

# APPENDIX E

## PUBLIC COMMENTS AND RESPONSES

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### E.1 INTRODUCTION

This Appendix includes a list of agencies, organizations, and individuals commenting on the previously-circulated Revised Draft EA, copies of their comments, and responses to the substantive environmental issues raised in the comments. The following pages show all the comments received which relate to the project and the Bureau's responses to those comments. The Bureau reviewed and considered all comments and determined whether or not the comments warranted further analysis and documentation. The Bureau noted in the individual responses when further analysis or changes were made.

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## Comments

## Responses

### Taxpayers for Common Sense



August 18, 2004

VIA FAX and EMAIL

Mr. Kirk Rodgers  
Mr. Richard Stevenson  
Bureau of Reclamation  
2800 Cottage Way  
Sacramento, CA 95825

Ms. Basia Trout  
Red Bluff Division Office  
Bureau of Reclamation  
P.O. Box 159  
Red Bluff, CA 96080

Re: Renewal of the Central Valley Project long-term water service contracts with  
The Sacramento River Division Contractors

Dear Mr. Rodgers, Mr. Stevenson, and Ms. Trout:

Taxpayers for Common Sense (TCS), a nonpartisan budget watchdog group, is extremely concerned about the long-term implications of proposed Central Valley Project (CVP) water service contracts for the Shasta, Trinity River, and Sacramento River Divisions. Specifically, TCS believes these contracts do not fairly represent the interests of federal taxpayers. We strongly urge the Bureau of Reclamation to extend the comment periods on both the environmental documents regarding the renewal of the Sacramento River Division CVP Long-Term Water Service Contracts and also the proposed renewal of 36 long term water service contracts in the Shasta, Trinity River, and Sacramento River Divisions by at least 60 days.

Given the impact these water contracts will have on both California water issues and federal taxpayers for years to come, it is vitally important that all stakeholders have ample opportunity to review these proposals and to be able to give comprehensive input. Although the regular public comment period is generally sufficient, the long-term nature of these contracts combined with the scheduling of the comment period during a traditional time for families to take vacation and for congressional recess makes it necessary for the Bureau to extend the comment period to allow appropriate public input into the process. The Bureau is supposed to be negotiating on behalf of federal taxpayers. As a result, the Bureau owes it to taxpayers to give them every chance to ask questions and understand the impacts of these major 25-year water commitments. The Bureau proposes to renew Sacramento River Division contracts for up to 322,000 acre-feet of CVP water before the public has reviewed the potential impact of these contracts.

Long-term CVP contracts are not permanent entitlements. Instead, these contracts must receive full review in order to consider the constantly evolving needs of California's

### TCS-1

Thank you for your comment. Reclamation has considered requests for extensions of the comment period, and feels adequate time was given for review. The BA for the Sacramento River Division long-term water service contract renewals was completed in August of 2003. The Draft EA was first released on August 19, 2003 and was revised in March of 2004. On July 2, 2004, a 60-day public review and comment period was initiated for the associated long-term CVP water service contracts for the Black Butte Unit, Tehama-Colusa Canal Unit, and the Corning Canal Unit of the Sacramento River Division. The revised draft EA and FONSI were released on July 30, 2004 for an additional 30-day public review.

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### Taxpayers for Common Sense (cont'd)

Mr. Kirk Rodgers  
Mr. Richard Stevenson  
Ms. Basia Trout  
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diverse set of water users. California's water needs are constantly in flux and full review of these contracts renewals is the only responsible policy. Contract pricing should also charge market rates for water.

Again, we urge the Bureau of Reclamation to extend the comment period on these contracts by an additional 60 days to give federal taxpayers the fullest possible opportunity to comment on these long-term contracts. Please feel free to contact me at (202) 546-8500 x126 or [aileen@taxpayer.net](mailto:aileen@taxpayer.net) with any questions.

Sincerely,



Aileen D. Roder  
Program Director

## Comments

## Responses

### Valley Water Protection Association

From: "Colefarm" <colefarm@shocking.com>  
To: <trout@mp.usbr.gov>  
Date: 8/26/04 6:23PM  
Subject: Sacramento River and Feather Water Contracts

TO: Ms. Basia Trout, Federal Bureau of Reclamation

FROM: Linda Cole, Valley Water Protection Association

RE: Sacramento River Division contracts, Feather Water District

### VWPA-1

These contracts have not been given adequate time for the public to review the reports and to weigh potentials for cumulative impacts within the Sacramento watershed. We respectfully request that an extension be given for review and comment. That extension should include adequate time for the public to consider studies and reports not yet available, and for consideration of proposed actions listed in other contracts within the same water basin. We need to look at cumulative impacts within the total proposed actions from all contracts potentially tapping the same water resources within the valley.

Contract decisions need to be responsive to the people's right to know and to comment. These contracts have the potential to drive water management for up to 40 years. At the same time we have political assumptions that shortfalls in water south of the Delta will be made up by water from Northern California... for growth, for drought, for water quality, for fish, for economic stimulus. All these parallel efforts need to be considered once the full scientific studies have been completed. The comment period should reflect the complexity of these issues. Anything less is not following the intent of the law providing for public input.

Thank you,

Linda Cole

### VWPA-1

Reclamation has considered requests for extensions of the comment period and feels adequate time was given for review. The BA for the Sacramento River Division long-term water service contract renewals was completed in August of 2003. The Draft EA was first released on August 19, 2003 and was revised in March of 2004. On July 2, 2004, a 60-day public review and comment period was initiated for the associated long-term CVP water service contracts for the Black Butte Unit, Tehama-Colusa Canal Unit, and the Corning Canal Unit of the Sacramento River Division. The revised draft EA and FONSI were released on July 30, 2004 for an additional 30-day public review.

The cumulative impacts of the CVP were addressed in the PEIS for implementation of the CVPIA. The analysis in the EA finds the renewals of the contract to be a continuation of previous contracts with minor financial and administrative changes, with no changes in either the volumes of water under contract or the places of use. Moreover, most do not involve any change in the type of use, such as the addition of M&I uses. The analysis in the EA addresses the proposed changes to the contract and the potential environmental effects of those changes. As indicated in the EA, these contract changes would not result in significant effects to the environment.

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E-5

The Bay Institute

The Bay Institute  
Natural Resources Defense Council  
Planning and Conservation League

Via Federal Express

August 27, 2004

Ms. Basia Trout  
U.S. Bureau of Reclamation  
22500 Altube Avenue  
P. O. Box 159  
Red Bluff, CA 96080

Re: Comments on Revised Draft EA on Sacramento River Division Renewal Contracts

Dear Ms. Trout,

This letter provides comments of The Bay Institute, the Natural Resources Defense Council (NRDC) and the Planning and Conservation League on the Revised Draft Environmental Assessment (EA) for Renewal of the Long-term Contracts for the Sacramento River Division Contractors (U.S. Bureau of Reclamation, Mid-Pacific Region, Sacramento, CA; July 2004). Additional supplemental comments from our organizations are also being submitted by NRDC under separate cover.

Bay-1

The EA states that it has been prepared to determine whether renewal of long-term water service contracts will result in any significant impacts to the natural and human environment (EA, pg. 1-1). In its current form, the document describes alternatives with few meaningful differences and offers an incomplete, inadequate and contradictory environmental impacts analysis. Much of the information provided in the EA is an incomplete review of analyses conducted by the U.S. Bureau of Reclamation (Reclamation) for its Operation Criteria and Plan Biological Assessment (OCAP BA), which evaluates proposed Reclamation operations in the Sacramento River Division as well as the greater Sacramento-San Joaquin watershed and which identifies numerous instances in which proposed operations will negatively impact the natural environment and valuable biological resources.<sup>1</sup>

<sup>1</sup> The EA states that renewal of Sacramento River Division water service contracts is related to the current update of the Operations Criteria and Plan (OCAP) (EA, pg. 1-5, 6). The project description for the Sacramento River Division contained in the OCAP and accompanying Biological Assessment is essentially the same as that described in the three alternatives in the EA.

Bay-1

Given legal and regulatory constraints, the two action alternatives in the EA provide a reasonable range of alternatives that meet the stated purpose and need. The EA summarizes key points addressed in the OCAP BA while referring to the more comprehensive and in-depth review of these issues in the BA, where it is discussed at length. The tiered documents used the PEIS by reference as a foundation to avoid duplication and focus more narrowly on the new alternatives or more detailed site-specific effects. Therefore, only changes from the alternatives considered in the PEIS would be addressed in detail in the tiered EA. The No Action Alternative is defined as renewal of existing contracts as modified by non-discretionary CVPIA provisions addressed in the PEIS. The analysis displays the increment of change between that of the No Action Alternative and the other alternatives. The diversion of water is an on-going action and the current condition. Hence, the significant impacts alluded to in this comment are not a result of the proposed action but are the existing/no action conditions.

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E-6

The Bay Institute (cont'd)

Bay-2

Other important analyses, including the Draft EIS/EIR for the Fish Passage Improvement Project at the Red Bluff Diversion Dam (TCCA and USBR, 2002), are not even cited. The EA itself, although incomplete, identifies a number of substantial negative impacts. Yet, despite overwhelming evidence to the contrary (including the listing of several fish species dependent on environmental conditions in the Sacramento River Division under state and federal Endangered Species Acts (ESA) in just the last decade), the EA contends that these impacts have no significant or cumulative effects. This conclusion and the Finding of No Significant Impact (FONSI, July 2004) are wholly unsupported by both the readily available scientific evidence and analytical results reported by Reclamation in the EA, OCAP BA, and a number of other documents and reports.

Water project operations on the Sacramento River affect many terrestrial and aquatic plant and animals species that inhabit the river corridor, the Sacramento-San Joaquin Delta and the San Francisco Bay. Our comments focus on the effects of proposed Sacramento River Division operations on native anadromous fish species that rely on the Sacramento River and its tributaries. Several of these species, including winter-run and spring-run Chinook salmon and steelhead, have declined to such low levels that they are now listed under both state and federal Endangered Species Acts. For each of these species, dams and water management operations on the Sacramento River and its tributaries are identified as key factors for the species' declines.

Bay-3

Three components of Reclamation's proposed Sacramento River Division operations have substantial continuing and new negative impacts on the environment and pose significant threats to native anadromous fish species that rely on this river. Only one of these impacts is even identified in the EA, despite other Reclamation analyses that have previously identified the others.

Bay-4

1. Operation of Red Bluff Diversion Dam (RBDD). According to the EA (as well as the Project Description in the OCAP BA), Reclamation proposes to continue closing the RBDD during the May 15-September 15 period. RBDD blocks and/or delays migration of adult anadromous fishes, harms emigrating juvenile anadromous fishes, and degrades habitat and water quality in the Sacramento River upstream and downstream of the facility. Compared to the alternatives analyzed in the Draft EIS/EIR for the Fish Passage Improvement Project at Red Bluff Diversion Dam (August 2002), an effort led by Reclamation and one of its major Sacramento River Division water contractors (Tehama-Colusa Canal Authority), the RBDD operation proposed in the EA, the No Action "4-month gates in" alternative, was determined to have the greatest negative impacts on fishery resources in the Sacramento River. Reclamation's selection of this operational protocol for RBDD as the preferred alternative conflicts with the preferred alternative identified in the Draft EIS/EIR and, in fact, appears to abrogate the EIS/EIR process for

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Bay-2

Impacts resulting from the proposed alternatives would neither be significant, nor would they differ substantially from the No Action Alternative. The diversion and use of water is an on-going action. Dam maintenance and operations are discussed in the CVPIA PEIS and OCAP BA/BO. These impact analyses, although incorporated by reference in the EA, are not applied to the proposed action impact level. The PEIS analyzed cumulative impacts of long-term contract renewals on a regional basis. Because the contract renewals maintain the status quo of water deliveries under ongoing CVP operations, and in essence only change the legal and financial arrangements of a continuing action, they do not contribute to cumulative impacts in any demonstrable manner.

Bay-3

These impacts do not result from the proposed action. As stated earlier, the impacts of continuing the operations of the CVP and the implementation of CVPIA have been discussed in the CVPIA PEIS and OCAP BA/BO.

Bay-4

Any impacts related to the RBDD do not result from the proposed action of water service contract renewal. Future conditions of the RBDD are being addressed in a separate project-specific process.

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### The Bay Institute (cont'd)

the Fish Passage Improvement Project, the finalization of which has been "delayed" pending completion of the OCAP process.<sup>2</sup>

Bay-5

2. Elevated water temperature in the Sacramento River below Keswick Dam. According to the OCAP Project Description, Reclamation proposes to change Sacramento River temperature control objectives, relocating the temperature compliance point upstream in the river (OCAP BA, pg. 2-36).<sup>3</sup> Compared to current operations, this will increase mortality of incubating winter-run Chinook salmon eggs and emergent fry and substantially reduce the area of habitat for all salmonid species that use the mainstem Sacramento River. The proposed action violates protections required by the State Water Resources Control Board (Water Rights Orders 90-05 and 91-01) and the Endangered Species Act (Biological Opinion for winter-run Chinook salmon; NOAA Fisheries, 1993). This impact is not discussed in the EA, nor has it been addressed in any NEPA document analyzing Reclamation's new OCAP.

Bay-6

3. Eliminate minimum carryover storage requirements in Shasta Reservoir. According to the OCAP BA (pg. 2-36), Reclamation proposes to no longer operate to maintain a minimum carryover storage in Shasta Reservoir of 1.9 million acre-feet (MAF). This requirement, contained in the winter-run Chinook salmon BO (NOAA Fisheries, 1993), is intended to maintain an adequate cold-water pool in the reservoir to provide for releases of cold water to the river for protection of winter-run Chinook salmon during multi-year dry periods. This impact is not discussed in the EA, nor has it been addressed in any NEPA document analyzing Reclamation's new OCAP.

Bay-7

These operations described in the EA and related OCAP BA also threaten and devalue several large-scale and costly habitat improvement projects that have been already initiated in the Sacramento River and its tributaries upstream of RBDD.<sup>4</sup> In addition, it is noteworthy that none of the three alternatives described in the EA reflect any effort by Reclamation to craft operational protocols that would minimize these (and other) well-documented negative impacts of current operations on the Sacramento River environment and its biota. Indeed, Alternative 2 of the EA is assessed as having greater negative impacts on the wetland and riparian environments than current operations.

The following sections discuss some of the negative impacts of the proposed actions related to renewal of long-term water service contracts in the Sacramento River Division on several native anadromous fish species.

<sup>2</sup> In response to questions from NOAA Fisheries, Reclamation stated that the preferred alternative for RBDD operations was the "No Action Alternative" described in the 2002 Draft EIS/EIR. Reclamation responses to NOAA Fisheries questions are available at [www.usbr.gov/mp/cvo/ocapBA.html](http://www.usbr.gov/mp/cvo/ocapBA.html).

<sup>3</sup> The temperature compliance point is the location at which specific cool water temperature conditions must be maintained for the protection of winter-run Chinook salmon by Reclamation using reservoir releases and the Shasta Temperature Control Device.

<sup>4</sup> Habitat improvement actions upstream of RBDD include: Battle Creek Restoration Plan; Clear Creek Restoration Plan; ACID fish passage improvements; ongoing improvement of Iron Mountain Mine water quality discharges; and the Temperature Control Device at Shasta Dam.

### Bay-5

The EA alternatives do not include the actions mentioned above. That action is outside of the scope of this document. The proposed action addressed in the EA is renewal of water service contracts, not operations of the CVP.

### Bay-6

The proposal of a change in the storage level at Shasta Reservoir is outside the scope of this EA. The hydrologic operation of the CVP is a separate action with its own environmental compliance requirements.

