

RECLAMATION

Managing Water in the West

Central Valley Project Municipal and Industrial Water Shortage Policy Scoping Report

July 2011



U.S. Department of the Interior
Bureau of Reclamation
Mid-Pacific Region

July 2011

Mission Statements

The mission of the Department of the Interior is to protect and provide access to our Nation's natural and cultural heritage and honor our trust responsibilities to Indian Tribes and our commitments to island communities.

The mission of the Bureau of Reclamation is to manage, develop, and protect water and related resources in an environmentally and economically sound manner in the interest of the American public.

Central Valley Project Municipal and Industrial Water Shortage Policy

Scoping Report

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List of Abbreviations and Acronyms

CC CSD	Clear Creek Community Services District
CEQ	Council on Environmental Quality
CFR	Code of Federal Regulations
CVP	Central Valley Project
CVPIA	Central Valley Project Improvement Act
EA	Environmental Assessment
EBMUD	East Bay Municipal Utility District
EIS	Environmental Impact Statement
ESA	Endangered Species Act
M&I	Municipal and Industrial
NEPA	National Environmental Policy Act
NOI	Notice of Intent
PH&S	public health and safety
Reclamation	US Bureau of Reclamation
RPA	Reasonable and Prudent Alternative
SMUD	Sacramento Municipal Utility District
TCCA	Tehama-Colusa Canal Authority
Westlands	Westlands Water District
WSP	Water Shortage Policy

1.0 Introduction

This report documents the Central Valley Project (CVP) Municipal and Industrial (M&I) Water Shortage Policy (WSP) scoping activities. The Bureau of Reclamation, the National Environmental Policy Act (NEPA) lead agency, plans to prepare an Environmental Impact Statement (EIS) to analyze the potential effects of an update to the M&I WSP (Proposed Action). Reclamation previously developed a draft CVP M&I WSP in 2001 with input from CVP M&I Water Service Contractors, and prepared an Environmental Assessment in 2005 (2005 EA).

1.1 Scoping Purpose and Process

Scoping is generally defined as “early public consultation”, and is one of the first steps of the NEPA environmental review process (see Figure 1). Scoping activities involve the public, stakeholders, Indian tribes, and other interested agencies early in the environmental compliance process. The participation helps the action agency determine the range of alternatives, the environmental effects, and the mitigation measures to be considered in an environmental document.

As part of the scoping process, agencies often conduct public meetings. Scoping is not limited to public meetings; however, public meetings can be an effective communication tool as well as an effective mechanism for gathering information. During scoping meetings, the lead agency generally outlines the proposed project, defines the area of analysis, proposes issues to be addressed in the environmental compliance document, and solicits public comments. A formal public commenting period follows scoping meetings. During the comment period, interested parties may submit written comments to the action agency. Scoping comments are considered by the lead agency during the formulation of alternatives and help determine the scope of the environmental issues to be addressed in the environmental document.

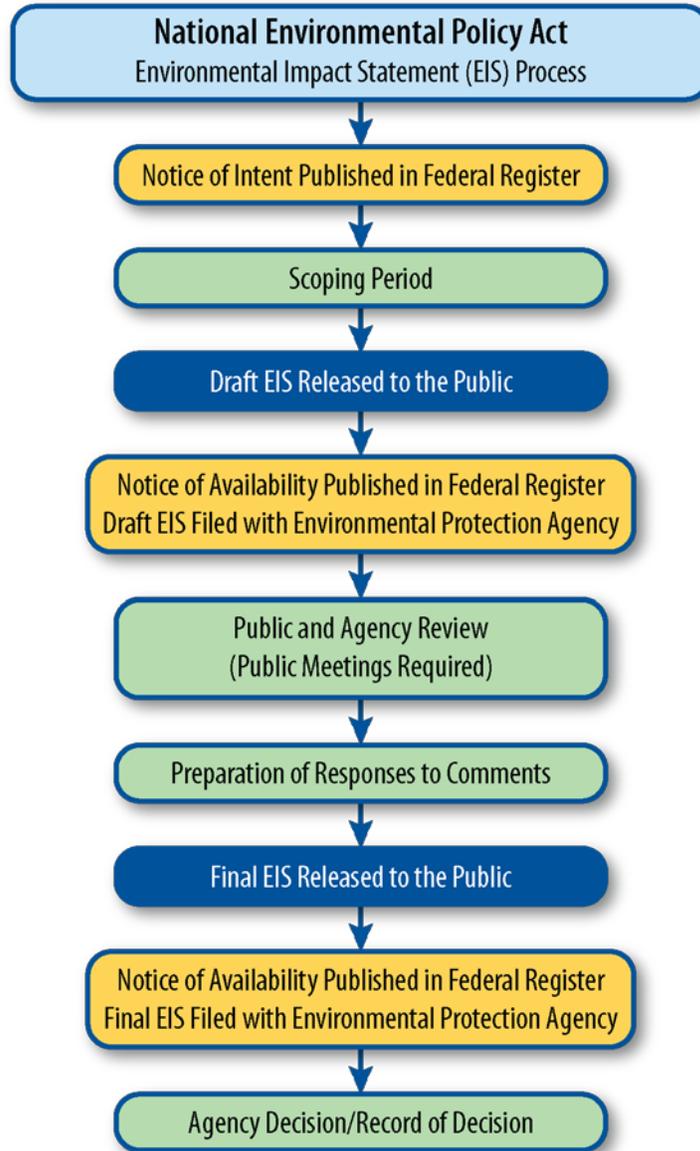


Figure 1. NEPA Process

1.2 Applicable Regulations

NEPA regulations (40 CFR 1501.7) require an open process to determine the scope of the issues to be addressed in the environmental review and to identify significant issues. According to NEPA, scoping should occur early on in the environmental review process and should involve the participation of the affected parties.

Scoping requires the lead federal agency to:

1. “Invite the participation of affected Federal, State, and local agencies, any affected Indian tribe, the proponent of the action, and other interested persons (including those who might not be in accord with the action on environmental grounds);
2. Determine the scope and the significant issues to be analyzed in depth in the environmental impact statement;
3. Identify and eliminate from detailed study the issues which are not significant or which have been covered by prior environmental review narrowing the discussion of these issues in the statement to a brief presentation of why they will not have a significant effect on the human environment or providing a reference to their coverage elsewhere;
4. Allocate assignments for preparation of the environmental impact statement among the lead and cooperating agencies, with the lead agency retaining responsibility for the statement;
5. Indicate any public environmental assessments and other environmental impact statements which are being or will be prepared that are related to but are not part of the scope of the impact statement under consideration;
6. Identify other environmental review and consultation requirements so the lead and cooperating agencies may prepare other required analyses and studies concurrently with, and integrated with, the environmental impact statement; and
7. Indicate the relationship between the timing of the preparation of environmental analyses and the agency’s tentative planning and decision making schedule” (40 CFR 1501.7).

Public involvement activities are required by Council on Environmental Quality (CEQ) regulations which state: “Agencies shall: Make diligent efforts to involve the public in preparing and implementing their NEPA procedures” (40 CFR 1506.6(a)). Public scoping meetings help to satisfy this requirement.

CEQ regulations (40 CFR 1508.22, 516 DM 2.3D) require the implementing agency to notify the public that it is preparing an EIS for a project under consideration. Reclamation published a Notice of Intent (NOI) in the Federal Register on Tuesday, March 9, 2011. Attachment A of this scoping report includes a copy of the NOI.

2.0 Proposed Action

The CVP is a Reclamation federal water project in the State of California. The CVP supplies irrigation and municipal water, produces hydropower, and provides flood control and recreation on its many large reservoirs. The CVP delivers approximately 7 million acre-feet of water on an average annual basis to agricultural, municipal, and environmental uses in the Sacramento and San Joaquin Valleys, cities and industries in Sacramento and the East and South San Francisco Bay Areas, and to fish hatcheries and wildlife refuges throughout the Central Valley. CVP facilities include 20 dams and reservoirs, 39 pumping plants, 2 pumping-generating plants, and 11 power plants. Figure 2 shows the general service area of the CVP and primary facilities.

In recent years, however, persistent drought conditions and regulatory requirements have reduced the amount of water available for consumptive uses by CVP water contractors. Water shortages necessitate development of water management plans by Reclamation and other water management agencies to be used during years when the CVP water demands exceed the available water supplies.

Allocation of CVP water supplies for any given water year is based upon forecasted reservoir inflows and Central Valley hydrologic conditions, amounts of storage in CVP reservoirs, regulatory requirements, and management of Section 3406(b)(2) resources and refuge water supplies in accordance with the Central Valley Project Improvement Act (CVPIA). In some cases, M&I water shortage allocations may differ between CVP divisions due to regional CVP water supply availability, system capacity, or other operational constraints.

The CVP is authorized and operated under Federal statutes and by the terms and conditions of water rights acquired pursuant to California law. During any year, constraints may reduce the availability of CVP water for M&I water service contractors. Water shortages may be caused by drought, unavoidable causes, or restricted operations resulting from legal and environmental obligations or mandates. Those legal and environmental obligations and mandates include, but are not limited to, the ESA, the CVPIA, and conditions imposed on the CVP's water rights by the California State Water Resources Control Board.

In 2001, Reclamation developed a draft CVP M&I WSP in consultation with the CVP M&I water service contractors. An EA was completed and published in October 2005, and a Finding of No Significant Impact was signed in December 2005. Since that time, the 2001 Draft M&I WSP has been implemented in accordance with Alternative 1B from the 2005 EA.

Since the implementation of the 2001 Draft M&I WSP, Reclamation received additional comments from CVP contractors expressing the need for clarity on certain aspects of the 2001 Draft M&I WSP, as modified. In addition to the questions posed by stakeholders, environmental and operational conditions have changed since the 2005 EA was adopted.

Central Valley Project Municipal and Industrial Water Shortage Policy

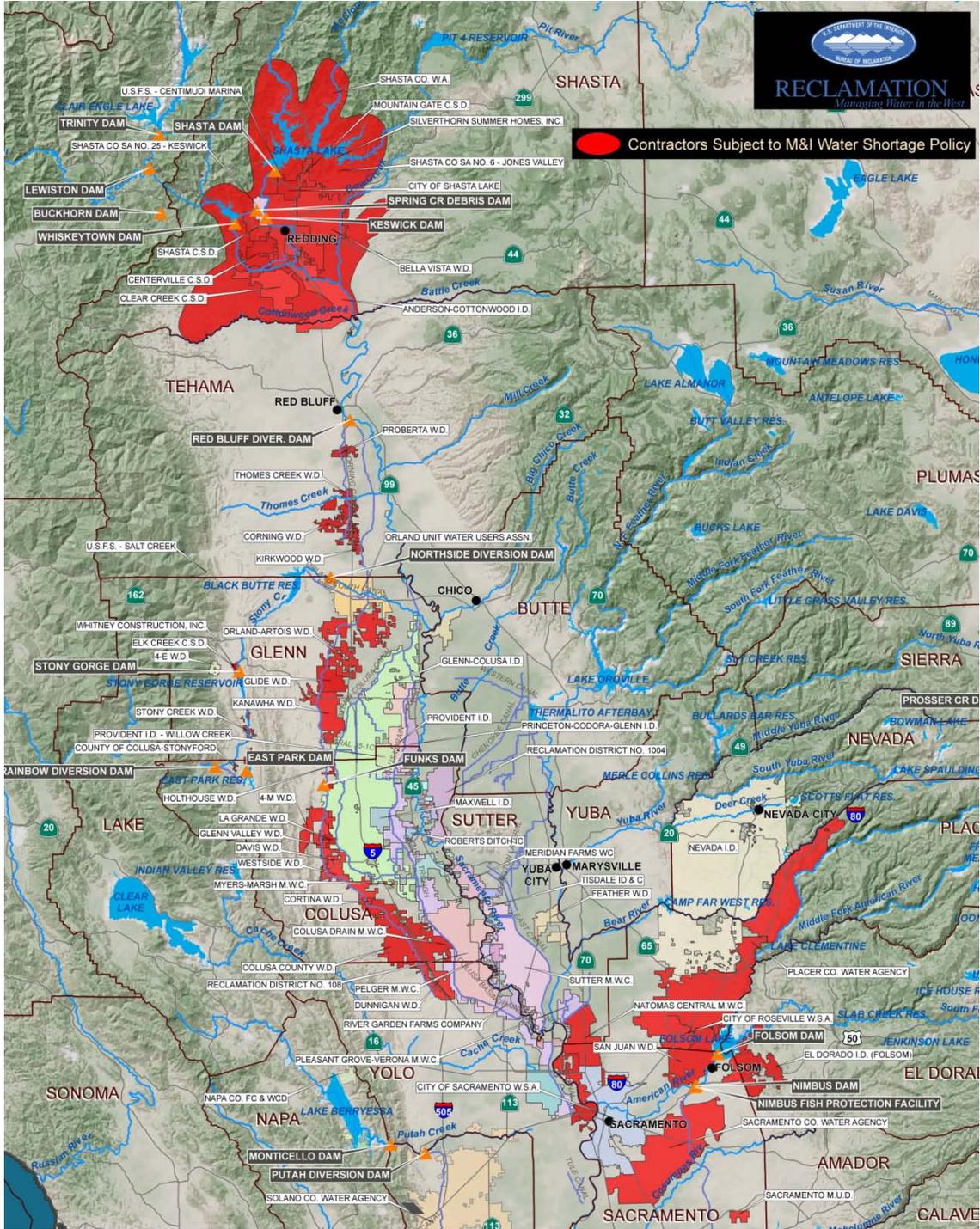


Figure 2: Central Valley Project Facilities and Service Area

Central Valley Project Municipal and Industrial Water Shortage Policy

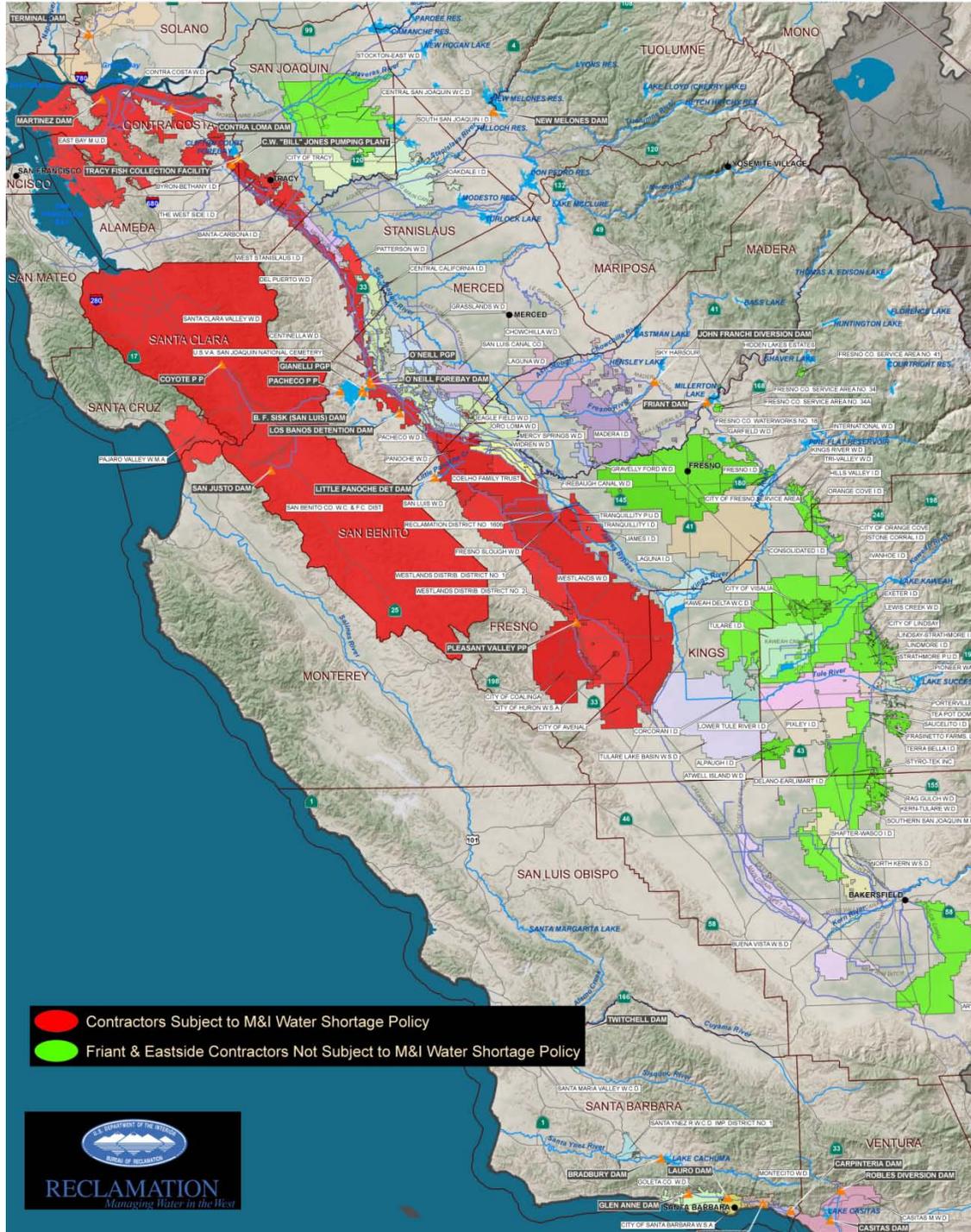


Figure 2: Central Valley Project Facilities and Service Area (Page 2)

These include new requirements from the 2008 US Fish and Wildlife Service and 2009 National Oceanic and Atmospheric Administration's National Marine Fisheries Service biological opinions, the recognition that the CVP supplies are subject to larger magnitude shortages with greater frequency, and uncertainties surrounding management of the Delta. In addition, changes in population projections throughout the region and corresponding changes to projected water demand, as well as changes in crop types from annual row crops to more permanent crops, such as trees and vines, are occurring. These developments require Reclamation to evaluate a series of alternatives and provide an M&I WSP that recognizes the different needs of the water user community during water shortages.

The purpose of updating the 2001 Draft M&I WSP, as modified, is to provide detailed, clear, and objective guidelines on the distribution of CVP water supplies to M&I Contractors during water shortages. The intent of the guidelines is to inform CVP water users when, and by how much, water deliveries may be reduced during periods of drought and other low water supply conditions. The goal is to increase the predictability of water deliveries to CVP M&I Water Service Contractors and allow them to better plan for and manage available CVP and non-CVP water supplies. Contractors also asked that certain terms and conditions regarding the 2001 Draft M&I WSP applicability and implementation be clarified. The Proposed Action is the adoption of an updated M&I WSP and its respective implementation guidelines.

Reclamation has been in communication with CVP stakeholders since August 2009 about its effort to update the 2001 Draft M&I WSP. Reclamation held a series of workshops with CVP stakeholders from May 2010 through January 2011 to provide Reclamation's interpretation of the policy, receive input from stakeholders on suggested changes, and review the October 2010 Working Draft M&I WSP. All workshop presentations and materials, and contractor comments, can be accessed at Reclamation's website <http://www.usbr.gov/mp/cvp/mandi>.

3.0 Scoping Meetings

Reclamation held four public scoping meetings in March 2011, regarding preparation of an EIS for the CVP M&I WSP. The meetings were held as follows:

- Sacramento, March 21, 2011, 2-4 p.m.
- Willows, March 22, 2011, 6-8 p.m.
- Fresno, March 23, 2011, 6-8 p.m.
- Oakland, March 24, 2011, 6-8 p.m.

Twenty-four people attended the four meetings, including members of the public, elected official representatives, and representatives from public agencies.

