

APPENDIX F

Comment Letters on EA and Responses to Comments

Comment Letters on EA and Responses to Comments

Letters commenting on the Draft EA and the Updated Draft EA are reproduced on the following pages. Each comment letter has been assigned a number (e.g., Comment Letter 7) and each specific comment has also been assigned a number (e.g., Comment 7-4), as shown in the margins of the letters. Immediately following each comment letter are Reclamation's responses to the comments in that letter. The responses are numbered to correspond to the numbers assigned to the comments. Where changes to the EA text result from the responses, those changes are indicated with revision marks in the text of the Final EA (underline for new text, ~~strike-out~~ for deleted text). Comments that present opinions about the project or that raise issues not directly related to the substance of the EA are noted without a detailed response.

The Draft EA was distributed in 2000. The Updated Draft EA was distributed in 2004 to those who submitted comments on the Draft EA. Most (15 out of 18) of the comment letters commented on the Draft EA. In 2003, the Biological Assessment/Essential Fish Habitat Assessment (BA/EFHA) was prepared for the Endangered Species Act consultation for these contract renewals.

No significant environmental issues beyond those already covered in the EA were raised during the 30-day comment period for the Draft EA and the 30-day comment period for the Updated Draft EA. Comments received on the EA did not indicate new significant impacts or significant new information that would require recirculation of the EA pursuant to the National Environmental Policy Act (NEPA).

clauses that are now off the table, while ignoring issues raised during negotiations which are now likely to be included in the final negotiated contract. The District proposes that the Environmental Assessment draft process be suspended until such time as the final negotiated agreement is reached between the parties.

2. Contrary to the statements made (page 6-3), Contractors were not adequately consulted prior to preparation of the Environmental Assessment. Issues critical to the contractors were not discussed, e.g., water quantity increases, and for others, only Reclamation's position is mentioned without analysis of a contract which mirrors the contractor's position (e.g., 2 to 5 acre minimums). This is an additional reason why the Environmental Assessment should not have been prepared prior to contract negotiations being completed.

3. The Environmental Assessment needs to be prepared in a manner which will be adequate for CEQA compliance. The cost for preparation of an entirely new set of environmental documents for CEQA compliance is prohibitive. Moreover, inconsistencies in the NEPA required analysis and CEQA analysis weakens both documents from a defense standpoint to potential environmental challenges. Consistency between the two documents is critical.

Supplies

4. While the Environmental Assessment proposes that alternatives would not increase contract quantities, the Contractors have not conceded that additional quantities should not be included. The contractors were not consulted about this foregone conclusion and vociferously voiced their opposition to that position when the proposed "bookends" were suggested months

ago. The Environmental Assessment totally ignores that issue and is per se inadequate for that reason.

5. During negotiations the Contractors have established, to the satisfaction of Reclamation, that additional water may, in fact, be available for delivery to Sacramento Valley contractors based on a scientific study. The results of that study were ignored and thus no increased deliveries are analyzed at all in the draft Environmental Assessment.

6. Contractors may also obtain additional supplies from other sources. The contractors' proposal for obtaining those supplies, the means and quantities identified in their needs analysis should be considered versus the blinders approach of the Environmental Assessment which ignores water supply issues other than CVP water. Specifically, analysis of the inability of the contractors to obtain supplies identified to be necessary in their needs analyses should be considered.

7. The Environmental Assessment presupposes that CVP water is a supplemental supply (page 2-2). For many, and perhaps most of the Sacramento Valley contractors, CVP water is the primary or sole source of supply and its continued beneficial use in this area is critical to economic survival. The Environmental Assessment tries to minimize the impacts of shortages in CVP supply by a characterization which does not reflect historical use. No analysis is made of contractors alternative supplies to make up for CVP shortfalls.

8. The Environmental Assessment fails to mention the impact of Area of Origin laws on Sacramento Valley CVP contractors. Those laws impact CVPLA implementation, transfers, and

contractor development of state water rights. Those issues are unique to Sacramento Valley contractors. The contractors were not consulted on what impacts those laws will have on contract renewal or water rights issues in the future and they should be considered.

1-8

Minimum Parcel Size

9. The Environmental Assessment adopts Reclamation's position that a change of minimum acreage for agricultural water eligibility from 2 to 5 acres will have "little or no effect on the cost of water for farmers with parcels between 2 and 5 acres . . ." (page 4.3-10). The contractors were not consulted about his issue and do not share Reclamation's opinion.

1-9

10. Small rural parcels are the mainstay of the two largest districts in the Shasta and Trinity Division. Most parcels bought and sold in the 2 to 5 acre size are dependent on irrigation water being available for pasture and agricultural production. The Environmental Assessment fails to analyze the effects of disqualification of those parcels for agricultural water rates and rather dismisses the impact as nominal.

1-10

11. Land values and marketability of affected parcels will be seriously impacted if agricultural water rates are no longer available. The consequences of that included not only reduction in land sales, but a lower property tax base which impacts the districts and the county in which they are located.

1-11

12. Contrary to the conclusion reached in the Environmental Assessment with regard to water rates, the increased costs for imposing M&I rates on smaller parcels will not necessarily be borne by each customer. Rather, districts often attempt to dull the impact by adopting blended rates

1-12

which, in effect, subsidize rural water rates with income from residential and commercial customers. Those impacts were not considered.

1-13

Transfers

13. The Environmental Assessment recognizes that transfers are a critical means for contractors to increase short supplies and improve water management. The Environmental Assessment fails to discuss at all the use of CVP facilities for those transfers and Reclamation's position for permitting such use. Contract negotiations have established that Reclamation, while theoretically agreeing that CVP facilities can be used for transfers and conveyance of non-project water, has proposed restrictions and conveyance rates on that use which renders it a practical and financial impossibility. Thus, the realization of water use benefits by transfer and conveyance of non-project water through CVP facilities may or may not be a factor when final contract negotiations are completed. The Environmental Assessment needs to address these issues, but cannot do so until the contract negotiations are concluded.

1-13

14. The Environmental Assessment fails to mention CVPIA application of Area of Origin laws on transfers.

1-14

15. Historic transfers that will continue into the future should be covered by the Environmental Assessment rather than simply deferring that to additional analysis, as suggested. There is ample data available to review historic transfers that are repeated annually and no additional analysis should be required beyond the Environmental Assessment for both NEPA and CEQA compliance.

1-15

Term

16. Other than a passing mention of 40 year renewal rights for M&I uses, the Environmental Assessment is based on a presupposed 25 year contract. The District and most other contractors in the Shasta and Trinity divisions have significant M&I deliveries in their contracts that will be subject to the 40 year perpetual renewal. The Environmental Assessment fails to analyze the impacts of that renewal right.

1-16

17. A tentative agreement has been reached that would permit agricultural contracts to be guaranteed a renewal for an additional 25 years, thus rendering the first contract term effectively 50 years. Absent conclusion of contract negotiations, the Environmental Assessment cannot properly analyze environmental impacts by guessing at contract terms which is a fundamental and critical component of the analysis.

1-17

Tiered Pricing and Payment Capacity

18. The Environmental Assessment improperly concludes that payment capacity vis-a-vis tiered pricing will apply only to the first 80% of water deliveries. This is contrary to Reclamation's rate setting policy.

1-18

19. Reclamation's proposal (Alternative 2) for Category 1 and 2 water is now off the table and the discussion and analysis of that issue in the Environmental Assessment should be deleted.

1-19

Needs Analysis

Page 2-2, Needs Analysis. The EA states that the CVP contract amount will be limited by the existing CVP contract quantity. Contractors and the Bureau have negotiated a provision which

allows for additional water to be delivered in certain years. This provision was the result of a study done by the contractors to determine whether this additional water could be delivered to the Sacramento Valley without affecting others in the CVP or fish & wildlife. The EA should address this additional water. During contract negotiations, contractors repeatedly requested that EA's for the long-term contract renewal address increased amounts so that contracting negotiations would not be limited by the environmental assessment.

1-20

Other

Table 2-2, page 2-15. The figures for crop water use and acres under irrigation in the year 2026 for the Bella Vista Water District are in error. They should be 11,635 and 2,807, respectively, to match the Bureau's Needs Analysis.

Table 4.1-1, Page 4.1-2. Indicates the service area boundary of Bella Vista as 3,395 acres. That figure should be 33,932 acres.

1-21

Page 4.2-1, second paragraph. Indicates that the Bella Vista Water District was formed in 1964. That figure should be 1957.

Page 4.3-3, Table 4.3-6 and Page 4.3-5, Table 4.3-9. Both show the CVP contract maximum for Bella Vista at 22,000 acre feet. That number should be 24,000 acre feet.

Page 4.4-4, second paragraph. Indicates that "agricultural water consumption decreased . . ." The decrease ". . ." is attributed to urbanization of the westerly portion of the Bella Vista Water District." It should also be noted that some of this shift is due to the unreliability of the Central

1-22

Valley Project water supply. Many agricultural users never recovered from the last drought when supplies to the District were cut by 75%.

Adopted by the Board of Directors November 14, 2000.

Responses to Comment Letter 1 – Bella Vista Water District (2000)

- 1-1: The bookends approach was used to provide a reasonable range of alternatives that meet the purpose and need for the proposed action and to allow analysis of the project impacts to move forward while contracts were being negotiated.
- The alternatives assessed in the EA represent a range of water service agreement provisions that meet the 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 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 the “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.
- 1-2: Comment is noted. Public scoping meetings were held throughout the contractor service areas, including Redding, between October 1998 and January 1999. Contract provisions comprising Alternative 1 were developed by the Contractors and analyzed in the Draft EA.
- 1-3: Reclamation is not required to comply with CEQA. Reclamation is the lead agency for the proposed federal action. Other non-federal parties (contractors) may be required to consider the proposed action under CEQA.
- 1-4: Section 3404(c) of the CVPIA directed the Secretary of Interior to renew existing CVP water service contracts. Because a finite resource (CVP water) was involved and 800,000 acre-feet of that finite resource was committed to another use, Reclamation concluded with some degree of certainty that additional water beyond a Contractor’s current maximum quantity could not be obligated.
- 1-5: Comment is noted. The referenced study argued that small amounts of water might be available in some years. The potential availability of additional supplies would hold under all alternatives, including the No Action. Accordingly, there are no anticipated impacts of those additional supplies under the action alternatives relative to the No Action Alternative.
- 1-6: The analysis in the EA does not address the implications and costs for individual contractors to secure additional water supplies as a result of CVPIA because CVP water supplies and deliveries are presumed the same under all alternatives, including the No Action. The intent of the analysis of action alternatives is to assess their potential effects relative to the No Action alternative. In the case of water supply and deliveries there is no expected effect. While Alternative 2 does propose a change in water prices relative to the No Action, as discussed in Section 4.3 of this EA, it is reasonable to expect no material change in the demand for CVP M&I water under Alternative 2 due to the very low price sensitivity of M&I water users and the high price of alternative supplies relative to CVP water.
- 1-7: Reclamation realizes that shortages may occur in the future due to decisions of the Contractors and their clients. Under NEPA, the EA is required to evaluate the impacts of the alternatives for renewing the long-term water service contracts. Evaluating alternative supplies that would make up for CVP shortfalls that derive from growth decisions of the Contractors is beyond the scope of the EA. Also refer to response I.6.

- 1-8: The CVP water supplies are obtained under State law and, to the extent that area of origin laws are upheld by the courts, CVP operations will have to be amended to accommodate them. At this time, these laws have not been tested in the courts.
- 1-9: Although Reclamation proposes to change the threshold for presumption of agricultural use of water for purposes of billing from 2 acres to 5 acres, CVP Contractors will be allowed to request a modification from the Contracting Officer for a demonstrated need for agricultural use on parcels that are less than 5 acres. Therefore, this change will result in little or no effect on the cost of water for farmers with parcels that are less than 5 acres, although non-farmers would lose subsidies arising from the current presumption of agricultural use.
- 1-10: Refer to “Definition of Municipal and Industrial Users” on page 2-10 of the Final EA. CVP Contractors will be allowed to request a modification from the Contracting Officer for a demonstrated need for agricultural use on parcels that are less than 5 acres. Therefore, this change will result in little or no effect on the cost of water for farmers with parcels that are less than 5 acres. Only non-agricultural uses, such as pasturage to support equine recreation, would be affected.
- 1-11: Reclamation has been assured by Contractors that all recipients of water at agricultural rates are legitimate agricultural users. Thus, there will be no adverse impacts as the users will simply have to document their agricultural use of the water to get agricultural rates. BVWD will continue to receive irrigation water for a period of 25 years, provided contract provisions are met. These provisions include, but are not limited to, preparation of a water conservation plan, maintenance of water measuring devices/measurement methods, and continued beneficial use of Project water.
- 1-12: Comment is noted. Such subsidization actions are a matter of the District’s choice.
- 1-13: Project facilities were built for Project purposes, which take priority over non-Project uses. Such uses are permissible, however, when spare capacity is available and an equitable share of the Project costs is paid. The draft contracts allow non-Project water to be conveyed via CVP facilities, provided those uses are approved by the Contracting Officer, comply with appropriate environmental review and Reclamation policies/laws, and include payment to the United States at an appropriate rate.
- 1-14: Transfers are approved individually as separate actions. The contracts do not cover specific transfers; they merely provide for transfers under applicable law. Questions concerning area of origin issues will be addressed in reviews of specific transfers, as appropriate.
- 1-15: A history of short-term transfers does not guarantee future transfers. Specific future transfers are not addressed in this EA. Such transfers would require separate analysis before Reclamation could approve them.
- 1-16: Pure M&I contracts are for 40 years; irrigation contracts are for 25 years; and mixed irrigation and M&I contracts are for 25 years, with provision for extension of the M&I component to 40 years. Renewal of the contracts is currently expected, but further environmental analysis is anticipated upon any such renewal.
- Refer to page 1-8 and 1-9, Section 1.8 of the Final EA for the assumptions used in the 40-year impact analysis.

- 1-17: Reclamation and BVWD have negotiated a long-term renewal contract that will furnish irrigation water for 25 years. Further renewals would, under current law, require further environmental analysis.
- 1-18: The contract rates are defined by CVP rate-setting policies, P.L. 99-546, and the Reclamation Reform Act (RRA). The prices of CVP water used in the analysis of the No Action Alternative are based upon 1994 CVP irrigation and M&I water rates. All alternatives use tiered water pricing. Under the No Action Alternative, tiered water pricing is based upon use of an "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 the applicable contract rate, and the next 10% 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. For Alternative 1, tiered pricing was assumed in the analysis. Alternative 2 assumed tiered pricing with Categories 1 and 2 water.
- 1-19: The contract provision for Category 1 and Category 2 water was considered under Alternative 2, but was not included in the negotiated contract terms and conditions.
- 1-20: Comment is noted. Analysis of potential alternate water supplies is outside the scope of this EA. The subject of the EA is the renewal of existing contracts with financial and administrative changes but 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 the effects that additional water would have on Contractors and their supplies is outside the scope of this document.
- 1-21: The comment regarding crop water use and acres under irrigation has been noted. The other corrections cited have been inserted into Final EA.
- 1-22: Comment is noted.

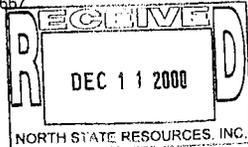


LETTER 2

SHASTA COUNTY

WATER AGENCY

COUNTY OFFICE BUILDING
1855 PLACER STREET
REDDING, CA 96001
(530) 225-5661
FAX (530) 225-5667



BUREAU OF RECLAMATION OFFICIAL FILE COPY RECEIVED DEC 9 5 2000

RONALD C. HILL
CHIEF ENGINEER

November 22, 2000

Al Candlish
2800 Cottage Way
Sacramento, CA 95825-1898

Subject: Long-Term Contract Renewal Draft Environmental Assessment
Shasta-Trinity Decision

Dear Mr. Candlish:

The Shasta County Water Agency (SCWA) appreciates this opportunity to comment on this region's Draft Environmental Assessment (EA). SCWA's goal is to facilitate regional solutions to local water problems and, as such, the SCWA finds the Draft EA to be deeply troubling.