### Bay-7

The EA does not assess the continued use of RBDD, as this is a separate action which is assessed in depth in the OCAP BA, and is the subject of its own environmental compliance procedures. Therefore this comment is outside the scope of this document.

The EA does not address operational aspects of water conveyance. This EA tiers off the PEIS to evaluate potential site-specific environmental impacts of renewing the long-term water service contract for the Sacramento River Division contractors. The purpose of this project is to renew the Sacramento River Division water service contracts, consistent with the provisions of CVPIA. The project alternatives include the terms and conditions of the contracts and tiered water pricing.

Operational protocols are not associated with the stated purpose and need, and are therefore not included in either of the proposed actions.

## Comments

## Responses

### The Bay Institute (cont'd)

#### Spring-run Chinook salmon

Historically, the spring run of Chinook salmon was the second largest run in the Central Valley watershed and supported the bulk of the commercial fishery (Yoshiyama et al., 1998; copy enclosed). Based on population declines during the past several decades (and extirpation of spring-run Chinook salmon in the San Joaquin basin), Sacramento basin spring-run Chinook salmon are now listed as threatened under both state and federal ESAs. During the past decade, the run has been the target of a number of protection and recovery efforts, including those focused on tributary streams upstream of RBDD.

#### Bay-8

The EA states that the majority of spring-run Chinook salmon spawn in three Sacramento River tributaries, Mill, Deer, and Butte Creeks (EA, pg. 3-75), all of which enter the Sacramento River below RBDD. The EA further states that since only a small percentage of spring-run Chinook salmon spawn in the mainstem Sacramento River above (or below) RBDD, no population level impacts are expected. While the description of current spring-run Chinook salmon distribution may be accurate, this explanation inexplicably ignores the fact that as recently as 15 years ago the mainstem Sacramento River supported a substantial population of spring-run Chinook salmon that spawned above RBDD, averaging more than 10,000 fish per year from 1969-1986 (Figure 1, data from California Department of Fish and Game [CDFG]), more than five times as many fish as returned to Mill, Deer and Butte Creeks combined during the same period (Figure 2, data from CDFG). Since the early 1990s, only a few hundred fish have successfully returned to the upper mainstem Sacramento River and, in 2003, preliminary analysis of escapement surveys indicated that no spring-run returned to spawn in this reach of the river. The decline of the Sacramento River population coincided with the 1987-1992 drought and poor water quality conditions in the upper river, particularly below RBDD (use of spawning habitat below RBDD by fish prevented from reaching the upper reach of the river declined during this period as well). Similar low numbers of spring-run Chinook salmon were counted on the three tributary streams downstream of RBDD during the drought. However, since the mid-1990s, although populations recovered somewhat in the downstream tributaries, the mainstem Sacramento River population remained critically low and, based on the 2003 survey, may now be approaching extinction.

Given the current restricted geographic distribution and only two remaining independent natural spring-run Chinook salmon populations (one in Mill and Deer Creeks and the other in Butte Creek), the species is perilously close to extirpation in the Sacramento basin (McElhany et al., 2000; Lindley et al., 2004; copies enclosed). A major focus of protection and recovery efforts is to reestablish the run in other suitable streams. The mainstem Sacramento River below Keswick Dam, which has large amounts of holding and spawning habitat and cool water temperatures, and two tributary streams, Battle and Clear Creeks (both located upstream of RBDD) offer some of the best opportunities for restoring a broader geographic distribution for the spring-run Chinook salmon, increasing its population size, and reducing its vulnerability to extinction. In addition, the

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#### Bay-8

The suggested timeframe is outside of the EA's baseline conditions. The historical distribution of Chinook, however, is discussed. The EA acknowledges that the placement of dams and water diversions are a major cause of this species decline. It should also be noted that the numbers may be misleading. The NOAA OCAP Supplemental BO 2004-2006 (February 27th 2004) states:

“[e]valuating the abundance of the ESUs as a whole, however, complicates trend detection. For example, although the mainstem Sacramento River population appears to have undergone a significant decline, the data are not necessarily comparable because coded wire tag information gathered from Central Valley fall-run Chinook salmon (CV fall-run Chinook salmon; *O. tshawytscha*) returns since the early 1990s has resulted in adjustments to ladder counts at Red Bluff Diversion Dam (RBDD) that have reduced the overall number of fish that are categorized as spring-run Chinook salmon.”

The EA does not assess the continued use of RBDD, as this is a separate action which is assessed in depth in the OCAP BA, and is the subject of its own environmental compliance procedures.

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### The Bay Institute (cont'd)

anadromous fish doubling requirement of the Central Valley Project Improvement Act (CVPIA) includes a doubling goal for spring-run Chinook salmon on the Sacramento River (USFWS, 1995).

Past and current RBDD operations have had significant negative impacts on spring-run Chinook salmon. Continuation of the current RBDD operations, the action proposed in the EA, will likely result in the extirpation of the run from the Sacramento River, failure to meet CVPIA-mandated doubling goal for the run in the Sacramento River, and prevent establishment of the run in newly restored streams upstream of RBDD.

- RBDD prevents or delays upstream migration of 70% of adult fish (OCAP BA, pg. 6-19; Draft EIS/EIR Fish Passage Improvement Project for RBDD, pg. B-6). Fish ladders incorporated into the dam are inefficient at passing spring-run Chinook salmon (CDFG, 1998, copy enclosed).
- Reduced flows and elevated temperatures below RBDD when the gates are closed reduce survival of fish restricted to areas below RBDD.
- Migration delays at RBDD prevent fish that do pass the facility from successfully reaching suitable holding habitat in tributary streams before seasonal decreases in flow and increases in temperature in the lower reaches of these tributaries block their passage (TCCA and USBR, 2002).
- The biological consequences of blocked or delayed passage at RBDD include changes in spawning distribution (Hallock, 1987; copy enclosed), hybridization with fall-run Chinook salmon (CDFG, 1998), increased adult pre-spawning mortality (USBR, 1995), and decreased egg viability (Vogel et al., 1988), all of which contribute to reduced reproductive success.

#### Winter-run Chinook salmon

Winter-run Chinook salmon historically spawned in several Sacramento River tributaries located far upstream of Shasta Dam (Moyle, 2002). Closure of Shasta and Keswick Dams restricted this unique run to a single location, the Sacramento River below Keswick Dam.<sup>5</sup> Environmental conditions (largely water temperature) in the river further restrict the fish, which return to the river as immature adults during the winter and hold during the spring and summer before spawning in the late summer, to the short reach of the river from immediately below Keswick Dam to approximately Red Bluff Diversion Dam (depending on water temperature and flow conditions). In the mid-1970s, drought and extreme water management operations on the Sacramento River nearly wiped out the run, killing most adult fish holding in the river and most incubating eggs during two consecutive years and resulting in extremely low returns of adult fish three years later

<sup>5</sup> The Sacramento River basin is the only watershed that supports a winter run of Chinook salmon (Moyle, 2002).

### Bay-9

### Bay-9

These are not consequences of the proposed action. The EA does not address shifting the compliance point, the removal of the minimum carryover storage, nor the impacts of RBDD. Operations of the CVP are a separate action. Please refer to the CVPIA PEIS and OCAP BA. Cumulative CVP impacts were addressed in the CVPIA PEIS and are incorporated in this EA by reference. Beyond those cumulative impacts discussed in the CVPIA PEIS and BO, there are no additional cumulative impacts that would result from long-term water service contract renewals in the Sacramento River Division.

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(i.e., in 1979 and 1980, Figure 3, data from CDFG, 2004 datum is a preliminary estimate reported to the California Bay-Delta Authority Operations Group). By 1989, after the species had remained at critically low levels for a decade, it was listed by both the state and federal ESAs as threatened. In 1994, the federal ESA listing was changed to endangered.

### Bay-9 (cont'd)

Given the current extremely restricted geographic distribution of winter-run Chinook salmon and the concentration of the entire Evolutionarily Significant Unit (ESU) into a single population, this species is also highly vulnerable to extinction (Lindley et al. 2004). A major focus of protection and recovery efforts is to protect remaining habitat below Keswick Dam by using the Shasta Temperature Control Device<sup>6</sup> and controlled reservoir releases to maintain suitably cool temperatures for adult holding, spawning, egg incubation and early rearing, improve passage of immigrating adults to the upper Sacramento River by opening RBDD gates during September 15-May 15 period, improve survival of emigrating juveniles, and reestablish the run in other suitable streams, with the greatest emphasis on Battle Creek. And as existing state bond funding for CALFED restoration activity dries up and federal funding for and authorization of CALFED languish, it is at best uncertain whether, let alone when, winter-run Chinook salmon will be successfully restored to Battle Creek.

The EA states that, in some years, water temperatures "may reach levels that are detrimental to survivorship" (pg. 3-75) for winter-run Chinook salmon but implies that the run will respond by spawning closer to the dam. The effects of reduced summer flow (predicted by the OCAP BA analyses) and the effects of elevated water temperature resulting from this and Reclamation's proposed upstream shift in the temperature compliance point on this run (or on spring-run Chinook salmon and steelhead), and the resultant reduction in critical habitat area are not described in the EA or included in the summary table of potential impacts (EA Table 2-2, pg. 2-15, 16). The OCAP BA provides more analysis of the multiple potential impacts of planned operations for the delivery of water by Reclamation to its Sacramento River Division contractors as well as downstream contractors and the Delta.

- Reclamation's plan to shift the temperature compliance point to a location 18 miles upstream of that presently required under the winter-run Chinook salmon BO (NOAA Fisheries, 1993) is likely to undo some or all of the progress towards recovery of the species made during the past decade (see Figure 3). Even during the past decade Reclamation has failed to meet current temperature compliance requirements, with the largest exceedences occurring during the past four to seven years (OCAP BA, pg. 9-29). These exceedences are the likely explanation of Reclamation's observation in the OCAP BA that winter-run Chinook salmon now spawn in areas closer to Keswick Dam than in the past and, rather than justifying

<sup>6</sup> Before the Temperature Control Device was completed, cool water from deep in Shasta Reservoir was released from lower outlets by bypassing the power generation turbines.

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The Bay Institute (cont'd)

a harmful change in the temperature compliance point proposed by Reclamation, may in fact be contributing to the slowed rate of population increase observed in the past three to four years. In addition, Reclamation predicts that Sacramento River flows during the critical late summer and early fall period will be lower, exacerbating water temperature problems (OCAP BA, pg. 9-27).

- Results of analyses reported in the OCAP BA (pg. 9-32, Figure 9-32) indicate that future operations will increase egg mortality (above current levels) by an average of 5-10% and by as much as 20-25% in critically dry years.
- The upstream shift in the temperature compliance point reduces winter-run Chinook salmon habitat by 40% (as linear river miles), effectively eliminating access to 18 miles of river channel in many years.

Bay-9 (cont'd)

Reclamation's plan to no longer operate to meet the minimum 1.9 MAF of carryover storage threatens the survival of winter-run Chinook salmon during multi-year droughts. The potential impacts of this action were not reported in the EA.

- Maintenance of a minimum of 1.9 MAF is intended to preserve enough water in Shasta Reservoir's cold-water pool to support flow releases for temperature control in the upper Sacramento River in years following dry and critically dry years. Failure to maintain sufficient reserves and resultant inability to threatens the survival of entire cohorts of the winter-run Chinook salmon ESU.
- Based on this proposed less conservative storage management plan, Reclamation's OCAP BA (pg. 9-28-32) predicted that, on average during dry and critically dry years, 45% of incubating eggs would be killed each year. This mortality rate is approximately two to ten times higher than that predicted for wetter years.

While current operations of RBDD improve passage for adult fish, the RBDD gates remain closed during the period when a large percentage of juvenile winter-run Chinook salmon migrate downstream. These fish must pass under the gates or through the ladders and their auxiliary water systems, or they are entrained and impinged into the Tehama-Colusa Canal headworks or the Research Pumping Plant screens and bypasses. The well-documented negative impacts of RBDD on survival of emigrating juvenile salmon, which were likely part of the basis for the Draft EIS/EIR for the RBDD Fish Passage Improvement Project to recommend as a preferred alternative that RBDD gates be raised year-round (Executive Summary, pg. V), were not reported in the EA.

- More than one third (39%) of emigrating juvenile winter-run try to pass RBDD when the gates are closed (TCCA and USBR, 2002, pg. B-8). Compared to fish that pass the RBDD when the gates are open, these fish are subjected to increased stress, physical injury and mortality.

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The Bay Institute (cont'd)

- Vondracek and Moyle (1983) reported that the predominant cause of mortality of juvenile salmonids passing through the RBDD was a dysfunctional predator-prey created by the RBDD. USFWS (1981) reported that greater than 50% of juvenile Chinook salmon passing through RBDD when the gates were down died.

Steelhead

Steelhead, which spawn in the Sacramento River above RBDD and in upstream tributaries, will be negatively affected by Reclamation's proposed renewal of long-term water service contracts and associated operations in a variety of ways.

Bay-10

- RBDD blocks passage of at least 17% of immigrating adult steelhead (TCCA and USBR, 2002).
- More than a third (36%) of juvenile emigrants are negatively affected by RBDD. Mortality rates of juvenile steelhead passing through the dam are 42% (TCCA and USBR, 2002).
- Increases in water temperature resulting from the upstream shift in the temperature compliance point and reduced flows during the summer will increase mortality (above current rates) of both adult and juvenile steelhead.

Green sturgeon

Green sturgeon populations have been reduced throughout their range and today only three known spawning populations still exist, including one on the Sacramento River (Moyle et al, 1995). Among the causes for the species' decline are loss of access to spawning habitat by dam construction and degradation of spawning habitat quality (OCAP BA, pg. B-12).

Bay-11

- As much as 35% of the immigrating adult green sturgeon are blocked by RBDD. Green sturgeon do not readily ascend fish ladders designed for passage of salmonid fishes, therefore any green sturgeon that reach RBDD when the gates are closed are completely prevented from ascending the river beyond that point (OCAP BA, pg. B-16). Emigrating adult fish are also blocked by RBDD.
- During the May 15-September 15 period when the RBDD gates are closed, nearly 100% of emigrating larval and juvenile green sturgeon must pass under the gates, through the fish ladders, or become entrained at the two diversion facilities where, like juvenile salmonids they are subject to stress, injury, mortality, and high rates of predation

Bay-12

During the past few decades, the effects of water management operations on the Sacramento River, its environment, and its valuable biological resources have been observed, investigated and extensively documented. For many specific impacts, the mechanisms underlying their effects have been identified and alternative infrastructure

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Bay-10

See response to Bay-9, above.

Bay-11

See response to Bay-9, above.

Bay-12

The alternatives assessed in the EA represent a range of water service agreement provisions that meet the project purpose and need. The No Action Alternative consists of renewing existing water service contracts as described by the Preferred Alternative of the PEIS. In November 1999, Reclamation published a proposed long-term water service

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Final EA for Renewal of Long-term Contracts for the Sacramento River Division Contractors

E-13

The Bay Institute (cont'd)

Bay-12 (cont'd)

design, operation and/or management approaches that minimize their adverse impacts have been devised. The three alternatives evaluated by Reclamation in the draft EA to support renewal of long-term water service contracts in the Sacramento River Division fail to consider or implement any such improvements, despite compelling evidence that continued operations threaten the continued existence of several priority fish species and despite federal laws such as the CVPIA that mandate such reforms. Further, the impacts analysis reported in the EA ignores a large body of evidence, much published by Reclamation itself, of adverse impacts of current and planned actions and draws a false and unsupported conclusion of no significant impact.