**Table 3-1.
Scoping Meeting Attendants**

Name	Affiliation	Sacramento	Willows	Fresno	Oakland
Mark Atlas	Tehama-Colusa Canal Authority		X		
Ryan Bezerra	Attorney for Folsom, Roseville, and San Juan	X			
Erma Clowers	U.S. Bureau of Reclamation			X	
David Coxey	Bella Vista Water District		X		
Karen Donovan	East Bay Municipal Utility District				x
Sue Garabedian	Fresno County Supervisor Debbie Poochigian			X	
Jan Goldsmith	Placer County Water Agency	X			
Lynn Gorman	Fresno County Public Works and Planning			X	
Garth Hall	East Bay Municipal Utility District	X			X
Jay Johnson	Representative Garamendi	X			
Cindy Kao	Santa Clara Valley Water District			X	
Kelly King	Senator LaMalfa		X		
Shauna Lorange	San Juan Water District	X			
Bill Luce	Friant Water Authority			X	
Phil McMurray	San Luis and Delta-Mendota Water Authority	X			
Brandon Minton	Representative Garamendi	X			
Paul Olmstead	Sacramento Municipal Utility District	X			
Amber Piera	Public		X		
Anna Sutton	U.S. Bureau of Reclamation	X			
Bonnie Van Delt	U.S. Bureau of Reclamation	X			
Jeanne Zolezzi	Herum/Crabtree	X			

3.1 Scoping Meeting Notification

Reclamation published the NOI in the Federal Register (Vol. 76, No. 45, Tuesday March 8, 2011), as required by NEPA.

To publicize the meetings, Reclamation distributed a press release on March 4, 2011, and an update on March 11, 2011, to approximately 130 media outlets including radio and TV stations throughout the state, area newspapers, and agricultural industry publications, and to approximately 75 county and municipal water agencies, irrigation districts, and their attorneys. The press release contained information on the location, date, and time of the scoping meetings. The Notice of Intent was distributed to the contact list on March 8, 2011. Information on the scoping meetings was also posted to Reclamation’s website at <http://www.usbr.gov/mp/cvp/mandi/>.

Attachment A of this scoping report contains a copy of the NOI and the press release distributed by Reclamation.

3.2 Staff

Table 3-2 provides a list of agency and consultant staff that attended the public scoping meetings.

**Table 3-2.
Agency Staff at Scoping Meetings**

Staff	Affiliation	Meetings Attended			
		Sacramento	Willows	Fresno	Oakland
Tim Rust	Reclamation	X	X	X	X
Tammy LaFramboise	Reclamation	X	X	X	X
Louis Moore	Reclamation	X	X	X	X
Leeyan Mao	Reclamation	X	X	X	X
Ruben Zubia	CDM	X	X	X	X
Chris Park	CDM	X	X	X	X
Andria Loutsch	CDM	X	X	X	
Pam Jones	Kearns & West	X	X	X	X
Evan Paul	Kearns & West	X			
Water Bourez	MBK	X			

3.3 Scoping Meeting Format and Content

Meeting participants were greeted at the door and asked to sign in. All names were entered into a database for the exclusive purpose of keeping participants up-to-date on future activities, meetings, and project information. Meeting materials were then provided to participants and included:

- An agenda;
- A copy of the PowerPoint presentation;

- A copy of the NOI;
- A copy of the press release;
- The March 2011 project Fact Sheet;
- Additional Considerations for Implementing the Draft Central Valley Project M&I Water Shortage Policy of September 11, 2001;
- The 2001 Draft CVP M&I WSP; and
- A comment card.

A copy of all meeting materials provided at the scoping meetings can be found in Attachment B. The 2005 EA and the October 2010 Working Draft CVP M&I WSP were available for review at the reception desk.

The public meetings began with a PowerPoint presentation by Reclamation. The presentation explained the purpose of the meeting, presented an overview of the M&I WSP, and described the public scoping process.

A public question and comment session was held after the presentation. Meeting participants were invited to provide verbal or written comments. Verbal comments from the scoping meetings are summarized in Section 4.0 of this report. Reclamation accepted written comments through mail, e-mail, and fax throughout the scoping period of March 8, 2011 through May 9, 2011. A copy of all comments received during the scoping period is included in Attachment C.

4.0 Comment Summary

This section presents a summary of the oral and written comments received during the scoping process. The purpose of this section is to provide a summary of the substance of the comments received and issues raised. Not all of the comments received or issues raised and summarized below may be material to the environmental analysis.

- **No Action Alternative**
 - West Side Irrigation District observed that the No-Action and the Proposed Action are quite similar. This could disguise impacts of the project by framing them as existing conditions. Concerns were raised that if the EIS analyzes the difference between the effects of the existing policy and the policy under development, that no analysis of the effects of a prioritization policy on agriculture and other water users in general would be done.
 - West Side Irrigation District believes that the use of the existing 2005 policy as the No Action alternative is inappropriate and could be illegal under NEPA.
 - A letter sent by multiple M&I contractors¹ pointed out that it is common practice and legally supported to use existing management arrangements as the No Action Alternative.
- **Action Alternatives**
 - The letter sent by multiple M&I contractors recommended that the M&I Contractors “Redline Strikeout” version be included as an alternative in the EIS (see <http://www.usbr.gov/mp/cvp/mandi>), and that an adequate range of alternatives be included in the EIS.
 - Westlands Water District (Westlands) asked that the EIS contain an adequate range of alternatives that are given a rigorous analysis that compares the proposal to the various alternatives. Westlands suggested a number of alternatives, including seller/buyer transfers as authorized by the CVPIA, water reallocation programs, and water banking programs.
 - Byron Bethany Irrigation District asked that an alternative be developed that excludes the existing limitation on transferring or converting irrigation water to M&I use, as the commentor believes this limitation to be arbitrary. The

¹ Bella Vista Water District, the Cities of Folsom, Redding, Roseville, and Tracy, Contra Costa Water District, San Juan Water District, East Bay Municipal Utility District (EBMUD), El Dorado Irrigation District, Placer County Water Agency, Sacramento County Water Agency, Sacramento Municipal Utility District (SMUD), and Santa Clara Valley Water District submitted a joint letter to Reclamation outlining their concerns. These contractors are referred to in the remainder of this document as “multiple M&I contractors.”

commentor believes such an alternative should be fully developed and analyzed in the EIS.

- The letter from multiple M&I contractors suggested an alternative based on the Redline Strikeout version with the exception that M&I reductions during shortage years could be applied to each contractor's full CVP contract allocation rather than historical use. This would eliminate historical use and the adjustments associated with it and replace it with M&I contract quantities.
- Del Puerto Water District and James Irrigation District proposed an additional alternative in which all M&I contractors would be subject to an equal percentage reduction, with no contractors receiving a greater allocation, especially during shortages. The State Water Project has used equal percent reductions for the last 15 years. This alternative would not recognize the important need to sustain urban economies during droughts, and could result in significant impacts to some contractors. This would require a full analysis of impacts in the EIS.
- EBMUD asked that implementation guidelines be drawn up for each alternative included in the EIS.
- EBMUD requested that once the alternatives are defined that they be put up on the project website for review by stakeholders during the EIS analysis process.
- SMUD wanted assurance that the alternatives would address basin-wide needs, and the needs of the contractors within the basin.
- **Impact Analysis**
 - The letter from multiple M&I contractors asked what baseline would be used in the modeling effort, as the supply and delivery targets are constantly moving. One commenter suggested that the best baseline conditions would be the requirements of the most recent Biological Opinions modified to reflect: 1) Judge Wanger's invalidation of the Reasonable and Prudent Alternatives (RPAs) regarding the Fall X2 and San Joaquin River import/export ratios; and 2) preliminary injunction against implementation of RPAs from the 2009 salmonid Biological Opinion.
 - Westlands discussed the need for a proper baseline, as the 2004 Operations Criteria and Plan no longer applies.
 - The letter from multiple M&I contractors suggested the EIS should also include a cumulative impact discussion in the context of other reasonably foreseeable past, present, and future actions potentially affecting the allocation of CVP water. Specifically, this should include the Bay Delta Conservation Plan's proposed 15,000 cubic feet per second isolated facility.
 - Clear Creek Community Services District (CC CSD) is concerned about the effects of diminished deliveries to residences on agricultural parcels where domestic usage is supplied by an agricultural allocation. The tightening of these supplies could lead to deliveries that are below health and safety levels,

despite the intent of the WSP to ensure adequate deliveries to ensure human health and safety.

- EBMUD suggested that when developing Public Health and Safety impacts, the EIS should analyze regular day conditions and avoid treating local groundwater overdraft as a non-CVP supply. Similarly, when analyzing surface water storage, avoid treating them as a non-CVP supply and allowing them to be drained.
- Del Puerto Water District asked for the EIS to model effects of the WSP on South of Delta agricultural contractors.
- Westlands requested that Reclamation specifically analyze the impacts to water service contractors who have limited access to alternative water supplies and will be acutely affected by the WSP.
- **Applicability of the WSP**
 - Friant Water Authority asked if the new policy will specifically state the agencies that are and are not affected by the policy.
 - Tehama-Colusa Canal Authority (TCCA) requested that each alternative clearly state that the WSP will apply equally to all M&I contractors, including the American River Division contractors
 - TCCA asked that the EIS and M&I WSP should make clear that the WSP pertains to M&I water specifically, and not to all CVP supplies generally, including irrigation water.
 - CC CSD feels that the M&I WSP should not apply to them given the language in the existing WSP and the terms of specific contracts. These contractors believe that these exclusions should be written into the new WSP to avoid future confusion.
 - CC CSD believes that the priority of use provided by the “Area of Origin” doctrine in the California Water Code needs to be addressed in the EIS as they believe they are being adversely affected due to shortage allocations that ignore the “Area of Origin” doctrine.
 - CC CSD asked that the alternatives and the analysis consider the impacts and effects of “mixed use” contractors, or those contractors who provide water for residents living on agricultural parcels. The comment asked for “(1) appropriate protection for domestic ‘M&I’ use that occurs on small parcel agriculture, and (2) the effects of compliance and observance of the ‘area of origin’ rights in regards to shortage allocations.”
 - Fresno County Public Works Department had a question about how agricultural water could be converted to M&I water. This is important to Fresno County as there are communities on the West Side that get their M&I water allocation from the Westlands Water District, an agricultural contractor, and other M&I contractors who have provided potable “M&I quality” water to agricultural contractors with the understanding that a conversion of agricultural water for M&I usage could occur in the future.

- **Enforcement and Justification**
 - Del Puerto Water District and others contractors asked for clarification on the legal authority for the WSP, as it appears that it may be inconsistent with Section 9(c) of the 1939 Act. The analysis should consider the legal ramifications of 43 U.S.C. Section 485 (c) which states that no water contract for municipal or miscellaneous purposes shall be made unless the Secretary determines that it will not impair the efficiency of the project for irrigation purposes.
 - West Side Irrigation District suggested that the existing WSP is not a policy as defined by Reclamation, but is instead a rule that must be adopted according to a set series of actions. A policy is typically a set of guidelines or goals without direct binding effects on the public that governs internal operations, a rule is legally binding on the public. Therefore, to use the existing “policy” as the No Action Alternative inappropriately elevates the authority of the policy to that of a “rule”. The commentor claims that the existing policy is not legally binding on the contractors until it has been adopted according to the Administrative Procedures Act.
 - Del Puerto Water District asked what policy the WSP seeks to advance, and pointed out that many M&I contractors have alternative sources of water to the CVP supplies that are not available to irrigators.
- **Purpose and Need**
 - The letter from multiple M&I contractors proposed a new Purpose and Need statement, as the existing statement does not reflect the considerations that Reclamation has shown during past shortages towards protecting public health and safety and sustaining urban economies.
- **Other Comments**
 - TCCA objected to new definitions of specific terms in the M&I WSP that differ from the definitions used in the contracts with M&I water users. It was suggested that the new policy clearly state that where contracts are not consistent with the policy that the contract language prevail.
 - A Reclamation employee from the Willows office asked if the information from the Department of Water Resources study with the Shasta/Tehama/Butte Basin Management Agency on the groundwater basin will be integrated into the analysis.
 - SMUD raised questions as to how the WSP process would interact with the Bay-Delta process. They are concerned that the WSP policy timeline will be delayed to match the Bay-Delta proceedings and be put on hold for the next five years while those issues are resolved.
 - The multiple M&I contractors asked to receive updates during the development of the EIS and to have the opportunity to provide feedback at the following stages of the EIR development:
 - Establishment of alternatives for analysis;

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- Development of the analytical approach, methodology, and assumptions for determining the effects of each alternative;
- Initial review of preliminary analytical results
- Subsequent modeling refinement; and
- Input on changes to any of the above.

Attachment A
Scoping Meeting Notification

was also placed at the 16th Street and Constitution Avenue entrance to the Ellipse. Since that time there has been a continued, temporary closure of the roadways to unauthorized vehicular traffic. The USSS will determine whether to change the status of the closure from temporary to permanent and to integrate durable, more aesthetic security elements in place of the temporary security elements identified above.

The intent is to integrate durable, more aesthetic security elements that not only help satisfy the requirement to maintain the historic and iconic character of President's Park South, but also improve the experience of visitors moving through the area to enter or view the White House and its grounds.

The EA will assess a range of alternatives establishing a permanent closure of E Street and associated roadways and the installation of re-designed security elements resulting in changes to the area, along with a no-action alternative for continuing the current closure using the existing, temporary security elements. The *Plan* was developed as an EIS and it will serve as a foundation for this EA, and the EA will also review the *Plan's* treatment of President's Park South.

In 2008, the NCPC Security Task Force recommended, and the NPS and USSS agreed, that NCPC, through its Task Force, would manage a limited competition to generate creative and thoughtful design concepts that incorporate necessary USSS security elements while improving the experience of visitors moving through the area to enter or view the White House and its grounds. The NCPC is a Federal agency whose mission includes serving as the central planning agency for the Federal activities in the greater Washington, DC area. The design concepts generated through this process may become alternatives in the EA.

Dated: December 22, 2010.

Peggy O'Dell,

Regional Director, National Capital Region.

[FR Doc. 2011-5253 Filed 3-7-11; 8:45 am]

BILLING CODE 4312-54-P

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

Notice of Intent To Prepare an Environmental Impact Statement (EIS) and Hold Public Scoping Meetings for the Municipal and Industrial (M&I) Water Shortage Policy (WSP), Central Valley Project (CVP)

AGENCY: Bureau of Reclamation, Interior.

ACTION: Notice of intent and public scoping meetings.

SUMMARY: The U.S. Department of the Interior, Bureau of Reclamation Mid-Pacific Region (Reclamation) proposes to prepare an EIS to analyze the potential effects of an update to the M&I WSP. The policy would be implemented by Reclamation during water short years. Reclamation previously developed, in consultation with the CVP M&I Water Service contractors, a draft CVP M&I WSP in 2001, and in 2005 prepared an Environmental Assessment (2005 EA). The 2005 EA was published on October 2005 and a Finding of No Significant Impact (FONSI) was signed in December 2005. The 2001 M&I WSP was modified by, and is being implemented in accordance with, Alternative 1B in the 2005 EA.

Since the publication of the 2005 EA, Reclamation received additional comments from several CVP water service contractors. The contractors expressed a need for clarity on certain aspects of the 2001 M&I WSP, as modified. Other comments received by Reclamation suggested consideration of alternatives to the 2001 M&I WSP. The comments coupled with recent significant changes in the Bay-Delta and CVP/State Water Project operations, has impelled Reclamation to evaluate alternatives and provide an M&I WSP that best recognizes the needs of various segments of the water user community and how those needs could be addressed in times of water shortages.

DATES: Written comments on the scope of the EIS will be accepted until May 9, 2011.

Four public scoping meetings will be held to solicit public input on the scope of the environmental document, alternatives, concerns, and issues to be addressed in the EIS. The scoping meeting dates are:

- Monday, March 21, 2011, 2-4 p.m., Sacramento, CA.
- Tuesday, March 22, 2011, 6-8 p.m., Willows, CA.
- Wednesday, March 23, 2011, 6-8 p.m., Fresno, CA.
- Thursday, March 24, 2011, 6-8 p.m., Oakland, CA.

ADDRESSES: Send written comments on the scope of the M&I WSP EIS to Tamara LaFramboise, Natural Resource Specialist, Mid-Pacific Regional Office, Bureau of Reclamation, 2800 Cottage Way, MP-410, Sacramento, CA 95825; or e-mail tlaframboise@usbr.gov.

Scoping meetings will be held at:

- Sacramento— Best Western Expo Inn and Suites, 1413 Howe Avenue, Sacramento, CA 95825.
- Willows—Veteran's Memorial Hall Building of Willows, 525 W. Sycamore Street, Willows, CA 95988.
- Fresno—Piccadilly Inn Express, 5115 E. McKinley Avenue, Fresno, CA 93727.
- Oakland— Red Lion Hotel Oakland International Airport, 150 Hegenberger Road, Oakland, CA 94621.

FOR FURTHER INFORMATION CONTACT: Tim Rust, Program Manager, Bureau of Reclamation, via e-mail at trust@usbr.gov or at (916) 978-5516; or Mike Chotkowski, Chief, Division of Environmental Affairs, Bureau of Reclamation, via e-mail at mchotowski@usbr.gov or at (916) 978-5025.

SUPPLEMENTARY INFORMATION: The CVP is operated under Federal statutes authorizing the CVP, and by the terms and conditions of water rights acquired pursuant to California law. During any year, constraints may occur on the availability of CVP water for M&I water service contractors. The cause of the water shortage may be drought, unavoidable causes, or restricted operations resulting from legal and environmental obligations or mandates. Those legal and environmental obligations include, but are not limited to, the Endangered Species Act, the Central Valley Project Improvement Act (CVPIA), and conditions imposed on CVP's water rights by the California State Water Resources Control Board. The 2001 M&I WSP, as modified, establishes the terms and conditions regarding the constraints on availability of water supply for the CVP M&I water service contracts.

Allocation of CVP water supplies for any given water year is based upon forecasted reservoir inflows and Central Valley hydrologic conditions, amounts of storage in CVP reservoirs, regulatory requirements, and management of Section 3406(b)(2) resources and refuge water supplies in accordance with CVPIA. In some cases, M&I water shortage allocations may differ between CVP divisions due to regional CVP water supply availability, system capacity, or other operational constraints.

The purpose of the update to the 2001 M&I WSP, as modified, is to provide detailed, clear, and objective guidelines for the distribution of CVP water supplies during water shortage conditions, thereby allowing CVP water users to know when, and by how much, water deliveries may be reduced in drought and other low water supply conditions.

The increased level of predictability that will be provided by the update to the 2001 M&I WSP is needed by water managers and the entities that receive CVP water to better plan for and manage available CVP water supplies, and to better integrate the use of CVP water with other available Non-CVP water supplies. The update to the 2001 M&I WSP is also needed to clarify certain terms and conditions with regard to its applicability and implementation. The proposed action is the adoption of an updated 2001 M&I WSP, as modified, and its respective implementation guidelines.

The EIS will be used to develop and evaluate alternatives to the 2001 M&I WSP, as modified, and will include analysis of the adverse and beneficial effects on the quality of the human and physical environment.

Issues to be addressed may include, but are not limited to, CVP water supply availability, impacts on biological resources, historic and archaeological resources, hydrology, groundwater, water quality, air quality, safety, hazardous materials and waste, visual resources, socioeconomic, including real estate, agriculture and environmental justice.

At this time, there are no known or possible Indian trust assets or environmental justice issues associated with the Proposed Action.

Special Assistance for Public Scoping Meetings

If special assistance is required at the scoping meetings, please contact Mr. Louis Moore at (916) 978-5106, or via e-mail at wmoore@usbr.gov. Please notify Mr. Moore as far in advance as possible to enable Reclamation to secure the needed services. If a request cannot be honored, the requestor will be notified. A telephone device for the hearing impaired (TDD) is available at (916) 978-5608.