Section 2.3.1 of the EA states that "...the CVP contract amount will be limited by the existing CVP contract quantity." These words would effectively thwart any potential use of "found," or 3(f), water. The SCWA has participated with other local contractors to fund a computer study of system operation and found that there are small amounts of water to be had without impacting downstream deliveries, imports or the environment. In Divisional negotiations, the Bureau of Reclamation agreed that, if 3(f) water is available, it ought to be delivered. The contractors and Bureau are further in agreement that 3(f) water ought first to be made available to contractors in need.

If the scope of the EA is limited to contract quantities, a contractor that has taken delivery of its entire contract amount and yet has additional beneficial needs, would have to go through the environmental process each time that 3(f) water becomes available. This would be impractical because 3(f) water is basically "slop" in the system, passively available on short notice. Limiting the scope of the Draft EA to contract quantities makes 3(f) water unviable.

Table 4.3-12 lightly explores the economic ramifications of the alternatives. However, it incorporates a flawed premise regarding the relationship between the Contractors' 1999 rates versus the 1994 rates. This flaw taints all subsequent comparisons with other alternatives that use more timely water

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Page 2

Another economic concern is that the consideration of Alternative 2 completely ignores the so-called "Death Spiral." Repeated drought years would change the five-year rolling average that would be used to calculate cost tier placement. During dry conditions lasting five years or more, a contractor using 100% of his contract allocation would see his usable contract amount diminished to 75% of the amount at the beginning of the drought. At the end of the dry spell, the contractor would have to pay premium rates on the water use above 60% of its contracted amount. Subsequent droughts would repeat this process, iteratively eroding the supply. The Draft EA only considers a single year of drought and suggests that overall economic impacts would be nominal. We disagree: existing and potential new municipal and industrial (M&I) users would be severely impacted. However, instead of constricting these existing and new M&I users, these users will forsake existing, developed areas served by CVP water, in favor of "greenfield" sites overlying the Redding Groundwater Basin. There is ample land available for development, overlying the high-yielding portions of the groundwater basin in the Cottonwood, Anderson, and Balls Ferry areas. These areas are presently in large private holdings, with habitat and scattered agriculture.

The final bullet point of Section 1.3 states that the right to renew is limited. In previous negotiating sessions, the Bureau has indicated that M & I contractors would enjoy an unlimited right to renew pursuant to their authorization language. If that has changed, then it is vitally important to inform all Californians dependant on the CVP water, so that they may plan accordingly.

The bullet point at the end of Section 1.2 notes that Long Term Contract Renewal is needed to "Allow the continued reimbursement of the Federal government for the costs related to the construction and operation of the CVP." We believe continued repayment was never in doubt. CVPIA, however, requires project capital to be paid off at a rate greater than that previously negotiated. The EA should reflect that the new long term contracts are meant to accelerate the repayment schedule.

Several more minor discrepancies are apparent:

- Section 3.3 states that the system is making deliveries at 337 TAF below 1994 levels, though CVPIA calls for and 800 TAF reduction and, when ESA is considered, 1.2 MAF is the number most commonly cited.
Section 5.11 notes that the yield increase study has been completed by the Bureau, though Table 2-1 notes that there is a need for such a study (the CVPIA 3408(j) study). SCWA is keenly interested in this study, as the Bureau has made a point of not binding the Secretary to it in the contract.
The "Vernal Pool/Wetland" row of Table 4.5-1 notes that seasonal wetlands are common "in the southeast portion of the STWD water service area." The Draft EA may mean the "Shasta-Trinity Water Division," but this is not apparent.
Section 4.2.1's treatment of the U.S.F.S. Centimudi Boat Ramp states that the marina is currently serviced by Shasta CSD. This is not the case.

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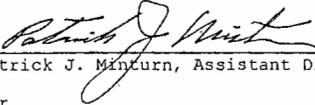
Two items of paramount concern are not dealt with at all: the Trinity Flow Decision and the Bureau's recent movement toward an M & I shortage policy. The Trinity Flow Decision will impact all SCWA subcontractors in Shasta County. The new M & I shortage policy tinkers with the reliability curves put forth in the CVPIA Programmatic EIS, further undermining the economic conclusions of the Draft EA.]-2-10

In closing, the Draft EA is deeply flawed at both the factual and analytical level. The Bureau and its consultants have a unique opportunity now -- because of the pause while Presidential administrations change -- to double check their facts and to follow through with meaningful analysis that would make this EA the thorough, thoughtful and useful document that the law requires.

Should you have any questions or concerns, please contact Eric Wedemeyer at (530) 225-5181.

Very truly yours,

Ronald C. Hill, Chief Engineer

By 
Patrick J. Minturn, Assistant Director

FJM/lr

Responses to Comment Letter 2 – Shasta County Water Agency (2000)

- 2-1: The analysis was based on the best available data and adjusted as noted in the footnotes to the table cited. The effects on the analysis were deemed minimal, given that these users deliver treated water, which means the cost of the raw water is a small percentage of the final cost. Thus, the final cost, and hence use, is not very sensitive to the costs of raw water.
- 2-2: The analysis employs 1994 and 1999 prices to be consistent with the rate years used in the CVPIA PEIS, which the EA is tiered from.
- 2-3: Comment noted. However, the application of the rolling average was dropped from Alternative 2. Further, the economic analysis in the EA is tiered from the CVPIA PEIS, which focused on the implications for CVP water users of the alternatives under long-run average and short-run dry conditions. Finally, the low sensitivity of M&I water users to water price and the relatively high cost of alternative M&I supplies together would suggest that there would be little impact on the demography of areas served with CVP water under the action alternatives relative to the No Action Alternative.
- 2-4: Comment is noted. 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 lacks discretion to not renew the contracts. The language reflects the language of the CVPIA.
- 2-5: Repayment is an identified “need” for the long-term contract renewal (the proposed federal action). The language reflects the language of the CVPIA.
- 2-6: Reclamation’s records show that the re-allocation of CVP water to fish and wildlife purposes under the CVPIA reduced average annual CVP water deliveries to water service Contractors from 2,270,000 acre-foot/year under the No-Action Alternative to 1,933,000 acre-foot/year (a difference of 3,370,000 acre-foot/year under all of the alternatives analyzed in the PEIS for the CVPIA, including the Preferred Alternative.
- 2-7: Comment is noted.
- 2-8: The reference to STWD in Table 4.5-1 of the Draft EA was deleted from the Updated Draft EA.
- 2-9: Thank you for the correction. The error has been corrected in the Final EA.
- 2-10: The Trinity River Flow Decision does affect operations in the Sacramento Valley, but it is not a discretionary item related to contract renewals. The principal effect is to make compliance with temperature requirements more difficult. Any changes in M&I shortage policy would apply to all three alternatives considered in the EA, including the No Action. Accordingly, there are no anticipated incremental impacts of this shortage policy from the action alternatives, relative to the No Action Alternative.

Responses to Comment Letter 3 – Bella Vista Water District (2000)

3-1: Comment is noted

3-2: Providing greater supplies in dry years to any Contractor who chooses to change from agricultural use to urban use equates to increasing that Contractor's supply in dry years. Given a constant supply in the CVP, that would amount to imposing heavier shortages on the Contractors who do not make such a shift. The policy to which the comment objects thus protects agricultural Contractors who choose to remain agricultural from the impacts of land use decisions made by others. Contractors are free to develop their holdings as they choose, but that does not mean that Reclamation is obligated to provide water to meet any resulting new demands they create.

Response to Comment Letter 4 – Office of Planning and Research (2000)

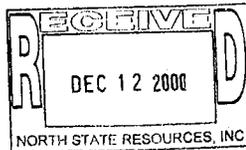
No comments were submitted. Letter 4 is a notification that the Draft EA (2000) was sent to the 15 agencies listed in the attachment.

LETTER 5 CITY OF REDDING



PUBLIC WORKS DEPARTMENT
 FIELD OPERATIONS DIVISION - STREETS, WATER, WASTEWATER
 Mail: P.O. Box 496071, Redding, CA 96049-6071
 Shipping: 20055 Viking Way, Building #3, Redding, CA 96003
 530.224.6068 FAX 530.224.6071

December 4, 2000
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Mr. Al Candlish
 Bureau of Reclamation
 Mid-Pacific Region
 2800 Cottage Way
 Sacramento, CA 95825-1898

Dear Mr. Candlish:

Subject: Draft Environmental Assessment for the Long-Term Contract Renewal - Shasta and Trinity Divisions

Thank you for the opportunity to review and comment on the Draft Environmental Assessment for the Long-Term Contract Renewal for the Shasta and Trinity Divisions. The Shasta and Trinity Division contractors are at the head works of a very reliable water supply with good quality water, and our local economy has much at stake in a successful solution to the state's pressing water needs.

The City of Redding (City) is in the process of re-negotiating its Central Valley Project (CVP) water contract, which has not been completed at this time, for 6,140 acre feet of water from the Spring Creek Conduit, Sacramento River, and the Toyon Pipeline. The City has concerns about the functional requirements of an Environmental Assessment, especially in the absence of a completed contract. The City suggests that the completion of the Draft Environmental Assessment be postponed until the completion of the contract negotiations. The City believes that there are critical issues that have to be addressed and evaluated for the Shasta and Trinity Division contractors before a final Environmental Assessment can be completed.

Obtaining accurate data is essential in preparing an accurate Environmental Assessment. After the Shasta and Trinity Division contractors met with North State Resources (NSR) on September 13, 2000, it was determined that NSR had been supplied with incorrect data, and the water contractors were not adequately consulted prior to the preparation of the Environmental Assessment.

The Environmental Assessment should address the future water demand beyond 25 years for all the Shasta and Trinity Division contractors. The Environmental Assessment should consider the effect of the total supply of the contract amount, whether it comes through the existing water contract, water transfers, or the acquisition of non-CVP water. The City, as well as other Shasta and Trinity Division contractors, strongly feel the Bureau of Reclamation (Bureau) should preserve the water supply that will be required to meet present and future beneficial uses in the watershed of origin. The Redding area will continue to grow and it does not make sense to make long-term water commitments to areas outside the Redding basin and then have to import or transfer water to the area to make up the shortfall. If the Bureau is not able to provide adequate water supplies for long-term demand for the Shasta and Trinity Division contractors, this should be taken into consideration in the Environmental Assessment.

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REQ NO	38391

Mr. Al Candlish
 November 27, 2000 (12-4-00)
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Important contract provisions concerning M&I water have not been resolved by the Bureau with the CVP contractors. Unresolved contract provisions concerning M&I water reliability, M&I water shortages, M&I water quality, and the M&I rate setting policy have not been determined. According to the Bureau, the rate setting policy will not be concluded until sometime next year. The M&I deficit which could influence M&I rates and capital repayment is also expected to be resolved within the next year. The Environmental Assessment should have addressed these factors or at least taken them into consideration.

The Environmental Assessment should analyze in further detail the impacts on the water contractors taking water from Whiskeytown Lake which is their only source of supply. This should work in conjunction with the Bureau's Trinity River flow decision and corresponding change in the amount of water diverted to the Sacramento River system. The potential risk for decreased flows through Whiskeytown Lake could change the operation of Whiskeytown Lake and increase water temperatures, increase organics in the water, increase water turbidity, and degrade water quality. All these potential risks could adversely impact water treatment operations and treatment expenses for the water contractors taking water from Whiskeytown Lake. Also the effects to the Sacramento River water quality should be addressed. The decrease in water diversions from the Trinity River has the potential to increase loading of chemicals and other constituents, which could affect water quality for both the environment and M&I uses. The Environmental Assessment should have also addressed the fact that 60% of the City's contract water that is diverted, is used and returned to the Sacramento River system with no credit of return water given to the City.

The California Department of Health Services - Division of Drinking Water (DOHS-DDW) which has primary enforcement responsibility and enforces the drinking water quality and monitoring standards in the Shasta and Trinity Division area should have had the opportunity to review and comment in the Draft Environmental Assessment. The DOHS-DDW has the authority of enforcement over the Shasta and Trinity Division contractors to ensure compliance with drinking water regulations.

The Bureau's proposal for tiered pricing should promote, not discourage, good water management tools such as conjunctive use, water transfers, and water conservation. The Bureau's approach to the implementation to tiered pricing in Category 1 and Category 2 water in Alternative 2 is no longer an item in the contract negotiations and should have been deleted from the Environmental Assessment.

The following inconsistencies were noticed during the Draft Environmental Assessment review:

Section 4.2 WATER SUPPLIES AND FACILITIES OPERATIONS

In the City of Redding section it is stated, "The Summit City Zone falls entirely within the unincorporated area of Shasta County." This statement is incorrect, three-quarters of the Summit City Zone lies within the city limits of the City of Shasta Lake. Also, the statement "The City's CVP long-term water service contract provides 9,290 acre-feet (according to PEIS data sources)." this statement is incorrect. The City of Redding has never received more than 4,500 acre-feet of the 6,140 acre-feet obligated in the Buckeye contract total.

Section 4.3 SOCIOECONOMICS

Is the Draft Environmental Assessment covering the entire service area of the City which includes both the Buckeye and Redding water contracts, or is the Environmental Assessment to cover Buckeye CVP contract service area only? The Draft Environmental Assessment document jumps

Mr. Al Candlish
November 27, 2000 (12-4-00)
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back and forth from the Buckeye contract area to the entire City area.

Table 4.3-4 M&I SERVICE CONTRACTORS WITHIN SELECTED SHASTA
AND TRINITY DIVISIONS BY M&I CATEGORY (1994)

The Service Connection Category has the entire City service area connection total and not the Buckeye contract service area. There are only 4,237 service connections in the Buckeye contract service area.

Table 4.3-5 DELIVERIES OF TREATED WATER TO M&I CUSTOMERS BY M&I
CATEGORY (ACRE-FEET PER YEAR)

The Service Connection Category also has the entire City service area treated water deliveries and not the Buckeye contract service area water deliveries. All the City totals listed in this table are incorrect except for the Industrial category. The information that the City submitted to the Department of Water Resources (DWR) in 1994 is not the information listed on this table. Landscape irrigation was listed on the DWR report as -0- acre-feet, not 21,354 acre-feet as listed in the table. The total listed on the bottom of the table is 28,149 acre-feet higher than the information the City submitted to the DWR in 1994.

5-13

Table 4.3-6 CVP CONTRACT MAXIMUM, M&I DELIVERIES AND ESTIMATED
COST (1994)

The CVP Contract Maximum (acre-feet) listed in this table is incorrect, the City's Buckeye contract total is 6,140 acre-feet, not the 9,250 acre-feet as listed in the table. There is no Redding contract settlement water used in the Buckeye contract area as listed in item 1 in the table.

The last sentence in the first paragraph on page 4.3-3 is not very clear: A comparison of the two tables also reveals that only a relatively small portion of the City of Redding's M&I water comes from its contract water. This statement comparing the numbers for the City category in Table 4.3-5 and Table 4.3-6 is incorrect. All the water delivered to the Buckeye contract area is CVP M&I contract water.

The City of Redding believes that being in the area of origin of a monumental water supply, the Bureau, through the Environmental Assessment, should make it a priority to assure a continuous and permanent supply of water for the City and the Shasta and Trinity Division contractors as a fundamental, historic, and critical component of the Long-Term Contract Renewals.