Bay-13

For all of the above reasons, and for the reasons set out in our supplemental comments being submitted under separate cover, as well as based on the materials attached with both sets of our comments and/or incorporated or referenced therein, the revised draft EA and the draft FONSI are technically and legally inadequate and contrary to law. We strongly urge Reclamation to prepare new environmental documentation for the proposed action, including an EIS/EIR, that includes among other things a more robust range of alternatives, including at least one that, at a minimum, is designed to address the negative impacts discussed in these comments, and that provides a much more comprehensive and rigorous evaluation of negative impacts to the River's environment and biological resources.

Sincerely,

Christina Swanson, Ph.D.  
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500 Palm Drive, Suite 200  
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(530) 756-9021

Hamilton Candee, Senior Attorney  
Natural Resources Defense Council  
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San Francisco, CA 94104  
(415) 875-6100

encl.

Bay 12 (cont'd)

contract. In April 2000, the CVP Contractors presented an alternative long-term water service contract. Reclamation and the CVP Contractors continued to negotiate the CVP-wide terms and conditions with these proposals serving as "bookends." This EA considers these proposals as bookends in the environmental documentation to evaluate the impacts and benefits of renewing the long-term water service contracts.

Reduction of contract amounts was considered in certain cases but rejected from analysis. The reason for this was twofold. First, water needs analyses have been completed for all contractors and in almost all cases the needs exceed or equal the current total contract amount. Second, in order to implement good water management, the contractors must be able to store or immediately use water available in years when more water is available. By quantifying contract amounts in terms of the needs analyses and the CVP delivery capability, the contractors can make their own economic decisions. Allowing the contractors to retain the full water quantity gives the contractors assurance that the water will be available to them for storage investments. In addition the CVPIA, in and of itself, achieves a balance through its dedication of significant amounts of CVP water and actions to acquire water for environmental purposes.

Non-renewal of existing contracts is considered infeasible based on Section 3404(c) of the CVPIA. This alternative was considered but eliminated from analysis in this EA because Reclamation has no discretion not to renew the contracts.

Bay-13

Reclamation has analyzed the Proposed Action in accordance with NEPA. The range of alternatives is based on the proposed contracts under negotiation when the NEPA process was initiated, and provides an adequate range of contract provisions consistent with the purpose and need of the contract renewal. The EA, tiered to the CVPIA PEIS, deals with the local effects of water pricing and how that may affect the Sacramento River Division's water purchases. The determination of no significant impact is based on the absence of changes to the infrastructure, physical disturbances, or water delivery, because few changes are expected in water quantities purchased by the contractors or in acreage cultivated as a result of the proposed action.

In addition, as stated in an earlier response, the CVPIA, through its numerous environmental actions, is addressing fish and wildlife that have been impacted by the CVP. The contracts need to be considered in the context of the CVPIA as a whole.

Appendix E Public Comments and Responses

## Comments

## Responses

### The Bay Institute (cont'd)

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### The Bay Institute (cont'd)

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E-16

The Bay Institute (cont'd)

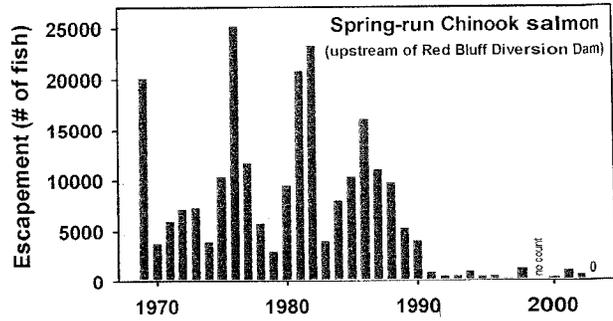


Figure 1. Escapement (number of adult fish) of spring-run Chinook salmon to the mainstem Sacramento River upstream of Red Bluff Diversion Dam, Data from CDFG.

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The Bay Institute (cont'd)

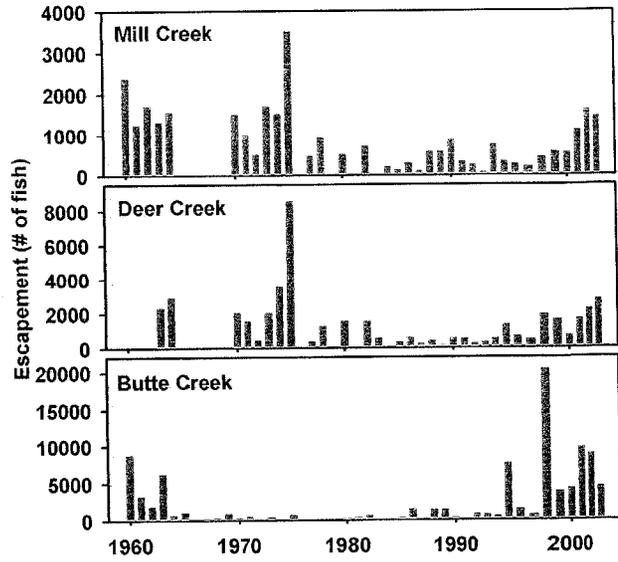


Figure 2. Escapement (number of adult fish) of spring-run Chinook salmon to Mill, Deer, and Butte Creeks. Data from CDFG.

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Final EA for Renewal of Long-term Contracts for the Sacramento River Division Contractors

E-18

The Bay Institute (cont'd)

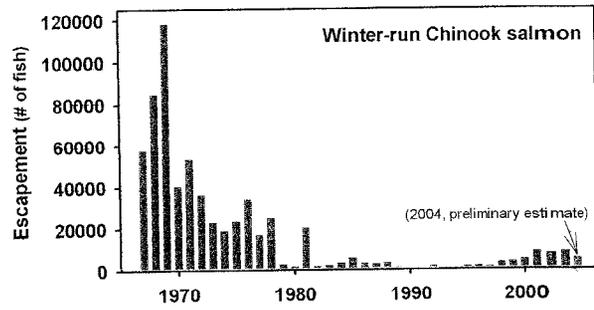


Figure 3. Escapement (number of adult fish) of winter-run Chinook salmon to the mainstem Sacramento River. Datum for 2004 is a preliminary estimate. Data from CDFG.

Comments

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Natural Resource Defense Council



NATURAL RESOURCES DEFENSE COUNCIL

August 28, 2004

Ms. Basia Trout
U.S. Bureau of Reclamation
22500 Altube Avenue
P. O. Box 159
Red Bluff, CA 96080

RE: Supplemental Comments on Revised EA for Sacramento River Division Contracts

Dear Ms. Trout:

These are the supplemental comments of the Natural Resources Defense Council (NRDC), The Bay Institute, and the Planning & Conservation League (PCL) on the Revised Draft Environmental Assessment (EA) and Draft Finding of No Significant Impact (FONSI) for Renewal of the Long-term Contracts for the Sacramento River Division Contractors (proposed contracts), U.S. Bureau of Reclamation, Mid-Pacific Region, Sacramento, CA; July 2004. Separately, our three organizations are submitting detailed technical comments on the revised draft EA/FONSI, along with extensive attachments, under separate cover. (A copy of those separate August 27, 2004 comments, without the attachments, is also enclosed herein for your convenience.) In addition, we are enclosing with these supplemental comments numerous materials that are relevant to the proposed renewal contracts and the revised draft EA/FONSI. We request full consideration of both sets of comments, along with all materials attached to or submitted with each of our comment letters or incorporated or referenced therein.

1. Request for Extension of Comment Deadline

The Bureau has not provided adequate time for the public to review the EA and FONSI or the proposed contracts. For all of the reasons stated in the attached letters from the Pacific Coast Federation of Fishermen's Associations (PCFFA), Taxpayers for Common Sense, Northern California/Nevada Council-Federation of Fly Fishers, and Rep. George Miller and five other Members of Congress, we urge you to reopen or extend (or both) the public comment periods for the contracts and the EA/FONSI so that there will be at least 60 days of public comment allowed after the completion and public distribution of the final Biological Opinion of NOAA Fisheries (NMFS) on the new OCAP for the Central Valley Project (CVP) and the State Water Project (SWP).

2. The Revised Draft EA and the proposed FONSI are Legally Inadequate.

The Bureau has failed to correct the numerous deficiencies in its prior environmental review documents pertaining to CVP long-term renewal contracts and interim renewal

NRDC-1

Reclamation has considered requests for extensions of the comment period but feels adequate time was given for review. The draft OCAP BO has been reviewed and the final OCAP BOs did not alter the analysis presented in the EA.

NRDC-2

The EA and the scope of the analysis were developed consistent with NEPA regulations and guidance from the Council on Environmental Quality (CEQ), and in conformance with the direction provided by NRDC vs Patterson, Civ. No. S-88-1658 (Patterson), which specifically addressed the application of NEPA relative to contract renewals. In Patterson the court found that "...ongoing projects and activities require NEPA procedures only when they undergo changes amounting in themselves to further "major action." The court went further to state that the NEPA

NRDC-1

NRDC-2

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Natural Resource Defense Council (cont'd)

Supplemental Comments on Revised EA/FONSI August 28, 2004 Page 2 of 3

NRDC-2 (cont'd)

contracts. Numerous comments criticizing these earlier documents have been submitted to the Bureau and are contained in the administrative records on those contracts and their associated NEPA review processes, including NRDC's own extensive comments dated December 7, 2000, which are attached and incorporated herein, and the comments of the Hoopa Valley Tribe (letter of Thomas Schlosser to Frank Michny), which are also attached. Among other things, the Bureau has failed to meet its legal obligation to prepare a full Environmental Impact Statement (EIS) on these proposed contracts, failed to consider a reasonable range of alternatives, and failed to disclose and analyze adequately the environmental impacts of the proposed action, including cumulative impacts. Associated CEQA review is likewise insufficient. Some of these defects are more fully addressed below.

NRDC-3

3. The Bureau has failed to address the concerns previously identified by EPA and failed to comply with the Findings of the Council on Environmental Quality. In a series of letters, the US EPA has expressed repeated concern over the adequacy of the Bureau's environmental review process for its contract renewal program, including but not limited to the attached letters dated December 8, 2000, August 30, 2001, January 4, 2002, and January 23, 2004. Yet the Bureau has failed to adequately address those concerns in its new EA/FONSI. Similarly, back in 1989, EPA challenged the Bureau's failure to complete a full EIS on each group of CVP renewal contracts and the Council on Environmental Quality (CEQ) upheld EPA's critique. See 54 Fed. Reg. 28477 (July 6, 1989). The Bureau has numerous copies of the complete record of that proceeding, including in its copies of the court record in NRDC v. Paterson, Civ. No. S-88-1658-LKK, and should review and reconsider that record, including EPA's numerous submissions, and the CEQ findings.

NRDC-4

4. The Bureau has failed to adequately consider the effects of its operations and proposed contracts. Among many other defects, the Bureau has failed to adequately consider the impacts to fish species and fish habitat from its operations on the Sacramento River, including but not limited to the operation of Red Bluff Diversion Dam and the Tehama-Colusa Canal and the Bureau's new overall OCAP. In addition to the information provided in and referenced in our separate technical comments on this EA/FONSI, we also attach and direct your attention to the following relevant documents, and incorporate each of them by reference: a. July 11, 2003 letter from NRDC and The Bay Institute to Ms. Ann Lubas-Williams on the Draft OCAP and Draft OCAP Biological Assessment. b. July 28, 2004 letter from NRDC to Mr. Wayne White of US FWS re ESA Consultation on OCAP.

NRCD-2 (cont'd)

statutory requirement applies only to those changes. The analysis in the EA finds the renewals of the contract to be a continuation of previous contracts with minor financial and administrative changes with no changes in either the volumes of water under contract or the places of use. Moreover, most contracts do not involve any change in the type of use, such as the addition of M&I uses. The analysis in the EA addresses the proposed changes to the contract and the potential environmental effects of those changes. As indicated in the EA, these contract changes would not result in significant effects to the environment.

NRDC-3

Please see response to NRDC-2, above.

NRDC-4

The analysis in the EA addresses the proposed changes to the contract and the potential environmental effects of those changes. As indicated in the EA, these contract changes would not result in significant effects to the environment. The proposed action that is being analyzed in this EA is water service contract renewal and the delivery of water to the contractors. The impacts to fish species as a result of contractor's water use and Reclamation's operations and maintenance activities are discussed in the documents you mentioned. This EA does not disregard the findings of other reports, but is focusing on the proposed action of incorporating administrative conditions into renewed contracts to ensure CVPIA compliance.

In regard to the Fish Passage Improvement Project, Reclamation is continuously working with NOAA Fisheries to minimize impacts to salmonids at the RBDD and decisions about the next steps will be made after the OCAP BA consultation is completed. This is a separate action subject to its own environmental compliance requirements. Permanent, structural fixes at the RBDD would cost on the order of 100 million dollars, so decisions as to what to do are not easily reached. It may be that lower costs, seasonal fixes can be designed, but that remains to be seen.

Appendix E Public Comments and Responses

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E-21

Natural Resource Defense Council (cont'd)

Supplemental Comments on Revised EA/FONSI  
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NRDC-4  
(cont'd)

Similarly, the EA/FONSI disregards the concerns, findings and analysis previously provided on these Sacramento River environmental issues by the Bureau itself or other federal agencies, including but not limited to the attached letter of July 23, 2004 from NMFS to Mr. Thomas Stokely and the attached February 1998 Supplemental Fish & Wildlife Coordination Act Report by the US FWS on the Red Bluff Diversion Dam and the Tehama-Colusa Canal, as well as the August 2002 Draft EIS/EIR for the Fish Passage Improvement Project at Red Bluff Diversion Dam, available at [www.tccafishpassage.org](http://www.tccafishpassage.org).

NRDC-5

5. The Bureau fails to analyze meaningful alternatives on the key terms of the contracts including price and water quantity.

Numerous members of the public have written to the Bureau in past years urging the Bureau to evaluate a broader range of alternatives to its current policy of rolling over most water quantity terms in its long term renewal contracts and keeping water prices significantly below cost and below market without any adjustment for conservation incentives or environmental repayment. The EA/FONSI has utterly failed to evaluate such alternatives, including those discussed in the attached May 3, 2004 letter of National Taxpayers Union & Taxpayers for Common Sense, the attached letter of January 9, 2001 of NRDC, and the attached March 2, 1994 brief on ratesetting filed by plaintiffs in *NRDC v. Patterson*, Civ. No. S-88-1658-LKK.

NRDC-6

6. The Bureau is acting in an arbitrary and capricious manner in its NEPA process on contract renewals.

This EA/FONSI is part of a larger pattern of arbitrary NEPA compliance by the CVP in addressing its OCAP and contract-renewal program. For example, the Bureau is proposing significant changes in its operations in its OCAP, yet failing to do any NEPA or CEQA review. The Bureau is conducting an EIS on the Sacramento River Settlement Contracts, the American River Division renewal contracts and the San Luis Unit renewal contracts, yet relying on a mere EA/FONSI for its Sacramento River Division contracts. The current proposed FONSI refers to a project description in OCAP, yet the 3 different versions of the OCAP BA, the final OCAP itself, the final FWS Biological Opinion on OCAP, and the ongoing ESA consultation with NMFS on OCAP involve different project descriptions. In sum, the approach is irrational and arbitrary and contrary to NEPA and its implementing regulations. We urge you to withdraw the revised draft EA and FONSI and proceed with a more adequate analysis in a full draft EIS on the proposed contracts.