Public Disclosure

Before including your name, address, phone number, e-mail address, or other personal identifying information in your comment, you should be aware that your entire comment including your personal identifying information may be made publicly available at any time.

While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Dated: January 21, 2011.

Anastasia T. Leigh,

Acting Regional Environmental Officer, Mid-Pacific Region.

[FR Doc. 2011-5153 Filed 3-7-11; 8:45 am]

BILLING CODE 4310-MN-P

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

Central Valley Project Improvement Act, Water Management Plans

AGENCY: Bureau of Reclamation, Interior.

ACTION: Notice of availability.

SUMMARY: The following Water Management Plans are available for review:

- Truckee-Carson Irrigation District.
- Goleta Water District.
- Delano-Earlimart Irrigation District.
- Feather Irrigation District.

To meet the requirements of the Central Valley Project Improvement Act of 1992 (CVPIA) and the Reclamation Reform Act of 1982, the Bureau of Reclamation developed and published the Criteria for Evaluating Water Management Plans (Criteria). For the purpose of this announcement, Water Management Plans (Plans) are considered the same as Water Conservation Plans. The above entities have each developed a Plan, which Reclamation has evaluated and preliminarily determined to meet the requirements of these Criteria. Reclamation is publishing this notice in order to allow the public to review the plans and comment on the preliminary determinations. Public comment on Reclamation's preliminary (*i.e.*, draft) determination is invited at this time.

DATES: All public comments must be received by April 7, 2011.

ADDRESSES: Please mail comments to Ms. Christy Ritenour, Bureau of Reclamation, 2800 Cottage Way, MP-410, Sacramento, California 95825, or contact at 916-978-5281 (TDD 978-5608), or e-mail at critenour@usbr.gov.

FOR FURTHER INFORMATION CONTACT: To be placed on a mailing list for any subsequent information, please contact Ms. Christy Ritenour at the e-mail address or telephone number above.

SUPPLEMENTARY INFORMATION: We are inviting the public to comment on our preliminary (*i.e.*, draft) determination of

Plan adequacy. Section 3405(e) of the CVPIA (Title 34 Pub. L. 102-575), requires the Secretary of the Interior to establish and administer an office on Central Valley Project water conservation best management practices that shall “* * * develop criteria for evaluating the adequacy of all water conservation plans developed by project contractors, including those plans required by section 210 of the Reclamation Reform Act of 1982.” Also, according to Section 3405(e)(1), these criteria must be developed “* * * with the purpose of promoting the highest level of water use efficiency reasonably achievable by project contractors using best available cost-effective technology and best management practices.” These criteria state that all parties (Contractors) that contract with Reclamation for water supplies (municipal and industrial contracts over 2,000 acre-feet and agricultural contracts over 2,000 irrigable acres) must prepare a Plan that contains the following information:

1. Description of the District.
2. Inventory of Water Resources.
3. Best Management Practices (BMPs) for Agricultural Contractors.
4. BMPs for Urban Contractors.
5. Plan Implementation.
6. Exemption Process.
7. Regional Criteria.
8. Five-Year Revisions.

Reclamation will evaluate Plans based on these criteria. A copy of these Plans will be available for review at Reclamation's Mid-Pacific Regional Office located in Sacramento, California, and the local area office. Our practice is to make comments, including names and home addresses of respondents, available for public review.

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If you wish to review a copy of these Plans, please contact Ms. Christy Ritenour to find the office nearest you.

Dated: March 2, 2011.

Richard J. Woodley,

Regional Resources Manager, Mid-Pacific Region, Bureau of Reclamation.

[FR Doc. 2011-5163 Filed 3-7-11; 8:45 am]

BILLING CODE 4310-MN-P

**Mid-Pacific Region
Sacramento, CA**

MP-11-029

Media Contacts: Pete Lucero, 916-978-5100, plucero@usbr.gov

For Release On: March 11, 2011

Update: Public Scoping Meetings Scheduled on Updated M&I Water Shortage Policy and to Solicit Comment on Scope of Environmental Impact Statement

The Bureau of Reclamation has scheduled four public scoping meetings to solicit public input on the updated Municipal and Industrial Water Shortage Policy (M&I WSP) and to receive comment on the scope of a proposed Environmental Impact Statement (EIS). The proposed EIS will be prepared to analyze the potential effects of implementing the updated M&I WSP. A Notice of Intent was posted in the Federal Register on Tuesday, March 8, 2011. This revised press release announces a ***new meeting location** in the City of Willows, CA.

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- **Oakland** - Thursday, March 24, 2011, 6-8 p.m., Red Lion Hotel Oakland International Airport, 150 Hegenberger Road.

For additional information on the project, please visit Reclamation's M&I WSP website at <http://www.usbr.gov/mp/cvp/mandi/>.

There is a 60-day comment period. Written comments on the scope of the EIS should be received by close of business Monday, May 9, 2011, and should be sent to Tamara LaFramboise, Natural Resource Specialist, Mid-Pacific Regional Office, Bureau of Reclamation, 2800 Cottage Way, MP-410, Sacramento, CA 95825; or emailed to tlaframboise@usbr.gov. For additional information, please contact Tim Rust, Program Manager, Reclamation, via e-mail at trust@usbr.gov or at 916-978-5516 or Mike Chotkowski, Chief, Division of Environmental Affairs, Reclamation, via e-mail at mchotowski@usbr.gov or at 916-978-5025.

###

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Attachment B
Scoping Meeting Materials

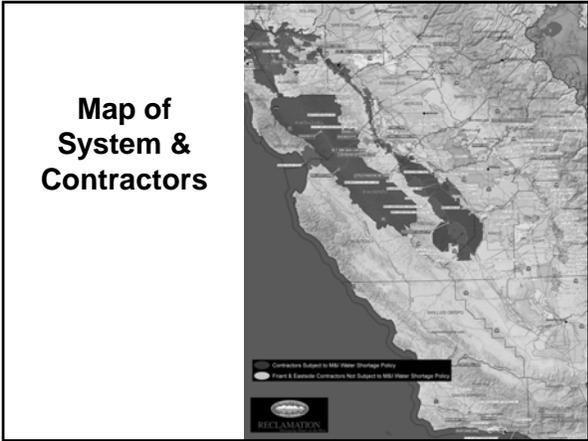
**CVP M&I Water Shortage Policy
Public Scoping Meeting**
Sacramento, CA
March 21, 2011

Agenda

- Introductions & Meeting Objectives
- Project Overview
- Environmental Impact Statement Process
- Public Scoping Process
- Public Input/Comment Opportunities

Meeting Objectives

- Review Central Valley Project (CVP) Municipal & Industrial Water Shortage Policy (M&I WSP)
 - Purpose/Need
 - Status
 - Need for Update
- Provide overview of EIS and Public Scoping Process
- Discuss opportunities for public review/input
- Obtain input/comments on M&I WSP update and EIS analyses



Purpose / Need

- **Proposed Action:** *Adoption of an updated M&I WSP*
- **Purpose:** *Provide detailed, clear, and objective guidelines for the distribution of CVP water supplies during CVP water shortage conditions*
- **Need:** *Increased level of predictability is needed by CVP M&I water service contractors to better plan for and manage available CVP water supplies, and to better integrate the use of CVP water with other available non-CVP water supplies*

M&I WSP Development

- **Importance of M&I reliability**
 - Recognition of reliability needs (When?)
 - Factors contributing to recognition (Why?)
- **Early development stages**
 - Pre-policy discussions
- **1994 Draft Policy**
 - Considerations for development
 - Legal force and effect
 - Implementation

M&I WSP Development (cont.)

- 1997 CVPIA Administrative Proposal on Urban Water Supply Reliability
 - Foundation for future shortage policy
 - Minimum level of reliability to urban water contractors
 - Consideration of non-CVP supplies
 - Reliability of converted/transferred water

M&I WSP Development (cont.)

- 2001 Draft M&I WSP
 - Established an M&I water supply allocation process during water short periods
 - Allowed adjustments to historical use for:
 - Growth
 - Extraordinary water conservation measures
 - Non-CVP water
 - Adjustments consider protection of other water supplies developed by water contractors
 - Key element: Shortage sharing between agricultural and M&I water users

M&I WSP Development (cont.)

- 2001 Draft M&I WSP

Irrigation Allocation (% of contract total)	M&I Allocation
100%	100% of contract total
95%	100% " "
90%	100% " "
85%	100% " "
80%	100% " "
75%	100% " "
70%	95% of adjusted historical use
65%	90% " "
60%	85% " "
55%	80% " "
50-25%	75% " "

M&I WSP Development (cont.)

- **2005 M&I WSP Environmental Assessment/Finding of No Significant Impact (EA/FONSI)**
 - Implemented changes to 2001 Draft M&I WSP
 - Key elements:
 - Reliability based on projected M&I use as determined by “Water Needs Assessment” performed for long-term contract renewals
 - Public health & safety
 - Shortage sharing between agricultural and M&I water users
 - Alternative water shortage allocation matrix adopted

M&I WSP Development (cont.)

- **Current M&I WSP: Alternative 1B from 2005 EA/FONSI**

Irrigation Allocation (% of contract total)	M&I Allocation
100%	100% of contract total
Between 75% and 100%	100% of contract total
70%	95% of historical use
65%	90% " "
60%	85% " "
55%	80% " "
Between 25% and 50%	75% " "
20%	70% " "
15%	65% " "
10%	60% " "
5%	55% " "
0%	50% " "

M&I WSP Development (cont.)

- **Current M&I WSP: Alternative 1B from 2005 EA/FONSI**
 - When M&I shortages fall below 75%, M&I allocation is the greater of:
 - X% of historical use, or
 - public health & safety level, up to a maximum of 75% of historical use

M&I WSP Development (cont.)

- 2010 Stakeholder Workshops
 - Series of 5 workshops with CVP M&I WSP stakeholders, May 2010 – January 2011
 - Received input regarding:
 - Need for clarification of certain terms & conditions
 - Questions on applicability
 - Assumptions of 2005 EA analyses
 - Need for better definition of implementation process
 - Recommendations for alternatives to certain terms & conditions

Need for Update of M&I WSP

- Comments received after the 2005 EA asked for additional clarity on the WSP:
 - How to calculate public health & safety levels?
 - What is historical use and what does it really mean?
 - How should historical use be calculated?
 - How can historical use be adjusted?
 - How should recycled water be treated?
 - Is CVP water supplemental or primary?
 - What does supplemental supply really mean?

Environmental Impact Statement Process

Why an EIS Now?

- **Changed environmental/operational conditions since 2005 EA:**
 - New Biological Opinion requirements from Fish and Wildlife Service and National Marine Fisheries Service
 - Greater frequency and magnitude of CVP water supply shortages, near term & long term
 - Delta uncertainty affects CVP & SWP supplies
 - Bay Delta Conservation Plan
 - Delta Vision / Bay-Delta Stewardship Council

Why an EIS Now? (cont.)

- **Changed environmental/operational conditions since 2005 EA:**
 - Changes in population growth projections and corresponding water demands
 - Ag land-use conversion from row crops to permanent crops (trees and vines)

Environmental Review Process

- **Federal actions require that agencies follow the NEPA process**
- **An Environmental Impact Statement (EIS) will be prepared by Reclamation before the M&I WSP is finalized**

Developing the EIS

- Evaluates reasonable alternatives to the proposed project
- Identifies significant environmental effects
- Proposes mitigation to reduce or avoid environmental impacts
- Provides information for public review and comment
- Informs decision makers

Some Resource Issues to be Considered

- CVP water supply availability
- Biological resources
- Historic and archaeological resources
- Hydrology
- Groundwater
- Water quality
- Climate change
- Air quality
- Safety
- Hazardous materials and waste
- Visual resources
- Indian Trust Assets
- Environmental justice
- Socioeconomics, including real estate and agriculture

EIS Timeline

- Public Scoping Process: March – June 2011
- Effects Analysis: February 2011 – April 2012
- Draft EIS Public Review: April – June 2012
- Final EIS: July 2012 – January 2013

Public Scoping Process

NEPA Requirement

- Seek input from other agencies, organizations, and the public on potentially affected resources, environmental issues to be considered, and the agency's planned approach to analysis.

Public Scoping Meetings

- March 21: Sacramento – Best Western Expo Inn and Suites, 1413 Howe Ave.
- March 22: Willows – Monday Afternoon Club, 120 N. Lassen Street
- March 23: Fresno – Piccadilly Inn Express, 5115 E. McKinley Ave.
- March 24: Oakland – Red Lion Hotel Oakland International Airport, 150 Hegenberger Rd.

Public Input / Comment Opportunities

Public Input / Comments

- Your input will help shape the M&I WSP and EIS:
 - Alternatives to the proposed action
 - Alternatives/clarification to terms and conditions
 - Implementation process
 - Applicability
 - Analyses to be conducted
 - Resources and other issues of concern to you
 - Questions you want answered in the EIS
 - Ways to minimize or avoid negative effects of the proposed action
 - Suggestions for information sources

What Will Reclamation Do With Your Input/Comments?

- All comments will be described in the Public Scoping Report
- Disclosure considerations
- Comments requested on:
 - Development of alternatives
 - Analyses to be conducted as part of EIS process
 - Preparation of EIS

How to Provide Comments Today

- Comments for inclusion in the Scoping Report are due by Monday, May 9, 2011
- Provide comments today through:
 - Comment Cards
 - Verbal Comments

How to Provide Comments After Today

- To provide comments after today:
 - Online: www.usbr.gov/mp/cvp/mandi/
 - Fax: (916) 978-5055
 - Mail/Email:
 - Ms. Tammy LaFramboise
 - Bureau of Reclamation
 - 2800 Cottage Way, MP-410
 - Sacramento, CA 95825
 - Email: tlaframboise@usbr.gov

Guidelines for Verbal Comments

- Fill out a speaker card.
- Everyone will be heard.
- Please be respectful.
- Reclamation is here to listen.
- Limit your comments to 3 minutes so others can speak.

Going Forward

- Public Scoping Report to be published and posted in June 2011
- Updates and new information available on M&I WSP Website - <http://www.usbr.gov/mp/cvp/mandi/index.html>
- If not currently on email list, add name to get email messages with project updates.
 - Send email to: Tammy LaFramboise
tlaframboise@usbr.gov

was also placed at the 16th Street and Constitution Avenue entrance to the Ellipse. Since that time there has been a continued, temporary closure of the roadways to unauthorized vehicular traffic. The USSS will determine whether to change the status of the closure from temporary to permanent and to integrate durable, more aesthetic security elements in place of the temporary security elements identified above.

The intent is to integrate durable, more aesthetic security elements that not only help satisfy the requirement to maintain the historic and iconic character of President's Park South, but also improve the experience of visitors moving through the area to enter or view the White House and its grounds.

The EA will assess a range of alternatives establishing a permanent closure of E Street and associated roadways and the installation of re-designed security elements resulting in changes to the area, along with a no-action alternative for continuing the current closure using the existing, temporary security elements. The *Plan* was developed as an EIS and it will serve as a foundation for this EA, and the EA will also review the *Plan's* treatment of President's Park South.

In 2008, the NCPC Security Task Force recommended, and the NPS and USSS agreed, that NCPC, through its Task Force, would manage a limited competition to generate creative and thoughtful design concepts that incorporate necessary USSS security elements while improving the experience of visitors moving through the area to enter or view the White House and its grounds. The NCPC is a Federal agency whose mission includes serving as the central planning agency for the Federal activities in the greater Washington, DC area. The design concepts generated through this process may become alternatives in the EA.

Dated: December 22, 2010.

Peggy O'Dell,

Regional Director, National Capital Region.

[FR Doc. 2011-5253 Filed 3-7-11; 8:45 am]

BILLING CODE 4312-54-P

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

Notice of Intent To Prepare an Environmental Impact Statement (EIS) and Hold Public Scoping Meetings for the Municipal and Industrial (M&I) Water Shortage Policy (WSP), Central Valley Project (CVP)

AGENCY: Bureau of Reclamation, Interior.

ACTION: Notice of intent and public scoping meetings.

SUMMARY: The U.S. Department of the Interior, Bureau of Reclamation Mid-Pacific Region (Reclamation) proposes to prepare an EIS to analyze the potential effects of an update to the M&I WSP. The policy would be implemented by Reclamation during water short years. Reclamation previously developed, in consultation with the CVP M&I Water Service contractors, a draft CVP M&I WSP in 2001, and in 2005 prepared an Environmental Assessment (2005 EA). The 2005 EA was published on October 2005 and a Finding of No Significant Impact (FONSI) was signed in December 2005. The 2001 M&I WSP was modified by, and is being implemented in accordance with, Alternative 1B in the 2005 EA.

Since the publication of the 2005 EA, Reclamation received additional comments from several CVP water service contractors. The contractors expressed a need for clarity on certain aspects of the 2001 M&I WSP, as modified. Other comments received by Reclamation suggested consideration of alternatives to the 2001 M&I WSP. The comments coupled with recent significant changes in the Bay-Delta and CVP/State Water Project operations, has impelled Reclamation to evaluate alternatives and provide an M&I WSP that best recognizes the needs of various segments of the water user community and how those needs could be addressed in times of water shortages.

DATES: Written comments on the scope of the EIS will be accepted until May 9, 2011.

Four public scoping meetings will be held to solicit public input on the scope of the environmental document, alternatives, concerns, and issues to be addressed in the EIS. The scoping meeting dates are:

- Monday, March 21, 2011, 2-4 p.m., Sacramento, CA.
- Tuesday, March 22, 2011, 6-8 p.m., Willows, CA.
- Wednesday, March 23, 2011, 6-8 p.m., Fresno, CA.
- Thursday, March 24, 2011, 6-8 p.m., Oakland, CA.

ADDRESSES: Send written comments on the scope of the M&I WSP EIS to Tamara LaFramboise, Natural Resource Specialist, Mid-Pacific Regional Office, Bureau of Reclamation, 2800 Cottage Way, MP-410, Sacramento, CA 95825; or e-mail tlaframboise@usbr.gov.

Scoping meetings will be held at:

- Sacramento— Best Western Expo Inn and Suites, 1413 Howe Avenue, Sacramento, CA 95825.
- Willows—Veteran's Memorial Hall Building of Willows, 525 W. Sycamore Street, Willows, CA 95988.
- Fresno—Piccadilly Inn Express, 5115 E. McKinley Avenue, Fresno, CA 93727.
- Oakland— Red Lion Hotel Oakland International Airport, 150 Hegenberger Road, Oakland, CA 94621.

FOR FURTHER INFORMATION CONTACT: Tim Rust, Program Manager, Bureau of Reclamation, via e-mail at trust@usbr.gov or at (916) 978-5516; or Mike Chotkowski, Chief, Division of Environmental Affairs, Bureau of Reclamation, via e-mail at mchotowski@usbr.gov or at (916) 978-5025.

SUPPLEMENTARY INFORMATION: The CVP is operated under Federal statutes authorizing the CVP, and by the terms and conditions of water rights acquired pursuant to California law. During any year, constraints may occur on the availability of CVP water for M&I water service contractors. The cause of the water shortage may be drought, unavoidable causes, or restricted operations resulting from legal and environmental obligations or mandates. Those legal and environmental obligations include, but are not limited to, the Endangered Species Act, the Central Valley Project Improvement Act (CVPIA), and conditions imposed on CVP's water rights by the California State Water Resources Control Board. The 2001 M&I WSP, as modified, establishes the terms and conditions regarding the constraints on availability of water supply for the CVP M&I water service contracts.

Allocation of CVP water supplies for any given water year is based upon forecasted reservoir inflows and Central Valley hydrologic conditions, amounts of storage in CVP reservoirs, regulatory requirements, and management of Section 3406(b)(2) resources and refuge water supplies in accordance with CVPIA. In some cases, M&I water shortage allocations may differ between CVP divisions due to regional CVP water supply availability, system capacity, or other operational constraints.