If you have any questions or need additional information please contact me at (530) 224-6040.

Sincerely,



Mike Robertson
Public Works Manager - Water

c: Phil Perry, Assistant City Manager
Len Wingate, City Attorney

Responses to Comment Letter 5 – City of Redding (2000)

- 5-1: As of the publication date of this Final EA, contract negotiations have been completed.
- 5-2: Comments are noted. Refer to page 1-9 of the Final EA for a description of the scoping and consultation process initiated for the long-term contract renewal in October 1998.
- 5-3: The water needs analyses prepared in 2000, which were based on a 25-year period, found that the amounts under contract would be fully used by 2025 and by implication would therefore be needed throughout the 40-year term that was subsequently determined to be applicable to M & I contracts.
- 5-4: The analyses in the EA were limited to renewal of long-term contracts for the Shasta and Trinity River Divisions and did not extend to exploration of area of origin concepts under State law. Should future judicial decisions require adjustments of CVP operations, which are based on a water right under State law, those adjustments would be addressed in separate environmental analyses.
- 5-5: The revised M&I policy and its impacts and implications are being discussed in a separate EA specific to the revised M&I policy.
- 5-6: The analyses in the EA were limited to the effects of the renewal of long-term contracts for the Shasta and Trinity River Divisions. The effects of the Trinity River Flow Decision on Whiskeytown Lake and the Sacramento River were beyond the scope of the EA and were addressed in the EIS specific to that action.
- 5-7: Water returned to the Sacramento River is not credited for any user.
- 5-8: Reclamation feels adequate time was given for review. The BA for the Shasta and Trinity River Divisions' long-term water service contract renewals was completed in August 2003. The Draft EA was first released on October 23, 2000, for a 30-day public review period. The Updated Draft EA and FONSI were released on August 31, 2004, for an additional 30-day public review period.
- In addition, these documents were available on Reclamation's website at www.usbr.gov/mp/cvpia/3404c/index.html
- 5-9: Comment is noted.
- 5-10: The commenter is correct that Category 1 and Category 2 water were eliminated from contract negotiations.
- 5-11: The reference to the Summit City zone under City of Redding in Section 4.2 has been changed to read, "Approximately one-quarter of the Summit City zone falls within an unincorporated area of Shasta County, and three-quarters fall within the city limits of the City of Shasta Lake." As noted, the water service contract total is 6,140 acre-feet/year, whereas the Project water component of the City's Sacramento River Settlement Contract is 3,150 acre-feet/year for a total of 9,290 acre-feet of Project water as of 2003.
- 5-12: Reclamation is aware that some of the demographic data in the Draft EA concerning the City of Redding are for the entire city rather than for only the Buckeye zone. The City of Redding does not maintain separate demographic data for the Buckeye zone because it is not considered a valid demographic unit.

- 5-13: A footnote was added to Table 4.3-4 in the Updated Draft EA (and remains in the Final EA) to show that of the 23,598 connections for the City of Redding, 4,179 are for CVP water under the Buckeye contract.

A footnote was added to Table 4.3-5 in the Updated Draft EA (and remains in the Final EA) indicating that the 42,699 acre-feet shown for the City of Redding includes other agreements and contracts in addition to the Buckeye contract. Roughly half of the City's water comes from sources not covered by contracts with Reclamation.

A footnote was added to Table 4.3-6 in the Updated Draft EA (and remains in the Final EA) indicating that the 9,250 acre-feet shown for the CVP Contract Maximum for the City of Redding includes 6,100 acre-feet of CVP water under the Buckeye contract (rounded to the nearest hundred acre-feet) along with the 3,150 acre-feet of CVP water under the City's Sacramento River Settlement Contract.

LETTER 6

LAW OFFICES OF

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December 4, 2000

Laura Kuh
North State Resources, Inc.
5000 Bechelli, Suite 203
Redding, California 96002

Via: Hand Delivered

Buford Holt
U.S. Bureau Of Reclamation
16349 Shasta Dam Blvd.
Shasta Lake, CA 96019-8400

Via: U.S. Mail

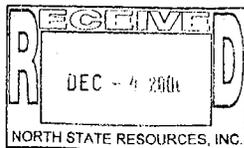
Al Candlish
U.S. Bureau of Reclamation
2800 Cottage Way
Sacramento CA 95825-1898

Via: Federal Express

Re: Response and Comments of Clear Creek Community Services District
to the "Draft Environmental Assessment for the
Long Term Contract Renewal -- Shasta and Trinity Divisions"

Dear Ms. Kuh and Messrs. Holt and Candlish:

This letter contains the response and comments of Clear Creek Community Services District to the "Draft Environmental Assessment for the Long Term Contract Renewal -- Shasta and Trinity Divisions" prepared for the United States Bureau of Reclamation by North State Resources, Inc. dated October, 2000. Because the Draft EA is of general application to the Shasta and Trinity Divisions, with sporadic references to Clear Creek CSD as an individual District, these comments are directed to the entire EA as a document pertinent to all Shasta/Trinity water service Contractors (inclusive of Clear Creek CSD), except where these comments specifically mention Clear Creek CSD by name. Other CVP Contractors within the Shasta and Trinity Divisions have or will be submitting their own comments to the Draft EA, and, to the extent applicable, Clear Creek hereby incorporates by reference their comments as well.



Laura Kuh, NSR and
Buford Holt and Al Candlish, U.S. Bureau Of Reclamation
Re: Response and Comments of Clear Creek Community Services District

December 4, 2000
Page 2

GENERAL COMMENTS

A general observation and inescapable conclusion that must be made after reviewing this Draft EA, is that it is so seriously flawed as to both form and factual content that it falls far short of NEPA requirements for environmental review. Though Clear Creek CSD is only a tiny part of the overall Central Valley Project, Clear Creek takes very seriously the necessity for adequate environmental review of the major federal action for long term renewal of its contract and the long term contracts of the other water service providers in the Shasta and Trinity Divisions. Unfortunately, this Draft EA is no more than a superficial treatment of Reclamation's general proposal to renew long term contracts under the Central Valley Project Improvement Act (CVPIA), without any substantive analysis or meaningful information that would disclose to Clear Creek, its customers, or the public, the true nature and extent of potential environmental impacts arising from the long term renewal of Clear Creek's water service contract or those of other water service Contractors in the Shasta/Trinity divisions.

6-1

A. The Process

The preparation process for this Draft EA was virtually designed to fail in light of Reclamation's inordinate delay in completing the Programmatic Environmental Impact Statement (PEIS), coupled with Reclamation's failure to reach agreement with the CVP Contractors on a CVP-wide form of contract in accelerated but unsuccessful negotiations, while North State Resources (NSR) was forced to prepare an environmental document under Reclamation's self-imposed imperative that long term renewal contracts must be ready in time to be signed by this presidential (Clinton) Administration. At what amounts to the "11th hour" NSR was directed by Reclamation to prepare a Draft EA, even though there was no CVP-wide form of contract, nor a divisional form of contract for the Shasta/Trinity Divisions, much less any individual form of contract for the individual water service Contractors. Using faulty information (a point made known to NSR and Reclamation early on) NSR spent several weeks preparing a document which conforms to the time constraints and negotiating position presented by Reclamation, at the expense of providing adequate substantive environmental review.

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In the meantime, even after Reclamation unilaterally terminated CVP-wide negotiations without agreement on September 29, 2000, the Shasta/Trinity Divisions continued with "technical working group" sessions with Reclamation representatives on September 27, October 2, and October 12, 2000, as well as formal negotiating sessions on October 20, October 27, and November 2, 2000, as part of the Sacramento Valley Division. This was a good faith effort by the Contractors to cooperate with Reclamation's late request to leapfrog the CVP-wide process and try to iron out CVP-wide issues at the same time that divisional issues were negotiated. November 2, 2000 had been declared by Reclamation to be the "drop dead" date for completing an agreed-upon form of contract in time for a 60 day public review prior

LETTER 6

to execution by the Clinton Administration. At the conclusion of the Sacramento Valley Divisional negotiation on November 2, 2000, although both sides remain committed to continue with negotiations on an uncertain future timetable, there was no agreement on a final divisional form of contract, and a variety of CVP-wide issues remain outstanding.

Now that the "drop dead" date has passed it is clear that interim renewal contracts will be needed for water service in 2001, and long term renewal contracts will have to be executed with a new presidential Administration. (See the District's November 7, 2000 letter to Reclamation Regional Director Lester Snow requesting a new interim renewal contract, copy attached hereto as Exhibit "A.") We are now called upon to comment upon a Draft EA that was put together in slapdash fashion to meet a time deadline that is no longer relevant. The rational approach, under the current circumstances, would be for Reclamation to withdraw the Draft EA, and when the parties finally do reach an agreed upon form of contract in 2001 then rewrite or substantially revise the EA to make it current and cure its numerous deficiencies. It is hereby suggested that Reclamation and NSR do exactly that.

B. Circular and Unlawful Incorporation of Environmental Documents.

Regardless of whether Reclamation takes the responsible step to defer final environmental review until actual negotiation of an agreed upon form of contract, or Reclamation continues with the current document and process, the circular linkage of the draft Contract and environmental documents will have to be disconnected in order to achieve final and adequate environmental review. As noted in Clear Creek's November 7, 2000 letter to Mr. Snow, both the Federal environmental documents and the CEQA document for long term contract renewal should not be prepared until after there is an agreed upon form of contract. Unfortunately, in the contract negotiations Reclamation has persisted in odd and uncompromising insistence upon a contract provision (Article 3(e)) that explicitly incorporates the environmental documents as contract terms. The environmental documents and constraints they impose are enforceable outside of the contract pursuant to the relevant environmental laws (i.e. NEPA, ESA, and CEQA) without mutating the environmental documents into contract terms. It perverts the relationship between contracts (as major federal actions) and environmental documents when you convert those environmental documents to express contractual covenants. The effect is twofold: (1) it allows Reclamation and (particularly) the U.S. Fish & Wildlife Service to unilaterally craft detailed instructions, conditions, and promises for Contractors to follow, as contract conditions, even though there is no negotiation of this portion of the contract; and (2) it allows Reclamation and Fish & Wildlife Service to threaten Contractors with the "death sentence" of contract termination if the Contractor fails to obey the directives unilaterally placed in the environmental documents. Further, as we have seen from the Biological Opinion for the interim renewal contracts, there is not the slightest hesitation by the U.S. Fish & Wildlife Service and Reclamation to use this "blank check" to incorporate in the environmental documents a multitude

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of highly specific directives aimed at exercising broad ranging contractual control over water service Contractors.

Putting aside for the moment the Contractors' position that Reclamation and Fish and Wildlife Service have no legal authority to bootstrap environmental documents into contract terms or usurp local government agency powers, the resulting contract structure becomes a never-ending "feedback loop" for environmental review. That is: (1) a tentatively agreed upon form of contract is negotiated by the parties, with a provision that incorporates the environmental documents as contract terms; (2) environmental review is carried out on the agreed upon form of contract, with environmental documents prepared by Reclamation and Fish & Wildlife Service which unilaterally inject numerous new and detailed contractual covenants by virtue of the various directives incorporated into the environmental documents; (3) the parties no longer have an agreed upon form of contract, because Reclamation and Fish & Wildlife Service have unilaterally drafted or revised major portions of "the contract" by drafting the environmental documents section of "the contract"; (4) though the parties no longer have an agreed upon form of contract, they are free to renegotiate "the contract" including the terms unilaterally drafted and inserted by Reclamation and Fish & Wildlife Service through preparation of the environmental documents; (5) renegotiation of "the contract" is a virtual certainty, particularly where the Fish & Wildlife Service has been given the first opportunity to (living up to its reputation) unilaterally insert coercive, arbitrary and overreaching contract directives; (6) the new and revised agreed upon form of contract, after a second round of negotiations, will require new environmental review; (1) we begin again.

To put this in context, for example, Reclamation has published a form of contract for the CVP (even though it hasn't been agreed to by the CVP Contractors) which purports to incorporate the future environmental documents as contract terms. The Site Specific Biological Opinion has not even been prepared yet, though that is getting underway, again with NSR as consultant. Assuming past indications hold true, it is likely that the Biological Opinion will include a directive that automatically requires prior review and approval by Reclamation and Fish & Wildlife Service before Clear Creek CSD provides water to land in the District that previously has not received water service. Such a contractual provision would be an unlawful usurpation of Clear Creek's local government agency powers, and it would place the District in legal jeopardy to landowners who could sue the District for failure to promptly perform its nondiscretionary ministerial duty to provide water service. Clear Creek cannot say that there is an agreed upon form of contract with Reclamation until after negotiation of the contract and after it has an opportunity to review, react and renegotiate terms unilaterally injected into the contract by a Site Specific Biological Opinion. If the aforescribed provision is inserted in the Biological Opinion for Clear Creek's draft contract, the District will certainly insist upon removal and renegotiation of that term and any other similarly overreaching terms. Another round of negotiations would follow, to be followed again by new or revised environmental review.

Another example, this time provided by actual experience with the interim renewal contracts, concerns the directive by Reclamation and Fish & Wildlife Service that permission be obtained before applying irrigation water to lands which laid fallow for three years. In a letter to Contractors dated July 6, 2000 Reclamation demanded compliance with this directive. After a storm of angry protest from irrigation Contractors, Reclamation withdrew its demand in a letter dated November 15, 2000. All the while, the Contractors' compliance with their interim renewal contracts -- which incorporate the interim contract Biological Opinion as contract terms -- hangs in the balance. Thus the Contractors and Reclamation no longer have a true contractual relationship so much as one of rule by inconsistent administrative fist.

Reclamation suggests that the Contractors ignore the illegalities in this process and essentially provide Reclamation and Fish & Wildlife Service carte blanche to unilaterally draft major portions of the contract through drafting of the environmental documents. This, Clear Creek CSD is unwilling to do. The District fully reserves its rights to reject and negotiate any contract terms created through the drafting of environmental documents. Further, it has been and remains the District's position that Article 3(e) of Reclamation's "proposal for CVP contracts" is unnecessary, unlawful, and unacceptable -- a matter to be revisited in further negotiations with Reclamation.

SPECIFIC COMMENTS

The following comments are submitted with the expectation that Reclamation will act in good faith and actually consider and respond to these comments with appropriate revisions/rewriting of the environmental document (including preparation of an Environmental Impact Statement), even if final preparation of the environmental document must be deferred to a later date. It should be noted that Clear Creek CSD provided Reclamation and NSR with a detailed list of issues/concerns while preparation of the Draft EA was in progress (see letter of October 3, 2000, attached hereto as Exhibit "B" fails to respond to the points raised. Accordingly, as the first comment on the Draft EA, Clear Creek CSD asks that Reclamation respond to each and every point raised in the letter, referring by page number and text to any information in the Draft EA, if any, which Reclamation feels is responsive. Next, Clear Creek's comments are referenced below to page numbers and text (or subject) in the Draft EA pertaining to the substantive comments which follow. Finally, comments are submitted relating to the failure of Reclamation and NSR to follow the Scope of Work for preparation of the EA.

