APPENDIX G

COMMENT LETTERS RECEIVED
AND
RECLAMATION RESPONSES TO PUBLIC COMMENTS

APPENDIX G - CONTINUED

Introduction to Appendix G

The *Draft Supplemental EA for the 2004 Renewal of Interim Water Service Contracts* was circulated for public and agency review in a 30-day review period that began on December 23, 2003 and ended January 23, 2003. Three written comments were received during the public review period. This final *Supplemental EA for the 2004 Renewal of Interim Water Service Contracts* provides responses to the 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 comment letters.

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

Table 1. List of Comment Letters Received.

Letter Reference	Commenter
USEPA	Lisa B. Hanf, Manager, Federal Activities Office U.S. Environmental Protection Agency Region IX
SCVWD	Kellye Kennedy, Senior Project Manager, Santa Clara Valley Water District
CH	Terry Roberts, Director, State of California, Governor's Office of Planning and Research, State Clearinghouse and Planning Unit

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

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EA 2/3

January 27, 2004

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

Subject: 2004 Renewal of Interim Water Service Contracts Supplemental Draft Environmental Assessment (SEA)

Dear Mr. Michny:

The Environmental Protection Agency (EPA) has reviewed the Draft Supplemental Environmental Assessment for the 2004 Renewal of Interim Water Service Contracts through February 29, 2006 - 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. USEPA 1

EPA provided comments on the 1994 draft guidelines for interim renewal of long-term CVP contracts, the 1994 EA for interim renewal of 67 CVP water service contracts, and the 2002 EA for interim renewal of 42 CVP water service contracts. Since our earlier comments are still relevant to the proposed contracts and current SEA, these letters are hereby incorporated by reference. A copy of our 2002 letter is attached.

The current management of the contract water supplies constitutes an irretrievable commitment of resources which should be fully evaluated pursuant to NEPA. The present SEA is the fifth "roll-over" since 1994. Section 3404(c) of Central Valley Project Improvement Act (CVPIA) states that the interim period may not exceed three years and that successive interim periods may not exceed two years prior to execution of new long-term contracts. Therefore, EPA urges Reclamation to pursue execution of long-term contracts based on a sound NEPA process, supporting an environmentally-responsive contract design. USEPA 2

EPA acknowledges the significant efforts made by Reclamation 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. We continue to offer our support on working USEPA 3

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through the issues raised in our comments or on other issues raised during the comment period. If you have questions, please contact Summer Allen, the lead reviewer for this project, at 415-972-3847.

Sincerely,

Lisa B. Hanf

Lisa B. Hanf, Manager
Federal Activities Office

Main ID# 002218
Enclosures:
EPA Comments on 2002 Interim Renewal EA

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.

USEPA 4

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 5

- 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 6 USEPA 7

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 8 USEPA 9

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. USEPA 10

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. USEPA 11

Recommendations:

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 12

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). USEPA 13

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)].

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 14

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. USEPA 15

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.

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 16

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 17

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 18

APPENDIX G - CONTINUED

Response to Comments by US Environmental Protection Agency (USEPA)

USEPA-1 Comment Noted.

USEPA-2 Comment Noted. See section 1.1, fourth 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 Comment Noted.

USEPA-4 Comment Noted

USEPA-5 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 CVPIA PEIS evaluated CVP-wide impacts of long-term contract renewal. Long-term contract environmental compliance documents tiered from the CVPIS 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-6 See Response to USEPA-2

USEPA-7 The final CVPIA PEIS, partly based on comments on the draft CVPIA 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-8 See USEPA-5 and 2. Reclamation and the contractors have made and will continue efforts to complete the appropriate environmental compliance process for long-term contracts.

Response to Comments by US Environmental Protection Agency (USEPA)

USEPA-9 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-10 See section 1.1, fourth 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.

USEPA-11 With interim contract renewal, the continuation of providing the same amount of water 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-12 Monitoring results of previous interim contracts have shown no significant affects from Reclamation's discretionary actions related to interim contract renewals. Appendix H of this Supplemental EA provide the latest report on the interim contract renewal US Fish and Wildlife Service's biological opinion.

USEPA-13 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 unforeseen 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-14 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-15 Alternatives, including tiered pricing, are being addressed through the negotiations process for long-term contracts. Appropriate alternatives will be evaluated as part of the environmental compliance process for long-term water-service contract renewals.

USEPA-16 See response USEPA-5 and 9. Various unforeseen circumstances have delayed the execution of long-term contracts for the interim contractors.

USEPA-17 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-18 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 H), the National Marine Fisheries Service concurrence letter (Appendix I), and the summary status report on the conservation actions included in the US Fish and Wildlife Service's 2000 biological opinion on interim renewals (Appendix F).

Santa Clara Valley Water District

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EA 1130 150		

January 23, 2004

Frank Michny, Environmental Officer
Bureau of Reclamation (MP-150)
2800 Cottage Way
Sacramento, CA 95825-1898

Subject: Draft Supplemental Environmental Assessment and Finding of No Significant Impact for the 2004 Interim Water Service Contracts through February 28, 2006.