The purpose of the update to the 2001 M&I WSP, as modified, is to provide detailed, clear, and objective guidelines for the distribution of CVP water supplies during water shortage conditions, thereby allowing CVP water users to know when, and by how much, water deliveries may be reduced in drought and other low water supply conditions.

The increased level of predictability that will be provided by the update to the 2001 M&I WSP is needed by water managers and the entities that receive CVP water to better plan for and manage available CVP water supplies, and to better integrate the use of CVP water with other available Non-CVP water supplies. The update to the 2001 M&I WSP is also needed to clarify certain terms and conditions with regard to its applicability and implementation. The proposed action is the adoption of an updated 2001 M&I WSP, as modified, and its respective implementation guidelines.

The EIS will be used to develop and evaluate alternatives to the 2001 M&I WSP, as modified, and will include analysis of the adverse and beneficial effects on the quality of the human and physical environment.

Issues to be addressed may include, but are not limited to, CVP water supply availability, impacts on biological resources, historic and archaeological resources, hydrology, groundwater, water quality, air quality, safety, hazardous materials and waste, visual resources, socioeconomic, including real estate, agriculture and environmental justice.

At this time, there are no known or possible Indian trust assets or environmental justice issues associated with the Proposed Action.

Special Assistance for Public Scoping Meetings

If special assistance is required at the scoping meetings, please contact Mr. Louis Moore at (916) 978-5106, or via e-mail at wmoore@usbr.gov. Please notify Mr. Moore as far in advance as possible to enable Reclamation to secure the needed services. If a request cannot be honored, the requestor will be notified. A telephone device for the hearing impaired (TDD) is available at (916) 978-5608.

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Dated: January 21, 2011.

Anastasia T. Leigh,

Acting Regional Environmental Officer, Mid-Pacific Region.

[FR Doc. 2011-5153 Filed 3-7-11; 8:45 am]

BILLING CODE 4310-MN-P

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Bureau of Reclamation

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AGENCY: Bureau of Reclamation, Interior.

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SUMMARY: The following Water Management Plans are available for review:

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To meet the requirements of the Central Valley Project Improvement Act of 1992 (CVPIA) and the Reclamation Reform Act of 1982, the Bureau of Reclamation developed and published the Criteria for Evaluating Water Management Plans (Criteria). For the purpose of this announcement, Water Management Plans (Plans) are considered the same as Water Conservation Plans. The above entities have each developed a Plan, which Reclamation has evaluated and preliminarily determined to meet the requirements of these Criteria. Reclamation is publishing this notice in order to allow the public to review the plans and comment on the preliminary determinations. Public comment on Reclamation's preliminary (*i.e.*, draft) determination is invited at this time.

DATES: All public comments must be received by April 7, 2011.

ADDRESSES: Please mail comments to Ms. Christy Ritenour, Bureau of Reclamation, 2800 Cottage Way, MP-410, Sacramento, California 95825, or contact at 916-978-5281 (TDD 978-5608), or e-mail at critenour@usbr.gov.

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If you wish to review a copy of these Plans, please contact Ms. Christy Ritenour to find the office nearest you.

Dated: March 2, 2011.

Richard J. Woodley,

Regional Resources Manager, Mid-Pacific Region, Bureau of Reclamation.

[FR Doc. 2011-5163 Filed 3-7-11; 8:45 am]

BILLING CODE 4310-MN-P

**Mid-Pacific Region
Sacramento, CA**

MP-11-029

Media Contacts: Pete Lucero, 916-978-5100, plucero@usbr.gov

For Release On: March 11, 2011

Update: Public Scoping Meetings Scheduled on Updated M&I Water Shortage Policy and to Solicit Comment on Scope of Environmental Impact Statement

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For additional information on the project, please visit Reclamation's M&I WSP website at <http://www.usbr.gov/mp/cvp/mandi/>.

There is a 60-day comment period. Written comments on the scope of the EIS should be received by close of business Monday, May 9, 2011, and should be sent to Tamara LaFramboise, Natural Resource Specialist, Mid-Pacific Regional Office, Bureau of Reclamation, 2800 Cottage Way, MP-410, Sacramento, CA 95825; or emailed to tlaframboise@usbr.gov. For additional information, please contact Tim Rust, Program Manager, Reclamation, via e-mail at trust@usbr.gov or at 916-978-5516 or Mike Chotkowski, Chief, Division of Environmental Affairs, Reclamation, via e-mail at mchotowski@usbr.gov or at 916-978-5025.

###

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-- Project Fact Sheet --

Development of an Updated Central Valley Project Municipal and Industrial Water Shortage Policy and Preparation of an Environmental Impact Statement

Project Overview

The Bureau of Reclamation developed a draft Central Valley Project (CVP) Municipal & Industrial (M&I) Water Shortage Policy (WSP) in 2001, in consultation with the CVP M&I Water Service contractors. In 2005, Reclamation prepared an Environmental Assessment (2005 EA) on the policy. The 2005 EA was published in October 2005 and a Finding of No Significant Impact was signed in December 2005. The 2001 Draft M&I WSP was modified by, and is being implemented in accordance with, Alternative 1B from the 2005 EA.

Since the publication of the 2005 EA, Reclamation received additional comments from several CVP water service contractors. The contractors expressed a need for clarity on certain aspects of the 2001 Draft M&I WSP, as modified. Other comments received by Reclamation suggested consideration of alternatives to the 2001 Draft M&I WSP. The comments, coupled with recent significant changes in the Delta and CVP and State Water Project operations, have compelled Reclamation to

evaluate alternatives and provide an M&I WSP that best recognizes the needs of various segments of the water user community and how those needs could be addressed in times of water shortages.

Project Need

The purpose of the update to the 2001 Draft M&I WSP, as modified, is to provide detailed, clear, and objective guidelines for the distribution of CVP water supplies to M&I contractors during water shortage conditions. The updated policy will allow CVP water users to know when, and by how much, water deliveries may be reduced in drought and other low water supply conditions.

The increased level of predictability to be provided by the update to the 2001 Draft M&I WSP is needed by CVP M&I water service contractors to better plan for and manage available CVP water supplies and to better integrate the use of CVP water with other available non-CVP water supplies. The update to the

2001 Draft M&I WSP is also needed to clarify certain terms and conditions regarding its applicability and implementation. The Proposed Action is the adoption of an updated M&I WSP and its respective implementation guidelines.



Central Valley Project Service Area



Project Setting

The CVP is authorized and operated under Federal statutes and by the terms and conditions of water rights acquired pursuant to California law. During any year, constraints may occur on the availability of CVP water for M&I water service contractors. The cause of the water shortage may be drought, unavoidable causes, or restricted operations resulting from legal and environmental obligations or mandates. Those legal and environmental obligations include, but are not limited to, the Endangered Species Act, the Central Valley Project Improvement Act (CVPIA), and conditions imposed on the CVP's water rights by the California State Water Resources Control Board.

The 2001 Draft M&I WSP, as modified, establishes the terms and conditions regarding the constraints on availability of water supply for the CVP M&I water service contracts. Allocation of CVP water supplies for any given water year is based upon forecasted reservoir inflows and Central Valley hydrologic conditions, amounts of storage in CVP reservoirs, regulatory requirements, and management of Section 3406(b)(2) resources and refuge water supplies in accordance with CVPIA. In some cases, M&I water shortage allocations may differ between CVP divisions due to regional CVP water supply availability, system capacity, or other operational constraints.

Environmental Review Initiated

Pursuant to the National Environmental Policy Act (NEPA), Reclamation is conducting public scoping meetings and preparing an environmental impact statement (EIS) for the development of an updated CVP M&I WSP. Alternatives to be analyzed in the EIS have not been developed at this time and will be developed through the NEPA process, including through the public scoping meetings.

The EIS will be used to evaluate alternatives to the 2001 Draft M&I WSP, as modified, and will include analysis of the adverse and beneficial effects on the quality of the human and physical environment. Issues to be addressed may include, but are not limited to, CVP water supply availability, impacts on biological resources, historic and archaeological resources, agriculture,

hydrology, groundwater, water quality, air quality, safety, hazardous materials and waste, visual resources, socioeconomic, and environmental justice. At this time, there are no known or possible Indian Trust Assets or environmental justice issues associated with the Proposed Action.

Public Participation

Reclamation is implementing a comprehensive public participation program to fully inform and engage potentially affected agencies and communities. Understanding the public's views on the scope of the project and EIS is critical to a successful project. Toward that end, a series of meetings is being held to introduce the project and solicit public comments. There will be a 60-day comment period.

The meeting schedule is:

- **Sacramento** - Monday, March 21, 2011, 2-4 p.m., Best Western Expo Inn and Suites, 1413 Howe Avenue;
- **Willows** - Tuesday, March 22, 2011, 6-8 p.m., Monday Afternoon Club, 120 N. Lassen Street
- **Fresno** - Wednesday, March 23, 2011, 6-8 p.m., Piccadilly Inn Express, 5115 E. McKinley Avenue,
- **Oakland** - Thursday, March 24, 2011, 6-8 p.m., Red Lion Hotel Oakland International Airport, 150 Hegenberger Road.

If you are unable to attend the meetings but would like to submit a comment, please mail written comments to Tamara LaFramboise, Natural Resource Specialist, Mid-Pacific Regional Office, Bureau of Reclamation, 2800 Cottage Way, MP-410, Sacramento, CA 95825; or via email to tlaframboise@usbr.gov.

Written comments on the scope of the EIS will be accepted until May 9, 2011.

For Further Information

Contact: Tim Rust, Program Manager, Reclamation, via e-mail at trust@usbr.gov or at 916-978-5516 or Mike Chotkowski, Chief, Division of Environmental Affairs, Reclamation, via e-mail at mchotowski@usbr.gov or at 916-978-5025.



Additional Considerations for Implementing the Draft Central Valley Project M&I Water Shortage Policy of September 11, 2001

- In determining projected M&I demand under paragraph 3 of the Draft M&I Water Shortage Policy (WSP), Reclamation may also rely on M&I Contractors' Water Needs Assessments completed for long-term contract renewals, as analyzed in the Municipal and Industrial WSP, Central Valley Project 2005 Environmental Assessment Alternative 1B.
- In determining M&I allocation reductions for years when the irrigation allocation is below 25% under paragraph 4 of the Draft M&I WSP 2001, Reclamation may also rely on, as guidance, Table 3-5 from the Municipal and Industrial WSP 2005 Environmental Assessment Alternative 1B (attached).
- NOTE: All references to contract total in Table 3-5 from the Municipal and Industrial WSP 2005 Environmental Assessment , except when the M&I allocation is 100%, should read historical use instead of contract total. The historical use amount is determined by averaging the amount of water the contractor took during the last three years of unconstrained flow (or 100%) M&I allocation.

All references to "contract total" in Table 3-5 , except when the M&I allocation is 100%, should read "historical use" instead of "contract total."

TABLE 3-5

ALTERNATIVE 1 WATER SHORTAGE ALLOCATIONS

Allocation Step	Allocation to Irrigation Users	Allocation to M&I Users
1	100 percent	100 percent
2	100 to 75 percent	100 percent
3	75 to 70 percent	100 to 95 percent
4	70 to 65 percent	95 to 90 percent
5	65 to 60 percent	90 to 85 percent
6	60 to 55 percent	85 to 80 percent
7	55 to 50 percent	80 to 75 percent
8	50 to 25 percent	75 percent
9	25 to 20 percent ^a	The Maximum of: (1) 75 to 70 percent of M&I CVP contract total (2) Public health and safety water quantities up to 75 percent of Contract Total
10	20 to 15 percent ^a	The Maximum of: (1) 70 to 65 percent of M&I CVP contract total (2) Public health and safety water quantities up to 75 percent of Contract Total
11	15 to 10 percent ^a	The Maximum of: (1) 65 to 60 percent of M&I CVP contract total (2) Public health and safety water quantities up to 75 percent of Contract Total
12	10 to 5 percent ^a	The Maximum of: (1) 60 to 55 percent of M&I CVP contract total (2) Public health and safety water quantities up to 75 percent of Contract Total
13	5 to 0 percent ^a	The Maximum of: (1) 55 to 50 percent of M&I CVP contract total (2) Public health and safety water quantities up to 75 percent of Contract Total
14	0 percent ^a	The Maximum of: (1) 50 percent of M&I CVP contract total (2) Public health and safety water quantities up to 75 percent of Contract Total

^aAllocations to Irrigation CVP contractors will be further reduced within the Contract Year to provide public health and safety water quantities to M&I CVP contractors within the same Contract Year, provided CVP water is available.

Allocations methodologies identical for Alternatives 1A and 1B.

D R A F T
Central Valley Project
M&I Water Shortage Policy
September 11, 2001

The CVP (Central Valley Project) is operated under Federal statutes authorizing the CVP and by the terms and conditions of water rights acquired pursuant to California law. During any year, there may occur constraints on the availability of CVP water for an M&I (municipal and industrial) contractor under its contract. Thus, the purposes of this policy are to:

- ' Define water shortage terms and conditions applicable to all CVP M&I contractors
- ' Establish a minimum water supply level that (a) with M&I contractors' drought water conservation measures and other water supplies would sustain urban areas during droughts, and (b) during severe or continuing droughts would, as much as possible, protect public health and safety
- ' Provide information to help M&I contractors develop drought contingency plans

Currently, many M&I contractors are not using the full M&I portion of their contract total. If the M&I water shortage allocation were applied to full contract entitlements, the resulting allocation for some contractors would exceed their current demand. M&I water demands within the CVP are continually increasing. Therefore, the provision for "75 percent M&I reliability" will be applied to a contractor's *historical use*, with certain adjustments, up to the CVP projected M&I demand as of September 30, 1994. Reclamation recognizes that as water conservation measures are implemented there is a hardening of demand that lessens an M&I contractor's ability to reduce demand during shortages.

The capability of the CVP to meet the water supply levels addressed by this policy is subject to the availability of CVP water supplies. M&I water shortage allocation may differ between divisions of the CVP. Generally, the allocation (percentage) to the various divisions will be the same, unless specific operational constraints on Reclamation require otherwise.

Reclamation explored the concept of two tiers of M&I water supply reliability as proposed by contractors in the CVPIA (Central Valley Project Improvement Act) Administrative Proposal on Urban Water Supply Reliability. Although Reclamation determined not to adopt two tiers, it will facilitate the sale of CVP water from willing sellers to M&I contractors when necessary.

Definitions

Historical use - The average quantity of CVP water put to beneficial use within the service area during the last 3 years of water deliveries, unconstrained by the availability of CVP water. Reclamation and the contractor will negotiate the calculated historical use, to be outlined in a contract exhibit that can be modified during the contract period (but that will not require formal contract amendment). Reclamation recognizes that certain circumstances may require adjustment of the historical use such as growth, extraordinary water conservation measures, or use of non-CVP water supplies. Also, Reclamation may agree to adjust the historical use on the basis of unique circumstances, after consultation with the contractor. An example of a unique circumstance is the year following a drought year, in which water users are still using extraordinary water conservation measures, or the converse, in which a contractor may use more water than historically used in order to recharge ground water.

Adjusted for growth - An adjustment to the contractor's historical use quantity to account for demand increases within the contractor's service area to include (but not be limited to) increases due to population growth and to the number or demand of industrial, commercial, and other entities the contractor serves, provided the contractor provides required documentation to Reclamation.

Adjusted for extraordinary water conservation measures - An adjustment to the contractor's historical use quantity to account for conservation measures that exceed applicable best management practices adopted by the California Urban Water Conservation Council. A water conservation measure considered extraordinary in 2001 may be a mandatory best management practice in 2010 and thus would not be considered extraordinary in 2010.

Adjusted for Non-CVP water - An adjustment to the contractor's historical use quantity to account for water sources other than the CVP used to satisfy M&I demand within the contractor's service area, subject to written documentation from the contractor that shows the extent to which use of the non-CVP water actually reduced the contractor's use of CVP water in other years.

Public health and safety - M&I uses to which water is allocated consistent with criteria established by the State of California, or as established by Reclamation consistent with criteria applied by similarly situated California M&I water supply entities, as applicable, during declared water shortage emergencies.

Terms and Conditions

1. Allocation of M&I water will be based on a contractor's historical use of CVP M&I water, adjusted for (a) *growth*, (b) *extraordinary water conservation measures*, and (c) *non-CVP water*, subject to Term and Condition 3. At the contractor's request, Reclamation will consult

with the contractor to adjust the contractor’s historical use on the basis of (a) growth, (b) extraordinary water conservation measures, and (c) use of non-CVP water. Term and Condition 1 is intended to encourage contractors to use non-CVP water first and rely on CVP water as a supplemental supply. Reclamation will adjust the historical-use calculation to reflect the effect of non-CVP water used in lieu of use of the contractor’s CVP water. Crediting for this non-CVP water will be based on 1 acre-foot for 1 acre-foot, unless Reclamation and the contractor agree otherwise in considering unique circumstances. The contractor must fully document use of non-CVP water to clearly show how much that water use actually reduced the contractor’s use of CVP water in other years, and submit the documentation in writing to Reclamation.

2. For an M&I contractor to be eligible for the “minimum shortage allocation” of 75 percent of adjusted historical use, the contractor’s water service contract must reference M&I water shortage policy. In addition, the water service contractor must (a) have developed and be implementing a water conservation plan that meets CVPIA criteria and (b) be measuring such water consistent with section 3405(b) of the CVPIA. Reclamation intends to incorporate in all new, renewed, and amended water service contracts, a provision that references the CVP M&I water shortage policy.

3. This M&I water shortage policy applies only to that portion of the CVP water identified as projected M&I demand as of September 30, 1994, as shown for year 2030 on Schedule A-12 of the 1996 Municipal and Industrial Water Rates book and for those contract quantities specified in section 206 of Public law 101-514. Subject to these limitations, except as provided for public health and safety levels (Term and Condition 7), irrigation water transferred or converted to M&I use after September 30, 1994, will be subject to shortage allocation as irrigation water. For CVP water transferred or assigned, a CVP contractor may request that the CVP water so obtained be eligible for M&I reliability. Before Reclamation may approve such a request, the transferee or assignee must fully mitigate any adverse impacts to agricultural water supplies. Further, for CVP water converted, an M&I contractor may request a permanent conversion from agricultural shortage criteria to M&I shortage criteria, provided there are no adverse impacts to agricultural or other M&I water supply contracts .

4. Before allocation of M&I water to a contractor will be reduced, allocation of irrigation water will be reduced below 75 percent of contract entitlement, as shown here:

Irrigation Allocation	M&I Allocation
100%	100%
95%	100%
90%	100%
85%	100%
80%	100%

75%	100%
-----	------

5. When allocation of irrigation water has been reduced below 75 percent and still further water supply reductions are necessary, both the M&I and irrigation allocations will be reduced by the same percentage increment. The M&I allocation will be reduced until it reaches 75 percent of adjusted historical use, and the irrigation allocation will be reduced until it reaches 50 percent of contract entitlement. The M&I allocation will not be further reduced until the irrigation allocation is reduced to below 25 percent of contract entitlement, as shown in the following tabulation.

Irrigation Allocation	M&I Allocation
70%	95%
65%	90%
60%	85%
55%	80%
50%-25%	75%

6. When allocation of irrigation water is reduced below 25 percent of contract entitlement, Reclamation will reassess both the availability of CVP water supply and CVP water demand. Due to limited water supplies, during these times M&I water allocation to contractors may be reduced below 75 percent of adjusted historical use.