COMMENT NO.	DRAFT EA PAGE NO.	COMMENT
1	N/A	Please respond to <u>each and every point</u> raised in Clear Creek CSD's letter of October 3, 2000, attached hereto as Exhibit "B," referencing by page number and text any information in the Draft EA which Reclamation feels is responsive.
2	1-1	Under "Introduction" the Draft EA purports to review "the impacts and benefits of long term renewal of water service and repayment contracts with the nine CVP water service contractors that comprise the Shasta and Trinity Divisions." This misstates the purpose of the environmental review document insofar as it references purported renewal of "repayment contracts." Though some of the Shasta/Trinity Division Contractors have repayment contracts with Reclamation, none of those repayment contracts have expired or are subject to renewal. In particular, Clear Creek CSD's repayment contract has not expired and is not up for renewal. There is no provision in CVPIA that compels early renewal or renegotiation of repayment contracts. Only <u>water service</u> contracts are subject to compulsory renewal under CVPIA. The water service contracts, <u>not</u> the repayment contracts, are the subject of the ongoing negotiations with Reclamation, and they are the only proper subject of environmental review. A major flaw that runs throughout the Draft EA is the failure to distinguish between contract provisions that are part of the repayment contracts held by the Contractors and provisions which are being negotiated in the water service contracts held by Contractors. For example, the two acre threshold allowing application of agricultural water is a part of Clear Creek CSD's <u>repayment contract</u> , and is not a term to be negotiated in the water service contract. Adequate environmental review cannot be carried out until Reclamation recognizes the proper scope of environmental review (the water service contracts) and differentiates between the terms being negotiated in the water service contracts and the terms that already exist in ongoing repayment contracts.
3	1-1	The Introduction references "nine water service Contractors" and proceeds to list them. However, only eight legal entities are actually listed, because the Shasta County Water Agency and the Keswick County Service area are only one legal entity-- the County of Shasta. (Notwithstanding the fact that there are two contracts with the County, which the County administers in two different ways.) In addition, a very important legal entity has been completely omitted from this list and from the analysis in the Draft EA altogether -- that is, Centerville Community Services District.

6-4

6-5

COMMENT NO.	DRAFT EA PAGE NO.	COMMENT
3 (Continued)	1-1	<p>Centerville CSD is a 100% M&I water supply provider to suburban residents in a geographic area in between Clear Creek CSD and the City of Redding. Centerville CSD has over 1,050 M&I service connections; around 10,000 in acres (roughly) in its service area; 1,500 +/- acre feet of annual usage; a new 900 acre foot exchange contract with USBR; and 25% dedicated capacity by contract in Clear Creek's expanded filtration plant. Historically Centerville CSD has been entirely dependent upon CVP water supplied by either or both of Clear Creek CSD and the Shasta County Water Agency. All of Centerville's CVP water is filtered and treated through Clear Creek's filtration plant, from water delivered through the Muletown Conduit operated and maintained by Clear Creek CSD. Though Centerville has recently obtained a contract with Reclamation for a portion of its water supply, as a result of the removal of Saeltzer Dam and settlement of Townsend Flat Water Ditch Rights, Centerville will continue to require additional CVP water supplied either through Shasta County and/or Clear Creek CSD. Clear Creek CSD's existing water service contract expressly provides for sales of CVP water outside of Clear Creek's boundary to provide water to Centerville, without those sales being considered a "transfer" or a prohibited extraterritorial water service -- a rather unique feature among CVP contracts. (See Article 27 of Clear Creek's existing Interim Renewal Contract.)</p> <p>Centerville is the fastest growing water service agency serving CVP water, due to residential expansion and growth from the Redding urban area. Because Centerville CSD has been and will continue to be dependent upon CVP water supplies derived from the contracts reviewed in this Draft EA, the impacts associated with renewal of the long term contracts for the Shasta County Water Service Agency and Clear Creek CSD are passed through also to Centerville CSD. Thus the Draft EA has a huge "blind spot" in failing to provide any discussion or analysis of the environmental impacts that will occur in the Centerville CSD water service territory.</p>

COMMENT NO.	DRAFT EA PAGE NO.	COMMENT
4	1-1	<p>Section 1.2 of the Draft EA makes reference to Section 3404(c) of the CVPIA pertaining to renewals of long term contracts, as if this section governed the entirety of the water service contracts being renewed. In fact, the quoted section of CVPIA covers the water service contracts only insofar as the contracts provide for agricultural water service. Section 3404(c) of the CVPIA is not applicable to the water service contracts insofar as they provide for M&I water service. Renewal of the water service contracts insofar as they provide for M&I water is governed by the 1963 Act, the pertinent portions of which are set out in Exhibit "C" attached hereto. <u>Reclamation has acknowledged and agreed to this distinction.</u> The different treatment accorded M&I service and Ag service is of critical importance in evaluating the long term renewal of the water service contracts.</p> <p>For M&I service, Reclamation acknowledges that the Contractors have an absolute legal right to successive long term renewals, and the legal limit for contractual renewal of M&I water service is 40 years. For Ag service, Reclamation contends that the quoted section of CVPIA requires only one 25 year renewal, with future renewals subject to the discretion of the Secretary of Interior, and a cap of 25 years on the duration of the contract; the Ag water service Contractors dispute Reclamation's position, and the issue is not yet fully resolved. Without attempting to argue or resolve the dispute between Reclamation and Ag service contractors as to the renewal rights for Ag water service, it is clear that the acknowledged legal distinction between renewals for M&I and Ag water service result in a permanent reliable water supply for M&I service as contrasted with a disputed and potentially unreliable source of supply for Ag water service.</p> <p>Long term capital investments are necessary to sustain either Ag or M&I water service. The differential treatment of Ag vs. M&I water service is a major disincentive for investment in facilities which support Ag service, contrasted with a favorable incentive for investment in relatively reliable future M&I water supplies. This is critical to "transitional Ag/M&I districts" -- Clear Creek CSD and Bella Vista WD -- which are given a huge incentive to accelerate the transition from agricultural water service to M&I service. The Draft EA's failure to discuss the above-described distinctions between long term renewal of Ag service and M&I service is a major deficiency of this environmental document.</p>

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COMMENT NO.	DRAFT EA PAGE NO.	COMMENT
5	1-1	<p>A glaring omission in this EA is its failure to address the unique status of Clear Creek CSD and Bella Vista WD as what might be called "transitional Ag/M&I districts." Clear Creek, for example, currently uses about two-thirds of its CVP water as Ag water, and about one-third as M&I water, by quantity; about two-thirds of Clear Creek's customers are M&I customers, and about one-third are Ag customers. Bella Vista WD has similar proportions. Both Clear Creek and Bella Vista have contracts which allow 100% of the contract total to be used for M&I water service, and no consent or special permission is required from Reclamation to allocate the water between Ag and M&I uses. Both Clear Creek and Bella Vista anticipate that over the long term (25 years to 50 years) M&I usage will become the dominant (if not exclusive) form of usage of their CVP water. Both Clear Creek and Bella Vista have made major capital investments in their water treatment, storage, and distribution facilities to accommodate the increasing future demands for M&I water service. Both Clear Creek and Bella Vista provide 100% potable water to their customers, regardless of whether the water is currently put to Ag or M&I usage. Further, though about 80% of the 112 CVP contracts up for renewal have some tiny mixture of Ag and M&I service, <u>none</u> of those contractors (other than Clear Creek and Bella Vista) have a pattern of water usage in which the dominant form of usage is less than 90% or the subordinate form of usage is greater than 10%; none of the other 112 Contractors have made substantial capital investments in facilities for increasing future M&I usage of water that currently is characterized as Ag usage; <u>none</u> of the other 112 CVP Contractors would describe themselves as a "transitional Ag/M&I District." Out of approximately 112 CVP Contractors currently negotiating long term contract renewals, only Clear Creek CSD and Bella Vista WD meet this profile.</p> <p>The Draft EA says absolutely <u>nothing</u> about the unique water usage profile of Clear Creek CSD and Bella Vista WD, which together account for over 72% of the CVP contract quantity for contracts subject to renewal in the Shasta and Trinity Divisions. The unique water usage profile of Clear Creek and Bella Vista is well known both to Reclamation and NSR. The Draft EAs failure to account for the unique water usage profile of Clear Creek and Bella Vista is an enormous and inexcusable omission which undercuts the validity of the EA.</p>

6-7

COMMENT NO.	DRAFT EA PAGE NO.	COMMENT
6	1-2	In Table 1-1, the reference to City of Shasta Lake shows a contract number of W11341R4; that should be W11341R5. The quantity shown for City of Shasta Lake is 2,750 acre feet; that should be approximately 4,800 acre feet, since City of Shasta Lake is seeking renewal of the combined contract quantities under contract number 11r-1515 and contract number 11r-1523. Insofar as the table purports to reflect water currently available under interim renewal contracts, the correct number for City of Shasta Lake should be 2,413 (with an option to request the balance up to 2,750 acre feet on approval by USBR). The reference for City of Shasta Lake showing that the contracts for Shasta Dam Area PUD and Summit City PUD are "included" is false to the extent that the table represents that the two former contracts are included in the existing interim renewal contract; the intention of the City of Shasta Lake and Reclamation is to include renewal of both former long term contracts in one long term contract for about 4,800 acre feet.
7	1-2	The reference to a contract number for Clear Creek Community Services District in Table 1-1 should be 489A1R5 (effective Dec. 1, 2000).
8	1-2	Again the reference to "Keswick County Service Area" is misleading insofar as it is represented to be a separate entity from the County of Shasta or the Shasta County Water Agency.
9	1-4	A major omission under Section 1.3 "Basis of Central Valley Project Water Service Contract Renewals" is the failure to cite the 1963 Act for M&I water service. See Exhibit "C" attached hereto.
10	1-4	The following statement under Section 1.3 contains assertions which are misleading, false and disputed. "The CVPIA included a right of renewal of long term repayment or water service contracts for a term not to exceed 25 years but the Secretary may or may not renew such contracts for successive periods for terms not to exceed 25 years." The reference to "repayment contracts" is misleading in that CVPIA does not compel renegotiation of repayment contracts, and no long term repayment contracts are currently being negotiated with Reclamation in the Shasta and Trinity Divisions. Only water service contracts are subject to the current negotiations. The assertion that "The Secretary may or may not renew such contracts" is false insofar as it references M&I usage allowed under the contracts (see 1963 Act and previous comment); insofar as the assertion references agricultural water service, it is disputed by the Contractors.

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COMMENT NO.	DRAFT EA PAGE NO.	COMMENT	
11	1-5	In reference to the City of Shasta Lake it is stated that "In 1978, the SDAPUD and SCPUD contracts were merged into one long term contract." This is false. Actually, the Summit City Public Utilities District (SCPUD) was absorbed by the Shasta Dam Area Public Utilities District (SDAPUD), and the water service contract held by SCPUD was assumed by SDAPUD, by assignment, for purposes of administration; two contracts remained outstanding, jointly administered by SDAPUD. The two long term contracts did not expire in 1988. They were renewed and continued by a series of temporary contracts numbers 8-07-20-W0715, then 0-07-20-W0885, then 2-07-20-W1024. At the time that these temporary contracts were executed, it was expected that the City of Shasta Lake would receive a long term contract of approximately 4,800 acre feet (not 4,400 acre feet as represented in the Draft EA).	6-13
		The statement in the Draft EA that "There was no right to renewal available" is patently false; there was in fact an absolute legal right to successive future renewals pursuant to the 1963 Act. At the time these short-term renewal contracts were executed (which was prior to CVPIA) California was experiencing severe drought conditions and drastic shortages were being imposed by Reclamation on all CVP water service contractors. For these short-term extensions of their water service the SDAPUD agreed to contract quantities totalling about 2,400 acre feet "during the drought restriction...to assist the USBR in meeting the 1989 crisis...". It appears that a draft EIS had been prepared at or around 1988-89 which allocated 4,800 acre feet to SDAPUD based on its demonstrated future needs for water service. Nowhere in this Draft EA is there appropriate mention or reference to the earlier EIS.	6-14
		In 1993 the City of Shasta Lake was incorporated, and the water service contractual rights of SDAPUD and SCPUD were assumed by the City. At no time did either SDAPUD (or SCPUD) or the City agree that 2,750 acre feet was an appropriate contract amount for long term contract renewal. The City (and SDAPUD) had allowed for a reduced quantity during the drought only as an accommodation to Reclamation during the drought, while a long term contract at 4,800 acre feet was expected when environmental review under the draft EIS was completed. CVPIA was enacted in 1992, and even though the interim renewal contracts have carried forward the reduced quantity, the City has continued to demand and expects the long term renewal contract to provide approximately 4,800 acre feet of water.	
12	1-5	The reference to Clear Creek Community Services District inaccurately represents that it is an agency formed "under Trinity River Division Act of 1955." Clear Creek CSD is a local governmental agency formed under the Community Services District Laws, sections 61000 through 61934 of the Government Code of the State of California.	6-15

COMMENT NO.	DRAFT EA PAGE NO.	COMMENT	
13	1-5	It is stated that Clear Creek CSD's initial contract with the federal government provided for delivery of "up to" 15,300 acre feet of CVP water. This is not accurate. In truth, Clear Creek CSD was required to "accept and pay" for 17,300 -- later adjusted to 15,300 -- acre feet of CVP water under its long term contract, <u>whether Clear Creek used the water or not</u> , up until the execution of an interim renewal contract effective January 1, 1995. (CVPIA effectively prohibited "accept and pay" contract requirements like those which governed Clear Creek for 32 years.) Though the District did not relish paying for water which it did not use for 32 years, the payments were regarded as an "investment" in the future availability of that water for both M&I and Ag purposes to meet the demands of future growth.	6-16
14	1-5	As noted under the reference to the Shasta County Water Agency, this contract provides water that supplies not only Centerville CSD, but also a variety of County Service Areas such as Jones Valley CSA, Crag View CSA and Castella CSA. Why does the Draft EA contain no analysis whatsoever of the impacts to these small service areas located in some of the more remote areas of Shasta County?	6-17
15	1-6	As noted in earlier comments, the "Keswick County Service Area" is not a separate legal entity from the County of Shasta. A "County Service Area" is a subunit of county government, with a board of directors appointed by (and removable by) the county board of supervisors, given limited local autonomy to provide public services in a specified geographic area.	6-18
16	Fig. 1-2 Map of District Service Areas	This map is noteworthy for its omissions. The glaring and serious omission is the absence of Centerville CSD. Attached hereto as Exhibit "D" is a map from Reclamation's EA for the Saultzer Dam removal, depicting the location of the Centerville CSD service area. Also depicted on Exhibit "D" is the service area for Jones Valley CSA No. 6 -- which does not appear on Figure 1-2. Also missing from Figure 1-2 are the service areas for Crag View CSA No. 23 and Castella CSA No. 3.	6-19
17	1-9	The Draft EA reference to "study period" anticipates that the first 25 year long term water service contract will expire in the year 2026. Given that long term renewal contracts will not be executed until some time in 2001, the new expiration date should be changed to 2027.	6-20

COMMENT NO.	DRAFT EA PAGE NO.	COMMENT
18	1-9	<p>The discussion of "related activities" is grossly inadequate. In addition to the activities listed in Table 1-2, Reclamation is also carrying out several other related activities which directly impact water supply to these Contractors under their renewed long term water service contracts: (1) the Trinity River Flow decision which will decrease water exports from the Trinity River that otherwise would be available to these contractors, and also substantially alter the operations of Whiskeytown Lake; (2) removal of Saeltzer Dam and restoration of approximately ten miles of critical salmon spawning habitat, which will require increased surface water releases from Whiskeytown Dam; (3) Anadromous Fish Restoration Program (AFRP) which will establish increased flows necessary for salmon spawning habitat in Clear Creek, using the same surface water supply from Whiskeytown Lake that is used for most of the water service contractors covered by this Draft EA; (4) new water service contracts by Reclamation with the McConnell Foundation and Centerville CSD, as part of the water rights settlement arising from removal of Saeltzer Dam, not discussed at all in this Draft EA; (5) changed operations of Whiskeytown Lake, which is the surface water supply for most of the Contractors covered in this Draft EA.</p> <p>Under "Long Term Water Service Contract Negotiations Process" the Draft EA repeats earlier stated legal opinions about the effect of CVPIA that are either inaccurate or disputed by the Contractors (and which are addressed by earlier comments herein). In addition, it is stated that M&I contracts are to be renewed "under terms and conditions that are mutually agreeable." Your attention is directed to the 1963 Act provisions (Exhibit "C") which state that Reclamation may only renegotiate "(1) the charges set forth in the contract in the light of circumstances prevailing at the time of renewal and (2) any other matters with respect to which the right to renegotiate is reserved in the contract." While the Contractors acknowledge that water rates and charges may be renegotiated, the contracts do not specify any other matters with respect to which the right to renegotiate is reserved.</p>