Sincerely,

  
Hamilton Candee  
Senior Attorney

NRDC-5

A needs analysis was conducted for each contractor within the various units of the CVP to determine the historic and projected water demands and supplies, and historic and projected cropping patterns. Comprehensive information on each contractor's surface and groundwater supplies was collected together with information in the contractor's Water Management Plans. In regards to groundwater supplies, the initial calculation of CVP water needs was limited by the assumption that groundwater pumping would not exceed the safe yield of the aquifer. The average of 19 years of historical water deliveries was compared to a calculated average past beneficial use. Because the CVP was initially established as a supplemental water supply for areas without adequate supplies, the needs for most contractors are at least equal to the CVP water service contract and frequently exceeded the previous contract amount.

The water pricing contract rates are defined by the CVP rate-setting policies, P.L. 99-546 and the Reclamation Reform Act (RRA). The prices of CVP water used in the No Action Alternative are based upon 1994 irrigation and municipal/industrial CVP water rates.

The No Action alternative together with negotiated proposals for CVP-wide terms and conditions are the basis for the action alternatives. The preferred alternative essentially maintains the status quo apart from changes mandated by the CVPIA. The analysis displays the increment of change between the No Action Alternative and the other alternatives.

NRDC-6

Project operations as described in the OCAP BA are a separate action from contract renewal. The OCAP BA/BO process is subject to its own environmental compliance requirements which are being addressed as may be required. A consistent project description was utilized in both Biological Opinions received on the CVP operations.

Appendix E Public Comments and Responses

Comments

Responses

Defenders of Wildlife



Butte Environmental Council



August 30, 2004

Basra Trout  
P.O. Box 159  
Red Bluff CA 96080.

Mr. Richard Stevenson  
Bureau of Reclamation  
2800 Cottage Way, MP-440,  
Sacramento CA 95825.

Re: Sacramento River Division Environmental Assessment and Contracts

Dear Ms. Trout and Mr. Stevenson:

On behalf of Butte Environmental Council, Defenders of Wildlife, and the Lassen Forest Preservation Group, we would like to thank you and your staff for the opportunity to comment on and pose questions about the Sacramento River Division Environmental Assessment and Contracts.

**Process**

We request that the Bureau of Reclamation (BR) extend the comment period on the Sacramento River Division Environmental Assessment (EA) and the Sacramento River Division Contracts. We have been unable to download the sizable documents from your web site. In addition, we need access to the Biological Opinions (BOs) by the U.S. Fish and Wildlife Service and NOAA Fisheries to adequately comment and these documents have not been completed.

We request a hard copy of this EA, and when available, the BOs, the Sacramento River Settlement Contractors Environmental Impact Statement, and the Feather Water District Environmental Assessment.

**Substantive Issues**

**DOW-1**

1) Are there operational conservation plans for each of the contractors as required by the Central Valley Project Improvement Act (CVPIA)? If so, will you please send us copies?

**DOW-2**

2) There are severe water quality issues in the Colusa drain, which fails both state and federal standards. When and how will you address these violations of the Clean Water Act and Porter Cologne?

**DOW-1**

All M&I contractors with more than 2000 af of Project Water or Irrigation contractors with more than 2000 irrigable acres are required to have water conservation plans. All available Water District (contractor) Water Conservation or Water Management Plans are on file at the Regional office and can be made available for review there. The contact point for those plans would be Lucille Billingsley in the Mid-Pacific's Regional Office, who can be reached at (916) 978-5215.

Sacramento River Settlement contractors, as holders of water rights, are distinct from water service contractors and are still developing their plans as part of a 'Regional' plan. The City of Redding, which has both a settlement contract and a water service contract, and the contractors which hold only water service contracts, such as the TCCA districts, Bella Vista, Clear Creek, and the City of Shasta Lake have prepared plans.

**DOW-2**

Reclamation is unaware of any specific violations of the Clean Water Act or Porter Cologne Act in the Colusa Drain resulting from its actions of renewing water service contracts. We have received no notices of any such violations. Reclamation does not own these facilities and cannot address violations which do not directly result from the proposed action of contract renewal. Please see comment FOR-16.

## Comments

## Responses

### Defenders of Wildlife (cont'd)

- DOW-3** | 3) The model used for benchmark studies for this process, CalSIM II, is highly flawed (Sjovold 2004). How will the BR correct these significant failings?
- DOW-4** | 4) The operation of the Red Bluff diversion violates the CVPIA. It currently prevents migration of 70% of threatened spring run Chinook salmon and 17% of steelhead adults. There has been no quantification of impacts to all juvenile fish species. What does the BR plan to do to rectify this violation?
- DOW-5** | 5) The Tehama Colusa Canal and the Corning Canal pose serious problems for fish migration on all the westside tributaries. As you are aware, Stoney Creek is so impacted that it runs unnaturally dry a significant part of the year. What does the BR propose to do to restore flows to these tributaries?
- DOW-6** | 6) What analysis has been conducted to determine the impacts to ground water, the local economy, and the environment if surface waters are sold and ground water is used to replace the surface water for existing operations? What analysis has been done to determine the impacts to the local economy and the environment if surface waters are sold and agricultural land is fallowed?
- DOW-7** | 7) The Sacramento River has minimum flow standards for salmonids and no ecosystem flow standards for riparian restoration, a significant CalFed goal.
- DOW-8** | 8) What analysis has been conducted to determine the possible impacts from proposed water storage projects like Sites Reservoir and raising Shasta dam?
- DOW-9** | 9) Where is the cumulative impact analysis for all the contracts, possible ground water substitution, and proposed storage projects?
- DOW-10** | 10) The contract renewals are an opportunity to quantify the value of water flowing from upper watersheds. How will the BR fund the studies to provide this watershed information? The contractors should assist with the funding.

Thank you for the opportunity to comment.

Sincerely,

**Barbara Vlamis, Executive Director**  
Butte Environmental Council  
116 W. Second Street, Suite 3  
Chico, CA 95928

**Kelly McDonald, California Program Associate**  
Defenders of Wildlife  
926 J Street, Suite 522  
Sacramento, CA 95814

**James Brobeck, Forestry Policy Analyst**  
Lassen Forest Preservation Group  
1605 Manzanita  
Chico, CA 95926

### DOW-3

In conducting studies for this process, we used the best available information at our disposal. New information will be taken into account as it is provided.

### DOW-4

Only about 7% of the total spring run population currently migrates into the upper Sacramento Valley and is either delayed or blocked at the RBDD. Conversely, 93% of spring-run experience no delays or they spawn downstream of the RBDD. The earliest arriving fish have the best chance of making it to the upper reaches of tributary streams where they hold over the summer before spawning, encountering no obstacles. Permanent, structural fixes would cost in the order of 100 million dollars, so decisions as to what to do are not easily reached. It may seasonal fixes can be designed at lower costs, but that remains to be seen. Reclamation is continuously working with NOAA Fisheries to minimize impacts to salmonids at the RBDD and decisions about the next steps will be made after the OCAP BA consultation is completed.

### DOW-5

The TC and Corning Canals do not impact fish migration in most west side streams. These canals pass under these streams by means of siphons, leaving them unobstructed with the exception of Funks Creek and, seasonally, Stony Creek. However, all west side streams south of Stony Creek, including Funks, terminate in the Colusa Basin Drain. The Drain is a privately constructed feature that predates the canals by decades, which blocks or impedes access from the Sacramento River. All streams north of Stony Creek connect to the Sacramento River, but most, except Cottonwood Creek were seasonal before the onset of agricultural diversions. While these diversions surely shorten the period of flow, they are all private, not CVP diversions. The only water removed from tributaries to the Sacramento by the TC and Corning Canals is a portion of the water stored in Black Butte Reservoir at the end of the flood season. Part of that stored water, as noted above, is devoted to in-stream flows that tend to extend the period of potential passage.

**Comments**

**Responses**

**Defenders of Wildlife (cont'd)**

**DOW-5 (cont'd)**

Historically, flows in Stony Creek occurred intermittently in the late fall, winter, and spring months. With the installation of Black Butte Dam, flows in Stony Creek have been regulated by the COE for the purpose of flood control primarily from November through March. After the threat of floods has passed, Reclamation controls releases of stored water for the purpose of irrigation. When water is being diverted for irrigation using a temporary diversion dam, a minimum of 40 cfs is being released downstream for fishery benefits. Reclamation and the COE are currently consulting with NOAA Fisheries on the effects of water operations in lower Stony creek to anadromous fish. A short-term BO was issued in 2002 and a long-term BO is expected by March of 2005. The terms and conditions of the BO suggest increased releases to benefit salmonids.

**DOW-6**

This EA does not evaluate exchanges or transfers. Water transfers are considered actions separate from contract renewal that require their own action-specific environmental compliance. The CVPIA has allowed water transfers upon approval by Reclamation; transfers were evaluated in the Programmatic Environmental Impact Statement for the Preferred Alternative. Reclamation will continue to require separate environmental review of proposed transfer requests. At this time, however, some sense of the potential effects can be obtained from, or soon will be obtainable, from the reports of the Sacramento Valley Water Management Program, the EIS for the renewal of the Sacramento River Settlement Contracts (SRSC), and the Sacramento River Basinwide Water Management Plan. The effects predicted by modeling for the SRSC EIS were surprisingly small in the context of the basin as a whole.

The CVP was initially established as a supplemental water supply for areas without adequate supplies. A needs analysis was conducted for each contractor within the various units of the CVP. In regards to groundwater supplies, the initial calculation of CVP water needs was limited by the assumption that groundwater pumping would not exceed the safe yield of the aquifer.

**Comments**

**Responses**

**Defenders of Wildlife (cont'd)**

**DOW-6 (cont'd)**

The Agricultural Economics and Regional Economy sections under each of the alternatives in the EA analyzes which scenario would result in the greatest economic effects when applied to the gross value of production, the fallowing of land, and the increased cost of CVP water.

**DOW-7**

Comment noted. The subject of this EA is the renewal of existing contracts with minor financial and administrative changes with no changes in either the volumes of water under contract or the places of use. The analysis in the EA concerns Reclamation's delivery of CVP water to CVP contract areas. The comments regarding minimum flow standards are outside the scope of this document.

**DOW-8**

The subject of this EA is the renewal of existing contracts with minor financial and administrative changes with no changes in either the volumes of water under contract or the places of use. The analysis in the EA concerns Reclamation's delivery of CVP water to CVP contract areas. The comments regarding water storage projects are outside the scope of this document.

**DOW-9**

The cumulative impacts of the CVP were addressed in the PEIS for implementation of the CVPIA. Analysis of potential impacts on agricultural land use and economics of the Sacramento River Division CVP contract renewal is conducted at the level of the specific CVP contractors that would be affected. The analysis of potential regional level water projects is beyond the scope of the action analyzed in this EA.

**DOW-10**

The subject of this EA is the renewal of existing contracts with minor financial and administrative changes with no changes in either the volumes of water under contract or the places of use. The analysis in the EA concerns Reclamation's delivery of CVP water, not its use. The comments regarding watershed studies are outside the scope of this document.

Taxpayers for  
Common Sense

Comments

Responses



August 30, 2004

VIA FAX AND EMAIL

Mr. Kirk Rodgers  
Mr. Richard Stevenson  
Bureau of Reclamation  
2800 Cottage Way  
Sacramento, CA 95825

Ms. Basia Trout  
Red Bluff Division Office  
Bureau of Reclamation  
P.O. Box 159  
Red Bluff, CA 96080

**RE: Sacramento River Division Contractors Draft Revised Environmental Assessment (EA) and Finding of No Significant Impact (FONSI)**

Dear Mr. Rodgers, Mr. Stevenson, and Ms. Trout:

With this letter, Taxpayers for Common Sense (TCS), a nonpartisan budget watchdog, submits our comments regarding the Bureau of Reclamation's draft EA and FONSI for the Sacramento River Division contracts. TCS is extremely concerned about the way in which the Bureau of Reclamation is renewing Central Valley Project (CVP) water service contracts. According to the Bureau of Reclamation's July 30, 2004 press release, the Sacramento River Division contracts include the Tehama-Colusa Canal Unit, the Corning Canal Unit, and the Black Butte Unit. These proposed contracts will restrict up to 322,000 acre feet of CVP water for 25 to 40 years.

It is vital that the Bureau of Reclamation recognize that it is representing the interests of federal taxpayers when it is negotiating CVP water service contracts. The Bureau owes it to taxpayers to give them every chance to ask questions and understand the impacts of these major 25- to 40-year water commitments. It is disturbing that the Bureau has basically ignored numerous letters asking it to extend the comment period on the Sacramento River Division EA and FONSI. Instead, the Bureau proposes to renew Sacramento River Division contracts for up to 322,000 acre-feet of CVP water before the public has had a full opportunity to review the potential impact of these contracts or the proposed environmental documentation. To add insult to injury, the internet link to these important documents is down on the day that public comments are due, making it almost impossible for the public to comment on this vital documentation.

**TCS-2-1**

Reclamation has considered requests for extension of the comment period and feels adequate time was given for review. The analysis in the EA finds the renewals of the contract to be a continuation of previous contracts with minor financial and administrative changes with no changes in either the volumes of water under contract or the places of use. Moreover most do not involve any change in the type of use, such as the addition of M&I uses. The analysis in the EA addresses the proposed changes to the contract and the potential environmental effects of those changes. As indicated in the EA, these contract changes would not result in significant effects to the environment.

A needs analysis was conducted for each contractor within the various units of the CVP to determine the historic and projected water demands and supplies, and historic and projected cropping patterns. Comprehensive information on each contractor's surface and groundwater supplies was collected together with the contractor's Water Management Plans. In regards to groundwater supplies, the initial calculation of CVP water needs was limited by the assumption that groundwater pumping would not exceed the safe yield of the aquifer. The average of 19 years of historical water deliveries was compared to a calculated average past beneficial use. Because the CVP was initially established as a supplemental water supply for areas without adequate supplies, the needs for most contractors are at least equal to the CVP water service contract and have frequently exceeded the previous contract amount.

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**Taxpayers for  
Common Sense (cont'd)**

**Comments**

**Responses**

Ms. Basia Trout  
August 30, 2004

Public involvement must be the cornerstone of the water contract process. Without it, taxpayers face the negative fiscal ramifications of federal water service contracts that they had little part in shaping. The public should be given every chance to comment on the draft EA and FONSI for the Sacramento River Division contracts. Protecting taxpayers' interests requires that full opportunity be given for them to comment on all facets of water contract negotiations. The impact of these contracts on federal taxpayers as well as their potential consequences for water quality, wildlife and wildlife habitat, the fishing industry, urban and rural water users throughout California, and other important community concerns require that the public be fully engaged before decisions are made.

TCS believes these contracts do not represent the interests of federal taxpayers. Instead, they provide extremely favorable conditions to water service contractors while failing to ensure essential taxpayer protections, promised in the Central Valley Project Improvement Act (CVPIA) of 1992, are included. CVPIA and CALFED signified a commitment to ending the age of big subsidies and waste in California water policy. The Bureau of Reclamation needs to renew CVP contracts in a way that represents a responsible vision of future water needs in California. All proposed CVP contracts should reflect realistic water delivery amounts at far less subsidized prices.

Unfortunately, the Bureau of Reclamation is poised to enter into 25- to 40-year contracts with Sacramento River Division contractors which will not implement the important contract reforms envisioned by the CVPIA. The Bureau owes it to taxpayers to reduce promised quantities in the proposed contracts to reflect realistic water delivery levels. Inflated promises of water and large subsidies will increase pressure for new dam projects and threaten the delicate balance negotiated in the CALFED Record of Decision (ROD). Such promises will continue a vicious cycle of the federal government promising unreachable amounts of water at cheap prices to CVP contractors and then federal taxpayers being forced to fund massive new water projects to try to meet these demands.