7. Reclamation will deliver CVP water to an M&I contractor at not less than a *public health and safety* water supply level, provided CVP water is available, if (a) the Governor declares an emergency due to water shortage applicable to that contractor or (b) Reclamation, in consultation with the contractor, determines that an emergency exists due to water shortage. The contractor will calculate the public health and safety level using criteria developed by the State of California and submit the calculated level to Reclamation along with adequate support documentation for review. Reclamation will ensure that the calculated level is consistent with such criteria. If State criteria do not exist, the contractor will apply criteria developed by Reclamation (in consultation with the contractor) that will be consistent with relevant criteria used by similarly situated California M&I water entities. Reclamation will provide a water supply at the public health and safety level to all CVP M&I contractors, including contractors with allocation of irrigation water transferred or converted to M&I use after September 30, 1994. At times of extraordinary circumstance, Reclamation may determine that it is necessary to vary the allocation of M&I water among contractors, taking into consideration a contractor's available non-CVP water.

8. Each M&I contractor will provide to Reclamation its drought contingency plan designed to protect public health and safety. The contractor may provide a copy of its Urban Water Management Plan (UWMP) or water conservation plan (WCP) to Reclamation in lieu of a separate drought contingency plan so long as the UWMP or WCP contains the contractor's drought contingency plan.

*Place
First Class
Stamp Here*

Municipal and Industrial Water Shortage Policy

Tammy LaFramboise
Bureau of Reclamation
2800 Cottage Way
Sacramento, CA 95825

Please fold, staple, stamp, and mail.

Attachment C

Scoping Comments

Index of Scoping Period Comments

C-1: Byron Bethany Irrigation District

C-2: West Side Irrigation District

C-3: Clear Creek Community Services District

C-4: Del Puerto Water District

C-5: James Irrigation District

C-6: Multiple M&I Contractors

C-7: Reclamation District 1606, Del Puerto Water District

C-8: Tehama-Colusa Canal Authority

C-9: Westlands Water District


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April 26, 2011

Tamara LaFramboise
 Natural Resource Specialist
 Mid-Pacific Region
 United States Bureau of Reclamation
 2800 Cottage Way
 Sacramento, CA 95825

Re: Comment Letter Regarding the Scope of the Environmental Impact Statement
 (EIS) for Adoption of an Updated M&I Shortage Policy

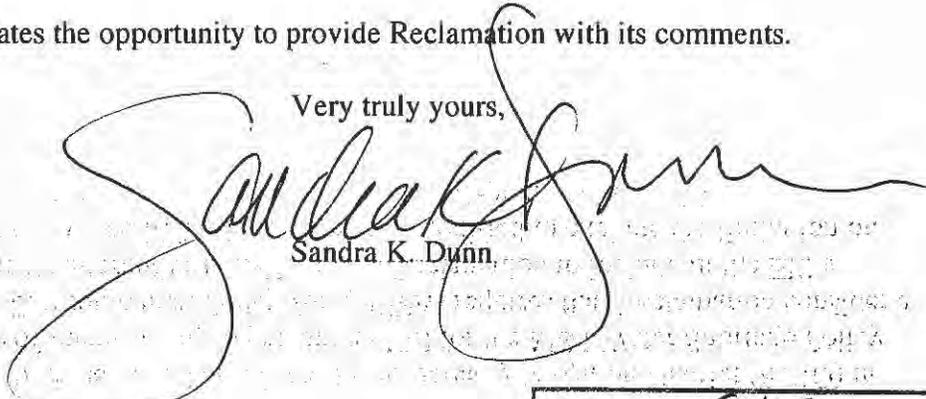
Dear Ms. LaFramboise:

This letter is submitted on behalf of the Byron Bethany Irrigation District (BBID) in response to the Notice of Intent (NOI) to prepare an EIS for the M&I Water Shortage Policy (WSP). The National Environmental Policy Act (NEPA) requires that Reclamation consider a reasonable range of viable alternatives. BBID urges Reclamation to include in the EIS a separate alternative based on the M&I shortage policy modified to exclude the limitation on irrigation water transferred or converted to M&I use after September 30, 1994.

As noted in its letter to Reclamation dated February 28, 2011, BBID believes that the current limitation on irrigation water converted to M&I use is arbitrary. To fully understand the potential impacts on water availability to other CVP contractors resulting from the removal of the current limitation, a separate alternative should be developed and fully analyzed in the EIS.

BBID appreciates the opportunity to provide Reclamation with its comments.

Very truly yours,


 Sandra K. Dunn

SKD:sb

cc: Rick Gilmore

Classification	ENV-6.00
Project	214
Control No.	11033209
Folder I.D.	1148370
Date Input & Initials	4/27/2011 JS



Jeanne M. Zolezzi
jzolezzi@herumcrabtree.com

VIA EMAIL AND U.S. MAIL

May 5, 2011

Ms. Tammy La Framboise
Bureau of Reclamation
Mid-Pacific Region
2800 Cottage Way MP-410
Sacramento CA 95825-1898

Re: The West Side Irrigation District

Dear Ms. La Framboise:

The Bureau of Reclamation has scheduled four public scoping meetings to solicit public input on the updated Municipal and Industrial Water Shortage Policy (M&I WSP) and to receive comment on the scope of a proposed Environmental Impact Statement (EIS). This letter is written on behalf of The West Side Irrigation District (WSID) in an attempt to clarify application of the existing and proposed M&I Water Shortage Policy (WSP) to its contract, and to provide comments on any proposed EIS.

First, we would incorporate the comments made by WSID in its June 29, 2010 letter, and clarify that the 5,000 acre feet included in the notes portion of WSID's Water Needs Assessment must be included as part of the total M&I demands in Column 37 for 2025 and, therefore, subject to the M&I WSP. If the M&I WSP is to be adopted, it must be adopted in a manner that allows all eligible CVP contractors to benefit from its provisions.

Second, we wish to provide comments on the NEPA documents being contemplated by Reclamation on the M&I WSP. At the Sacramento workshop on the NOP, Bureau staff confirmed that the "No-Action Alternative" proposed in the EIS would likely be current CVP operations under the existing M&I WSP. In other words, the NEPA document contemplated by Reclamation would compare a No-Action Alternative based on the proposed M&I WSP to a Project Alternative based on the proposed M&I WSP. It is safe to say even before the EIS is prepared that a comparison of these two alternatives will show no impacts.

Any NEPA document prepared on the M&I WSP must follow the law. The M&I WSP currently being implemented by Reclamation is not a "policy". A "policy" is ordinarily a set of guidelines or goals without direct binding effects. While a policy can govern internal

Comment C-2

agency operations, when it is applied to directly bind the public it is a rule. As set forth by Reclamation:

Policy reflects the Commissioner's leadership philosophy and principles and defines the general framework in which Reclamation pursues its mission. Policy is structured to encourage innovation to accomplish implementation at the local level. Policies are signed by the Commissioner. <http://www.urbr.gov/recman/> 5/5/2011

To the contrary, a "rule" "is a document you publish in the Federal Register to implement or interpret law or policy." <http://www.usbr.gov/cio/im/rules/> 5/5/2011. The APA defines a "rule" or "regulation" as...

[T]he whole or a part of an agency statement of general or particular applicability and future effect designed to implement, interpret, or prescribe law or policy or describing the organization, procedure, or practice requirements of an agency.

The APA defines "rulemaking" as...

[A]gency action which regulates the future conduct of either groups of persons or a single person; it is essentially legislative in nature, not only because it operates in the future but because it is primarily concerned with policy considerations."

The M&I WSP currently being implemented by Reclamation is an illegal policy, which cannot be made binding upon contractors until it is adopted pursuant to the Administrative Procedures Act.

As a result, the "No-Action Alternative" set forth in the EIS being scoped cannot include the existing M&I WSP. The United States Court of Appeals, Ninth Circuit, clarified as much in Friends of Yosemite Valley (2008) 520 F.3d 1024 ("Friends 2008"), where the court held it to be a violation of NEPA for the "No-Action Alternative" to assume the existence of the very plan being proposed. As the court concluded:

Such an assumption is logically untenable. The baseline alternative should not have "assume[d] the existence of the very plan being proposed." *Friends of Yosemite Valley* 439 F.Supp.2d at 1105. This is so even given the deference owed to the agency's choice of a "no-action" alternative and the ongoing nature of agency management. *Friends 2008* at p. 1038.

A no action alternative in an EIS is meaningless if it assumes the existence of the very plan being proposed. *Id.*, quoting *Friends of Yosemite Valley* 439 F.Supp.2d at 1105.

Further, because Reclamation's current implementation of the M&I WSP without compliance with the APA is illegal, it cannot be properly included in the no action alternative as the status quo:

The EIS was invalid because every alternative it considered, including the no-action alternative, assumed the existence of projects that required agency authorization but that the agency had not yet validly authorized. *League to Save Lake Tahoe v. Tahoe Regional Planning Agency* 739 F.Supp.2d 1260, 1275-76.

Comment C-2

An agency may not escape its duty by ignoring that duty and then presenting the result as a *fait accompli* incorporated into an environmental baseline. Id.

We look forward to an environmental document that (1) explains the authority for imposing the proposed M&I WSP on all CVP contractors, and (2) accurately reflects the impacts on agricultural CVP contractors.

Very truly yours,

A handwritten signature in black ink, appearing to read "Jeanne Zolezzi". The signature is written in a cursive style and is centered below the closing phrase.

JEANNE M. ZOLEZZI
Attorney-at-Law

JMZ:md

cc: Ms. Barbara Kleinert
Mr. Steve Kaiser

May 9, 2011

Tamara LaFramboise
Natural Resource Specialist
Mid-Pacific Regional Office
Bureau Of Reclamation
2800 Cottage Way
Sacramento, CA 95825
*by e-mail to tlaframboise@usbr.gov
& by U.S. Mail*

re: Clear Creek Community Services District
Scope of the M&I WSP EIS

Dear Ms. LaFramboise:

This letter is submitted on behalf of Clear Creek Community Services District (CC CSD) in regards to the proposed scope of the M&I Water Shortage Policy (WSP) Environmental Impact Statement (EIS).

CC CSD is uniquely situated among CVP contractors with respect to the impact of the M&I WSP incorporated into its long term water service contract as a contractual term. 99% of all water delivered to contractors in the CVP goes either to (1) so-called "M&I contractors" who serve urban areas and have no Ag usage, or (2) large irrigation districts that supply Ag water in large quantities but have only incidental (1%-3%) M&I usage. For the "M&I contractors" 99% of their contract quantities are protected by "needs assessments" greater than their contract maximums; and for the irrigation contractors, the M&I WSP doesn't interfere with their ability to sell/transfer water to urban M&I contractors, nor do they care if limits are placed on their own ability to use future M&I water since their tiny requirements are easily satisfied and they had no right to M&I water at all prior to the reclassification of their contract water in about 2000. A fraction of 1% of the CVP water is delivered to "mixed use" contractors such as CC CSD (there are only a few) that have substantial proportions of both M&I and Ag current usage, and in the District's case has a vested contractual right to full use of its contract quantity for reliable M&I water that preexisted the M&I WSP and reclassifications of irrigation contracts.

(1) The United States' M&I WSP of 2005 and thereafter takes no account and attempts to override the contractual rights of CC CSD to full usage of the contract quantity of 15,300 acre feet as reliable M&I water. Included within

those contractual rights of CC CSD are the rights to protection of domestic users of water living on agricultural parcels, to use of water for human/ domestic basic M&I needs. The current policy withdraws water from domestic users of water situated on "Ag" parcels as if 100% of the water were for irrigation purposes, ignoring the impact on human uses—which may be severe where (as in CC CSD) the parcels served and irrigation usage is on average relatively small (parcels of 2 to 20 acres). In the 2009 water year, the United States imposed a water shortage restricted delivery of water to the District that was below health and safety levels for the District's domestic water users inclusive of human beings living on agricultural parcels; the water refused to the District was taken by the United States and diverted to other downstream users and uses that the United States deemed to have a higher priority for use irrespective of the District's need and contract rights in the water. The District was required to expend \$160,000 on an emergency basis to purchase to water on the open market, so that it could provide water to health and safety levels to all domestic users in the District.

(2) Also included in the contractual rights of the District are the first right of use accorded to residents of the "watershed of origin" and/or "county of origin" (see California Water Code §§11460, 10505, and 11128), given that the Clear Creek watershed in Shasta County generates over 112,000 acre feet of water annually-- many times the contract quantity of the District at 15,300 acre feet. Clear Creek CSD submits that the United States must observe and comply with the District's "area of origin rights" in and to the subject deliveries of water, so that the M&I WSP would not be applicable except insofar as needed to enforce federal environmental and endangered species laws, and the District's needs in the "area of origin" would be fully satisfied before the "area of origin" waters were sent downstream by the United States to address contractual commitments to other water users outside the "area of origin."

Clear Creek CSD requests that the scope of the EIS address the two issues outlined above. That is, the alternatives and analysis should consider the potential impacts and effects of implementation for "mixed use" contractors, and in particular study should be given to: (1) appropriate protection of domestic "M&I" use that occurs on small parcel agriculture, and (2) the effects of compliance and observance of the "area of origin" rights in regards to shortage allocations.

Thank you for your consideration of these comments.

Very truly yours,

MCNEILL LAW OFFICES



WALTER P. MCNEILL



P.O. Box 1596 Patterson, CA 95363-1596

Phone (209) 892-4470 • Fax (209) 892-4469

May 9, 2011

VIA EMAIL AND U.S. MAIL

Ms. Tamara LaFramboise, Natural Resource Specialist
Mid-Pacific Regional Office
Bureau of Reclamation
2800 Cottage Way, MP-410 Sacramento, CA 95825

RE: Proposed M&I Water Shortage Policy (WSP) for CVP

Dear Ms. LaFramboise:

This letter is in response to the March 8, 2011 notice in the Federal Register regarding the above reference matter and your request for comments on the scope of the referenced draft EIS.

Attached is prior correspondence from Del Puerto Water District setting forth various policy and legal concerns previously expressed concerning various proposed M&I water shortage policies, dated November 22, 2010, April 22, 2005, November 26, 2001, January 9, 2001 and November 30, 2000. Despite over a decade of discussion and comments, for the most part no meaningful answers have been provided to the questions posed and the comments made in this prior correspondence. Please review this correspondence in evaluating different matters that need to be addressed in the draft EIS.

Among other things, we note the following must be addressed in the EIS or other documentation of Reclamation:

1. What is the legal authority for the WSP? As detailed in the attached correspondence, the WSP appears to be inconsistent with Section 9(c) of the 1939 Act.
2. What policy does the WSP seek to advance? In many instances M&I contractors have alternatives to CVP water that are not available to irrigation contractors. Why shouldn't all contractors share equally in shortages, as has been the case with the State Water Project for the last 15 years?

Comment C-4

3. In evaluating the water supplies available to irrigation and M&I contractors under different alternative policies, all alternatives must be compared to a true "no-project" or no action alternative. We were very troubled to learn that at the Sacramento scoping meeting on March 21, 2011, it was represented the "no-action" alternative would be compared to the existing draft M&I policy, which we assume would be the 2005 policy referenced in the Federal Register notice. Please refer to the second point of Ms. Jeanne Zolezzi's letter of May 5, 2011 submitted on behalf of the West Side Irrigation District, which is incorporated by this reference, detailing why such a "no action" alternative is clearly inappropriate.

Thank you for the opportunity to comment on the notice of intent. If you have any questions or need additional information, please contact me.

Sincerely,



William D. Harrison, General Manager
DEL PUERTO WATER DISTRICT

Cc: Board of Directors
Ernest Conant, Esq.
CVPWA
SLDMWA



P.O. Box 1596 Patterson, CA 95363-1596

Phone (209) 892-4470 • Fax (209) 892-4469

November 22, 2010

Timothy G. Rust
M&I WSP Program Manager
Bureau of Reclamation
2800 Cottage Way
Sacramento, CA 95825

Via FAX: (916) 978-5290
Email: TRust@usbr.gov

Re: October 21, 2010 Draft Municipal and Industrial Water Shortage Policy

Dear Mr. Rust:

The following comments on the above referenced draft policy are provided on behalf of the Del Puerto Water District ("District").

We understand from your statements at the October 28, 2010 workshop that Reclamation will prepare a separate new document under the National Environmental Policy Act (NEPA) that will analyze and evaluate the effects of this proposed policy on irrigation contractors. Because we believe the water supply impacts on south of the Delta irrigation contractors will be significant, we would ask that the extent of this reduction be modeled and clearly identified. Furthermore, this new documentation needs to analyze and measure the effects of this policy against the true, no-policy, no-M&I preference alternative. We look forward to this analysis and reserve our right to comment on this new document.

We have already commented on prior drafts of this policy, both verbally and in writing, and have attached our comment letters of November 30, 2000, January 9, 2001 and November 26, 2001 for your consideration in this current regard. We have also attached our letter dated April 22, 2009 that provided our comments on a prior proposed Draft EA/FONSI your consideration.

This proposed policy is similar to prior draft policies, making only minor modifications, and would have substantially the same negative impacts on irrigation contractors as noted in this prior correspondence. As pointed out therein, this proposed policy cannot be justified and enforced in light of Section 9(c) of the 1939 Act. Furthermore, we see nothing in this latest draft that addresses either how this proposed policy can be pursued in light of the applicable law for Reclamation providing municipal water supplies, or how Reclamation intends to mitigate the obvious impacts this proposed policy would have on irrigation contractors.

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Accordingly, we encourage you to reconsider this draft policy and develop a new policy that does not interfere with the irrigation purpose of the Project, as described in the attached correspondence. Additionally, we hope and trust that the further evaluation of this proposed policy under NEPA will evaluate, among other things, the true effects of this proposed policy on CVP agricultural contractors located south of the Delta such as the District, particularly in light of the current regulatory constraints on the movement CVP water supplies through the Delta.

Thank you for the opportunity to comment on this proposed policy. If you have any questions regarding our position, please contact me.

Sincerely,



William D. Harrison, General Manager
DEL PUERTO WATER DISTRICT

Cc: Board of Directors
Ernest Conant, Esq.
CVPWA
SLDMWA



P.O. Box 1596 • Patterson, CA 95363-1596

Fax (209) 892-4469 • Phone (209) 892-4470

April 22, 2005

Mr. David Lewis
Bureau of Reclamation
2800 Cottage Way, MP 730
Sacramento, CA 95825

(Via FAX 1-916-978-5094)

RE: Comments on Draft Environmental Assessment (EA) and Finding of No Significant Impact (FONSI) for the CVP M&I Water Shortage Policy (Shortage Policy)

Dear Mr. Lewis:

The Del Puerto Water District (District) submits the following comments on the Draft Environmental Assessment for the Central Valley Project M&I Water Shortage Policy dated March of 2005.

The Del Puerto Water District is a CVP contractor located south of the Delta. Its contract providing for up to 140,210 acre-feet of CVP water is used almost exclusively to serve irrigation purposes within the District. CVP water is the sole source of supply for the vast majority of District users. Fully one half of the District's 40,000 irrigated acres are planted to permanent crops. The reliability of the District's water supplies to irrigate these plantings is crucial to our survival and that of the agricultural communities in which we live and who depend upon these supplies for their economic well-being. As such, the District has a vital if not crucial interest in the proposed policy and the subject documents.

Comments

The EA is a seriously flawed document that in no way supports a finding of no significant impact. We strongly urge the Bureau of Reclamation to withdraw the proposed Draft EA and the proposed FONSI, to reconsider the purpose and need for such a policy in view of Reclamation law and to prepare a legally adequate analysis of all of the alternatives.

Previous draft policies, going back to the 1993 draft interim policy up to and including that of September 11, 2001, have raised serious legal issues and policy concerns which the District has detailed in our letters dated November 30, 2000, January 9, 2001 and November 26, 2001 (attached). Not only does it appear that the issues and concerns expressed in our previous comment letters have been totally ignored, they are, in fact, exacerbated by new language and concepts contained in the now proposed alternative.