Dear Mr. Michny:

The Santa Clara Valley Water District (District) is pleased to provide comments on the subject Draft Supplemental Environmental Assessment (DSEA) and Finding of No Significant Impact (FONSI). We agree with the conclusion reached in the Draft FONSI that interim renewal of the proposed water service contracts for an additional term of two years will not have a significant impact on the human environment. Therefore we support that a FONSI for the proposed action is appropriate. SCVWD 1

With respect to Threatened and endangered species as discussed in Chapter 3 of the Draft SEA, we support Reclamation's commitment to undertake activities described in the referenced 2002 Biological Opinion. However, we believe clarification is necessary in Reclamation's addition to Chapter 3 Biological Resources. In section 3.3.1, the Bureau has included a paragraph that states the following: SCVWD 2

> "The FWS Biological Opinion for 2002 interim contracts is incorporated by reference in the 2004 Supplemental EA and presents the commitments that Reclamation will undertake during the proposed 2004 interim renewal period."

The 2002 Biological Opinion included statements with respect to the District's activities and the impacts of the interim contract renewal that the District has disputed. We understand that these portions of the 2002 Biological Opinion will be revised when the new Biological Opinion for 2004 Interim Renewal Contracts is issued. In order to clarify this point, we request that Reclamation add a sentence explaining that a new biological opinion will be issued for the proposed action. It is our understanding the new biological opinion will supercede the 2002 biological opinion.

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Thank you for considering these comments. If you have any questions, you may contact me at (916) 447-1534.

Sincerely,

Kellye Kennedy
Senior Project Manager
Imported Water Unit

cc: Karen Donovan, Duane Morris
kk:kk

APPENDIX G - CONTINUED

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

SCVWD-1 Comment noted.

SCVWD-2 Text revised as suggested.

STATE OF CALIFORNIA

Governor's Office of Planning and Research

State Clearinghouse and Planning Unit

Arnold Schwarzenegger
Governor

Jan Boel
Acting Deputy Director

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EA 2/23

February 19, 2004

Bob Eckart
U.S. Bureau of Reclamation
2800 Cottage Way
Sacramento, CA 95825

Subject: 2004 Renewal of Interim Water Service Contracts Through February ~~28, 2006, CVP, CA~~
SCH#: 2004014004

Dear Bob Eckart:

The State Clearinghouse submitted the above named Joint Document to selected state agencies for review. The review period closed on February 18, 2004, and no state agencies submitted comments by that date. This letter acknowledges that you have complied with the State Clearinghouse review requirements for draft environmental documents, pursuant to the California Environmental Quality Act.

CH 1

Please call the State Clearinghouse at (916) 445-0613 if you have any questions regarding the environmental review process. If you have a question about the above-named project, please refer to the ten-digit State Clearinghouse number when contacting this office.

Sincerely,

Terry Roberts

Terry Roberts
Director, State Clearinghouse

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1400 TENTH STREET P.O. BOX 3044 SACRAMENTO, CALIFORNIA 95812-3044
(916)445-0613 FAX(916)323-3018 www.opr.ca.gov

Document Details Report
State Clearinghouse Data Base

SCH# 2004014004
Project Title 2004 Renewal of Interim Water Service Contracts Through February 28, 2006, CVP, CA
Lead Agency U.S. Bureau of Reclamation

Type JD Joint Document

Description Execute up to 59 interim Water Service Contracts with Central Valley Project water contractors for a period of up to two years, from March 1, 2004 through February 28, 2006. Interim Contract Renewals are executed under the authority of the CVPIA to provide a bridge between the expiration of existing long-term water service contracts and the execution of new long-term water contracts.

Lead Agency Contact

Name Bob Eckart
Agency U.S. Bureau of Reclamation
Phone 916.978-5051 **Fax**
email
Address 2800 Cottage Way
City Sacramento **State** CA **Zip** 95825

Project Location

County
City
Region
Cross Streets
Parcel No.
Township **Range** **Section** **Base**

Proximity to:

Highways
Airports
Railways
Waterways Sacramento River, San Joaquin River, American River, Feather River
Schools
Land Use Agricultural and Municipal / Industrial

Project Issues Agricultural Land; Vegetation; Wildlife; Growth Inducing; Cumulative Effects

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Reviewing Agencies Resources Agency; Department of Fish and Game, Region 2; Department of Fish and Game, Headquarters; Delta Protection Commission; Department of Parks and Recreation; Reclamation Board; Department of Water Resources; Native American Heritage Commission; State Lands Commission; Regional Water Quality Control Bd., Region 5 (Sacramento); State Water Resources Control Board, Clean Water Program; State Water Resources Control Board, Division of Water Quality; State Water Resources Control Board, Division of Water Rights

CH 2

Date Received 01/20/2004 **Start of Review** 01/20/2004 **End of Review** 02/18/2004

Note: Blanks in data fields result from insufficient information provided by lead agency.

APPENDIX G - CONTINUED

Response to Comments by
State of California
State Clearinghouse and Planning Unit

CH-1 Comment noted.

CH-2 Comment noted.