6-21

6-22

COMMENT NO.	DRAFT EA PAGE NO.	COMMENT
19	2-1	<p>The Draft EA makes note of the three phase negotiation process that was contemplated by Reclamation and the Contractors. The "scope of work" between Reclamation and North State Resources for preparation of this Draft EA also described the three phase process (under "Development of Alternatives") as follows: "Negotiations will be carried out in a three phase process: Phase I -- CVP-wide terms; Phase II -- Division/Unit Level Terms; and Phase III -- District Specific Terms." As noted earlier in the General Comments, this three phase negotiating process was abandoned by Reclamation when it unilaterally terminated CVP-wide negotiations before closure had been reached on a CVP-wide form of contract. Subsequently, division/unit level negotiations were pursued for the Sacramento Valley Division, while CVP-wide issues continued to be addressed on an ad hoc basis in different divisional negotiations around the state. The divisional negotiations for the Sacramento Valley Contractors did not come to closure either, leaving us with no Sacramento Valley divisional agreed-upon form of contract. Negotiations have not even started on the district-specific level for any of the Shasta/Trinity Contractors. While both sides are committed to continuing negotiations, it is not anticipated that significant progress will be made on all three of these levels until after a new presidential administration takes office, simply due to our current time constraints.</p> <p>The status of the negotiations at this point in time can only be said to be "unresolved," particularly since the negotiations have been pursued as "package deal" negotiations from the outset. In "package deal" negotiations the parties propose an entire contract (rather than negotiating terms of a contract item by item). Such negotiations require trade offs of favorable and unfavorable versions of different terms within the total contract, seeking compromise through a balance of those trade offs in the total contract, rather than incrementally negotiating each individual contract term to a mutually acceptable form as a stand-alone term. In theory, Reclamation or the Contractor might accept an unfavorable version of a contract term in return for a favorable version of a different contract term, and so on throughout the contract, as long as the parties feel the contract as a whole represents a balanced acceptable compromise.</p>

6-23

COMMENT NO.	DRAFT EA PAGE NO.	COMMENT
19 (Continued)	2-1 (Continued)	The "package deal" approach is a pragmatic method of negotiating contracts which contain numerous highly contentious terms that otherwise might cause the negotiations to stalemate if the parties were required to fully agree on each individual term. One drawback to "package deal" negotiations is that if they are interrupted before an agreement is reached, it cannot necessarily be said that there is measurable "progress" by way of agreement to portions of the contract or specific terms short of an entire package. When negotiations resume, the past effort in negotiations will not have been wasted, because both sides have developed a better understanding of what the other is looking for in a "package deal" and we certainly are closer to structuring a "package" that could be mutually acceptable. However, given the absence of an agreed upon CVP-wide form of contract, and the absence of a divisional agreed upon form of contract, and no individual district negotiations, technically all provisions of the contract remain open to negotiation. The Draft EA is entirely premature, when there are no actual agreed upon contract provisions at this point in the negotiations.

COMMENT NO.	DRAFT EA PAGE NO.	COMMENT
20	2-2	<p>At the top of Page 2-2 there is a brief description of Reclamation's bizarre and legally unfounded "bookends" approach to environmental review. First, a single contract proposal by Reclamation and a single contract proposal by the Contractors' group are arbitrarily selected as "bookends" for the respective negotiating positions of the parties, even though each of these proposals is only one of many proposals made by Reclamation or the Contractors' group, with no special significance attached to these particular proposals. Secondly, it is <u>falsely assumed</u> that these are polar opposite proposals by the respective parties that represent the extremes of their bargaining positions, when in fact they are nothing more than "package deal" proposals for which that type of comparison is not applicable. (See previous comment.) Third, it is <u>falsely assumed</u> that all subsequent proposals will fall somewhere on a linear continuum stretching between these two "bookends," when in fact there is no such linear continuum for comparison. Conceptually "package deal" negotiating is like throwing darts at a dart board; it's pointless to compare the relative positions of the darts on the dart board; you keep throwing until you hit a "bullseye" by reaching agreement. Finally, there is <u>no legal foundation</u> for the notion that realistic environmental review can be carried out for an amorphous continuum of possibilities for the project (the final contract) which is supposed to be subject to environmental review.</p> <p>Both NEPA and CEQA require a stable and finite project description. While it is possible to study several alternatives without designating the preferred alternative, each alternative must have specifically designated characteristics that allow for evaluation as if any one of them could be the preferred alternative. The amorphous continuum of possibilities put forward by the "bookends" approach provides no definable project capable of environmental evaluation. This approach is fundamentally incompetent and unlawful as a means of environmental review.</p>

6-24

COMMENT NO.	DRAFT EA PAGE NO.	COMMENT
21	2-2	Under Section 2.3.1 "Needs Analysis" it is stated that "Beneficial and efficient future water demands were identified for each district." These calculations of future water demands are extremely important and relevant to evaluating the future water usage patterns of the districts. They should be identified and listed in the Draft EA. Additionally, if the Draft EA assumes that future water demands greater than the existing CVP contract quantity will not be met by increasing the CVP contract quantity, then there should be environmental evaluation of the resulting creation of "unsatisfied demand." That is, "unsatisfied demand" may cause districts to turn extensively to other water sources, such as groundwater pumping, resulting in significant indirect environmental effects. Significant "unsatisfied demand" may also induce Contractors to file and perfect "area of origin" applications that preferentially increase total water supply to the Contractor applicants while reducing available supply to other CVP Contractors. (With the pending Westlands WD application in progress, Reclamation cannot deny that area of origin applications are a foreseeable response to unsatisfied demand.) Analysis of unsatisfied future M&I demand relative to unsatisfied future Ag demand also could lend greater predictability to conversion of land use from Ag to M&I purposes. The magnitude of unsatisfied demand may additionally indicate the probability of future rationing or price increases. The Draft EAs failure to discuss these issues, despite having the relevant information at hand, is a serious defect in the environmental analysis. 6-25
22	2-2	Under "Needs Analysis" the Draft EA characterizes CVP water as a "supplemental water supply" to be used to the extent that non-CVP water supplies cannot meet future water demands. This position is directly contrary to Bureau of Reclamation policy and positions, stated repeatedly by Reclamation throughout the negotiations, that Contractors were not to be penalized for developing non-CVP water supply sources by treating CVP water as merely "supplemental water" to be reduced when demand can be satisfied from alternate supplies. In responding to this comment, Reclamation should either correct the statement in the Draft EA to reflect its true policy and position, or affirm the statement in the Draft EA (even though it is contrary to the repeated representations of policy by Reclamation) if honesty requires it. Assuming that the statement in the Draft EA is inaccurate, and that Reclamation did not misrepresent its policy/position in the recent negotiations, then the Draft EA should be amended to consider the probability that aggregate water supplies for each district will increase in the future as those districts develop additional non-CVP supplies. This would result in the growth of future aggregate water supplies to keep pace with the projected future water demands, accompanied by growth of both M&I and Ag water uses. The environmental effects of increased aggregate water usage should be considered and addressed in the environmental document. 6-26

COMMENT NO.	DRAFT EA PAGE NO.	COMMENT
23	2-2	Under "Needs Analysis" it is blankly stated that "This environmental analysis does not include increased total contract amounts." No fact-based explanation or rationale is given for this arbitrary limitation of environmental review. There is nothing in CVPIA which prohibits increases in contract quantities. There is nothing in CVPIA or other relevant law, which prohibits Reclamation from redistributing water quantities based on projected future water demands or any other relevant factors. This arbitrary limitation adopted by the Draft EA is merely an example of one of many instances in which the Draft EA conforms its parameters to the negotiating position of Reclamation, rather than a fact-based or legal limitation on the scope of good faith environmental review. 6-27 This arbitrary limitation to existing contract quantity was Reclamation's negotiating position at the time the Draft EA was prepared. Subsequently, Reclamation reviewed a proposal by Sacramento Valley Division Contractors to increase potential CVP water quantities under Article 3(f) of the contract, based on very recent engineering analysis which indicated the availability supplemental CVP water available to Sacramento Valley Division Contractors (without negatively impacting deliveries to other CVP contractors). As a result, Reclamation has indicated a willingness and desire to revise the contract language to allow for such supplemental supplies, that could potentially increase deliveries of CVP water above the present contract quantity. Reclamation has represented that it will request NSR to revise its environmental evaluation to consider these increased CVP water supplies. While Clear Creek CSD and the other Sacramento Valley Contractors applaud Reclamation's cooperation in exploring the possible usage of these additional CVP supplies, the fact that the environmental review must now be modified demonstrates the error of the Draft EA adopting an arbitrary restriction on environmental review merely because it conformed to Reclamation's then current negotiating position. 6-27
24	2-3	Table 2-1 uses an improper description and definition for the "No Action Alternative." This Alternative should be based on an assumption that the long term water service contracts (not the interim contracts) are renewed under the same terms, subject only to changes mandated by CVPIA -- not changes merely requested or supported by Reclamation's bargaining position. For example, CVPIA mandates that the length of a renewed agricultural water service contract be limited to 25 years; CVPIA does not mandate that environmental documents be explicitly incorporated into the contract as additional contract terms. The Draft EA erroneously frames that "No Action" Alternative as a completely new contract with new terms which fully implement CVPIA. 6-28

COMMENT NO.	DRAFT EA PAGE NO.	COMMENT	
25	2-3	On the "Explanatory Recitals" for Alternative 1, it is indicated that it "assumes implementation of yield increase projects per 3408(j) study." However, the Draft EA does not evaluate increased contract quantities that would result from the yield increase.	6-29
26	2-3	Under "Explanatory Recitals" for Alternative 1, it "assumes that loss of water supply reliability would have significant adverse socioeconomic and environmental impacts." Where is the discussion/analysis in the Draft EA of the significant adverse impacts?	6-30
27	2-3	The "Category 1 and Category 2" concept was discarded and discredited before the Draft EA was prepared. This was a central feature of this "bookend" used in the Draft EA. The drafters should explain why they believe this "bookend" proposal still serves a valid basis for comparison of the effects of contract provisions.	6-31
28	2-4	For "M&I water" the "No Action" Alternative should assume a two acre threshold rather than a five acre threshold. Alternative 2, the Reclamation proposal, would utilize a five acre threshold.	6-32
29	2-4	For "Terms of Contract -- Right to Use Contract" the "No Action" Alternative and Alternative 2 should state that water service contracts, insofar as they allow for M&I service, shall be renewed (per the 1963 Act).	6-33
30	2-5	For "Sales, Transfers or Exchanges of Water" none of the alternatives is consistent with Reclamation's current policy and negotiating position in effect when the draft EA was put out -- that transfer water should be paid for at the rate paid by the transferor.	6-34
31	2-6	For "Quality Of Water" all of the alternatives indicate that Reclamation would be "without obligation to operate towards water quality goals." In fact, Reclamation has made a commitment to specific water quality goals and targets as part of the CALFED process, which carry over as operational water quality goals for these water service contracts. In negotiations with the M&I "virtual division" Reclamation has stated its willingness to include contract provisions which acknowledge Reclamation's commitment to work toward these water quality goals.	6-35
32	2-9	Under "Development of Alternatives" it states that "The No Action Alternative" consists of renewing existing water service contracts as described by the Preferred Alternative of the PEIS. This is an improper definition of the "No Action Alternative." See comment #24 and comment #34, and comment #35.	6-36
33	2-9	Under "Development of Alternatives," the November 1999 Reclamation proposal and the April 2000 CVP Contractor's proposal are described here as though Reclamation and the CVP Contractors considered those proposals to be "bookends" for negotiations. That inference or statement is false.	6-37

COMMENT NO.	DRAFT EA PAGE NO.	COMMENT	
34	2-9	There is no description, analysis, or treatment of the required Existing Conditions scenario. The scope of work for NSR requires development of an Existing Conditions scenario but none appears in this Draft EA. The Existing Conditions evaluation and scenario is necessary to provide a benchmark for the EA reader to compare with the "No Action" alternative (which is set in the year 2026), and to compare the projected incremental differences between alternatives with the existing setting. The Draft EA does nothing more than describe existing water service facilities operated by the Districts in the Shasta/Trinity divisions (see Chapter 4 of the Draft EA). There is no evaluation or data on the existing environmental resources or environmental conditions in the District service areas.	6-38
35	2-9	Here again the "No Action Alternative" is equated with the PEIS "Preferred Alternative," rather than a true and accurate "No Action Alternative." The equivalent nomenclature in CEQA for the "No Action Alternative" is the "No Project" Alternative. The following quote from <u>Planning and Conservation League v. DWR</u> (Sept. 15, 2000) 83 C.A. 4th 892, 912 & 917-918, is instructive: "CEQA requires that the no project alternative discussed in an EIR address "existing conditions" as well as "what would be reasonably expected to occur in the foreseeable future if the project were not approved, based on current plans and consistent with available infrastructure and community services." (Guidelines, former § 15126, subd. (d)(4), now § 15126.6, subd. (e)(2).) The existing conditions, supplemented by a reasonable forecast, are characterized as the no project alternative. The description must be straightforward and intelligible, assisting the decision maker and the public in ascertaining the environmental consequences of doing nothing; requiring the reader to painstakingly ferret out the information from the reports is not enough. (<i>Environmental Planning & Information Council v. County of El Dorado</i> (1982) 131 Cal.App.3d 350, 357; <i>Dusek v. Redevelopment Agency</i> (1985) 173 Cal.App.3d 1029, 1043.)	6-39
		A no project description is nonevaluative. It provides the decision makers and the public with specific information about the environment if the project is not approved. It is a factually-based forecast of the environmental impacts of preserving the status quo. It thus provides the decision makers with a base line against which they can measure the environmental advantages and disadvantages of the project and alternatives to the project."	