The newly proposed policy no longer limits its applicability to the quantities of CVP water identified for M&I uses as of September 30, 1994 (as did the September 2001

proposal), but it increases the already significant impact on agricultural water supplies of the prior proposal by applying the policy to the quantities identified under Water Needs Assessments predicated on the amount of water that M&I Contractors estimate could be beneficially used by the year 2025. (Page 1-3) According to the subject documents, these assessments show many M&I contractors equaling or exceeding their full Contract Totals by the year 2025 (Page 1-3) thereby magnifying the policy's adverse effect on agricultural water supplies through the application of ever-greater shortages on an ever-smaller base of irrigation supplies.

The proposed policy fundamentally and, by its own repeated acknowledgement, reallocates agricultural water service supplies to urban contractors and offers no mitigation for the resulting loss of agricultural water supplies. (ES-3, 3-2)

We reiterate our previous claim that adoption of the proposed policy cannot be justified or enforced in light of Section 9(c) of the 1939 Act (43 USC §485(c)) which provides in part:

“No contract relating to municipal water supply or miscellaneous purposes or to electric power or power privileges shall be made unless, in the judgment of the Secretary, it will not impair the efficiency of the project for irrigation purposes.”

While the District has been willing to acknowledge that some priority should be given for M&I purposes that are needed to protect public health and safety, and that fish and wildlife purposes might also be subject to “human health and safety” requirements as has been provided for by Section 3406(b)(2)(C) of the CVPIA, we would also point out that the reason that the OCAP 2004 described the allocation of CVP water supply for the 253 water service contracts and the Sacramento River Settlement Contracts in the following manner:

“Those water service contracts had many varying water shortage provisions. In some contracts, M&I and agricultural use shared shortage equally. In most of the larger M&I contracts, agricultural water was shorted 25% of its contract entitlement before M&I water was shorted, and then both shared shortages equally.” (Page 1-1, 2)

is because there are only a few water service contracts which reasonably could have been entered into with a Secretarial determination that such priorities would not impair the efficiency of the project for irrigation purposes.

We would also grant that “as the CVP system was being developed there were no shortage allocation because actual demands were less than the water supply each year.” (Page 1-2) Unfortunately, as the subject document points out, “water allocations to contractors located south of the Delta have been most affected by changes in operations by legislative and regulatory changes.” (Page 2-1) Today, the practical effect of granting any such M&I priority is to further reduce the quantity of water available for irrigation purposes to contractors located south of the Delta in many, if not most, years, as opposed to only occasionally during extreme drought conditions. The Draft EA seriously errors

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when it states that the alternatives will result in “changes for Irrigation CVP water service contractors” in only “9 of the 72 years” modeled. (Page 5-45) It will, in fact, have a significant impact in virtually every year, especially for south of the Delta irrigation contractors. The extent of the total reduction should be modeled and clearly identified in the analysis.

We continue to contend that new contracts and the policies referenced in them, in accord with Reclamation Law and historical contractual language and understanding, should provide an equal footing between irrigation and M&I uses except to the extent that water is needed to meet M&I public health and safety demands during extreme droughts or as can be provided without impact to irrigation supplies.

In this regard, the EA seriously errors in establishing a No Action Alternative baseline as that defined by the operational criteria in the OCAP 2004. (Page ES-3) To our knowledge, no previous draft policy establishing anything other than an equal sharing of shortages between M&I and irrigation water has been the subject of environmental review and the impacts to irrigation supplies of the current No Action Alternative have never been analyzed. The No Action Alternative as the environmental baseline used to measure the impacts of the policy is both legally inadequate and improperly defined. The subject analysis thoroughly masks and minimizes the effects of the proposed alternative, particularly for South of the Delta water contractors, by failing to measure its effects against the true, no-policy, no-M&I preference alternative.

Even without the appropriate baseline analysis, the adverse effects of such a policy on agricultural water supplies are significant. To mention that concepts to increase M&I CVP water service contract deliveries include: “storage of additional water during wet years” along side of reductions of deliveries to Irrigation CVP Water Service Contractors, and then, to immediately dismiss this concept as “not possible with existing facilities”; not only begs the question but ignores and serves to dismiss out-of-hand a number of viable concepts. (Pages ES-3, 3-2)

Other alternatives available to M&I Contractors if they wish to achieve greater reliability than is otherwise available from the project are 1) including willing seller/willing buyer transfers provided for under CVPIA, 2) water reallocation programs, such as Santa Clara Valley Water District (SCVWD) has done with the San Luis Delta-Mendota Water Authority and certain of its members, and 3) the development and/or participation in water banking programs, such as SCVWD and other urban agencies have done with Semitropic Water Storage District.

To base a proposed FONSI on the following statement:

“At the expected frequency of no or very little CVP irrigation water deliveries associated with this alternative, it is likely that farmers without affordable and accessible alternative water supplies will be subject to significant financial burdens. Farmers may fallow crops, resulting in lost farm revenue and related jobs. Farmers with permanent crops would be most vulnerable to losing high valued investments. Loss of agricultural employment would affect lower income population and minority

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populations more than other populations in the state." (Page 5-45, emphasis added)

is not only unjustifiable, it is quite simply incomprehensible.

To adopt such a policy is tantamount to suggesting that one can farm without water. There is no justification or rationale for such taking the proposed policy position. If M&I contractors know that the reliability of existing and converted water supplies retains its original agricultural status, as it must to avoid these unacceptable and significant impacts, they are in a position to plan for and acquire the quantities they need to assure the desired level of reliability.

Reclamation has never similarly considered increasing contract supplies or reliability to agricultural contractors based on increased acreage planted to permanent crops or the number of farms or farm families served. The point here is that the proposed policy quite clearly favors urban growth and water supply demand at the direct and ever-increasing expense of irrigation water supplies.

The District remains seriously opposed to this and any other policy that would further impair the efficiency of the project for irrigation purposes.

In addition to these and the attached comments, the District wishes to incorporate by reference the comments provided you by and on behalf of Westlands Water District.

Your thoughtful consideration of these comments is appreciated.

Sincerely,



William D. Harrison
General Manager

Cc: Board of Directors
Ernest Conant, Esq.
Tom Birmingham, Westlands Water District



P.O. Box 1596 • Patterson, CA 95363-1596

Fax (209) 892-4469 • Phone (209) 892-4470

November 26, 2001

Bureau of Reclamation
Attention: Alisha Sterud, MP 400
2800 Cottage Way
Sacramento, CA 95825-1898

RE: Comments on Draft CVP M&I Water Shortage Policy

Dear Ms. Sterud:

This letter conveys the comments of the Del Puerto Water District on the draft CVP M&I Water Shortage Policy as noticed in the Federal Register on October 30, 2001.

The current September 11, 2001 draft policy continues to raise serious and complex legal and policy issues, and by this letter we incorporate the comments and concerns detailed in our letter dated November 30, 2000 and reiterated in our letter of January 9, 2001 (both attached). The concerns expressed in these letters remain inadequately addressed and are, in fact, exacerbated by new language and concepts in the current proposed policy.

We note here that while the proposed policy purports to limit its applicability only to the quantities of projected M&I demand as of September 1994 and maintains that irrigation water converted to M&I use after that date will be subject to the same shortage allocation as irrigation water, new language has been added that would allow the conversion of subsequently transferred, assigned or converted agricultural supplies to M&I reliability provided that there are either no, or fully mitigated, adverse effects. We continue to maintain that the proposed policy fundamentally reallocates agricultural water service supplies to urban contractors and further submit that there is no mitigation possible for the inevitable resulting loss of agricultural water supplies. The adverse effects of such a policy on agricultural water supplies are magnified by the application of deeper shortages on an ever-smaller base supply. To include such language is tantamount to suggesting that one can farm without water. There is no justification or rationale for such language. If M&I contractors know that the reliability of converted water retains its original agricultural status as it must to avoid additional impacts, they are in a position to plan for and acquire the quantities they need to assure the desired level of reliability.

The proposed policy is also of serious concern insofar as it provides for adjustments in "historical use" based on "population growth" and/or the "number or demand of industrial, commercial, and other entities the contractor serves". Reclamation has never similarly considered increasing contract supplies or reliability to agricultural contractors based on increased acreage planted to permanent crops or the number of farms or farm families served. The point here is that the proposed policy quite clearly favors urban growth and water supply demand at the direct and ever-increasing expense of irrigation water supplies.

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We reiterate that adoption of this proposed policy cannot be justified or enforced in light of Section 9(c) of the 1939 Act (43 USC §485(c)) which provides in part:

“No contract relating to municipal water supply or miscellaneous purposes or to electric power or power privileges shall be made unless, in the judgment of the Secretary, it will not impair the efficiency of the project for irrigation purposes.”

The District remains seriously opposed to this and any other policy that would further impair the efficiency of the project for irrigation purposes.

Thank you for the opportunity to provide comment on this proposed policy.

Very truly yours,



William D. Harrison
General Manager

Cc: Kirk Rodgers
John Davis
Ernest Conant
CVPWA
SLDMWA



P.O. Box 98 • Westley, CA 95387-0098

Fax (209) 892-4469 • Phone (209) 892-4470

November 30, 2000

Mr. Lester Snow, Regional Director
Department of the Interior
Bureau of Reclamation
Code: MP-100, Regional Office
2800 Cottage Way, Room E-1604
Sacramento, CA 95825-1898

BUREAU OF RECLAMATION OFFICIAL FILE COPY RECEIVED		
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CODE	ACTION	SUBJECT

RM 12-1
100 Copy Road

RE: Proposed M&I Water Shortage Policy

Dear Mr. Snow:

We understand that you are considering finalizing a policy regarding M&I water shortages and are seeking comments on a draft prepared on November 20, 2000 draft and circulated at a workshop held on November 21, 2000. Although there have been a number of draft policies over the years, we understand that this is the first time that such a policy is intended to be finalized.

As you know the Del Puerto Water District's contract for 140,210 acre-feet of CVP water is used almost exclusively for irrigation within the District. About half of the irrigated acreage within the District is planted to permanent crops. The reliability of the District's water supplies to irrigate these plantings is crucial to our survival.

We understand that some M&I Contractors are suggesting that the final policy be modified from that set forth in the November 20th draft in several respects for the primary purpose of providing greater reliability to M&I Contractors. Insofar as the inevitable result of such changes would be to reduce deliveries to agricultural Contractors, we urge you to reject such suggestions.

In fact, we fail to understand how the M&I Shortage Policy as set forth in a November 20th draft and in prior drafts can be justified and enforced in light of Section 9(c) of the 1939 Act (43 USC §485h(c)) which provides in part:

"No contract relating to municipal water supply or miscellaneous purposes or to electric power or power privileges shall be made unless, in the judgment of the Secretary, it will not impair the efficiency of the project for irrigation purposes."

We acknowledge that some priority should be given for M&I purposes that are needed to protect public health and safety, and that fish and wildlife purposes should also be subject to "human health and safety" requirements as has been provided for by Section 3406(b)(2)(C) of the CVPIA. We also acknowledge that there are a few M&I Contractors which historically have had various M&I priority provisions in their contracts which reasonably could have been entered into with a Secretarial determination that such priorities would not impair the efficiency of the project for irrigation purposes.

Date	12/16/00
Project	CVP
	2794

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Unfortunately, times have changed since those contracts were entered into. Today, the practical effect of granting any such M&I priority is to reduce the quantity of water available for irrigation purposes in many, if not most, years, as opposed to only occasionally during extreme drought conditions. We believe that new contracts and policies should provide an equal footing between irrigation and M&I uses except to the extent that water is needed to meet M&I public health and safety demands during extreme droughts.

We would point out that M&I Contractors do have alternatives if they wish to achieve greater reliability than is otherwise available from the project. They can consider and pursue water reallocation programs, such as Santa Clara has done with the San Luis Delta-Mendota Water Authority and certain of its members. They can also develop and/or participate in water banking programs, such as Santa Clara and other urban agencies have done with Semitropic Water Storage District. The effect of the November 20th draft policy, made worse if modified as suggested by some M&I Contractors, would be to provide M&I Contractors with more water at the expense of irrigation supplies. We believe that M&I Contractors should share equally in the water losses to the project resulting from on-going regulatory constraints. To do otherwise only accommodates and encourages urban growth with less expensive CVP supplies to the detriment of hard-working farmers and precious agricultural lands.

We would also like to note that the State Water Project has eliminated M&I priorities under the Monterey Amendments. In the same way that these amendments both allowed for transfer of state water supplies from agriculture to M&I and provided that they would be treated equally in times of shortage, so too should federal supplies provided under CVPIA transfer provisions treat the apportionment of shortages between agricultural and M&I users (i.e. equally).

Accordingly, we urge you to reconsider the draft M&I policy and develop a policy which does not impair the irrigation purposes of the Project, except to the extent that supplies are required to meet health and safety needs of our urban areas in times of extreme drought. Furthermore, if you should proceed with a policy similar to that presented in the November 20, 2000 draft, we implore you not shift additional burdens to irrigation as has been suggested by some M&I Contractors. Thank you for the opportunity to comment on this draft policy.

Very truly yours,



William D. Harrison
General Manager

Cc: John Davis
Board of Directors
Ernest Conant
CVPWA
SLDMWA

JAMES IRRIGATION DISTRICT

BOARD OF DIRECTORS
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Incorporated February 16, 1920
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May 9, 2011

TRANSMITTED BY EMAIL TO: tlaframboise@usbr.gov
ORIGINAL WILL BE MAILED

Ms. Tamara LaFramboise
Natural Resource Specialist
UNITED STATES DEPARTMENT OF THE INTERIOR
BUREAU OF RECLAMATION
Mid-Pacific Regional Office
2800 Cottage Way
Sacramento, CA 95825-1898

SUBJECT: PROPOSED M&I WATER SHORTAGE POLICY (WSP) FOR CVP

Dear Ms. LaFramboise:

This letter is to notify you that I support the comments made by Del Puerto Water District in their May 9, 2011, letter.

Sincerely,



John Mallyon
GENERAL MANAGER

JM:dh



P.O. Box 1596 Patterson, CA 95363-1596

Phone (209) 892-4470 • Fax (209) 892-4469

May 9, 2011

VIA EMAIL AND U.S. MAIL

Ms. Tamara LaFramboise, Natural Resource Specialist
Mid-Pacific Regional Office
Bureau of Reclamation
2800 Cottage Way, MP-410 Sacramento, CA 95825

RE: Proposed M&I Water Shortage Policy (WSP) for CVP

Dear Ms. LaFramboise:

This letter is in response to the March 8, 2011 notice in the Federal Register regarding the above reference matter and your request for comments on the scope of the referenced draft EIS.

Attached is prior correspondence from Del Puerto Water District setting forth various policy and legal concerns previously expressed concerning various proposed M&I water shortage policies, dated November 22, 2010, April 22, 2005, November 26, 2001, January 9, 2001 and November 30, 2000. Despite over a decade of discussion and comments, for the most part no meaningful answers have been provided to the questions posed and the comments made in this prior correspondence. Please review this correspondence in evaluating different matters that need to be addressed in the draft EIS.

Among other things, we note the following must be addressed in the EIS or other documentation of Reclamation:

1. What is the legal authority for the WSP? As detailed in the attached correspondence, the WSP appears to be inconsistent with Section 9(c) of the 1939 Act.
2. What policy does the WSP seek to advance? In many instances M&I contractors have alternatives to CVP water that are not available to irrigation contractors. Why shouldn't all contractors share equally in shortages, as has been the case with the State Water Project for the last 15 years?

3. In evaluating the water supplies available to irrigation and M&I contractors under different alternative policies, all alternatives must be compared to a true "no-project" or no action alternative. We were very troubled to learn that at the Sacramento scoping meeting on March 21, 2011, it was represented the "no-action" alternative would be compared to the existing draft M&I policy, which we assume would be the 2005 policy referenced in the Federal Register notice. Please refer to the second point of Ms. Jeanne Zolezzi's letter of May 5, 2011 submitted on behalf of the West Side Irrigation District, which is incorporated by this reference, detailing why such a "no action" alternative is clearly inappropriate.

Thank you for the opportunity to comment on the notice of intent. If you have any questions or need additional information, please contact me.

Sincerely,



William D. Harrison, General Manager
DEL PUERTO WATER DISTRICT

Cc: Board of Directors
Ernest Conant, Esq.
CVPWA
SLDMWA

***Bella Vista Water District
City of Folsom
City of Redding
City of Roseville
City of Tracy
Contra Costa Water District
San Juan Water District***

***East Bay Municipal Utility District
El Dorado Irrigation District
Placer County Water Agency
Sacramento County Water Agency
Sacramento Municipal Utility District
Santa Clara Valley Water District***

May 9, 2011

Ms. Tamara LaFramboise
Natural Resource Specialist
Mid-Pacific Regional Office
Bureau of Reclamation
2800 Cottage Way, MP-410
Sacramento, CA 95825

Subject: Comment Letter Regarding the Scope of the Environmental Impact Statement for Adoption of an Updated M&I Water Shortage Policy

Dear Ms. LaFramboise:

The undersigned agencies (M&I Contractors) appreciate the opportunity to provide comments in response to the Notice of Intent (NOI) to prepare an Environmental Impact Statement (EIS) for the M&I Water Shortage Policy (WSP), and associated public scoping meetings. Each of our agencies contracts with the U.S. Bureau of Reclamation (Reclamation) for Central Valley Project (CVP) M&I water supplies, and we support Reclamation's efforts to update the 2001 draft WSP and develop a final WSP that incorporates Reclamation's long-standing practices for allocating water supplies. For decades, Reclamation has operated under principles that recognize the importance of providing our agencies with the reliability needed to sustain our economies, protect human health and safety, and facilitate our long-term integrated water management planning efforts. We have provided detailed comments and recommendations on this latest effort through Reclamation's stakeholder workshops held in 2010 and we appreciate Reclamation's responsiveness to our issues and concerns.

The M&I Contractors' detailed recommendations for implementing the 2001 draft WSP's principles are intended to improve both clarity as well as consistency with Reclamation's stated policies. These policies include provision of CVP supplies to meet human health and safety, as well as recognizing the benefit to the CVP of M&I Contractors developing and using non-CVP supplies. Specific comments were provided by M&I Contractors in a November 22, 2010 letter addressed to Mr. Rust. These comments are incorporated by reference into this comment letter.

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Ms. Tamara LaFramboise

May 9, 2011

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As requested in the NOI, we submit the following additional comments regarding the scope of Reclamation's EIS and the alternatives, concerns, and issues to be addressed in the EIS.

Purpose and Need

The NOI states that “the purpose of the update to the 2001 M&I WSP, as modified, is to provide detailed, clear, and objective guidelines for the distribution of CVP water supplies during water shortage conditions, thereby allowing CVP water users to know when, and by how much, water deliveries may be reduced in drought and other low water supply conditions.” However, it is important that the project's purpose and need be refined so that it reflects the considerations that Reclamation has implemented for years in allocating water during shortages, namely protecting public health and safety and sustaining urban economies developed in reliance upon CVP supplies. We request that the EIS's purpose and need statement be revised in subsequent documentation and in the EIS itself to include these considerations. We recommend that Reclamation states the project's purpose and need as follows:

The purpose and need for the proposed action is to (a) provide detailed, clear, and objective guidelines for the distribution of CVP water supplies during water shortage conditions, thereby allowing CVP water users to know when, and by how much, water deliveries may be reduced in drought and other low water supply conditions; (b) protect the public health and safety of urban communities served by the CVP's M&I contractors within the geographical area affected by the WSP; and (c) sustain urban economies developed in reliance upon CVP supplies within that area.

Recommended Alternatives

Reclamation's NOI describes the proposed action as “the adoption of an updated 2001 M&I WSP, as modified” by, and currently implemented in accordance with, Alternative 1B in the 2005 EA. This description could be read as stating that Reclamation is incorporating, into its proposed project, language in the 2005 EA that states that, unique among the CVP's Divisions, the American River Division's water supplies would be subject to reductions below public health and safety levels. During its workshops, however, Reclamation stated that this is not Reclamation's intent or existing practice, and that the updated WSP will eliminate this exclusion. M&I Contractors accordingly understand and expect that the terms, conditions, and implementation measures of the M&I WSP will apply equally to all M&I Contractors, including the American River Division contractors. We request that this fact be made clear in each EIS alternative, as well as in the final preferred alternative.

