site-specific environmental documentation for long-term contracts with ~~interim~~ contractors in the American River, Delta, San Felipe, Sacramento River, Shasta and Trinity River Diversions."

Thank you for this opportunity to review and comment on the DSEA.

Sincerely,

Kellye J. Kennedy
Senior Project Manager

Response to Comments by Santa Clara Valley Water District (SCVWD)

SCVWD-1 Comment noted.

SCVWD-2 Text revised as suggested.