COMMENT NO.	DRAFT EA PAGE NO.	COMMENT
36	2-10	Under "Definition of Municipal and Industrial Users" it states that "The definition of municipal and industrial users was established in portions of a 1982 Reclamation policy memorandum." This statement is false. The referenced 1982 Reclamation policy memorandum is applicable only to repayment contracts. The policy memorandum is not pertinent to water service contracts, nor is it pertinent to the analysis for the Draft EA. The two districts interested in the definition of municipal and industrial water use -- Clear Creek CSD and Bella Vista WD -- have existing ongoing repayment contracts which specify a two acre threshold. Those repayment contracts are not being renewed or renegotiated. The 1982 policy memorandum was for application to new or renegotiated repayment contracts, and therefore has no application to Clear Creek CSD or Bella Vista WD at all. As for water service contracts, Reclamation has no policy applying an acreage threshold to define municipal and industrial water. Clear Creek CSD and Bella Vista WD, which make up more than 72% of the water usage in the Shasta/Trinity divisions, will continue to employ a two acre threshold for the definition of M&I water. The Draft EA is fatally flawed in failing to properly address this issue. 6-40
37	2-10	Under the "Definition of Municipal and Industrial Users" there is a misleading and disingenuous statement that "The CVP has generally applied a definition of five acres or less for municipal and industrial uses in the CVP for many years." This Draft EA is for the Shasta/Trinity divisions -- not for the CVP as a whole. In the Shasta/Trinity divisions this contract provision is pertinent only to Clear Creek CSD and Bella Vista WD, whose combined water usage comprises more than 72% of the total water usage for the Shasta/Trinity divisions. For close to 40 years both Clear Creek CSD and Bella Vista WD have operated using a two acre threshold, not a five acre threshold. A five acre threshold for the definition of M&I water has never been used in the Shasta/Trinity divisions. 6-41

COMMENT NO.	DRAFT EA PAGE NO.	COMMENT
38	2-11	Under Section 2.4.2 it is stated that the Draft EA does not consider "terms and conditions to provide a highly reliable water supply, and provisions to improve the water supply capabilities of the CVP facilities and operations" purportedly because separate environmental documentation would be required for future actions and it would "limit the Secretary's obligation to achieve a reasonable balance among competing demands as required by the CVPIA." The potential for future environmental studies of future federal actions is not an excuse for refusing to consider reasonably foreseeable future federal actions that would enhance water supply reliability and/or increase CVP yields (for example, raising Shasta Dam by several feet -- a proposal currently under serious consideration). The fact that future environmental documents may be necessary to clarify the environmental effects of future federal actions does not allow Reclamation to abdicate its responsibility to consider those reasonably foreseeable actions based upon the current information available. Secondly, the deference to maintaining the Secretary's freedom to administer the CVPIA is nonsensical and unwarranted. The purpose of entering a contract is to require the Secretary to accept binding contractual obligations which do in fact limit his/her freedom to administer the CVPIA to the extent required to comply with those contractual commitments. Nothing in the Contractors' proposal (described as Alternative 1) requests or causes the Secretary to violate his/her duties under CVPIA or any federal law. The Draft EA's refusal to consider the actual parameters of the CVP Contractors' proposal is another example of the Draft EA conforming the parameters of environmental review to Reclamation's negotiating position, rather than performing fact-based objective evaluation. 6-42
39	2-11	Under Section 2.4.2 the statement concerning contractual "Provisions for Compliance With Biological Opinions" is inaccurate and misleading (See General Comments, B. Circular and Unlawful Incorporation of Environmental Documents.). Though it may be true that biological consultations are required for certain Reclamation activities, there is no legal requirement by Executive Order or otherwise, that Reclamation water service contracts contain a contract term making a contractual promise of compliance with Biological Opinions (and other environmental documentation). Please provide a citation to the Executive Order, and a photocopy of the Executive Order, relied upon by Reclamation and NSR for this statement. As noted in the General Comments, the attempt by Reclamation to impose such a contractual provision makes the environmental review process illogical, circular, and unlawful. 6-43

COMMENT NO.	DRAFT EA PAGE NO.	COMMENT	
40	2-12	The Draft EA states that the "Definition of Municipal Users In Alternative 1 would be the same as in the No Action Alternative." This statement is untrue, as shown by Table 2-1 at page 2-4 of the Draft EA, where the "M&I water" definition shows a five acre threshold under the "No Action Alternative" and then shows a two acre threshold under "Alternative 1."	6-44
41	2-14	Under the heading of "Selection of the Preferred Alternative," the Draft EA gives no definition or form to a Preferred Alternative. Rather, it is stated that the final contract language will be found somewhere in the amorphous continuum between Alternative 1 and Alternative 2. As noted in previous comments, this is an invalid methodology that provides no meaningful basis for public review/comment or even Contractor review/comment as to the federal action that is likely to eventually emerge from this still ongoing contract negotiations process.	6-45
42	2-15	Comments related to Table 2-2 are deferred to the particular section of the Draft EA that are referenced within the table, though it should be noted that the table inaccurately refers to CCCWD instead of CCCSD (p. 2-15 and 2-17).	6-46
43	3-1	Under Section 3.1 there is no reference to the recent Saeltzer Dam Removal Environmental Assessment, or to the Trinity River Flow Environmental Impact Statement, or to the draft EIS from about 1988-89 pertaining to water supplies for the City of Shasta Lake (Shasta Dam Area PUD) area.	6-47
44	3-3	Under Section 3.6 "Focus of the Environmental Assessment" the scope of this Draft EA is narrowly and unlawfully circumscribed to a review of "socioeconomic resources." There is no Existing Conditions Analysis. There is no Biological Assessment or analysis of biological resources, either current or as impacted by the Alternatives.	6-48
45	4.1-2	Under Table 4.1-1, the correct contract number for Clear Creek CSD is 489A1R5. Also, the service boundary area for Clear Creek CSD stated at 14,314 is inaccurate; the current area is 14,800 acres, with an additional 3,922 acres in pending inclusion requests with USBR.	6-49
46	4.2-3	The reference to Clear Creek CSD's service area should be amended as noted in comment no. 45. Similarly, the breakdown of territory devoted to agriculture, rural residential, and undeveloped land, will have to be revised. The District is not aware of any factual basis for the breakdown by the consultant; for example the 4,000 acres assigned to "rural residential receiving M&I water," which appears to be nothing more than a guess. It is mysterious that Reclamation and NSR would attempt to prepare a Draft EA without accurate factual information, and without contacting Clear Creek CSD to obtain and verify the accuracy of basic factual information. The Draft EA is factually unreliable and therefore fundamentally flawed as an environmental document.	6-50

COMMENT NO.	DRAFT EA PAGE NO.	COMMENT	
47	4.2-4	It is stated that Clear Creek's wells "are intended for use only when surface supplies are inadequate to meet demand..." This statement is untrue insofar as it implies that the wells may be turned on "when surface supplies are inadequate to meet demand." This matter was the subject of litigation in the Shasta County Superior Court. As it now stands, Clear Creek's wells are for "emergency use" only. If Clear Creek desires to use the wells "when surface supplies are inadequate to meet demand" or as a future supplemental primary water supply, the District would have to first prepare new and extensive environmental documentation before even considering using the wells for that purpose. In order to prepare such environmental documentation, additional major groundwater studies (which are beyond the District's capability) would have to be performed and completed. Only one of the wells is connected to a permanent electric power supply line for its pump motor, whereas the other two wells must be powered for any temporary usage by truck-mounted diesel generators. At this juncture Clear Creek CSD cannot say that the groundwater wells will ever be available for any use other than to meet emergencies.	6-51
48	4.2-4	The text inaccurately represents that "the majority of the developed agricultural property in the district is ditch or flood irrigated." In fact all water to Ag parcels is piped and metered, and the vast majority of applied water is by sprinkler or drip system.	6-52
49	4.2-4	There is a reference to the population increase in Clear Creek CSD's service area, with a population of about 8,000 people in 1998. The actual population at the time of release of this Draft EA was in excess of 9,500 people.	6-53
50	4.2-4	The text states that "The District is situated on a plateau, which rises from the floor of the Sacramento valley." This statement is true, but it is unaccompanied by the additional information necessary to give it meaningful context. The "plateau" that the District is situated on has land which is suitable for agriculture, but because of the hydrogeologic conditions of this plateau there is no access to groundwater for wells. The three emergency wells referenced at the top of page 4.2-4 are located outside the District boundaries and are connected by pipeline to the District's distribution system. The inaccessibility of groundwater in the Clear Creek CSD service area was confirmed by a Bureau of Reclamation study and report prepared prior to the formation of the District and construction of the federal facilities which bring water to the District. This was the original justification for construction of the "Clear Creek South Unit" -- i.e. to bring CVP water to irrigable lands that otherwise would not have access to groundwater. Thus, Clear Creek CSD is totally dependent upon its contractual CVP water supply, and any shortages, unmet demand, price increases, etc. cannot be ameliorated by resort to groundwater.	6-54

COMMENT NO.	DRAFT EA PAGE NO.	COMMENT	
51	4.2-4	The text states that there are "75 miles of pipe" in the distribution system, when in fact there are 120 miles of distribution line. The text also neglects to mention the 4 million gallon storage tank at the head of the District.	6-55
52	4.2-7	The one sentence discussion of "Cumulative Effects" is grossly inadequate. There is no evaluation of the cumulative effects of long term contract renewals, and changes in water quantity exported to Whiskeytown Lake due to the Trinity River Flow decision, together with the removal of Saeltzer Dam and restoration of ten miles of critical salmon spawning habitat requiring increased releases to Clear Creek from Whiskeytown Lake, coupled with the Anadromous Fish Restoration Program (AFRP) which recommends doubling or tripling flow releases to Clear Creek to enhance the salmon spawning habitat. As noted in Clear Creek's letter of October 3, 2000, attached hereto, there are potentially serious cumulative effects on the surface water supply drawn from Whiskeytown Lake to provide surface water deliveries under the long term contracts for Clear Creek CSD, Shasta County, City of Redding, and Shasta CSD. The combination of seasonally decreased inflows to Whiskeytown Lake from Trinity River exports, coupled with seasonally increased releases to Clear Creek for salmon spawning habitat, may very well increase surface water temperatures. Potential seasonal fluctuations in the lake level may also increase the organic load in the water. Water quality may be significantly impacted by increased turbidity -- which greatly increases Clear Creek's water treatment costs and decreases the water treatment capacity of Clear Creek's filtration plant. In severe instances of drawdown of Whiskeytown Lake, one or both of Clear Creek's water intakes on Whiskeytown Dam may be uncovered -- causing reduction or cutoff of the surface water supply. Centerville CSD, which receives all of its water through the same facilities as Clear Creek CSD, and which treats its water (by contract) through Clear Creek's filtration plant, would experience the same impacts. The other CVP Contractors which draw their surface water from Whiskeytown Lake would also be subject to these potentially significant adverse impacts on water quality.	6-56
53	4.2-7	There is no discussion of the new water service contracts with the McConnell Foundation and with Centerville CSD under the section on "Cumulative Effects."	6-57
54	4.3-2 and 4.3-3	The Draft EA looks at M&I water usage based upon 1994 statistics. No rationale or explanation is offered for using information that is six years out of date. An accurate environmental evaluation should be based upon the most current information available.	6-58

COMMENT NO.	DRAFT EA PAGE NO.	COMMENT	
55	4.3-3	The information shown in Table 4.3-5 for Clear Creek's 1994 deliveries of treated water to M&I customers at 474 acre feet is <u>inaccurate</u> . In addition, the statement below Table 4.3-6 that "The disparity between Clear Creek's 1994 CVP deliveries (1,928 acre feet) and the District's treated deliveries to its M&I customers (474 acre feet) may be explained by the fact that Clear Creek WD sells some of its M&I water to other districts, including BVWD, is <u>inaccurate</u> . Clear Creek CSD (not WD) does not and never has sold <u>treated M&I water</u> to Bella Vista WD. In 1994 Clear Creek delivered 1,450.2 acre feet of M&I water in the District and sold 480 acre feet of water to Centerville CSD.) The source of these fundamental errors in the Draft EA is unclear, but suffice it to say that the preparers of the Draft EA have not consulted with Clear Creek CSD to attempt to verify the accuracy of this information. The inaccurate information is indicative of a systemic deficiency of accurate factual information throughout the entire Draft EA.	6-59 6-60
56	4.3-3	The information shown in Table 4.3-6 for the 1994 Cost-of-Service Rate is inaccurate. The 1994 Cost-of-Service Rate was \$25.85 (not \$26.09), and the contract rate was \$18.50.	6-61

COMMENT NO.	DRAFT EA PAGE NO.	COMMENT
57	4.3-3 and 4.3-4	<p>The text of the paragraph starting at the bottom of page 4.3-3 and extending to the top of page 4.3-4, provides some observations and analysis of the cost of M&I water in the City of Shasta Lake, which is then extrapolated to "the other Shasta and Trinity Divisions water districts." First, it is observed that the average City of Shasta Lake water bill for 1,000 cubic feet of water was approximately \$15.40. To arrive at a water cost per acre foot, the drafter of the EA merely multiplied \$15.40 by 43.560 -- since one acre foot of water equals 43,560 cubic feet of water. "This translates to about \$670 per acre foot." Then, because the CVP cost-of-service rate for M&I water to City of Shasta Lake is about \$15.00 per acre foot, the drafter of the EA concluded that residential customers paid a rate in 1999 that "was almost 45 times the cost of service rate that they paid for that water." (\$670 divided by \$15.00 equals 44.60) This leads to the erroneous conclusion by the drafter that "An M&I district's cost of untreated water is usually a relatively small component of its cost to treat, store, and deliver water to its customers (and thus the rates charged to its customers)." Then follows an unfounded leap of logic that "Similar findings would be expected for the other Shasta and Trinity Divisions water districts." Later in the Draft EA the findings are used to support the conclusion that increases in CVP M&I water rates will have little or no impacts on M&I water usage and consumption (page 4.3-13).</p> <p>This analysis in the Draft EA is incompetent, and then the erroneous conclusion is improperly applied to dissimilar districts in the Shasta/Trinity division. First, it is falsely assumed that the \$15.40 average household water bill per 1,000 cubic feet is made up entirely of the cost of water delivered (commodity charge), when in fact most of that monthly charge is comprised of a fixed monthly fee for capital costs, capacity, and equipment. Monthly fixed fees are only charged once per month while the water cost (commodity charge) increases proportionately with increased delivered quantity. Average M&I household usage is close to two-and-one-half times that of the amount used for this analysis in the EA. In addition, the EA completely overlooks restoration fund payments, which are a significant component of the overall cost of water for a contractor like the City of Shasta Lake. An actual analysis of the monthly charges by City of Shasta Lake, with a breakdown of the component charges, along with average monthly water usage quantities, would be necessary to determine the true "delivered cost" of treated M&I water in the City. Preliminarily, it appears that the true cost would be less than half of what is indicated in the Draft EA. The burden is on the drafters of the EA to perform a competent analysis. Commentors are not required to do it for them.</p>

-6-62

COMMENT NO.	DRAFT EA PAGE NO.	COMMENT																
57 (Continued)	4.3-3 and 4.3-4 (Continued)	<p>Secondly, the costs of "delivered water" cannot be transposed from the City of Shasta Lake to other highly dissimilar water service contractors like Clear Creek CSD. Clear Creek's M&I water usage is very different from the "average" usage in an urban environment like City of Shasta Lake or City of Redding. Clear Creek's M&I water usage is predominantly on large lot "ranchette" rural residences, which typically apply water to horse pasture, domestic animals, landscaping, etc. The water usage for these "ranchette" style residences is nearly four times the average usage for standard urban residences. Because of the high degree of M&I water usage associated with this type of land use, the effect of rate increases is magnified four fold. Water usage also is much more sensitive to rate increases -- in contrast to smaller urban residences with hardened demand -- because much of the water is applied outside the home, and the customer may reduce or terminate those uses in responses to escalating prices. The effect is compounded by the fact that Clear Creek CSD's prices are far higher to begin with, as one can see from Table 4.3-14 on page 4.3-12, where Clear Creek's current rate is shown as \$42.01 per acre foot and City of Shasta Lake is at \$15.00. Alternative 2 in Table 4.3-14 shows that M&I rates are projected to increase to \$137.59, \$165.41, and \$193.22 for Clear Creek. Currently Clear Creek charges a little over \$170 for M&I "delivered water" -- consisting of about \$42 cost of CVP water and about \$130 cost to deliver the water. Thus with the projected CVP M&I water rate increases, Clear Creek's charges to its customers will <u>more than double</u>.</p> <p>The notion stated in the Draft EA that the cost of CVP water is a minor or insignificant component of charges for "delivered water" to customers is pure fiction. A real analysis of M&I water rates and their impacts on M&I customers is necessary for an adequate environmental document.</p>																
58	4.3-4	<p>The Ag acreage shown in the text for CCCSD at 3,931 is roughly accurate; but the figures in Table 4.3-7 are wrong, and the total shown as 3,681 is in conflict with both the text and the correct numbers. The actual 1996 cropping pattern is:</p> <table border="0"> <tr> <td>pasture</td> <td>2,370</td> </tr> <tr> <td>misc. field crops</td> <td>178</td> </tr> <tr> <td>vegetables</td> <td>116</td> </tr> <tr> <td>nursery</td> <td>20</td> </tr> <tr> <td>fruit/olives</td> <td>920</td> </tr> <tr> <td>nuts</td> <td>115</td> </tr> <tr> <td>garden/orchards</td> <td>230</td> </tr> <tr> <td></td> <td>3,949</td> </tr> </table>	pasture	2,370	misc. field crops	178	vegetables	116	nursery	20	fruit/olives	920	nuts	115	garden/orchards	230		3,949
pasture	2,370																	
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nuts	115																	
garden/orchards	230																	
	3,949																	
59	4.3-5	<p>Table 4.3-8 showing 1994 Ag water delivery at 1,129 acre feet is incorrect. True number is 3,466.</p>																