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Ms. Tamara LaFramboise

May 9, 2011

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To ensure that the EIS analyzes an appropriate range of alternatives, we recommend that the following alternatives be included for analysis in the EIS:

1. *Proposed Alternative 1/Proposed Action:* We recommend that Reclamation examine as a proposed alternative, and define as the Proposed Action, Reclamation's proposed October 18, 2010 policy draft with the recommended revisions to that draft provided jointly by various M&I Contractors in the form of a "redline-strikeout version." The recommended revisions include clarifying language regarding adjustment of historical use, as well as elimination of an arbitrary cap on the quantity of CVP water supplies that may be allocated to meet an M&I Contractor's public health and safety need. The M&I Contractors' redline-strikeout version was provided as an attachment to the abovementioned November 22, 2010 letter and is also attached here.
2. *Proposed Alternative 2:* We recommend that Reclamation examine an alternative based on Proposed Alternative 1 above, with the exception that the M&I allocation reductions would be applied to the full amount of each M&I Contractor's CVP contract rather than its historical use. This would eliminate all references to historical use and its associated adjustments and replace them with M&I contract quantities.
3. *Proposed Alternative 3:* Because the M&I Contractors believe that Reclamation will be asked to do so by others, we also recommend that Reclamation examine an alternative under which dry-year reductions for M&I and Irrigation contractors would be made in equal percentages, with no class of contractors receiving a greater percentage. M&I Contractors note, however, that this alternative would not recognize the important need to sustain urban economies during droughts, and Reclamation would significantly alter its existing practice for allocating water supplies to M&I Contractors. There would be significant impacts from this change in existing policy, and it is important that there be a full analysis of the impacts of this significant alteration.

In reporting the results of its analysis of each EIS alternative, where Reclamation determines that it would not be possible under a particular alternative to deliver at least a public health and safety level of supply to one or more M&I Contractors, the EIS should identify the affected contractors and the extent and frequency of the failure to deliver that level of supply to those contractors.

Baseline/No Action Alternative

The Council on Environmental Quality's (CEQ) regulations under the National Environmental Policy Act (NEPA) require Reclamation to identify a no action alternative to its proposed project. (40 C.F.R. § 1502.14(d).) As a practical matter, Reclamation must identify the environmental baseline of its analysis. CEQ has longstanding guidance on how federal agencies should define the no action alternative, and therefore the

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Ms. Tamara LaFramboise

May 9, 2011

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baseline, for projects like this one. Specifically, CEQ's 1981 guidance "Forty Most Asked Questions Concerning CEQ's National Environmental Policy Act Regulations" states the following concerning the updating of management plans:

The . . . situation might involve an action such as updating a land management plan where ongoing programs initiated under existing legislation and regulations will continue, even as new plans are developed. In these cases "no action" is "no change" from current management direction or level of management intensity. To construct an alternative that is based on no management at all would be a useless academic exercise. Therefore, the "no action" alternative may be thought of in terms of continuing with the present course of action until that action is changed. Consequently, projected impacts of alternative management schemes would be compared in the EIS to those impacts projected for the existing plan. In this case, alternatives would include management plans of both greater and lesser intensity, especially greater and lesser levels of resource development.

(46 Fed.Reg. 18026, 18027 (March 23, 1981).)

The courts have affirmed agencies' decisions to treat their existing management arrangements as the no action alternative in their NEPA documents. (See *Akiak Native Community v. U.S. Postal Service*, 213 F.3d 1140, 1147-1148 (9th Cir. 2000).) In fact, the courts have relied on the Forty Questions document in affirming the use of a no action alternative that reflects existing management arrangements and not hypothetical pre-project conditions. (See *American Rivers vs. Fed. Energy Regulatory Comm'n*, 201 F.3d 1186, 1200-1201 (9th Cir. 1999).)

As discussed above, Reclamation has managed the CVP's water supplies consistent with the 2001 draft WSP's principles for many years. Reclamation accordingly should treat the continued implementation of those principles as its no action alternative and incorporate those principles into its analytical baseline.

The M&I Contractors recommend defining the baseline as existing environmental conditions and reflecting the operation of water project facilities under changing hydrologic and evolving regulatory conditions. Given actual operations over the past several years and projected into the next year, as well as ongoing litigation associated with the existing biological opinions for the operation of the CVP and the State Water Project, the baseline appears to be best reflected by the requirements of the most recent biological opinions modified to reflect: (1) Judge Wanger's invalidation of the reasonable and prudent alternatives (RPA's) regarding Fall X2 and the San Joaquin River inflow/export ratio; and (2) his preliminary injunction against the implementation of certain RPA's in the 2009 salmonid biological opinion. This scenario best reflects actual current operations of the CVP.

Comment C-6

Ms. Tamara LaFramboise

May 9, 2011

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Effects Analysis

As noted above, the CVP's operation is subject to a number of uncertainties. In the public scoping meetings held in the week of March 21, 2011, Reclamation personnel indicated that Reclamation intended to address those uncertainties in the EIS by using an analytical approach to identify the action's effects whereby the effects of each alternative would be examined under different "bookends." These bookends would reflect the range of possible operating scenarios for purposes of analyzing effects. In addition, the EIS should include a cumulative impact discussion that considers the proposed M&I shortage policy in the context of other reasonably foreseeable, past, present and future actions potentially affecting allocations of CVP water. M&I Contractors recommend that the cumulative impact analysis include the Bay Delta Conservation Plan's proposed 15,000 cfs isolated facility. The M&I Contractors have different positions concerning the implementation of such a facility and the recommendation that this be included in the analysis of effects should not be construed as an endorsement of such a facility's implementation.

EIS Development Process

We request that Reclamation plan to engage the stakeholders as it develops its draft EIS and well before that draft is formally released for public review and comment. We propose that Reclamation meet with stakeholders to brief them, and receive feedback from them, at the following stages in the development of the EIS:

- Establishment of alternatives for analysis;
- Development of analytical approach, methodology and assumptions for determining the effects of each alternative;
- Initial review of preliminary analytical results;
- Subsequent modeling refinement; and
- Changes in any of the above.

It is important that Reclamation maintain a collaborative process that brings affected stakeholders to the table and allows information to be shared in a way that ensures modeling assumptions accurately characterize local water use and supplies as well as public health and safety levels.

Comment C-6

Ms. Tamara LaFramboise

May 9, 2011

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The M&I Contractors look forward to working with Reclamation towards development of a thorough EIS and updated WSP. Feel free to contact Cindy Kao, 408 265-2607, extension 2346, with any questions or comments, and please let us know if there is anything else we can do to assist Reclamation in this effort.

Sincerely,

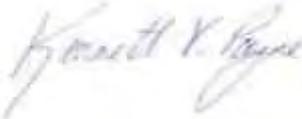
The undersigned CVP Municipal Water Contractors

BELLA VISTA WATER DISTRICT



By: David Coxey
General Manager

CITY OF FOLSOM



By: Kenneth V. Payne, P.E., Chief
Environmental & Water Resources Development

CITY OF REDDING



By: Jon McClain, P.E.
Assistant Public Works Director

CITY OF ROSEVILLE



By: Ed Kriz
Environmental Utilities – Water

Comment C-6

Ms. Tamara LaFramboise

May 9, 2011

Page 7

CITY OF TRACY



By: Steven Bayley

Deputy Director of Public Works

CONTRA COSTA WATER DISTRICT



By: Greg Gartrell

Assistant General Manager

EAST BAY MUNICIPAL UTILITY DISTRICT



Alexander R. Coate

General Manager

EL DORADO IRRIGATION DISTRICT



By: Jim Abercrombie

General Manager

PLACER COUNTY WATER AGENCY



By: David A. Breninger

General Manager

Comment C-6

Ms. Tamara LaFramboise

May 9, 2011

Page 8

SANTA CLARA VALLEY WATER DISTRICT



By: Beau Goldie

Chief Executive Officer

SAN JUAN WATER DISTRICT



By: Shauna Lorance

General Manager

SACRAMENTO COUNTY WATER AGENCY



By: Herb Niederberger

Interim Director of Water Resources

SACRAMENTO MUNICIPAL UTILITY DISTRICT



By: John DiStasio

General Manager and CEO

Incorporated May 9, 1914

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May 9, 2011

TRANSMITTED BY EMAIL TO: tlaframboise@usbr.gov
ORIGINAL WILL BE MAILED

Ms. Tamara LaFramboise
Natural Resource Specialist
UNITED STATES DEPARTMENT OF THE INTERIOR
BUREAU OF RECLAMATION
Mid-Pacific Regional Office
2800 Cottage Way
Sacramento, CA 95825-1898

SUBJECT: PROPOSED M&I WATER SHORTAGE POLICY (WSP) FOR CVP

Dear Ms. LaFramboise:

This letter is to notify you that I support the comments made by Del Puerto Water District in their May 9, 2011, letter.

Sincerely,



John Mallyon
MANAGER

JM:dh



P.O. Box 1596 Patterson, CA 95363-1596

Phone (209) 892-4470 • Fax (209) 892-4469

May 9, 2011

VIA EMAIL AND U.S. MAIL

Ms. Tamara LaFramboise, Natural Resource Specialist
Mid-Pacific Regional Office
Bureau of Reclamation
2800 Cottage Way, MP-410 Sacramento, CA 95825

RE: Proposed M&I Water Shortage Policy (WSP) for CVP

Dear Ms. LaFramboise:

This letter is in response to the March 8, 2011 notice in the Federal Register regarding the above reference matter and your request for comments on the scope of the referenced draft EIS.

Attached is prior correspondence from Del Puerto Water District setting forth various policy and legal concerns previously expressed concerning various proposed M&I water shortage policies, dated November 22, 2010, April 22, 2005, November 26, 2001, January 9, 2001 and November 30, 2000. Despite over a decade of discussion and comments, for the most part no meaningful answers have been provided to the questions posed and the comments made in this prior correspondence. Please review this correspondence in evaluating different matters that need to be addressed in the draft EIS.

Among other things, we note the following must be addressed in the EIS or other documentation of Reclamation:

1. What is the legal authority for the WSP? As detailed in the attached correspondence, the WSP appears to be inconsistent with Section 9(c) of the 1939 Act.
2. What policy does the WSP seek to advance? In many instances M&I contractors have alternatives to CVP water that are not available to irrigation contractors. Why shouldn't all contractors share equally in shortages, as has been the case with the State Water Project for the last 15 years?

3. In evaluating the water supplies available to irrigation and M&I contractors under different alternative policies, all alternatives must be compared to a true "no-project" or no action alternative. We were very troubled to learn that at the Sacramento scoping meeting on March 21, 2011, it was represented the "no-action" alternative would be compared to the existing draft M&I policy, which we assume would be the 2005 policy referenced in the Federal Register notice. Please refer to the second point of Ms. Jeanne Zolezzi's letter of May 5, 2011 submitted on behalf of the West Side Irrigation District, which is incorporated by this reference, detailing why such a "no action" alternative is clearly inappropriate.

Thank you for the opportunity to comment on the notice of intent. If you have any questions or need additional information, please contact me.

Sincerely,



William D. Harrison, General Manager
DEL PUERTO WATER DISTRICT

Cc: Board of Directors
Ernest Conant, Esq.
CVPWA
SLDMWA

Comment C-8

J. MARK ATLAS
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FAX COVER SHEET

To: Tamara LaFramboise
Fax Number: (916) 978-5290
From: J. Mark Atlas
Date: May 9, 2011

DOCUMENTS	NUMBER OF PAGES, including this cover sheet
Letter re: Scope of Environmental Impact Statement for Proposed M&I Water Shortage Policy	4

Note: due to the size of some documents, this may transmit in more than one batch.

COMMENTS: For your review pending receipt of the original letter mailed this date via FedEx.
Tracking #794737310373.

THE INFORMATION CONTAINED IN THIS FACSIMILE IS CONFIDENTIAL AND MAY ALSO BE PRIVILEGED. IT IS INTENDED ONLY FOR THE USE OF THE INDIVIDUAL OR ENTITY TO WHOM IT IS ADDRESSED. IF YOU ARE NOT THE INTENDED RECIPIENT, YOU ARE HEREBY NOTIFIED THAT ANY USE OR DISSEMINATION OF THIS IS STRICTLY PROHIBITED. IF YOU HAVE RECEIVED THE FACSIMILE IN ERROR, PLEASE NOTIFY US IMMEDIATELY. THANK YOU.

Comment C-8

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May 9, 2011

VIA FACSIMILE (916-978-5290)
and Federal Express (Air Bill #794737310373)
Tamara LaFramboise
Mid-Pacific Regional Office
Bureau of Reclamation
2800 Cottage Way, MP-410
Sacramento, CA 95825

Re: Tehama-Colusa Canal Authority
Scope of Environmental Impact Statement for Proposed M&I Water Shortage Policy

Dear Ms. LaFramboise:

We are submitting this comment letter on behalf of the Tehama-Colusa Canal Authority (TCCA) regarding the appropriate scope of the Environmental Impact Statement (EIS) for the Bureau of Reclamation's (Reclamation) proposed Municipal and Industrial Water Shortage Policy (M&I Policy) for the Central Valley Project (CVP). Specifically we are commenting on the Working Draft of the M&I Policy dated October 21, 2010.

TCCA is acting on behalf of its members who hold water service contracts for water deliveries from the Sacramento River Division of the CVP. Substantially all of the water received under these contracts is for irrigation use.

First, the EIS and the M&I Policy itself should make clear that the M&I Policy pertains to the distribution of *M&I water* during shortages. Although the M&I Policy does provide clear guidance with respect to the general relationship between Reclamation's M&I water and irrigation water deliveries, it should not, as implied in the Policy's "Introduction," provide guidelines that govern the distribution of all CVP supplies, including irrigation water. Second, Reclamation cannot rely on the M&I Policy in any manner that will circumvent the requirements of federal reclamation law, state law and contract obligations pertaining to the delivery of CVP water. Accordingly, the M&I Policy acknowledges that annual allocations of CVP water are based upon all applicable legal and regulatory constraints. Several statements in the M&I Policy, however, vaguely indicate that Reclamation has made certain assumptions about how CVP water will "generally" be allocated. These assumptions should not be built into the baseline

Comment C-8

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considerations of the EIS because they are untrue to the extent they conflict with Reclamation's legal, regulatory, and contract obligations:

- "Generally, the supply allocation (percentage) to the various divisions will be the same, unless specific constraints require otherwise." (Section 2.1)
- "Water Shortage Conditions - Periods when the available CVP water supplies are insufficient to meet the water demands of the CVP contractors, pursuant to the terms and conditions of the CVP water service contracts, water rights settlement contracts, and CVPIA . . ." ("Definitions" Section 2.1.1)
- "Shortage Allocation - Refers to the allocation of CVP water during Water Shortage Conditions, pursuant to the water allocation amounts prescribed in the CVP M&I WSP. The allocation of water is based on available CVP supplies." (*Ibid.*)

Reclamation cannot rely on these broad statements to circumvent legal and contractual requirements that apply to the distribution of CVP water. For example, TCCA does not interpret the M&I Policy as diminishing the rights of CVP contractors within a "watershed of origin" to receive their full contractual entitlements prior to Reclamation making water exports, as set forth in California Water Code § 11460.

Moreover, on November 28, 2001 TCCA submitted comments on the September 11, 2001 Draft M&I Policy, in which we stated that there is no justification in reclamation law or elsewhere that allows for the preference set forth in the M&I Policy (See, for example, Table 1) by which irrigation water allocations would be reduced before M&I allocations.

The most accurate "general" assumption with respect to allocations of CVP water is that CVP contractors north of the Delta will receive greater allocations than contractors south of the Delta, based on legal constraints. This is the baseline assumption that should be considered in the EIR. The only "increased level of predictability" (to quote the Policy's Introduction) that can be obtained through the M&I Policy pertains to how water shortages will generally be allocated among irrigation and M&I contractors, subject to all other legal and contractual obligations imposed on Reclamation. This is not much predictability at all, and the EIS should recognize this.

TCCA agrees with the comments previously submitted by the Del Puerto and James Irrigation Districts, that the M&I Policy should not deviate from the principle articulated by Congress in 43 U.S.C. § 485h(c): "No contract relating to municipal water supply or miscellaneous purposes . . . shall be made unless, in the judgment of the Secretary, it will not impair the efficiency of the project for irrigation purposes." The National Environmental Policy Act also requires that such considerations be taken into account. Because the M&I Policy will govern existing and future M&I contracts, the EIS should incorporate this legal consideration into its analysis, and Reclamation should make findings regarding how the CVP's water service to irrigation contractors will not be impaired by M&I contract deliveries.

Comment C-8

Tamara LaFramboise

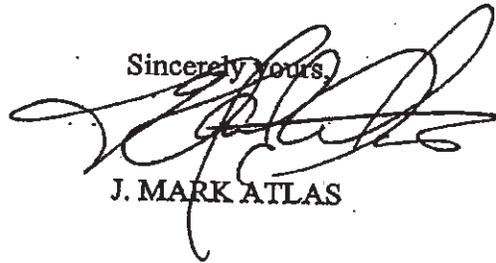
May 9, 2011

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Finally, we strongly object to any provision of the M&I Policy that introduces new definitions of terms and concepts that appear in TCCA's members' water service contracts. The contracts were the result of detailed, extended negotiations. For example, the contracts define "Condition of Shortage" and "Project Water." The M&I Policy's definitions of "Non-CVP Water" and, in particular "Water Shortage Conditions" are not the same as in the contracts. The M&I Policy should clearly provide that if the contracts are not consistent, the contract provisions prevail. Even though the contracts provide that water shortages will be allocated in accordance with the M&I Water Shortage Policy, TCCA's members never intended, nor does that clause allow, that the M&I Policy may be a vehicle for altering any of the existing provisions of the agreements.

Thank you for making these comments a part of the record.

Sincerely yours,



J. MARK ATLAS

cc: Ellen Trescott (via e-mail)
Tehama-Colusa Canal Authority (via e-mail)



JOHN V. "JACK" DIEPENBROCK
KAREN L. DIEPENBROCK
KEITH W. McBRIDE
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May 9, 2011

Via Electronic Mail
tlaframboise@usbr.gov

Tamara LaFramboise
Natural Resource Specialist
Mid-Pacific Regional Office
Bureau of Reclamation
2800 Cottage Way, MP-410
Sacramento, CA 95825

Re: Central Valley Project Municipal & Industrial Water Shortage Policy
Our File No. 3533.001

Dear Ms. LaFramboise:

I write on behalf of the Westlands Water District (Westlands)¹ and in response to the United States Bureau of Reclamation's (Reclamation) March 8, 2011, "Notice of Intent to Prepare an Environmental Impact Statement (EIS) and Hold Public Scoping Meetings for the Municipal and Industrial (M&I) Water Shortage Policy (WSP), Central Valley Project (CVP)" (2011 NOI). (76 Fed.Reg. 45 (11 March 2011), pp. 12755-12756.)

¹ Westlands is a California water district with contractual rights to receive up to 1,150,000 acre-feet of CVP water annually from Reclamation. Westlands uses this water for irrigation of approximately 500,000 acres on the west side of the San Joaquin Valley in Fresno and Kings Counties, and also for municipal and industrial purposes. Westlands' farmers produce more than 60 high quality commercial food and fiber crops sold for the fresh, dry, canned, and frozen food markets, both domestic and export. More than 50,000 people live and work in the communities that are dependent on Westlands' agricultural economy. It is beyond reasonable dispute that the M&I WSP will affect the quantity of water available to Westlands. Because the EIS will consider potential impacts of that M&I WSP, Westlands maintains a significant interest in the EIS.

