

October 1, 2002

*Via Email and First Class Mail*

Michael J. Ryan  
U.S. Bureau of Reclamation  
Shasta Area Manager  
16349 Shasta Dam Boulevard  
Shasta Lake, CA 96019-8400

Re: Settlement Contractors' Further Red-Line Draft of Renewal Contract for Discussion at the October 7, 2002 Negotiating Session

Dear Mr. Ryan:

In preparation for our October 7, 2002 negotiating session, I am enclosing an October 1, 2002 draft of the Settlement Contract. This draft includes and highlights revisions discussed during the September 11, 2002 negotiating session. The provisions that have been tentatively agreed to are not shaded. Accordingly, we anticipate that our negotiations and discussions would primarily focus on the shaded provisions. Following is a discussion of the shaded provisions, and an explanation of the further modifications proposed by the Settlement Contractors:

1. A "reservation of rights" recital has been added as the 6<sup>th</sup> Whereas clause, which is intended to incorporate certain provisions previously developed by the Settlement Contractors and Reclamation, as modified to reflect the dismissal of the Article 9 litigation.
2. A further proviso is proposed at the end of Article 3(b), which we believe is consistent with our prior discussion of other acquired water rights.
3. A new Article 3(c)(1) is included, which is intended to reflect the concepts and issues we discussed during the September 11, 2002 negotiating session regarding Reclamation's proposed rescheduling fee for the movement of base supply. In this regard, it bears reemphasis that this base supply rescheduling fee is a significant departure from the existing Settlement Contracts. Reclamation proposed this while simultaneously asserting that it desired to make only the minimum changes necessary in the contracts during these contract renewal negotiations. Under the existing contracts, no fee may be charged for rescheduling base supply. The only conditions on rescheduling base supply are that the Contractor must submit a written schedule, and any rescheduling may not cause the Contractor to divert quantities of base supply in excess of the Contract Total or the applicable limit during the Contractor's critical months. In addition, it is the Settlement Contractors' position that under

Article 9(a) of the existing Settlement Contract, the United States is precluded from imposing this fee. Nonetheless, as a further effort to break the deadlock on this issue, the Settlement Contractors are willing to offer a payment to Reclamation as set forth in the new proposed language.

As support for this proposal, we have also enclosed herewith a table entitled "Table of Year Type and SWRCB Water Availability Notices." This table adds information to the table presented by Reclamation during the September 11, 2002 session, which was marked as USBR Exhibit 9 for our negotiations. In accordance with the information set forth in the enclosed table, the Settlement Contractors propose the imposition of the rescheduling fee in the months of June, July, and August of Critical Years (as defined in the Settlement Contract).<sup>1</sup> The proposed imposition of the fee only in those months during Critical Years is generally based upon the frequency and duration of the SWRCB's unavailability notices, and the fact that even under Reclamation's most recent proposal, Term 91 was not in effect after August 31 (except in 1992), and rarely in effect prior to mid-June, during the 1990-2002 period. The 50% figure is intended to account for the fact that in many of the June months under Reclamation's most recent proposal, Term 91 was not in effect for the entire month. In addition, in two of the three years when there was a notice of unavailability, water was still available for diversion in June. The 50% figure is also derived in part from the fact that the Settlement Contractors will only be receiving 75% of their supplies during these Critical Years. In closing, the Settlement Contractors believe that this is a reasonable means to end the deadlock on this issue, particularly when viewed within the context of the existing Settlement Contracts, where absolutely no fee may be imposed.

4. Consistent with the preceding item, the Settlement Contractors have deleted Reclamation's proposed definition for "Term 91" in Article 1(q).

5. After further review and consideration, the Settlement Contractors propose deleting, in its entirety, Article 3(c)(2). This prior written approval provision is not included in the existing Settlement Contracts, and is a wholly new requirement that was proposed by Reclamation. In addition, requiring advance written approval is inconsistent with Article 3(c) of the draft renewal contract, which already recognizes the Contractor's right to change its monthly diversions, provided that the Contractor submits a written schedule before April 1 and before the first day of each month thereafter, as appropriate.

6. The proposed changes to existing Article 3(c)(3) are merely grammatical.

7. As we discussed during the September 11, 2002 session, we understand that Reclamation is willing to consider alternative approaches to the take-or-pay provisions of Articles 8(a), and the related water conservation requirements under Article 29. In this regard, the Settlement Contractors remain concerned that the renewal contract, as presently

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<sup>1</sup> Note, under the existing contracts and the draft renewal contract, a Contractor could not move base supply from non-critical months into critical months, but could move base supply within critical months or from critical months into non-critical months. Under these limitations, the proposed fee would be charged for moving July base supply into August, or August base supply into July. The fee would also be charged when base supply water from any month is moved into June.

structured, provides no incentives for additional water conservation by the Settlement Contractors. To address this concern, the Contractors wish to discuss with Reclamation, initially on a conceptual level, the development of a contractual mechanism that would allow for the adjustment of rates based on a determination by Reclamation that water conservation measures implemented by a Contractor have resulted in actual benefits to the CVP. The Settlement Contractors also believe that such a provision would provide them with a financial incentive for implementing costly new water conservation measures.

In addition, a few of the Settlement Contractors may propose that they maintain their 100% take-or-pay obligation, but as part of maintaining this obligation, these Contractors would not have the base supply rescheduling fee provision (Article 3(c)(1)) included in their renewed Settlement Contracts. We assume that Reclamation will address this additional option with such Contractors during the Contractor-specific negotiations.

Finally, while the Settlement Contractors have reviewed, in general, Reclamation's September 30, 2002 email containing Reclamation's proposed revised language for Article 9 of the draft renewal contract, we are not yet in a position to respond. We will, however, be able to address these issues during our October 7, 2002 negotiating session.

Please do not hesitate to contact me if you have any questions or need additional information.

Very truly yours,

Stuart L. Somach  
General Counsel,  
Glenn-Colusa Irrigation District

Encls.

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