Long-term CVP contracts are not permanent entitlements. Instead, contracts must receive full review in order to consider the constantly evolving needs of California's diverse set of water users. Contract pricing should also charge markets rates for water. The Bureau of Reclamation must also enforce tiered water pricing when drafting Sacramento River Division contract renewals. Under CVPIA, CVP contracts should be written to apply tiered water pricing when water consumption exceeds 80% of the annual contract maximum. Tiered pricing encourages wise use of water, therefore reducing the federal taxpayer's responsibility for providing highly subsidized water that will be wasted by contractors. We ask the Bureau of Reclamation to set annual contract maximums at more realistic levels that the CVP will be able to achieve.

**TCS-2-2**

**TCS-2-2**

The water pricing contract rates are defined by the CVP rate-setting policies, P.L. 99-546, and the Reclamation Reform Act (RRA). The prices of CVP water used in the No Action Alternative are based upon 1994 irrigation and municipal/industrial CVP water rates. The contracts will use tiered water pricing and in the No Action Alternative it is based upon use of a "80/10/10" Tiered Water Pricing from Contract Rate to Full Cost Rate" including appropriate Ability-To-Pay limitations. Under this approach the first 80% of the maximum contract total would be priced at a rate equal to the average of the contract Rate and Full Cost rate. The final 10% of the contract total would be priced at the Full Cost rate.

The No Action Alternative, together with negotiated proposals for CVP-wide terms and conditions, are the basis for the action alternatives. The preferred alternative essentially maintains the status quo apart from changes mandated by the CVPIA. The analysis displays the increment of change between the No Action Alternative and the other alternatives.

Responses

Comments

Taxpayers for  
Common Sense (cont'd)

Mr. Kirk Rodgers  
Mr. Richard Stevenson  
Ms. Basia Trout  
August 30, 2004

TCS strongly urges the Bureau of Reclamation to redraft Sacramento River Division contract renewals to ensure that federal taxpayers are protected and the Central Valley Project Improvement Act of 1992 is accurately and legally implemented. We also urge the Bureau to give the public every possible opportunity to participate in the contract negotiation process. Please contact me at (202) 546-8500 x130 or [aileen@taxpayer.net](mailto:aileen@taxpayer.net) with any questions.

Sincerely,



Aileen D. Roder  
Program Director

## Comments

## Responses

### Taxpayers for Common Sense



August 30, 2004

VIA FAX AND EMAIL

Ms. Basia Trout  
Red Bluff Division Office  
Bureau of Reclamation  
P.O. Box 159  
Red Bluff, CA 96080

**RE: Sacramento River Division Contractors Draft Revised Environmental Assessment (EA) and Finding of No Significant Impact (FONSI)**

Dear Ms. Trout:

Taxpayers for Common Sense (TCS), a nonpartisan budget watchdog group, would like to reiterate our concerns regarding the comment period for the Sacramento River Division draft EA and FONSI. On August 30, 2004, while finishing TCS' comments regarding these important documents, I noted that the link provided in the Bureau of Reclamation's July 30, 2004 press release entitled "Environmental Documents Available for the Renewal of the Sacramento River Division CVP Long-Term Water Service Contracts," was down. Given that August 30 is the deadline for the public to comment on these important documents, it is especially critical that these documents be readily available to the public at this time. Instead, as of 2:00 PM (EDT), the link continues to be down.

As you know, I alerted you to the problem associated with the Bureau of Reclamation's website link via email. TCS finds this development very disturbing. Despite numerous requests, the Bureau has refused to extend the comment period for these documents, yet the very documents that the public is being asked to review are unavailable on the final day of the comment period. In fact, there is no telling how long the link to these documents has been inactive. The scheduling of the comment period during a traditional time of family vacations and congressional recess combined with the documents being unavailable to the public on the last day of the comment period makes it necessary for the Bureau to extend the comment period to allow appropriate public input into the process.

TCS-3-1

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### TCS-3-1

Reclamation has considered requests for extensions of the comment period and feels adequate time was given for public review. The BA for the Sacramento River Division long-term water service contract renewals was completed on August of 2003. The Draft EA was first released on August 19, 2003 and was revised in March of 2004. On July 2, 2004, a 60-day public review and comment period was initiated for the associated long-term CVP water service contracts for the Black Butte Unit, Tehama-Colusa Canal Unit, and the Corning Canal Unit of the Sacramento River Division. The revised draft EA and FONSI were released on July 30, 2004 for an additional 30-day public review.

Comments

Responses

Taxpayers for Common Sense (cont'd)

I appreciate your attention on this matter. Please contact me if you have any questions at (202) 546-8500 x130 or aileen@taxpayer.net.

Sincerely,



Aileen D. Roder  
Program Director

Cc: Mr. Kirk Rodgers

Comments

Responses

February 2005

Final EA for Renewal of Long-Term Contracts for the Sacramento River Division Contractors

E-31

Friends of the River



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September 30, 2004

Ms. Basia Trout  
U.S. Bureau of Reclamation  
P.O. Box 159  
Red Bluff, CA 96080

Mr. Richard Stevenson  
U.S. Bureau of Reclamation  
2800 Cottage Way, MP-440  
Sacramento, CA 95825

Re: **Sacramento River Division CVP Long-Term Contracts  
Joint Comments on Contracts and Environmental Assessment**

Dear Ms. Trout and Mr. Stevenson:

These are the comments of Friends of the River in combined response to the Sacramento River Division CVP Long-Term Contracts and Environmental Assessment (EA). Friends of the River is California's statewide river conservation organization, with more than 5,000 members dedicated to the protection and restoration of the state's free flowing rivers and watersheds.

**Extension of Comment Period**

The public comment period deadlines for the Sacramento River Division Contracts and its EA are August 30 and 31 respectively. But commenting effectively on these key documents within the short time period allotted has proven difficult.

The Bureau of Reclamation's Operations Criteria and Plan (OCAP) for the re-operation of the Central Valley Project (CVP) in cooperation with State Water Project facilities is intended to meet all future Bureau water obligations, including renewed CVP contracts. OCAP must therefore be considered a crucial component of the Sacramento River Division contracts. The National Marine Fisheries Service's (NMFS) biological opinion for threatened and endangered salmon and steelhead in response to OCAP is not yet available to the public. This makes it virtually impossible to submit relevant comments in regard the contracts' potential impacts on threatened and endangered salmonids.

The U.S. Fish and Wildlife Service's Biological Opinion for the endangered Delta Smelt in response to OCAP (dated 7/30/04) was not available to the public until the first week of

FOR-1

Reclamation has considered requests to extend the comment period and feels adequate time was given for public review. The BA for the Sacramento River Division long-term water service contract renewals was completed on August of 2003. The Draft EA was first released on August 19, 2003 and was revised in March of 2004. On July 2, 2004, a 60-day public review and comment period was initiated for the associated long-term CVP water service contracts for the Black Butte Unit, Tehama-Colusa Canal Unit, and the Corning Canal Unit of the Sacramento River Division. The revised draft EA and FONSI were released on July 30, 2004 for an additional 30-day public review. Reclamation considered extensions of the comment period but feels adequate time was given for review. The OCAP BO and the NOAA Fisheries BO is not expected to significantly change the analysis of this draft EA. The analysis in the EA addresses the proposed changes to the contract and the potential environmental effects of those changes. As indicated in the EA, these contract changes would not result in significant effects to the environment.

Appendix E Public Comments and Responses

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February 2005

Final EA for Renewal of Long-Term Contracts for the Sacramento River Division Contractors

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Friends of the River (cont'd)

August. Friends of the River is still reviewing this detailed 231 page document in regard to its relevancy with Sacramento River Division contracts.

Copies of the contracts and the EA are difficult for the public to access. General public access to the documents were primarily via the internet. Perhaps due to technical interface problems, Friends of the River has found it impossible to download the relevant documents from the Bureau's web site. The Bureau's web site was inaccessible to us and appeared to be over-loaded by public queries on Sept. 30. The lack of easily accessible documents made it quite difficult to develop comprehensive comments.

Friends of the River respectfully requests a 90-day extension of time to review all pertinent background information and comment on these complex and lengthy documents.

Shasta Reservoir Carry-Over Storage

FOR-2

Proposed changes in CVP operations outlined in OCAP indicate that the Bureau intends to eliminate the 1.9 million acre feet of Shasta reservoir carry-over storage used to maintain adequate cold water flows for the endangered Sacramento River winter run chinook salmon. To the extent that the elimination of cold water carry-over storage is needed to meet CVP contract renewals and other Bureau obligations, this could eliminate or reduce critical habitat in the Sacramento River for the endangered winter run chinook and other listed species.

Sacramento River Temperature Standard

FOR-3

In conjunction with the elimination of cold water carry-over storage, OCAP proposes to eliminate up to 20 miles of critical habitat for the endangered winter run chinook by moving the Sacramento River temperature standard for salmonids from Red Bluff upstream to Ball's Ferry. To the extent that the temperature standard change is needed to meet CVP contract renewals and other Bureau obligations, this could eliminate critical habitat for the endangered winter run chinook and other listed species.

Red Bluff Diversion Dam

FOR-4

The Red Bluff Diversion Dam (RBDD) diverts most of the water used by the Sacramento River Division contractors. The Contract EA and OCAP indicate that the Bureau intends to continue the current operation of the RBDD. The RBDD is a well-known fish killer. The current operation of the RBDD creates migration problems for up to 70% of the threatened spring run chinook salmon that spawn upstream of Red Bluff. It also blocks passage for at least 17% of threatened steelhead adults and negatively impacts juvenile steelhead migrants. The RBDD also blocks as much as 35% of migrating green sturgeon, which are now found only in the Sacramento and Klamath rivers.

Ironically, the Tehama-Colusa Canal Authority and several state and federal agencies proposed in 2003 a solution to the RBDD fish passage problems which called for the permanent raise of the RBDD gates to provide 100% effective passage for all fish species. The dam's diversion function would be replaced with new water pumps and

FOR-2

Operations of the CVP as addressed in the OCAP BA/BO process is a separate action subject to its own environmental compliance requirements. Management of the cold water pool at Shasta Reservoir is being addressed in the OCAP consultation process and BO.

FOR-3

A change in the cold water management is not related to several of these contracts. The changes being addressed are necessitated by physical changes to water availability and other environmental requirements that have occurred since 1992. See response to FOR-2.

FOR-4

Only about 7% of the total spring run population currently migrates into the upper Sacramento Valley and is either delayed or blocked at the RBDD. Conversely, 93% of spring-run experience no delays or they spawn downstream of the RBDD. The earliest arriving fish have the best chance of making it to the upper reaches of tributary streams where they hold over the summer before spawning, encountering no obstacles. Permanent, structural fixes would cost in the order of 100 million dollars, so decisions as to what to do are not easily reached. It may be that seasonal fixes can be designed at lower costs, but that remains to be seen. Reclamation is continuously working with NOAA Fisheries to minimize impacts to salmonids at the RBDD and decisions about the next steps will be made after the BA consultation is completed. This is a separate action subject to its own environmental compliance requirements.

Appendix E Public Comments and Responses

## Comments

## Responses

### Friends of the River (cont'd)

fish screens. The Bureau was instrumental in shelving this proposal in favor of continuing the current fish-killing operation.

FOR-5

Continued operation of the RBDD is not acceptable. It fails to provide the salmon mitigation and enhancement originally promised in the federal authorizing legislation for the RBDD. It violates the mandates of the Central Valley Project Improvement Act (CVPIA) and the California Bay-Delta Restoration Program to resolve fish passage problems, as well as the Anadromous Fish Restoration Plan (AFRP) to double the Central Valley's salmonid population. It fails to comply with section 5931 of the California Fish and Game Code requiring the free passage of fish over or around dams. Even worse, it ignores the million of taxpayer dollars spent to study and resolve fish passage problems at RBDD and will negate millions more that have been or will be spent to improve salmon and steelhead habitat on Battle Creek, Clear Creek, and other upstream tributaries.

Fish passage problems at the RBDD must be resolved before the CVP contracts are renewed, or the contract renewals will violate state and federal law and contribute to unacceptable adverse impacts on threatened and endangered fish species.

#### Tehama-Colusa Canal and Corning Canal

FOR-6

The Tehama-Colusa Canal and Corning Canal distribute Sacramento River Division contract water diverted by the RBDD. The canals cross several west-side tributaries of the Sacramento River that formerly provided habitat for salmon and steelhead. The canal crossings have played a key role in the reduction or elimination of salmonid habitat on these tributaries.

The Corning Canal siphon creates a barrier to migrating salmon and steelhead in Elder Creek during low to moderate flow conditions. The Tehama-Colusa Canal siphon is a partial barrier to salmon and steelhead migration in Thomes Creek due to stream degradation associated with downstream gravel mining. The Tehama-Colusa Canal turn-out structure on Stony Creek not only acts as a partial barrier to salmon and steelhead migration, it actually diverts water from the creek into the canal. The diversion virtually dewater for much of the year the lower portion of Stony Creek.

Ironically, both Thomes Creek and Stony Creek were targeted for salmon enhancement in the original RBDD authorizing legislation. But CVP operations have actually negatively impacted salmon and steelhead on these streams and other west-side tributaries. The canal siphons and diversion structures on Elder, Thomes, and Stony creeks and other tributary streams violate sections 5931 and 5937 of the California Fish and Game Code requiring fish passage and adequate flows downstream of dams to maintain fish in good condition. This situation is contrary to the intent of the California Bay-Delta Restoration Program to restore salmonid habitat in the Sacramento watershed and the AFRP fish-doubling mandate.

Fish migration and downstream flow problems created by the Tehama-Colusa Canal and Corning Canal must be resolved before the Sacramento River Division Contracts are renewed, or the contract renewals will violate existing restoration policies and both state and federal law.

### FOR-5

Reclamation is continuously working with NOAA Fisheries to minimize impacts to salmonids at the RBDD and decisions about the next steps will be made after the OCAP BA consultation is completed. This is a separate action with its own planning and environmental compliance requirements.

### FOR-6

The TC and Corning Canals do not impact fish migration in most west side streams. These canals pass under these streams by means of siphons, leaving them unobstructed with the exception of Funks Creek and, seasonally, Stony Creek. However, all west side streams south of Stony Creek, including Funks, terminate in the Colusa Basin Drain, a privately constructed feature that predates the canals by decades, which blocks or impedes access from the Sacramento River. All streams north of Stony Creek connect to the Sacramento River, but most, except Cottonwood Creek, were seasonal before the onset of agricultural diversions. While these diversions surely shorten the period of flow, they are all private, non-CVP diversions. The only water removed from tributaries to the Sacramento by the TC and Corning Canals is a portion of the water stored in Black Butte Reservoir at the end of the flood season. Part of that stored water, as noted above, is devoted to in-stream flows that tend to extend the period of potential passage.

Historically, flows in Stony Creek occurred intermittently in the late fall, winter, and spring months. With the installation of Black Butte Dam, flows in Stony Creek have been regulated by the COE for the purpose of flood control primarily from November through March. After the threat of floods has passed, Reclamation controls releases of stored water for the purpose of irrigation. When water is being diverted for irrigation, using a temporary diversion dam, a minimum of 40 cfs is being released downstream for fishery benefits. Reclamation and the COE are currently consulting with NOAA Fisheries on the effects of water operations in lower Stony creek to anadromous fish. A short-term BO was issued in 2002 and a long-term BO is expected by March of 2005. The terms and conditions of the BO suggest increased releases to benefit salmonids.