6-63

6-64

COMMENT NO.	DRAFT EA PAGENO.	COMMENT	
60	4.3-5	Table 4.3-9 incorrectly shows Ag water delivery at 3,289 acre feet, but true number is 3,466. Also, the 1994 cost-of-service rate is incorrectly shown as \$15.79. The correct 1994 cost-of-service rate was \$11.78, and the contract rate was \$4.53.	6-65
61	4.3-7	The paragraph at the top of page 4.3-7 indicates that future CVP M&I and agricultural water use for Clear Creek CSD is based upon projections reported in the Shasta County General Plan, while water and land use projections indicated in other planning documents, such the future water needs assessment relied upon by the Bureau of Reclamation, are ignored. One would think that Reclamation would rely on its own current documentation (Reclamation's water needs analysis for Clear Creek CSD is dated October 3, 2000) for preparation of its own environmental document, rather than the Shasta County General Plan -- which is an inferior tool for water use planning and out of date. The EA should state specifically (by chapter and page reference) the documentation relied upon, and justify the use of documentation that is less accurate and less reliable than other readily available sources.	6-66
62	4.3-7	Under the heading for "Municipal and Industrial Water" the EA refers to the M&I water demand models developed for the CVPIA PEIS. It has been admitted that these models are inaccurate as predictors of water demand and water usage in the Shasta/Trinity divisions. For example, the models show water usage increasing as water price increases -- a result that is inexplicable. Further, all M&I usage under these models is patterned after small lot (or condominiums/apartments) urban residential usage, which bears no resemblance to the large lot (one to four acres) "ranchette" residential M&I usage prevalent in Clear Creek CSD and Bella Vista WD. To the extent that the CVPIA models are inappropriate for application to the specific circumstances being studied, the divisional EA is supposed to make corrections or use alternative approaches to arrive at accurate environmental evaluation. (That's what the Contractors were told by Reclamation about the use of divisional EAs to "tier off" from the Programmatic EIS.) Why then does this divisional EA blindly apply models which Reclamation has already admitted to be inaccurate?	6-67

COMMENT NO.	DRAFT EA PAGENO.	COMMENT	
63	4.3-8	By blindly applying the inaccurate models (along with its own erroneous analysis -- see comment no. 57) the EA arrives at the conclusion that M&I water usage is: "extremely price inelastic within a fairly large range of prices for water... Accordingly, no incremental change in future M&I demand for CVP water is anticipated under either Alternatives 1 or 2 when compared to the No Action Alternative." This observation may be accurate for Sacramento or the City of Redding urban areas, but it has no application to the M&I water usage in Clear Creek CSD and Bella Vista WD. The Draft EA fails to consider or evaluate the actual impacts of increased M&I water prices on the unique M&I land use pattern prevalent in Clear Creek CSD and Bella Vista WD. Table 4.3-4 indicates 1,441 single family residential M&I connections, and the land use data on page 4.2-3 indicates 4,000 acres for rural residential connections receiving M&I water, which results in an average parcel size of 2.8 acres for these rural residential "ranchettes." Table 4.3-8 indicates the average amount of land per agricultural service connection is 5.5 acres in Clear Creek CSD. The extremely large service area for Clear Creek CSD (see Table 4.1-1) also accommodates at least 4,497 acres (see page 4.2-3) still open for development. Clear Creek's mixture of small farms and large "ranchette" style residences is (for now) a very stable land use pattern because it is widely disbursed, and consistently low-density and low-impact environmentally. The District service area does not have typical urban infrastructure: there is no sewer system (all sanitation is through septic systems); there are no curbs, gutters, or sidewalks; the major roads are relatively narrow two-lane, high speed, "country roads"; aside from a couple of traffic signals, there generally are no urban traffic controls; law enforcement is provided by the county sheriff and fire protection is provided by a volunteer fire company. There are no commercial or retail centers in the District service territory. Additional growth within the District service territory can be easily accommodated by this limited infrastructure of public facilities, provided that growth follows the existing pattern of residential "ranchettes" and/or small farms. Growth is certain to occur in the form of spillover from the growing population in nearby City of Redding, and as a bedroom community for workers in the City of Redding. Under the current land use pattern, the path of least resistance for future growth is simply to expand upon and extend the current land use pattern into the undeveloped areas. There is an economic disincentive to the initial introduction of large suburban tract higher density residential housing, because of the disproportionate expense of infrastructure improvements needed in comparison to development within an area of established urban infrastructure like the City of Redding.	6-68

COMMENT NO.	DRAFT EA PAGE NO.	COMMENT
63 (Continued)	4.3-8 (Continued)	<p>As noted in earlier comments, M&I water usage for residential "ranchettes" is in fact quite price sensitive. (For example, when the price of watering horse pasture exceeds the price of purchasing hay, the residents will either alter that use or purchase hay.) M&I price increases of the magnitude shown in Table 4.3-14 would cause significant changes in M&I water usage and land use. Residential development to accommodate growth would no longer follow the low density path of "ranchette," because the life-style amenities associated with "ranchettes" would not longer be affordable with high priced water. Without any economic return for large size residential parcels, new development will take place on smaller lots. In particular "ranchettes" no longer using large quantities of M&I water would be divided into smaller more "typical" size residential lots (.25 to .5 acres), and new development in the open areas would take the form of standard tract subdivisions. As high density residential development becomes profitable on a speculative basis, mounting economic pressure will be placed on the small parcel farms to subdivide and convert to M&I usage to achieve a higher economic return. Light retail, commercial, and food service businesses will immediately follow the establishment of higher density residential development, further burdening the limited Happy Valley public services infrastructure. Though Happy Valley could absorb the beginnings of this type of development, the limited public facilities infrastructure would quickly be overwhelmed as higher density growth continues.</p> <p>In sum, the proposed CVP M&I rate increases for Clear Creek CSD are likely to be a catalyst for rapid transformation of this area of Shasta County, accompanied by major impacts on land use, water use, public facilities, and biological resources. These environmental impacts should be studied, rather than ignored, probably in an Environmental Impact Statement.</p>
64	4.3-9	<p>At the top of the page it is stated that "It is not anticipated there will be any M&I water related demographic or land use impacts of the contract renewal options. Accordingly, demographic and land use impacts are not addressed in the contract renewal M&I impact analysis." As noted by the previous comment, this is a major error of omission in the EA.</p>

COMMENT NO.	DRAFT EA PAGE NO.	COMMENT
65	4.3-10	<p>The paragraph at the top of page 4.3-10 states that changing the Ag/M&I acreage threshold from two to five acres would have little or no effect on the delivery and cost of CVP water for agricultural irrigators on parcels less than five acres. This statement is patently erroneous, disingenuous, and another example of shaping the environmental review to conform to Reclamation's bargaining position rather than objective/unbiased analysis.</p> <p>Changing the definition of M&I water to a five acre threshold would <u>instantly reclassify</u> over 350 parcels in Clear Creek CSD currently receiving Ag water to M&I usage at M&I rates. This would be an immediate, substantial, and adverse environmental impact.</p> <p>The only way for reclassified individual parcel owners to retrieve their Ag water status, would be for them to individually apply to the Bureau of Reclamation to request a re-reclassification of their land on an individual basis, upon demonstrating that they intend to use water for agricultural purposes to the "satisfaction of the Contracting Officer." It is no secret that the Bureau of Reclamation is openly hostile to the provision of agricultural water to small farms, especially farms less than five acres in size. In past contract negotiations for the interim renewal contracts, Reclamation attempted to completely eliminate agricultural water service to farms of less than five acres in size. Further, there are no true standards or criteria for retrieving the lost agricultural water designation other than the totally subjective requirement of meeting the "satisfaction of the contracting officer" -- a virtual impossibility in light of Reclamation's nonstop campaign to eliminate what it considers to be "inefficient" farms under five acres in size.</p> <p>The environmental analysis must focus on the actual, immediate, undeniable impact of the change in the Ag/M&I threshold, which is to convert 350+ parcels and over 1,167 acres of farm land to M&I usage at M&I rates. At best it would be sheer speculation for the preparer of this EA to assume that Reclamation would approve future requests for reclassification of two to five acre farms to agricultural usage, and at worst it would be complicity in a coverup of Reclamation's agenda to eliminate these small farms. Legitimate environmental analysis of a contractual provision which increases the Ag/M&I threshold to five acres requires preparation of an Environmental Impact Statement.</p>

6-69

COMMENT NO.	DRAFT EA PAGE NO.	COMMENT	
66	4.3-12 and 4.3-13	The text on 4.3-12 makes note of the huge projected rate increase for M&I water for Clear Creek CSD as indicated in Table 4.3-14. Then the text on page 4.3-13 indicates that "However, the percentage increases in residential water bills would be much smaller than the percentage increase in the Contractor's cost of untreated CVP water since the cost of treated water is only a small part of the individual's total residential M&I water bill." This statement and apparent assumption that rate increases to individual customers would be insignificant, is both untrue and unsupported by any factual analysis. As indicated in previous comments, in Clear Creek CSD the projected rate increases would cause the customer rates for "delivered water" to range from slightly less to slightly more than <u>double</u> the previous cost. (See comment no. 57.)	6-70
67	4.3-13	The text indicates that "Any increase in residential water rates could have a particularly severe impact on individuals and families with limited income and ability-to-pay more for their water." Clear Creek CSD agrees with this statement, but where is the follow-up analysis of the income and ability-to-pay for increased M&I water rates? The data in Table 4.3-15 immediately following that statement merely shows the total increase in the amount paid by Clear Creek to Reclamation for Clear Creek's annual aggregate supply of water. There is no factual analysis of the increased amounts paid by individual customers or the impact on persons with limited income and ability-to-pay. As Reclamation well knows, Clear Creek has consistently qualified for Reclamation Act "ability-to-pay" relief for CVP water rates; and it is a matter of common knowledge (which could be established by further investigation) that there is a substantial population of low income residents in the Happy Valley area served by Clear Creek CSD.	6-71
68	4.3.16	Table 4.3-20 shows projected year 2026 agricultural economic and land use impacts for Clear Creek CSD, comparing the No Action Alternative and Alternative 2 under average and dry hydrogeologic conditions. The data (if I interpret the table correctly) shows that under average hydrogeologic conditions Alternative 2 would cause a reduction of about two-thirds of agricultural water use, and under dry hydrologic conditions Alternative 2 would cause reduction of about 80% of agricultural water use. If this is true, is this not a significant adverse impact that needs to be further evaluated and addressed?	6-72
69	4.4-4	The actual service territory encompassed by Clear Creek CSD is 14,800 acres, with service provided to 2,490 total service connections, divided between 788 connections for agricultural use and 1702 connections for M&I use.	6-73

COMMENT NO.	DRAFT EA PAGE NO.	COMMENT	
70	4.4-5	Under "No Action Alternative" there is reference to changing the Ag/M&I threshold from two acres to five acres. Please see comment 65.	
71	4.4-6	Under Alternative 2, there is reference to the change in the Ag/M&I threshold from two acres to five acres and a statement that "There are no incremental indirect effects due to rewording under this Alternative." Please see comment 65.	6-74
72	4.4-7	Under Cumulative Effects, it is noted that Clear Creek CSD would likely fallow about 740 acres of pasture land under dry conditions. The EA then notes that this land, together with land fallowed in Bella Vista WD, would be "less than 5% of pasture in <u>Shasta County</u> . Therefore, implementation of either Alternative 1 or 2 would result in minor changes to land use." (Emphasis added) The comparison to <u>Shasta County</u> to determine the relative significance of the impacts is inappropriate. The significance of land use changes must be considered at the District level, because the effects relate to the District contract and water prices at the District level. Also the land use changes and water usage within the <u>District</u> determine the ability of the individual District to generate revenue for debt repayment on capital facilities and provide for water system improvements. In this context the removal of 740 acres from the agricultural rate base for Clear Creek CSD would have a significant impact on the District. Comparison to the general geographic region of Shasta County is not relevant to the renewal of the Clear Creek CSD contract, nor a proper method for evaluating the contracts of the CVP Contractors in the Shasta/Trinity divisions.	6-75
73	4.5-1	The analysis of biological resources cannot be effectively done without a Biological Assessment and full development of the Existing Conditions scenario.	6-76
74	4.5-6 and 4.5-7	Under the No Action Alternative and Alternative 2 there is discussion of increase in the Ag/M&I threshold from two acres to five acres. Please see comment 65.	6-77
75	4.6-1	Under Environmental Justice there is a conclusory statement that renewal of the long term water service contract would not disproportionately affect low income populations. However, with respect to Alternative 2, the Draft EA stated on page 4.3-13 that "Any increase in residential water rates could have a particularly severe impact on individuals and families with limited income and ability-to-pay more for their water." (See comment 67.) There is no evidence of factual analysis in this EA showing that there is no low income population in the Clear Creek CSD service area. This issue needs to be addressed by factual investigation.	6-78

COMMENT NO.	DRAFT EA PAGE NO.	COMMENT	
76	5-1	The discussion in Chapter 5 of "Other Activities" is little more than a generic and partial list of other activities occurring in the CVP, without any actual analysis of the manner in which these other activities interrelate with the Shasta/Trinity division CVP Contractors' long term water service contracts. The list of "Other Activities" fails to include: activities related to the removal of Saeltzer Dam and restoration of the 10 mile stretch of salmon spawning habitat; the Anadromous Fish Restoration Program (AFRP) which tentatively recommends substantially increased releases of water from Whiskeytown Dam to Clear Creek for enhancement of salmon spawning habitat; the new water service contracts executed with the McConnell Foundation and Centerville CSD; the Area of Origin application filed by Westlands Water District; and probable future Area of Origin applications by water service Contractors in the Sacramento Valley. Further, there is no mention of Reclamation's proposed M&I shortage policy, which treats all M&I water "converted" from Ag water as subject to continuing Ag water periodic reductions in supply; this policy has serious and substantial health/safety and economic consequences for Clear Creek CSD. Most importantly, there is no discussion of certain future changes in operation of Whiskeytown Lake, resulting from the combined effect of the Trinity River flow requirements, restoration of salmon spawning habitat following removal of Saeltzer Dam, and increased releases to Clear Creek in accordance with the Anadromous Fish Restoration Program (AFRP).	6-79
77	6-3	Under "California Environmental Quality Act" it is stated that "This EA could be used as a basis for preparation of a CEQA document." In fact, based on all of the comments submitted, this EA would not be adequate either as a NEPA document or as a basis for preparation of a CEQA document. If a new, or completely revised NEPA environmental document is prepared its adequacy could be evaluated at that time.	6-80
78	6-6	Under "Safe Drinking Water Act" the Draft EA again fails to address the concerns previously expressed by the CVP Contractors taking surface water from Whiskeytown Lake that the combined/cumulative impacts of ongoing Reclamation activities and programs could cause deterioration of the Whiskeytown Lake surface water supply. There is no factual analysis to support the assertion that there would be no changes in compliance with State Drinking Water Act requirements.	6-81

Very truly yours,

LAW OFFICES OF WALTER P. McNEILL



WALTER P. McNEILL

WPM/p
 Encs.

cc: Senator Dianne Feinstein (Washington Office via. U.S. Mail)
 Congressman Wally Herger (Washington Office via. U.S. Mail)
 Char Workman-Flowers, Clear Creek CSD (Via: Facsimile)

Exhibit "A"



5880 Oak Street
Anderson, CA 96007-9216

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Telephone: (530) 357-2121

November 7, 2000

Mr. Lester Snow, Regional Director
Bureau of Reclamation
2800 Cortage Way, E-160+
Sacramento, CA 95825

Re: Extension of Interim Renewal Contract

Dear Mr. Snow:

Unfortunately, we have arrived at the point in the long-term contract renewal negotiations addressed in Article 2(b)(3) of the District's interim renewal contract. Despite diligent efforts on both sides, we have not yet completed negotiations. As a consequence, this means that credible environmental documentation required both under NEPA and CDQA cannot realistically be completed in time for long-term contracts to be executed to be effectively by March 1, 2001, the expiration date of the current interim renewal contract. We have been able to narrow the focus of negotiations to a few remaining issues, and, based upon discussion at the latest Sacramento Valley CVP contractor regional negotiations on November 2, 2000, we believe that further negotiations would be beneficial. We are committed to continuing that process.