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DIEPENBROCK HARRISON

Tamara LaFramboise

May 9, 2011

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In April 2005, Westlands submitted comments on a draft environmental assessment for an M&I WSP (Draft EA). (Attachment 1 [April 22, 2005, letter].)² As it did in its comments on the Draft EA, Westlands prefaces its scoping comments for the EIS with an assurance that Westlands has not and does not object to Reclamation operating in accordance with an M&I WSP. In fact, Westlands supports the development of an M&I WSP. It provides the following comments to assist Reclamation in preparing a legally defensible environmental document that will support Reclamation's decision.

The EIS Must Include A Proper Baseline

The National Environmental Policy Act (NEPA) requires an analysis of "the magnitude and significance of the environmental consequences of the proposed action in the context of the cumulative effects of other past, present, and future actions." (Council on Environmental Quality, *Considering Cumulative Effects under the National Environmental Policy Act*, p. 41.)³ This analysis cannot be accomplished without defining an appropriate "baseline against which to compare predictions of the effects of the proposed action and reasonable alternatives . . ." (*Id.*) The existing environmental conditions at the time the NEPA analysis is undertaken form a proper baseline (i.e., the baseline captures the environment at a defined moment in time). (*See American Rivers v. Federal Energy Regulatory Commission*, 201 F.3d 1186, 1195-99.) The role of the baseline in NEPA analyses is anything but ministerial or trivial – the "concept of a baseline against which to compare predictions of the effects of the proposed action and reasonable alternatives is critical to the NEPA process." (*Considering Cumulative Effects under the National Environmental Policy Act*, p. 41.)

The Final Environmental Assessment for an M&I WSP issued in October 2005 (Final EA) indicates the 2004 Operations Criteria and Plan (2004 OCAP) represents the environmental baseline. (Final EA at ES-3.) However, the use of the 2004 OCAP cannot support the environmental baseline in the EIS because the OCAP 2004 no longer accurately reflects existing CVP operations. Indeed, Reclamation recognizes this point in its 2011 NOI:

[R]ecent significant changes in the Bay-Delta and CVP/State Water Project operations[] [have] impelled Reclamation to evaluate alternatives

² Insofar as the EIS relies upon analyses contained in the Draft EA, Westlands hereby incorporates herein by reference its comments on the Draft EA.

³ *Considering Cumulative Effects under the National Environmental Policy Act* is available at <http://ceq.hss.doe.gov/nepa/ccenepa/ccenepa.htm> (available May 9, 2011).

DIEPENBROCK HARRISON

Tamara LaFramboise

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and provide an M&I WSP that best recognizes the needs of various segments of the water user community and how those needs could be addressed in times of water shortages.

(76 Fed.Reg. 45 at 12755.) Reclamation therefore must, in order to discharge its duties under NEPA, develop a baseline for the EIS that properly captures the environmental conditions as they exist today.

The EIS Must Include An Adequate Range Of Alternatives

NEPA requires that, in addition to analyzing the environmental consequences of a proposed action, agencies "rigorously explore and evaluate" alternatives to that proposed action. (See 40 C.F.R. §§ 1502.1, 1502.14(a),(b),(d); 42 U.S.C. §§ 4332(2)(C)(iii), (2)(E).) An EIS's analysis of the alternatives including the proposed action "is the heart of the environmental impact statement." (40 C.F.R. § 1502.14.) A proper analysis must "present the environmental impacts of the proposal and the alternatives in comparative form, thus sharply defining the issues and providing a clear basis for choice among options by the decisionmaker and the public." (*Id.*) Reasonable alternatives to the proposed policy could include, for example, municipal and industrial water contractors securing water sources through: 1) seller/buyer transfers under the Central Valley Project Improvement Act; 2) water reallocation programs; and 3) water banking programs. But Reclamation has not yet explored and evaluated these alternatives. The legal sufficiency of the EIS will depend on Reclamation's inclusion of such reasonable alternatives and adequate analyses of those alternatives.

The EIS Must Adequately Analyze Potential Impacts To Water Service Contractors

Reclamation must, when it considers the direct, indirect, and cumulative impacts resulting from the M&I WSP, consider the context and intensity of those impacts. (See 40 C.F.R. §§ 1508.7, 1508.8, 1508.27(a), (b).) In so doing, Reclamation will need to consider among other things: environmentally beneficial actions, public health, degree of controversy surrounding the project, degree of unique or unknown risk, precedential effect, cumulative effect, cultural or historical resources, special status species, and consistency with federal, state, and local laws. (*Id.*) Reclamation will need to be "particularly alert to actions that may affect migratory species, air quality, watersheds, and other components of the natural ecosystem that cross borders, as well as to interrelated social and economic effects." (Council on Environmental Quality, *Guidance on NEPA Analyses for Transboundary Impacts*, July 1, 1997, available at <http://ceq.hss.doe.gov/nepa/regs/transguide.html> (available May 9, 2011).)

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Reclamation recognizes that, to meet those legal requirements, it will need to consider the impacts of the M&I WSP to the human environment within specific areas served by the CVP, including those areas served by Westlands. As an example, in the 2011 NOI for the M&I WSP, Reclamation wrote:

Allocation of CVP water supplies for any given water year is based upon forecasted reservoir inflows and Central Valley hydrologic conditions, amounts of storage in CVP reservoirs, regulatory requirements, and management of Section 3406(b)(2) resources and refuge water supplies in accordance with CVPIA. In some cases, M&I water shortage allocations may differ between CVP divisions due to regional CVP water supply availability, system capacity, or other operational constraints.

(76 Fed.Reg. 45 at 12755.) Similarly, Reclamation recognized in the Final EA the water shortages caused by an M&I WSP will likely have impacts particular to specific areas and interests served by the CVP:

At the expected frequency of no or very little CVP irrigation water deliveries associated with [an M&I WSP], it is likely that farmers without affordable and accessible alternative water supplies will be subject to significant financial burdens. Farmers may fallow crops, resulting in lost farm revenue and related jobs. Farmers with permanent crops would be most vulnerable to losing high valued investments. Loss of agricultural employment would affect lower income population and minority populations more than other populations in the state. There could be an improved allocations of industrial employment associated with industries that rely upon M&I CVP water service contract water and that were concerned about reductions in water supplies during droughts.

(Final EA at 5-36.)

Many farmers within Westlands are like the farmers described above – they stand to be acutely affected by the M&I WSP and have limited access to affordable alternative water supplies. For those farmers with access to suitable quality groundwater, reduced CVP water deliveries within Westlands may compel them to increase groundwater pumping, which in turn could contribute to land subsidence. Other farmers with no alternative water supplies may be forced to increase land fallowing, which could reduce air quality in the area. In the EIS, Reclamation must consider the potential for these types of impacts, as well as others. Moreover, because of the current and reasonably foreseeable regulatory regime, Westlands is not likely to

DIEPENBROCK HARRISON

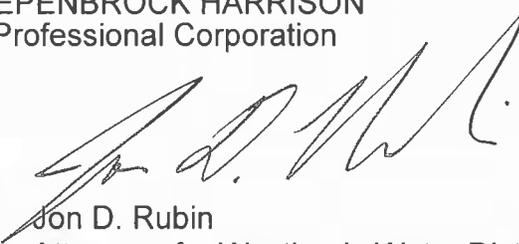
Tamara LaFramboise
May 9, 2011
Page 5

receive in most years its full allocation of CVP water authorized under its water service contract. Thus, the EIS's impact analysis cannot be confined to drier water years. It must instead consider potential impacts in all water year types.

Thank you for your consideration of these comments. Westlands looks forward to reviewing the draft EIS, once it is published.

Best Regards,

DIEPENBROCK HARRISON
A Professional Corporation

By 

Jon D. Rubin
Attorneys for Westlands Water District

JRM:gjc
Enclosure

cc: Thomas Birmingham
Craig Manson

ATTACHMENT 1

CENTRAL VALLEY
CITY...



BECKY DELL SHEEHAN
bsheehan@kmtg.com

April 22, 2005

VIA FACSIMILE AND REGULAR MAIL

Mr. David Lewis
Bureau of Reclamation
2800 Cortage Way, MP-730
Sacramento, CA 95825

Re: Comments Regarding Municipal and Industrial Water Shortage Policy,
Draft Environmental Assessment and Finding of No Significant Impact

Dear Mr. Lewis:

Westlands Water District ("Westlands"), on behalf of its landowners and water users, submits these comments on the Draft Environmental Assessment for the Municipal and Industrial Water Shortage Policy for the Central Valley Project, dated March, 2005 ("Draft M&I EA").

Westlands is a California water district with contractual rights to more than 1,150,000 acre-feet of Central Valley Project ("CVP") water from the United States Bureau of Reclamation ("Reclamation"). Westlands provides water for the irrigation of approximately 574,000 acres on the west side of the San Joaquin Valley, in Fresno and Kings counties, and maintains the authority to protect on behalf of its landowners and water users, rights that may be of common benefit to lands within Westlands. The Draft M&I EA reviews the potential impacts of formally adopting a water shortage policy for municipal and industrial water use ("M&I Shortage Policy"). Westlands, as an agricultural water contractor, will be subject to shortages as a result of the implementation of the M&I Shortage Policy. Accordingly, it maintains a vital interest in the Draft M&I EA.

By submitting this comment letter, Westlands is not objecting to Reclamation operating in accordance with a municipal and industrial shortage policy. Instead, Westlands submits this comment letter because of concerns it has with the manner in which the alternatives are described and impacts are presented. For example, it was difficult for Westlands to appreciate the differences in potential impacts that may be realized from a change from the existing M&I Shortage Policy to any of the action alternatives considered in the EA. Westlands hopes that by submitted this letter, Reclamation will revise the environmental assessment, and the resulting document will better present the information for review by the public and the decision-makers.

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Project	MP
Control No.	5004930
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Mr. David Lewis
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April 22, 2005

The National Environmental Policy Act ("NEPA") requires that federal agencies undertake an environmental analysis for every "major Federal action." 42 U.S.C § 4332; 40 C.F.R. § 1508.18. Although NEPA is a procedural statute, *City of Davis v. Coleman*, 521 F.2d. 661, 670 (9th Cir. 1975), compliance with its mandates serves an important public purpose. This requirement ensures that federal agencies are informed of environmental consequences before making decisions. *Inland Empire Public Lands Council v. United States Forest Service*, 88 F.3d. 754, 758 (9th Cir. 1996). Since proper NEPA procedures may not have been followed, the potential impacts of the M&I Shortage Policy may be underestimated. Therefore, Reclamation should reconsider its analysis.

A. The Description Of The Environmental Baseline Is Confusing.

A legally sufficient environmental assessment completed pursuant to NEPA must include an adequate description of the existing environment. In fact, "[t]he concept of a baseline against which to compare predictions of the effects of the proposed action and reasonable alternatives is critical to the NEPA process." Council on Environmental Quality, *Considering Cumulative Effects under the National Environmental Policy Act*, p. 41, <http://ceq.eh.doe.gov/nepa/ccenepa/ccenepa.htm> (visited April 14, 2005). As the case law explains:

'NEPA clearly requires that consideration of environmental impacts of proposed projects take place *before* [a final decision] is made.' (cite omit.) (emphasis in original). Once a project begins, the 'pre-project environment' becomes a thing of the past, thereby making evaluation of the project's effect on pre-project resources impossible. (cite omit).

Half Moon Bay Fishermans' Association v. Carlucci, 857 F.2d. 505, 510 (9th Cir. 1988).

When undertaking its analysis, the agency must be cognizant of the fact that the environmental baseline is not necessarily the same as the No Action Alternative. The baseline is a description of the affected environment at a fixed point in time, at some point prior to the approval of the project. Conversely, the No Action Alternative describes the future environmental conditions that would exist if the proposed action was not taken, thus it may include some forecasting. The No Action Alternative may assume that other things may happen even if the proposed project is not adopted.

1. The Baseline May Be Improperly Defined.

The Draft M&I EA is ambiguous. There is no explanation of the difference between the baseline, the No Action Alternative and Alternative 1A. Draft M&I EA at pp. 3-8, 3-9. The environmental baseline, which is apparently encompassed by the No Action Alternative, is

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Mr. David Lewis
Page 3

April 22, 2005

defined as project operations as they are described in the 2004 Long-Term CVP-Operating Criteria and Plan ("CVP-OCAP"). *Id.* at p. 3-8. However, the 2004 CVP-OCAP includes a Municipal and Industrial Shortage Policy ("M&I Shortage Policy") that appears identical to Alternative 1A. CVP-OCAP, June 30, 2004, at pp. 2-1 to 2-2.

The Draft M&I EA should have also clearly described the existing environment and compared that environmental condition to the changed environment resulting from the implementation of each alternative. The No Action Alternative makes a forecast about the water supply in the future, which is permissible. Draft EA at p. 3-26, Table 3-8. However, there is no parallel analysis of the water supply under the existing affected environment, as it exists prior to the formal adoption of an M&I Shortage Policy. Each alternative should have been compared to the environment as it exists prior to approval of the project and to the environment as it would exist in the future if the current project operations were continued. As a result, the impacts of the M&I shortage Policy may be improperly minimized.

Finally, the accuracy of the analysis may be questioned because, when the No Action Alternative and Alternative 1A are compared, the impacts are not identical, even though there is no discernable difference in the descriptions of the respective alternatives in the EA. *See* Draft M&I EA at p. 5-44.

B. The Scope Of The Alternatives May Be Limited.

To comply with NEPA, Reclamation must rigorously explore all reasonable alternatives, including the No Action Alternative, in a comparative form, sharply contrasting the issues and providing a clear basis for choice by decision makers and the public. *See* 40 C.F.R §§ 1502.1, 1502.14(a), (b) and (d); 42 USC §§ 4332(a)(C)(iii) and E. The Draft M&I EA may not meet this standard.

In the case of the Draft M&I EA, the problem is with the description of the No Action Alternative and Alternative 1A. As explained above, there is no discernable difference between these alternatives. Draft M&I EA at pp. 3-8, 3-9. For this reason, Reclamation should reconsider its definitions of the No Action Alternative and Alternative 1A in order to ensure that a reasonable range of alternatives is examined.

C. The M&I Policy's Potential Impacts May Be Disguised.

Reclamation must consider the direct, indirect, and cumulative effects of the M&I Shortage Policy. According to the Council on Environmental Quality ("CEQ") NEPA Regulations, direct effects are caused by the action and occur at the same time and place as the action, 40 C.F.R § 1508.8(a), while indirect effects "occur later in time or farther removed from distance, but are still reasonably foreseeable." 40 C.F.R § 1508(b). Indirect effects, for example, may include growth inducing effects and other effects related to induced changes in pattern of land use, population density, or growth rate. *Id.* Conversely, cumulative effects are the

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incremental impacts of a proposed action when added to other past, present, and reasonably foreseeable future actions, regardless of which agency, person, or entity initiates the action. 40 C.F.R § 1508.7. Cumulative effects may result from individually minor but collectively significant actions that take place over a period of time. *Id.*

When Reclamation considered whether the impacts resulting from the project are "significant," it was required to consider both the "context" and the "intensity" of the impacts. 40 C.F.R §§ 1508.27(a) and (b). The term "context" means that impacts of the proposal must be considered in light of its specific location, the affected region, and society as a whole. *Id.* "Intensity" refers to the magnitude of the project's impacts on the environment. *Id.* In determining the intensity of the impacts of the M&I Shortage Policy on the environment, Reclamation must consider: environmentally beneficial actions, public health, unique characteristics of the project site, degree of controversy surrounding the project, degree of unique or unknown risk, precedent setting effect, cumulative effect, cultural or historical resources, special status species, and consistency with federal, state or local laws. *Id.* The Draft M&I EA may not satisfy these requirements.

1. Impacts To The Water Supply.

The analysis of the M&I shortage Policy's impacts on the water supply is confusing, and it is therefore difficult to determine the extent of the impact of the M&I Shortage Policy on Westlands' water supply. The analysis in the Draft M&I EA clearly identifies the impacts of the M&I Shortage Policy in very dry years, when Westlands will be receiving less than 25% of its historical use. However, it does not clearly indicate the extent of the M&I Shortage Policy's impacts in all other years. As Westlands and the other agricultural water contractors will be receiving less water in any year that there is insufficient water to provide all contractors with 100% of their supplies, the extent of the total reduction should be clearly identified in the M&I EA.

Besides the shortcomings identified above, the Draft M&I EA is also inconsistent when it refers to the extent of the possible water supply impacts. The Draft M&I EA is not entirely accurate when it states that the alternatives will "result in changes in CVP contract" in 9 of the 72 years modeled, which is a statement that is made in multiple locations throughout the Draft M&I EA. *See e.g.* Draft M&I EA at p. 5-45. The alternatives will result in changes in the CVP contracts in more than merely nine years. Table 5-14 shows that agricultural water deliveries will in fact be less than 25 percent in 13 years out of the 72 years modeled under every alternative. Draft M&I EA at p. 5-44. Moreover, the impacts of the alternatives are greater or less than the No Action Alternative in each of the thirteen years, to a greater or lesser extent depending on the alternative. *Id.* Therefore, the Draft M&I EA should be modified to present a more consistent and accurate portrayal of the M&I Shortage Policy's impacts.

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2. Impacts To Groundwater, Air Quality And Soil Resources.

The Draft M&I EA's analysis of the M&I shortage Policy's potential impacts on groundwater, air quality and soil resources appears internally inconsistent. For example, in the groundwater section, it states that "some contractors may fallow land more frequently" as a result of the reduced agricultural contractor's water allocation. Draft M&I EA at p. 5-31. In the same document, however, the air quality and the soils sections state that "it is not anticipated that additional lands would be fallowed due to changes in the allocations of Irrigation CVP water service contracts." Draft M&I EA at p. 5-94. See also, Draft M&I EA at p. 5-97-5-98. The aforementioned statements are clearly inconsistent.

The Draft M&I EA appears to contradict itself again in the soil section. In that section, it concludes, without any analysis, that "[t]hese alternatives would not result in cumulative adverse impacts to soils when considered in combination with future projects such as water transfer projects or development of other water supplies." Draft M&I EA at p. 5-98 (emphasis added). This statement directly contradicts the statement in the air quality section where the Draft M&I EA defers the cumulative impacts analysis of future water transfer projects on air quality. Draft M&I EA at p. 5-94. These statements are contradictory because a cumulative impacts analysis of the combined effects of future water transfer projects and the M&I Shortage Policy on soil erosion would have to address air quality, because soil erosion (i.e., dust) is the cause of the reduced air quality in this circumstance.

D. The Assumptions Regarding the Amount of Health And Safety Water That Will Be Required Is Questionable.

Since the actual health and safety needs of the M&I contractors has not been determined, the Draft M&I EA assumes for purposes of the analysis that the health and safety allocations for "industry" and "commercial enterprises" will be 80% and 90% respectively. The Draft M&I EA justifies these high percentages by reasoning that water reductions below these levels could cause financial impacts. Draft M&I EA at p. 3-6. However, the resulting financial impacts from further reductions does not seem to be a "health and safety" issue, no more than the financial impacts to the farmers and ranchers impacted by a drought is a health and safety issue. Perhaps Reclamation should consider the approach adopted by the California Water Code. When a "water shortage emergency" is declared pursuant to the Water Code, first priority is given to domestic uses, sanitation and fire protection. Cal Water Code § 354. Financial interests are given a secondary priority. The Water Code's approach appears appropriate as it more directly addresses actual health and safety issues. For this reason, Reclamation should reconsider its criteria for defining minimum health and safety water requirements, particularly since each urban contractor will be determining its own health and safety requirements, which means there will be inconsistent implementation of the policy unless clear guidance is provided.

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Your consideration of these comments is appreciated. If you have any questions, please call Jon D. Rubin or me at (916)321-4500.

Very truly yours,

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