Comments

Responses

Friends of the River (cont'd)

**Sacramento River Flow Standard**

A key ecosystem restoration goal of the California Bay-Delta Restoration Program is to restore the natural stream meander and its associated aquatic and riparian habitats in the Sacramento River. These habitats support a wide range of sensitive, threatened, and endangered fish and wildlife species.

FOR-7

Although studies are still on-going, it is generally accepted that a comprehensive Sacramento River flow standard will require flows beyond the minimum levels needed for anadromous fish. Restoration of the river's natural meander and associated habitat will require bed-mobilization and streambank erosion flows to re-establish gravel bars. It will also require a naturally declining late spring flow to renew riparian habitat.

Renewal of the Sacramento River Division contracts could perpetuate flow conditions in the Sacramento River that are detrimental to the restoration of its natural meander ecosystem. Contracts should not be renewed until studies are completed identifying the flow standard needed to restore the river ecosystem. The flow standard should then be incorporated into the contracts when they are renewed. Adoption of this flow standard as part of the contracts is required by section 5937 of the California Fish and Game Codes, which mandates flows sufficient to maintain fish in good condition below dams.

**Delta Smelt Biological Opinion**

The U.S. Fish and Wildlife Service issued a no-jeopardy opinion for the endangered Delta smelt in regard to the Bureau's changes in CVP operations proposed in OCAP. Since these operational changes include CVP contract renewals, the Delta Smelt Biological Opinion (BO) is directly pertinent to the renewal of the Sacramento River Division contracts.

FOR-8

The Service's no-jeopardy decision is based on a confluence of actions and standards that have yet to be achieved, including full funding and implementation of the Environmental Water Account, providing 100% of the CVPIA's water mandate to the environment, and meeting water quality standards in the Delta and at Vernalis. Given the long and sad history of these unmet standards, it is likely that in most years, the Delta smelt will indeed be in jeopardy.

Upstream contract renewals will likely contribute to the further decline of this endangered species. The contracts should be modified to ensure that all standards needed to keep the Delta smelt out of jeopardy are met.

**Threatened & Endangered Species**

The renewal of the Sacramento River Division contracts effect the entire river and its adjacent terrestrial habitat, as well as the Bay-Delta ecosystem downstream. Unfortunately, the EA focuses primarily on fish species and gives short-shrift to terrestrial species dependent on river-associated wetlands, riparian forests, and adjacent grasslands. Contract renewals could modify flows needed to renew gravel bars and

FOR-9

FOR-7

General ecosystem goals for the Sacramento River are beyond the scope of the proposed action. The water service contracts contain provisions that call for reductions in deliveries to meet applicable environmental requirements. Contracts can adjust to such a flow standard, should one be adopted in the future.

FOR-8

The subject of this EA is the renewal of existing contracts with minor financial and administrative changes with no changes in either the volumes of water under contract or the places of use. The analysis in the EA concerns Reclamation's delivery of CVP water to CVP service areas. In addition, contracts contain provisions to reduce deliveries to meet environmental requirements, including relevant biological opinions. Delta smelt issues are being analyzed in the OCAP BA/BO.

FOR-9

The EA has discussed effects to plants, invertebrates, amphibians and reptiles, birds, mammals, as well as fish. But since the subject of this EA is the renewal of existing contracts with minor financial and administrative changes with no changes in either the volumes of water under contract or the places of use, effects to terrestrial species are minimal, and have been analyzed in the OCAP BA/BO and/or the PEIS.

Comments

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February 2005

Final EA for Renewal of Long-Term Contracts for the Sacramento River Division Contractors

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Friends of the River (cont'd)

FOR-9 (cont'd)

eroded banks, reducing habitat for riparian species such as the bank swallow, yellow-billed cuckoo, and valley elderberry longhorn beetle. The contract renewals could reduce overflow into adjacent wetlands and vernal grasslands, which provide habitat for the giant garter snake and Swainson's hawk. The EA should fully disclose the potential impacts to these listed species and their habitat.

New Surface Storage Projects

The Bureau of Reclamation is involved in two surface storage project investigations that directly pertain to the Sacramento River Division contract renewals. These include the Shasta Dam Storage Investigation and the North of Delta Offstream Storage Investigation.

The Shasta Dam Storage Investigation is focusing on increasing storage by raising Shasta dam anywhere from 6 to 200 feet. This project could significantly modify flows in the Sacramento River and the operation of downstream diversion facilities used by the Sacramento River Division contractors.

FOR-10

The North of Delta Offstream Storage Investigation is focusing on developing offstream storage in the western portion of the Sacramento Valley. The potential offstream storage sites would be fed by the existing or expanded RBDD and Tehama-Colusa Canal. There would also be considerable water wheeling between the Tehama-Colusa Canal and Glen-Colusa Irrigation District Canal, the diversion facility for which would also be used to supply water for offstream storage. In addition, a new third diversion facility from the Sacramento River is contemplated.

The environmental impacts on the Sacramento River and its tributaries, and their threatened and endangered fish and wildlife species and habitat that could be caused by these new storage facilities in conjunction with the contract renewals must be fully considered.

Water Conservation

The CVPIA requires effective water conservation plans to be in place and implemented before contracts are renewed. It is not clear that the required plans are in place for the contract renewals.

FOR-11

In reviewing the proposed long-term contracts for Sacramento Valley water users, Friends of the River questions why the Bureau is relying on the ineffectual water conservation guidelines of the Reclamation Reform Act rather than the Mid-Pacific Region's own Criteria for Evaluating Water Conservation Plans. The Mid-Pacific Region's Criteria, written to comply with the CVPIA, are far superior in helping water districts manage their water more efficiently for beneficial uses.

FOR-12

The current draft of the Sacramento Valley long-term contracts seems to leave it to the complete discretion of the Contracting Officer to determine if the water conservation plan meets Federal Law. This is far too anemic oversight. At a minimum, Reclamation should insert the following language into the contracts:

FOR-10

The subject of this EA is the renewal of existing contracts with minor financial and administrative changes with no changes in either the volumes of water under contract or the places of use. The analysis in the EA concerns Reclamation's delivery of CVP water within the CVP service area. The comments regarding future water storage projects are outside the scope of this document.

FOR-11

All M&I contractors with more than 2000 af of Project Water, or Irrigation contractors with more than 2000 irrigable acres, are required to have water conservation plans. All available Water District (contractor) Water Conservation or Water Management Plans are on file at the Regional office and can be made available for review there. Contact point for those would be Lucille Billingsley, MP-402.

Sacramento River Settlement contractors, as holders of water rights, are distinct from water service contractors and are still developing their plans as part of a 'Regional' plan. The City of Redding, which has both a settlement contract and a water service contract, and the contractors which hold only water service contracts, such as the TCCA districts, Bella Vista, Clear Creek, and the City of Shasta Lake have prepared plans.

Reclamation believes that Regional Criteria can be as effective as the existing Standard Criteria. Reclamation has agreed to consider Regional Criteria as a pilot program and these criteria must be found as effective as the Standard Criteria to continue after the first 5 years.

As you may recall, the Regional Criteria started back in 1997. At that time public meetings were held, and the "objectives driven" approach was the preferred alternative. The current Regional Criteria "piggy-back" off of these previous meetings.

Appendix E Public Comments and Responses

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Final EA for Renewal of Long-Term Contracts for the Sacramento River Division Contractors

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Friends of the River (cont'd)

"Water delivery pursuant to this Contract shall be contingent upon Contractor's continued implementation of such revised water conservation program, as documented in an annual update report on the conservation plan implementation. This plan must be made available to the public."

FOR-13

Friends of the River reiterates the objections it made during the draft phase of the Basin-Wide Water Management Plans. The Basin-Wide Plan is an exercise in paperwork, not an effort to implement effective, proven water management practices. The basin-wide plan, created by and for the exclusive benefit of Sacramento Valley contractors, has no requirements, no standards, no oversight by federal agencies or the public, and is completely pointless. The Mid-Pacific Region's existing Criteria for Evaluating Water Conservation Plans provide sufficient flexibility to the contractors and accountability to the U.S. taxpayers, making a Basin-Wide Plan absolutely unnecessary.

Water Transfers and Groundwater Measurement

Contract water should not be transferred unless both the willing seller and buyer can demonstrate they are already using existing water supplies as efficiently as possible. Friends of the River recommends the following language:

FOR-14

"Any transfer of Federal water between a willing seller Contractor and a willing buyer will only be allowed if the contracting officer determines that the Contractor is implementing an effective water conservation program, as detailed in the Criteria for Evaluating Water Conservation Plans, based on 3405 (e) of the CVPIA. If the willing buyer is a Federal Water Contractor, the contractor will only be allowed to receive transferred Federal Water if the contracting officer determines that the Contractor is implementing an effective water conservation plan, as detailed in the same Criteria."

Contract language regarding the measurement of water within the contractor boundaries must be expanded to include the following:

FOR-15

"...the Contractor has established a measuring program satisfactory to the Contracting Officer. The Contractor shall ensure that all surface water and groundwater that results from a recharge program using, at least in part, Federal Water..."

Colusa Drain Water Quality Problems

Much of the irrigation water provided to the Sacramento River Division Contractors drains into the Colusa drain. Water in the Colusa drain fails to meet state water quality and federal Clean Water Act standards.

FOR-16

In addition to state and federal water quality laws, the CVPIA also requires resolution of the Colusa drain's chronic water pollution problems. Contracts must not be renewed until the water quality problems are resolved. Resolution of this problem should not include diverting the polluted water elsewhere, such as the Yolo bypass.

FOR-12

The contracts connected to the Standard Criteria do not contain the suggested language that would condition water deliveries on plan implementation. The Criteria do state that the Regional plans will be noticed in the federal register, which provides the public with the opportunity to review the plans prior to being deemed adequate by Reclamation.

FOR-13

The Regional plan is only a part of the Basin Wide Management Plan. See response to comments regarding Regional Criteria being developed in response to administrative proposal.

FOR-14

Reclamation utilizes the water transfer guidelines developed under CVPIA to determine whether transfers should be approved or not. To be approved, the transfers must be consistent with state law including provisions concerning reasonable and beneficial use of water.

FOR-15

Reclamation considers it inappropriate to use the contracts to establish Regional criteria; rather, the approach that keeps the criteria timely and appropriate is to reference the required (and updated) criteria in the contracts.

FOR-16

Comment noted. Reclamation provides water to our customers and, although we are not responsible for how our customers use and dispose of the water, we support the need to improve the water quality in the Colusa Basin Drain. Currently, there are many ongoing efforts to improve the water quality in the Drain. The impacts of pesticides on water quality in the Colusa Drain are being addressed in the Colusa Basin Drainage District's Coordinated Resource Management Plan project. The project uses Integrated Resource Management to bring together representatives from diverse groups to resolve the identified issues, including improving water quality caused by pesticide use. U.C. Davis together with the CALFED Ecosystem Restoration Program are implementing the Alternative Pesticide Use Phase II (B211)(97-C12) to identify, promote,

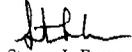
## Comments

## Responses

### Friends of the River (cont'd)

Thank you for soliciting our comments in response to the Sacramento River Division CVP Long-Term Contracts and EA.

Sincerely,



Steven L. Evans  
Conservation Director

### FOR-16 (cont'd)

and monitor alternative practices to reduce biological impacts of pesticides, as well as impacts from agricultural and urban sources on the water quality of all priority aquatic habitats identified by CalFed. The Colusa Basin Drain Sub-Watershed Project: Sand and Salt Creek Watershed (5-081-255-0), in affiliation with the Colusa County Resource Conservation District, State Water Resources Control Board and the Regional Water Quality Control Board is expected to yield survey results, water quality plan results, and water quality monitoring results, which will all be made available to all interested parties making recommendations on how landowners will comply with the Clean Water Act.

Reclamation supports these activities to improve water quality while it meets its obligation to renew water service contracts and provide water for irrigation.

## Comments

## Responses

## Hoopa Valley Tribe

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 A PROFESSIONAL SERVICE CORPORATION

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August 27, 2004

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Ms. Basia Trout  
 Bureau of Reclamation  
 P.O. Box 159  
 Red Bluff, CA 96080

Fax : 530-528-0612 or 530-529-3895

Email: btrout@mp.usbr.gov

Re: Comments on Revised Draft Environmental Assessment and Draft FONSI for  
 Sacramento River Division Long Term Contract Renewals (July 2004).

Dear Ms. Trout:

On behalf of the Hoopa Valley Indian Tribe, we have reviewed and now submit the following comments on the above referenced Draft Revised Environmental Assessment (REA) and Draft Finding of No Significant Impact (FONSI). These comments reflect the Tribe's ongoing concern with management of the Central Valley Project ("CVP"), which includes the Trinity River Division. Because of the CVP's effect on fisheries reserved for the Tribe, we are committed to ensuring that Reclamation actions subject to the National Environmental Policy Act (NEPA) reflect and comply with court decisions requiring, for example, that mitigation measures imposed as a result of consultation under Section 7 of the Endangered Species Act be addressed in draft environmental review documentation prepared pursuant to NEPA. *See e.g. Westlands v. United States*, 275 F.Supp.2d 1157 (E.D. Cal. 2002), *rev'd on other grounds*, No. 03-15194 (9th Cir. July 13, 2004) (discussed below). This approach ensures that the public is fully informed and has the opportunity to comment and participate in the decision-making process on all aspects of projects affecting the human environment.

Reclamation has tentatively concluded that the proposed project, the renewal of eighteen (18) water service contracts for the delivery of up to 322,000 acre feet of CVP water for a term of up to 40 years in some cases, will have no significant impact requiring an Environmental Impact Statement. Draft FONSI at 2. That conclusion, however, is unsupported in a number of particulars described below. It also relies in part on deferral of consideration of impacts to threatened and endangered species pending completion of consultation with NOAA-Fisheries and the Fish and Wildlife Service. *Id.* at 3. Such an approach is legally impermissible.

Hoopa-1

## Hoopa-1

The No Action Alternative consists of renewing existing water service contracts as described by the Preferred Alternative of the PEIS. The No Action Alternative together with negotiated proposals for CVP-wide terms and conditions are the basis for the action alternatives. The preferred alternative essentially maintains the status quo apart from changes mandated by the CVPIA. The analysis displays the increment of change between the No Action Alternative and the other alternatives.

Comments

Responses

Hoopa Valley Tribe (cont'd)

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ATTN: Basia Trout  
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1. Scope of Analysis

The REA states that it is limited in its scope to determining whether renewal of Sacramento River Division long-term water service contracts will have "site specific" impacts. Draft EA at 1-1. This focus on site-specific impacts is reflected in the document's "area of analysis" as the land within the district and counties of the Sacramento River Division project area and vicinity that may be affected by renewal of these 18 contracts. Draft EA at ES-3. Accordingly, there is no analysis of how the associated diversions will affect other portions of the CVP service area, such as the Trinity River basin or the Bay/Delta region. For example, it is likely that an alternative requiring lower volumes of diversions would make more water from the upper Sacramento River and Shasta Reservoir available for temperature control in the upper Sacramento River, thus reducing the need to rely on diversion from the Trinity River for those purposes. Lower level diversions from the Sacramento River to contractors may also provide higher Sacramento River flow into the Delta, thus improving water quality in the Delta and the availability of Delta resources for fishery, agricultural, municipal and industrial uses in southern California. The EA presents only the most cursory analysis of the interrelationship between these diversions and other portions of the CVP. E.g. Draft EA at 3-75 (noting that diversions have effect on amount and timing of freshwater flow in the Sacramento River and Delta). However, such considerations receive relatively short-shrift in this EA, as a result both of the site-specific focus of the document and the improvident omission of lower-diversion alternatives from the range of alternatives considered.

The EA states that its site-specific focus is warranted by the fact that the document is "tiered" off a Programmatic Environmental Impact Statement (PEIS) prepared in October 1999, which evaluated the impacts of implementing the CVPLA, including the renewal of existing long-term contracts. However, the EA also acknowledges that the PEIS preferred alternative included a set of contract terms and conditions represented by the No Action alternative of this EA, and that the final Sacramento River renewal contracts will not incorporate that particular set of terms and conditions. Draft EA at ES-3 through ES-4 (stating that final contracts will include terms negotiated between Alternatives 1 and 2). It is therefore possible that the actual contract terms will have CVP-wide impacts that were not analyzed in the CVPLA PEIS.

For example, the PEIS preferred alternative assumed that tiered pricing would be a component of any renewal contracts. The lack of tiered pricing in the proposed contracts may have significant effects on volumes of water actually requested for delivery under the contracts, which in turn will affect CVP-wide availability and reliability of supplies, carryover storage, and the finances resources available to the Bureau to fund fishery and wildlife measures required by the CVPLA. The set of impacts addressed on a programmatic and CVP-wide level in the PEIS therefore may be very different from the impacts that will actually result from implementation of the proposed action as presented in this EA.

## Comments

## Responses

### Hoopa Valley Tribe (cont'd)

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2. **Failure to Include an Alternative that Includes Contract Language Reflecting CVPIA Mandated Fishery Restoration Flows.**

The proposed action is the renewal of Sacramento River Division contracts for 25 or 40 years, depending on the type of contract, under terms and conditions that are substantially similar to the existing interim renewal contracts, which expire February 28, 2006. The language of the proposed contracts states generally that deliveries (and by implication the diversions necessary to accomplish those deliveries) will comply with the requirements of federal law. The contract language does not specifically reference the requirements of federal law that require priority be given to providing sufficient flows to protect and restore specified anadromous fisheries, including those of the Trinity River, e.g. Trinity River Act of 1955, Pub. L. 84-386, 69 Stat. 710 (1955); CVPIA § 3406(b)(23); see also Solicitor's Opinion, "Proposed Contract with Grasslands Water District," U.S. Dept. of Interior (Dec. 7, 1979). The EA should have considered an alternative that incorporates language specifically referencing those obligations.

On December of 2003, the Hoopa Valley Tribe ("Tribe") filed an administrative appeal of the Bureau Regional Director's denial of the Tribe's request that language referencing the instream fishery flow requirements of the Trinity River be incorporated into the terms of long term renewal contracts between the Bureau of Reclamation ("Bureau") and Central Valley Project ("CVP") water service contractors. This language is authorized by section 3404 of the Central Valley Project Improvement Act, Pub. L. 102-575, 106 Stat. 4600 (1992) ("CVPIA"), which subjects new and renewal CVP water service contracts to the fishery restoration provisions of the CVPIA, which includes the Bureau's obligation to meet the fishery restoration requirements of the Trinity River as established by the Trinity River Flow Evaluation-Final Report ("Flow Study"). See CVPIA § 3406(b)(23).

Contract language acknowledging Trinity River restoration requirements also reflects long-standing congressional directives that prioritize Trinity fishery releases over transbasin diversions to Central Valley contractors and is consistent with the federal government's trust responsibility to protect and preserve the Hoopa Valley Tribe's federally reserved fishing right. The Tribe's request was narrowly tailored to require compliance with scientifically based fishery flow requirements set forth in the Flow Study. Those requirements must be implemented pursuant to CVPIA § 3406(b)(23), and should be included as conditions on supply made available for delivery to Central Valley Project contractors.

The decisions of the federal courts since the enactment of the CVPIA make clear that the Bureau can and should reduce quantities of water delivered when fishery needs demand greater allocations. See *O'Neill v. United States*, 50 F.3d 677, 686 (9th Cir. 1998) (holding that the CVPIA modified priority of water users and thus changed contractual obligations under pre-existing long-term water delivery contracts); *NRDC v. Houston*, 146 F.3d 1118, 1126 (9th Cir. 1998) (invalidating CVP renewal contracts for failure to comply with environmental requirements); *Klamath Water Users Protective Ass'n v. Patterson*, 204 F.3d 1206, 1213 (9th Cir. 1999) (recognizing Bureau's responsibility to manage project operations to "meet the requirements of the ESA, requirements that override the water rights of the Irrigators"). The

### Hoopa-2

Fishery restoration flows are issues related to the operation of facilities to store and deliver water to the contractors, and were addressed in the PEIS and again in the OCAP BA/BO consultation; whereas the contracts that are the subject of this EA concern the delivery of water and the class of use (ag, M&I). In addition, the CVPIA has separate programs dealing specifically with fishery restoration flows.

Your comments concern issues affecting availability of stored water, whereas the EA addresses the delivery of water when it is available.

Comments

Responses

February 2005

Final EA for Renewal of Long-term Contracts for the Sacramento River Division Contractors

Hoopa Valley Tribe (cont'd)

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Ninth Circuit has expressly recognized the Bureau's obligation to operate to meet the water needs of vested tribal fishing rights. Klamath Water Users, 204 F.3d at 1214 (holding that the Bureau has "a responsibility to divert the water and resources needed to fulfill the Tribes' rights, rights that take precedence over any alleged rights of the Irrigators"). Accordingly, the terms of interim renewal contracts should expressly acknowledge those requirements, and the impacts of incorporating those requirements into the contracts should be assessed in an EIS.

Express subordination of water service delivery obligations to fishery restoration needs is hardly unprecedented. E.g., id. The Bureau has historically included fishery restoration requirements as among the conditions on supply available to satisfy interim renewal contracts. For example, in California Trout v. Schaefer, 58 F.3d 469 (9th Cir. 1995), the court noted that an interim renewal contract for allocations from the New Melones Reservoir provided "a maximum of 75,000 acre-feet of water annually, subject to availability after the Bureau satisfied the water needs of in-basin users and higher priority out-of-basin users." Id. at 471 (emphasis added). The "in-basin" needs given priority under that contract included those of "fish and wildlife resources" in the Stanislaus River Basin established under CVPIA § 3406(c)(2). Id. Given that precedent, the Bureau should consider an alternative heeding the command of CVPIA § 3404(c) in the terms of interim renewal contracts.

Improper Deferral of Mitigation.

The EA improperly defers consideration of impacts to threatened and endangered species pending completion of ESA § 7 consultation with NOAA-Fisheries and the Fish and Wildlife Service. Draft FONSI at 3; Draft EA at 4-3. Such an approach is impermissible under NEPA, as illustrated by the ruling in Westlands, 275 F.Supp. 2d at 1182-1185, rev'd in part on other grounds, No. 03-15194 (9th Cir. July 13, 2004). In that case, the court found that a Draft Environmental Impact Statement (DEIS) did not adequately analyze the impact of the proposed action on certain ESA-listed species. Id. at 1183. Further, the court found that the DEIS "did not consider or identify mitigation measures" for those impacts, other than to "specify that mitigation for impacts...would consist of consulting with the Service on impacts and implementing any required conservation measures." Id. The court concluded that Reclamation violated NEPA.

Hoopa-3

That is precisely the approach adopted in this document, which acknowledges that ESA § 7 consultation both on the CVP-OCAP and on the localized impacts of the particular contracts at issue here has yet to be completed. It is likely that significant mitigation requirements will be imposed because of that consultation, as the EA acknowledges that diversions required to supply these contracts will "negatively affect[]" winter-run, spring-run and fall/late fall-run Chinook and Central Valley Steelhead. Draft EA at ES-6 through ES-7, Table ES-2. In the words of the Westlands court, this approach "defers consideration of mitigation efforts" and "precludes the parties from meaningful analysis." Id. at 1184. See also id. at 1188 ("The omission of discussion of mitigation measures foreclosed any public input on the issues of whether and what CVP operations management alternatives existed and were feasible; and whether alternate water sources existed or if reduced flows could reduce the impact on species and other CVP users.").

Hoopa-3

The Draft NEPA document reflects Reclamation's assessment of impacts on listed species based on our Biological Assessment. The NEPA document will be amended, if necessary, in the Final EA to reflect any findings of the Biological Opinions that differ. The decision of what action, if any, to take will be based on the Final EA, not the Draft.

Appendix E Public Comments and Responses

## Comments

## Responses

### Hoopa Valley Tribe (cont'd)

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Moreover, to the extent that mitigation measures are imposed as a result of deferred ESA § 7 consultation, either in the form of Reasonable and Prudent Measures (RPMs) or other terms and conditions that may have significant impacts beyond those of the proposed action, the *Westlands* case requires that the environmental impacts of those mitigation measures be discussed “with reasonable thoroughness.” *Id.* at 1192. These measures and their environmental impacts must be disclosed to the public in a process that “included public participation”, *i.e.* they must be disclosed in a manner that allows meaningful public scrutiny, comment, and participation. *Id.* at 1198. By deferring discussion of species impacts pending completion of consultation with the fisheries agencies, the Draft EA/FONSI for interim contract renewals fails to meet these requirements.

We are particularly concerned about the potential effects that may arise from RPMs under consideration by NOAA Fisheries in their review of the CVP-OCAP. As you know, NOAA is considering including in their Biological Opinion certain RPMs regarding temperature requirements in the upper Sacramento River and operation of the Red Bluff diversion dam. Both of these may have discrete as well as cumulative impacts on water supplies available for diversion to meet the contractual obligations proposed here, as well as impacts to fishery and power resources that are not fully disclosed and addressed in this draft EA. The public has thus been deprived of the opportunity to meaningfully review the cumulative impacts of diverting up to 322,000 acre feet of water from the natural course of the Sacramento River and the associated actions that will be required under the ESA to mitigate the effect of those diversions.

#### 3. Inadequate Discussion of Alternatives.

The Draft EA is also insufficient because it lacks an adequate discussion of the “environmental impacts of the proposed action and alternatives” 40 C.F.R. § 1508.9. Council on Environmental Quality (CEQ) regulations require that an environmental assessment “shall include” a discussion of the environmental impacts “of the proposed action and alternatives....” *Id.* The Draft EA/FONSI, however, discusses only three alternatives: no action, the Bureau’s proposed contract terms, and the Contractor’s proposed contract terms. The EA does not identify the actual proposed terms of the renewed contracts, but states that, as a result of ongoing negotiations between contractors and the Bureau, the actual terms of contracts to be executed will fall somewhere in between the “bookends” represented by the three alternatives. Draft EA at ES-4; *Id.* at 2-8. The EA thus fails to identify a preferred alternative that accurately describes the actual action and associated impacts that will likely result. This approach is somewhat disingenuous in light of the fact that on July 30, 2004 the Bureau announced that it had concluded negotiation on contract terms and at that time released the negotiated terms for a 60 day public review. See Bureau of Reclamation Press Release No. MP-04-054 (available at <<<http://www.usbr.gov/mp/Mp140/news/2004/MP-04-054.html>>>).

### Hoopa-4

The EA and the scope of the analysis were developed consistent with NEPA regulations and guidance from the Council on Environmental Quality (CEQ), and in conformance with the direction provided by NRDC vs Patterson, Civ. No. S-88-1658 (Patterson) which specifically addressed the application of NEPA relative to contract renewals. In Patterson the court found that “...ongoing projects and activities require NEPA procedures only when they undergo changes amounting in themselves to further “major action.” The court went further to state that the NEPA statutory requirement applies only to those changes. The analysis in the EA finds the renewals of the contract to be a continuation of previous contracts with minor financial and administrative changes with no changes in either the volumes of water under contract or the places of use. Moreover, most do not involve any change in the type of use, such as the addition of M&I uses. The analysis in the EA addresses the proposed changes to the contract and the potential environmental effects of those changes. As indicated in the EA, these contract changes would not result in significant effects to the environment.

The two action alternatives represent the terms of the final contract, and a copy of a representative contract is provided in Appendix F of the final EA.

Comments

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February 2005

Final EA for Renewal of Long-term Contracts for the Sacramento River Division Contractors

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**Hoopa Valley Tribe (cont'd)**

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**Hoopa-5**

The analysis also expressly excludes from consideration a number of reasonable alternatives, including non-renewal, and renewal at reduced delivery amounts that would more accurately reflect current delivery constraints. See Draft EA at 2-8. These alternatives warrant further consideration. A comparative analysis of differential environmental impacts of a wide range of alternatives to the proposed action must be undertaken in order to allow the public a meaningful opportunity to assess the proposed action.

**5. M&I Shortage Policy**

**Hoopa-6**

The terms of the contracts at issue, as disclosed on July 30, 2004, do not specifically reference Reclamation's proposed revised M&I Shortage Policy, which has been under development for a number of years and has yet to be completed or subjected to necessary review under NEPA or the ESA. According to the Project Description for the Biological Assessment on the CVP-OCAP, any contract that does not specifically refer to the revised policy will not be subject to its provisions. Long Term CVP and SWP OCAP Biological Assessment (June 30, 2004) at p. 2-20. The Draft EA does not discuss the revised policy, its impacts or implications. In the event that the revised M&I Shortage Policy is completed prior to execution of these contracts, and the final contracts as released for public comment on July 30, 2004 are further revised to reflect that policy, recirculation of this EA will be necessary in order to assess the impacts of incorporating those revised shortage provisions into these contracts.

**6. Indian Trust Assets**

**Hoopa-7**

The draft FONSI states that "continued delivery of project water to the existing contracts will not affect any Indian Trust Assets because existing rights will not be affected." That statement fails to acknowledge the nature of water rights associated with tribal fishing rights. For example, the Hoopa Valley Tribe's federally protected fishing right guarantees to the Tribe the right to a fishery that is supportive of a moderate standard of living. As has been repeatedly acknowledged by the federal courts, tribes are entitled to sufficient water in rivers flowing through their lands to support a fishery that will meet those needs. Accordingly, as the needs of the Tribe and the fishery change, so do the water rights associated with the need to sustain that fishery. We accordingly remain very concerned that contractually dedicating the vast amounts of water that are specified in the CVP long term contracts will make it increasingly difficult for the CVP to adequately protect tribal fishery resources, as the limited supply that is available for these purposes is subject to increasingly greater demands as a result of foreseeable drought, global warming, population growth, and urban development. The EA fails to adequately address the cumulative impacts of these various factors on Bureau's ability to provide for and protect the fishery resources within its charge. See e.g. CVPIA § 3406 (b)(23) (identifying trust responsibility to protect the fishery resources of the Hoopa Valley Tribe as constraint on operation of CVP facilities).

**Hoopa-5**

The alternatives present a range of water service agreement provisions that could be implemented for long term contract renewals. The No Action Alternative consists of renewing existing water service contracts as described by the Preferred Alternative of the PEIS. The No Action alternative together with negotiated proposals for CVP-wide terms and conditions are the basis for the alternatives. Reduction of contract amounts were considered in certain cases but rejected from analysis. The needs analyses performed resulted in a need for water which equals or exceeds the current total contract amount. The existing and proposed renewal contracts both include provisions for reductions in deliveries in those years in which insufficient water is available.

Non-renewal of existing contracts is considered infeasible based on Section 3404(c) of the CVPIA. Reclamation is mandated by law to renew the contracts and thus lacks discretion to not renew the contracts.

**Hoopa-6**

Those impacts are being discussed in a separate EA specific to the revised M&I policy.

**Hoopa-7**

Those issues were the subject of the Trinity River EIS and the PEIS. They do not need to be reanalyzed in documents focused upon the maximum quantities under contract. As noted in a prior response the requirements for flows in the Trinity Basin affect how much water is available to fulfill contracts, whereas this document addresses the maximum amount that would be delivered. This EA addresses how much may be delivered if available, whereas the comment addresses factors affecting how much will be available.

Appendix E Public Comments and Responses

## Comments

## Responses

### Hoopa Valley Tribe (cont'd)

August 27, 2004  
Page 7

Thank you for allowing us the opportunity to comment on the Draft EA/FONSI. We trust that our comments will be appropriately considered and addressed in any final NEPA documentation for this proposed action.

Sincerely yours,

MORISSET, SCHLOSSER, JOZWIAK & McGAW



Thomas P. Schlosser  
Regina M. Cutler  
*Attorneys for the Hoopa Valley Tribe*

cc: Bennett Raley  
Kirk Rodgers  
Steve Thompson

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mmc:8/27/04

## Comments

## Responses

Page 1

### River Partners Organization

From: "Daniel Elseaff" <defseaff@riverpartners.org>  
To: <bttrout@mp.usbr.gov>  
Date: 9/1/04 11:42AM  
Subject: Request for extension

Please extend the period for comments on the Reclamation Board Water contracts that are coming up.

#### RPO-1

I would like copies of the documents and a list of the contracts that are coming up.

Sincerely,

Jan t:lseaff  
Restoration Ecologist  
River Partners  
539 Flume Street, Chico, California 95928  
(530)894-5401, ext 21  
defseaff@riverpartners.org  
www.riverpartners.org

#### RPO-1

Reclamation considered extensions of the comment period but feels adequate time was given for review. The BA for the Sacramento River Division long-term water service contract renewals was completed on August of 2003. The Draft EA was first released on August 19, 2003 and was revised in March of 2004. On July 2, 2004, a 60-day public review and comment period was initiated for the associated long-term CVP water service contracts for the Black Butte Unit, Tehama-Colusa Canal Unit, and the Corning Canal Unit of the Sacramento River Division. The revised draft EA and FONSI were released on July 30, 2004 for an additional 30 day public review.

Documents have been available onsite at [www.usbr.gov/mp/cvpia/3404c/index.html](http://www.usbr.gov/mp/cvpia/3404c/index.html).

## Comments

## Responses

### Sacramento River Preservation Trust

**From:** "John Merz" <jmerz@nreach.com>  
**To:** "Basia Trout" <btrout@mp.usbr.gov>  
**Date:** 9/3/04 3:31PM  
**Subject:** Sacramento River Division, CVP Contracts & EAVFONSI

Dear Basia,

**SRPT-1**

I have reviewed the comments submitted to the Bureau concerning the proposed Sacramento River Division, CVP Contracts and related EAVFONSI by both the NRDC, TBI&PCL and FOR and am in complete agreement with every point made. Please add the Sacramento River Preservation Trust (Trust) and the Sacramento Valley Environmental Water Caucus (SVEWC) to the list of groups and individuals requesting an extension of the comment period for both the contracts and the supporting environmental documents. Please note that we are incorporating by reference the comments submitted by NRDC, et al as mentioned above and hereby request to be kept informed of any and all activities associated with this project.

Sincerely,

John Merz  
President  
Sacramento River Preservation Trust  
PO Box 5366  
Chico, CA 95927  
530-345-1865 (Phone)  
530-899-5105 (Fax)  
jmerz@sacrivertrust.org

Co-chair, SVEWC

### **SRPT-1**

Comment noted. Reclamation considered extensions of the comment period but feels adequate time was given for review. The BA for the Sacramento River Division long-term water service contract renewals was completed in August of 2003. The Draft EA was first released on August 19, 2003 and was revised in March of 2004. On July 2, 2004, a 60-day public review and comment period was initiated for the associated long-term CVP water service contracts for the Black Butte Unit, Tehama-Colusa Canal Unit, and the Corning Canal Unit of the Sacramento River Division. The revised draft EA and FONSI were released on July 30, 2004 for an additional 30-day public review.

## Comments

## Responses

### State Clearinghouse and Planning Unit



Arnold  
Schwarzenegger  
Governor

STATE OF CALIFORNIA  
Governor's Office of Planning and Research  
State Clearinghouse and Planning Unit



Jan Boel  
Acting Director

September 3, 2004

Basia Trout  
U.S. Bureau of Reclamation, Red Bluff Field Office  
22500 Altube Avenue  
Red Bluff, CA 96080

Subject: Renewal of Long-term Contracts for the Sacramento River Division  
SCH#: 2004082017

Dear Basia Trout:

The State Clearinghouse submitted the above named Environmental Assessment to selected state agencies for review. The review period closed on September 2, 2004, and no state agencies submitted comments by that date. This letter acknowledges that you have complied with the State Clearinghouse review requirements for draft environmental documents, pursuant to the California Environmental Quality Act.

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

Sincerely,

Terry Roberts  
Director, State Clearinghouse

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

February 2005

Final EA for Renewal of Long-term Contracts for  
the Sacramento River Division Contractors

E47

## Comments

## Responses

### State Clearinghouse and Planning Unit

State Clearinghouse Data Base

<b>SCH#</b>	2004082017		
<b>Project Title</b>	Renewal of Long-term Contracts for the Sacramento River Division		
<b>Lead Agency</b>	U.S. Bureau of Reclamation		
<hr/>			
<b>Type</b>	EA	Environmental Assessment	
<b>Description</b>	Renewal of long-term water service contracts for water contractors in the Western Sacramento Valley for a period of 25 years or 40 years, depending on water use.		
<hr/>			
<b>Lead Agency Contact</b>			
<b>Name</b>	Basia Trout		
<b>Agency</b>	U.S. Bureau of Reclamation, Red Bluff Field Office		
<b>Phone</b>	530-528-0512	<b>Fax</b>	
<b>email</b>			
<b>Address</b>	22500 Altube Avenue		
<b>City</b>	Red Bluff	<b>State</b>	CA <b>Zip</b> 96080
<hr/>			
<b>Project Location</b>			
<b>County</b>	Glenn, Tehama, Colusa		
<b>City</b>	Willows		
<b>Region</b>			
<b>Cross Streets</b>			
<b>Parcel No.</b>		<b>Section</b>	
<b>Township</b>	<b>Range</b>		<b>Base</b>
<hr/>			
<b>Proximity to:</b>			
<i>Highways</i>			
<i>Airports</i>			
<i>Railways</i>			
<i>Waterways</i>			
<i>Schools</i>			
<i>Land Use</i>			
<hr/>			
<b>Project Issues</b>	Aesthetic/Visual; Agricultural Land; Air Quality; Archaeologic-Historic; Cumulative Effects; Economics/Jobs; Geologic/Seismic; Landuse; Recreation/Parks; Soil Erosion/Compaction/Grading; Vegetation; Water Quality; Water Supply; Wetland/Riparian; Wildlife		
<hr/>			
<b>Reviewing Agencies</b>	Resources Agency; Regional Water Quality Control Bd., Region 5 (Sacramento); Regional Water Quality Control Bd., Region 5 (Redding); Department of Parks and Recreation; Native American Heritage Commission; Reclamation Board; Department of Fish and Game, Region 2; Department of Fish and Game, Region 1; Department of Water Resources; Caltrans, Division of Transportation Planning; State Water Resources Control Board, Division of Water Rights; State Water Resources Control Board, Division of Water Quality; State Water Resources Control Board, Clean Water Program; State Lands Commission		
<hr/>			
<b>Date Received</b>	08/04/2004	<b>Start of Review</b>	08/04/2004 <b>End of Review</b> 09/02/2004

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

Comments

Responses

Department of Fish & Game



State of California - The Resources Agency  
DEPARTMENT OF FISH AND GAME  
<http://www.dfg.ca.gov>

ARNOLD SCHWARZENEGGER, Governor



September 9, 2004

Ms. Basia Trout  
US Bureau of Reclamation  
22500 Altube Avenue - Hwy 99W  
Red Bluff CA 96080

Dear Ms. Trout:

The Department of Fish and Game has reviewed the "Revised Draft Environmental Assessment for Renewal of Long-Term Contracts for Sacramento Canals Unit of the Central Valley Project (CVP)." According to the document, the purpose of the project is to renew the "Canals Unit" water service contracts consistent with the provisions of the Central Valley Project Improvement Act (CVPIA) as developed in the programmatic environmental impact statement for the CVPIA. The stated need for long-term contract renewal includes achieving a reasonable balance among competing demands including irrigation; fish and wildlife protection, restoration and mitigation and enhancement; and ensures CVP compliance with applicable laws including the Federal Endangered Species Act. While we did not see an explicit statement of need to achieve compliance with relevant State laws such as the California Endangered Species Act, we do recommend the US Bureau of Reclamation (Reclamation) support the State's efforts to protect fish and wildlife.

At this time, the Department of Fish and Game believes it is appropriate to delay proceeding with the environmental decision making process for the Long-Term Contract for the Sacramento Canals Unit until finalization of the Federal Endangered Species Act Biological Opinion which is due to be released by National Oceanic and Atmospheric Administration Fisheries in the near future

The Environmental Analysis (EA) relies on inappropriate and outdated assessments and omits relevant analyses for determining protection of Federal- and State-listed species including:

- Biological Opinion of 1993 for the CVP which only addresses effects to winter-run Chinook salmon. This document, which is being updated and replaced, cannot be used for assessing effects on the two other listed anadromous salmonid species, Central Valley spring-run Chinook salmon and Central Valley steelhead.

DFG-1

DFG-1

Information and assessment of affects on all listed anadromous fish is taken from the referenced March 22, 2004 CVP and State Water Project OCAP BA, which is the best information available. Updated versions did not significantly change the outcome of the assessments. The action being addressed in the EA is the delivery of water within CVP service areas. Updated ESA consultations have addressed all listed species affected by CVP operations.

*Conserving California's Wildlife Since 1870*



Comments

Responses

Department of Fish & Game (cont'd)

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Page Two

DFG-2

- The referenced March 22, 2004, Long-term Central Valley Project and State Water Project Operations Criteria and Plan (OCAP) Biological Assessment is out of date. The document has been updated with different versions several times since March. The current version in our opinion still contains some conclusions on the habitat and passage needs of some of the State listed anadromous species that we do not agree with; however, we understand there may be another version forthcoming.

DFG-3

- The determination of the effects Red Bluff Diversion Dam (RBDD) has on winter-run, spring-run and fall/late fall-run Chinook salmon and Central Valley steelhead is referenced to the 1993 Biological Opinion for winter-run Chinook which is not usable for spring-run Chinook salmon, fall-run Chinook salmon and steelhead. CVPIA Section 3406 b (10) requires the development and implementation of measures to minimize fish passage problems experienced by juvenile and adult anadromous fish at RBDD. In 2002 Reclamation lead the preparation and public review of a draft EIS/EIR addressing CVPIA requirement to minimize fish passage problems at RBDD. Reclamation has suspended the decision making process started by the document without responding to comments and we have not been notified when the suspension may end.

DFG-4

- The preferred alternative is overly vague in that it is a "negotiated position between Alternative 1 and Alternative 2." The formal project description for Alternative 1 does not clearly state what types of protections would be in place for endangered species; therefore, it is possible that the preferred alternative may not comply with the Endangered Species Act. The document should clearly describe what is included in the preferred alternative that is applicable and relevant to Federal and State endangered species acts and CVPIA anadromous fish restoration requirements.

The existing operation of the Sacramento Canal's Unit RBDD with its undersized fish ladders currently impairs passage of anadromous fish when the gates are installed and river flows are elevated due to runoff events. The species that endures the most impairment under existing conditions is spring-run Chinook which include adult migrants traveling to Battle Creek and Clear Creek. In addition, existing conditions can impair passage of the very last portion of the adult winter-run migration and juvenile anadromous fish traveling downstream under certain conditions. The fish ladders at the dam are over 40 years old and do not perform to currently accepted standards. The Draft Environmental Impact Statement/Environmental Impact Report for Fish Passage Improvement Project for RBDD describes the existing conditions explained above for both ladder performance and impaired passage of spring-run and winter-run Chinook.

DFG-2

The draft OCAP BA/BO documents have been reviewed and the final OCAP BA/BO documents did not change the information or determination of effects in the EAs. Also see response to comment DFG-1.

DFG-3

The RBDD EIS/EIR passage process is postponed until the final OCAP BO is issued. Reclamation is continuously working with NOAA Fisheries to minimize impacts to salmonids at the RBDD and decisions about the next steps will be made after the OCAP BA consultation is completed and implemented. This is a separate action subject to its own environmental compliance requirements. Please see earlier comments regarding the RBDD EIS/EIR process.

DFG-4

The No Action Alternative together with negotiated proposals for CVP-wide terms and conditions are the basis for the action alternatives. The preferred alternative, essentially maintains the status quo apart from changes mandated by the CVPIA. The analysis displays the increment of change between the No Action Alternative and the other alternatives. The contracts will comply with all relevant environmental requirements.

Comments

Responses

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Page Three

In addition to our general concerns with the EA, the Department has the following specific comments:

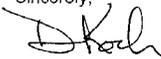
**DFG-5** | Page 3-67, Paragraph 1, Last sentence: This sentence is unclear as to what type of Chinook salmon is being analyzed for negative effects at RBDD and when the negative effects occur with respect to existing conditions or historical conditions. The sentence is in past tense implying negative effects are no longer occurring. This sentence and the one before it should be revised to clearly indicate that: (1) spring-run, winter-run and fall-run Chinook occur at RBDD; and (2) spring-run and winter-run Chinook are still affected negatively by RBDD to differing degrees.

**DFG-6** | Page 3-67, Paragraph 2, Section Title and Contents: Coho do not occur in the Sacramento River. Remove all references to coho from the document.

**DFG-7** | Page 3-75, Paragraph 2: The document states 98 percent of the spawning winter-run are protected. This conclusion is based upon an incomplete data set. The winter-run Chinook spawning distribution in the analysis was limited to an upstream area based on data for a few select years. Since it is known winter-run spawn as far downstream as RBDD and since the EA covers up to 40 years into the future, the complete data set should be used to characterize spawning winter-run distribution.

**DFG-8** | Page 3-74, Paragraph 3, last two sentences: These sentences need further explanation.

The Department recommends the "Long-Term Water Supply Contracting Environmental" document be retracted and reissued with appropriate modifications upon completion of the Biological Opinion for the CVP OCAP. Reclamation should also complete the environmental document for RBDD by responding to comments and issuing a "Record of Decision." Thank you for your considerations of our comments. If there are any questions regarding this matter, please contact Staff Environmental Scientist Harry Rectenwald at (530) 225-2368.

Sincerely,  
  
**DONALD B. KOCH**  
Regional Manager

cc: Messrs. Harry Rectenwald, Steve Turek,  
and Randal C. Benthin and Ms. Alice Low  
Department of Fish and Game  
601 Locust Street  
Redding, CA 96001

**DFG-5**  
Comment noted. Text was changed to reflect the current status.

**DFG-6**  
The EA will be modified to more clearly state that coho salmon are unlikely to occur within the project-affected waterways.

**DFG-7**  
Par 2. states that incubation conditions for winter-run Chinook salmon are estimated to cover 98% of winter-run spawning even with increased temperatures due to lowered water levels in the Sacramento River. The information was based on the best information available, as referenced in the Long-term CVP and State Water project OCAP BA.

**DFG-8**  
Reclamation provides CVP water to contractors to the point of diversion. Most adverse impacts occur to fish as a result of taking and using the water, which is not a Reclamation action.