In the last few weeks, we have heard the United States announced at least two "drop dead" dates for completing negotiations: October 27, 2000, and then November 2, 2000. These dates were based on the requirement that an agreed upon form of contract have 60 days public review prior to the final execution of a contract no later than January 20, 2001, the last possible date for action by the Clinton Administration. As a practical matter, that can not be accomplished now, especially since the contracts with individual contractors must be ready for review, and Reclamation has not even started individual contractor negotiations with Clear Creek CSD or any other of the Sacramento Valley Contractors. We don't dispute that November 2, 2000 was a realistic deadline for an agreed upon form of contract, but we are extremely disappointed that the failure to meet this deadline arose from the actions of some individuals in Reclamation and/or the Department. Despite frequent statements to the contrary, the government's representatives in the negotiating rooms have not had full authority to make binding commitments on behalf of the United States, or engage in true negotiations with the contractors. For instance, without regard to the rapid approach of the

Serving the Community of Happy Valley

EXHIBIT "A"

Mr. Lester Snow,
November 7, 2000
page 3

and water use, it is imperative that Reclamation immediately prepare and send us the one-year extension of the existing interim renewal contracts, to February 28, 2002, that is expressly provided for under Article 2(b)(3).

Again, in an effort to be able to plan for the next water year, we would appreciate a response to this letter, no later than November 27, 2000, advising when we can expect to receive the one-year extension. Thank you for your continuing efforts to complete the long-term contract renewal negotiations.

Sincerely,

Lawrence A. Russell,
Chairman of the Board

/cwf

LETTER 6

LAW OFFICES OF

WALTER P. McNEILL

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TELEPHONE (530) 222-6992
FACSIMILE (530) 222-6992

October 3, 2000

Via: E-mail & First-Class Mail

Laura Kuh
North State Resources, Inc.
5000 Bechelli, Suite 203
Redding, California 96002

Re: Environmental Assessment for Shasta-Trinity Long Term Renewal Contracts

Dear Ms. Kuh:

As you know, I represent Clear Creek CSD in the long term contract renewal negotiations process that has been underway with the Bureau of Reclamation. The meeting that you had with Shasta-Trinity Contractors on 9/13/00 was helpful in illuminating the status of the Environmental Assessment (EA) for the long term contract renewals, but also disconcerting in revealing problems with obtaining adequate environmental review on the Shasta-Trinity long term contract renewals. I understand that an administrative draft of the EA has now been produced, which has not been reviewed by any of the Contractors -- so we can't be certain what it does or does not contain. To encourage early review and, if needed, reassessment of your approach, Clear Creek CSD would like to submit the following points which ought to be considered in preparing the EA. These points are not exhaustive nor listed in order of priority.

- Accurate data on the contracts is needed to prepare an accurate EA. That may seem almost too basic to need to be mentioned, but after our meeting of 9/13/00 we had some reason for concern: (a) NSR had been supplied with inaccurate data for contract water quantities for the Shasta-Trinity CVP Contractors; (b) NSR had been supplied with inaccurate data as to the Ag/M&I water breakdown for Contractors with mixed usage; (c) the CVPIA Programmatic EIS, from which you are "tiering" the Shasta-Trinity EA, uses the City of Redding as the "representative" water user in the Shasta-Trinity group, though Redding accounts for only about 10% of the water and is less than "representative" of most usage; (d) modeling from the CVPIA Programmatic EIS uses models for the entire Sacramento Valley region to predict impacts/effects in Shasta-Trinity, despite dissimilarities between Shasta-Trinity and the region as a whole; and (e) Water Bulletin 98 assumptions are used, showing that increased rates for M&I water don't

Laura Kuh
North State Resources, Inc.
Re: Environmental Assessment for Shasta-Trinity
Long Term Renewal Contracts

October 3, 2000
Page 2

decrease consumption, reflecting a large metropolitan area water usage bias as opposed to the actual M&I water usage found in this mixed rural/urban area. It was our understanding that NSR would obtain corrected or revised data from Reclamation. We would hope that accurate data has been obtained, since that is the fundamental starting point for accurate/defensible environmental analysis.

- The EA should consider the large number of two- to five-acre parcels receiving Ag water, and the potential impacts of efforts by Reclamation to convert those parcels to M&I usage. There are about 350 such parcels in Clear Creek CSD, and about 338 such parcels in Bella Vista WD. Additional information concerning these small parcels should you wish to inquire about them.
- The potential impact of water rate increases through the adoption of current Reclamation proposed rate policies should be examined in the EA. For Clear Creek, the M&I contract rate would increase from \$42.01 per acre foot to \$137.59. For Bella Vista the M&I contract rate would increase from \$57.62 per acre foot to \$74.37; the Ag cost of service rate would increase from \$22.89 to \$32.02; and the Ag full cost rate would increase from \$53.32 to \$75.67.
- The effects of tiered pricing on water rates should be taken into account in determining rate impacts in the EA. To my knowledge there is no agreement, rule, or policy for application of tiered pricing to mixed Ag/M&I contracts. This raises a question as to how the EA will address the effects of rate impacts, without direction on how tiered pricing is to be applied to mixed Ag/M&I contracts. To my knowledge Reclamation has not even thought of this question, though the answer may have dramatic impacts on water costs and water consumption patterns.
- The EA should consider the full demand for water over 25 years, for Clear Creek as well as all the other Sacramento Valley Contractors. Clear Creek's needs analysis (like that of other Sacramento Valley Contractors) shows ultimate demand to be in excess of total contract quantity. The EA should consider the effect of full supply of this amount, whether it comes through the contract itself, or through transfers, or the acquisition of non-CVP water for use in conjunction with contract Project water. If there are any questions about the needs analysis or ultimate demand we would be glad to address them. As far as we know, Reclamation has accepted Clear Creek's needs analysis, and there have been no inquiries, questions, or objections to the needs analysis submitted to Reclamation many months ago.

- The EA should include analysis of the income levels of water users, the relationship of land use and water use to income levels, and the sensitivity of land use changes to changes in water rates based on the income levels of water users. There is a strong likelihood that you will find that the water users -- due to their relatively low income levels -- are highly sensitive to water price increases, and therefore land use changes (eg. conversion from Ag to M&I land use) will be strongly influenced by water pricing.
- To my knowledge we do not yet have a site-specific Biological Assessment or a site-specific Biological Opinion, and the EA being prepared by NSR does not include a comprehensive review of environmental conditions on the ground. Analysis of the affected environment and existing environmental conditions would be essential to an EA.
- Though I understand the rationale for the "bookends" approach being used for contract terms in the absence of a negotiated contract, I have concerns about it meeting the functional requirements of an EA, especially in the absence of an agreed upon CVP-wide form of contract. Environmental review requires a "stable and finite project description." The "project description" will come into sharper focus when we are at or near agreement with Reclamation on an actual contract.
- The EA should analyze the cumulative impacts of renewal of the long term water contracts for Contractors taking water from Whiskeytown Lake as their source of supply in conjunction with Interior's other activities an programs affecting the Whiskeytown Lake water supply. It is expected that in the next couple of months we will receive Interior's Trinity River Flow Decision, which will in all probability severely reduce inflows of Trinity River water to Whiskeytown Lake. It also is highly probable that there will be substantially increased flow releases from Whiskeytown Lake to Clear Creek, to make full use of the 10 miles of salmon spawning habitat that will be made accessible by the removal of Saeltzer Dam. At the same time, releases will continue to be made from Whiskeytown Lake to provide cold water for fish habitat in the Sacramento River, along with releases to dilute heavy metal concentrations in spillage from the Spring Creek Debris Dam. And, of course, the Contractors drawing water from Whiskeytown Lake will continue with their demands for water, with Clear Creek experiencing peak demands for Ag water in summer months at or around the same time flow releases for fish habitat in Clear Creek and the Trinity River are likely to be highest. There is a real potential risk that: decreased volumes of water moving through Whiskeytown Lake may cause water temperatures to increase; that competing

demands for water releases could result in temporary impacts on supply, or temporary lowering of lake levels, or both; that changes in the operation of Whiskeytown Lake could result in increased organic load, and/or turbidity, and other impacts on water quality; that decreased water quality could adversely impact water treatment capacity and treatment costs for Contractors taking their water from Whiskeytown Lake. Though there will clearly be material changes in the future operation of Whiskeytown Lake, I am not aware of any environmental study by Reclamation that considers the cumulative impacts on water service providers using Whiskeytown Lake as their source of supply. This would be the time to address that environmental issue.

- In the contract negotiations to this point Reclamation has stressed that future water supply needs and demands by water service Contractors are not likely ever to be satisfied by CVP water supplies. In essence, there will be long term pent up demand for additional water. The natural consequence of long term demand that can't be satisfied by Reclamation should be considered in the EA. Because all of the Sacramento Valley Contractors are within "areas of origin" and "counties of origin" that could provide adequate water supplies to meet 100% of future demands, the likely long term consequence would be individual Contractor "area of origin" water rights applications that may benefit individual Contractors but preempt and reduce overall CVP water supply. Successful area of origin applications will further reduce Reclamation's ability to meet future demand in the area of origin, forcing additional Contractors to follow with their own area of origin applications. A spiraling effect would occur until area of origin Contractors are able to meet full water needs through a combination of area of origin water rights and remaining CVP contract supplies. There will be disproportionate impacts among water service providers, because the overall CVP water supply will be diminished for all Contractors but different individual Contractors will be better positioned or worse positioned to file area of origin applications. This effect should be considered in the environmental analysis applied to contracts in the area of origin.
- Aside from the fact that there is no CVP-wide contract, various important contract provisions concerning M&I water have not been resolved by Reclamation with the CVP Contractors (as a whole) or with the M&I "virtual division" group. These unresolved contract provisions concern the following matters, among others: M&I water reliability, M&I water shortages, M&I water quality, and M&I contract renewal. In addition, an M&I rate-setting policy has not been determined, and may not be concluded until the fall of next year. Another important M&I issue on the horizon is probable settlement of the M&I deficit, which could greatly influence M&I rates and

Laura Kuh
 North State Resources, Inc.
 Re: Environmental Assessment for Shasta-Trinity
 Long Term Renewal Contracts

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capital repayment. It is reasonable to expect all of these matters to be resolved in the next 12 months and there is adequate information to discuss the parameters of possible outcomes. Therefore the environmental analysis should take these factors into consideration.

We believe the above points should be considered in the environmental analysis for long term contract renewal. We would be glad to discuss any of these points in greater detail with you should you desire to do so. Thank you for your consideration.

Very truly yours,

LAW OFFICES OF WALTER P. McNEILL



WALTER P. McNEILL

WPM/p
 cc: Clear Creek CSD
 USBR Area Manager, Mike Ryan

Pub.L. 88-44, June 21, 1963, 77 Stat. 68:

"That the Secretary of the Interior shall, upon request of the other party to any long-term contract for municipal, domestic, or industrial water supply hereafter entered into under clause (2) in the proviso to the first sentence of section 9, subsection (c), of the Reclamation Project Act of 1939 (53 Stat. 1195, 43 U.S.C. 485h) [subsec. (c) of this section], include provision for renewal thereof subject to renegotiation of (1) the charges set forth in the contract in the light of circumstances prevailing at the time of renewal and (2) any other matters with respect to which the right to renegotiate is reserved in the contract. Any right of renewal shall be exercised within such reasonable time prior to the expiration of the contract as the parties shall have agreed upon and set forth therein.

"Sec. 2. The Secretary shall also, upon like request, provide in any such long-term contract or in any contract entered into under clause (1) of the proviso aforesaid that the other party to the contract shall, during the term of the contract and of any renewal thereof and subject to fulfillment of all obligations thereunder, have a first right for the purposes stated in the contract (to which right the holders of any other type of contract for municipal, domestic, or industrial water supply shall be subordinate) to a stated share or quantity of the project's water supply available for municipal, domestic, or industrial use.

Responses to Comment Letter 6 – Walter P. McNeill (2000)

- 6-1: 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 contracts to be a continuation of previous contracts with financial and administrative changes and 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. In addition, the CVPIA, through its numerous environmental actions, is addressing fish and wildlife that have been affected by the CVP. The contracts need to be considered in the context of the CVPIA as a whole.
- 6-2: Reclamation prepared an Updated Draft EA in 2004.
- 6-3: These issues concerning possible future requirements were resolved in the negotiations and a BA/EFHA was prepared in 2003 to determine if the proposed long-term contract renewal for the Shasta and Trinity River Divisions may affect species that are currently federally listed as threatened or endangered or that are proposed or are candidate species for listing. The BA does not evaluate the effects of operating and maintaining the CVP. That analysis is presented in a separate biological assessment for the Operations Criteria and Plan, also called OCAP.
- Consultation with the USFWS has been completed for seven of the ten long-term water service contract renewals in the Shasta and Trinity River Divisions. For all seven contracts, the USFWS has concurred with the determinations of the BA, which are that the long-term contract renewals are not likely to adversely affect special-status species and designated or proposed critical habitats of those species. A similar conclusion is expected for the remaining three contracts.
- 6-4: Comments are noted. The negotiations included only water service contracts, not repayment contracts. It was recognized that the repayment contracts could be renegotiated, but as part of a separate action requiring its own environmental analysis. The primary issue of concern was the proposed change to the threshold for presumption of agricultural use of water for purposes of billing from 2 acres to 5 acres. This issue was resolved in the contract negotiations.
- 6-5: Refer to the Updated Draft EA or the Final EA for a description of the 10 contracts and Contractors evaluated. Centerville Community Services District was one of several entities receiving water from the Shasta County Water Agency (SCWA) as the lengthy contract renewal process began. Centerville, through an assignment from Shasta County Water Agency, now contracts directly with Reclamation and has been added to the list of Contractors in the EA. The legal status of SCWA and Keswick County Service Area is strictly a matter of administrative concern and has no effect on the environmental analysis. Like Centerville, the Keswick area is being served under its own contract.
- 6-6: Comments are noted. The distinction between the terms of M&I and agricultural contracts was recognized in the negotiated contracts and provision was made for extension of the term of the M&I portion of contracts

- that provide for both M&I and agricultural use. Section 4.3 of the EA discusses the existing regional and local economy and the economic impacts of agricultural water versus M&I water.
- 6-7: Comment is noted. The document discloses numerous times that the Clear Creek Community Services District and Bella Vista Water District are the only two service providers in the Shasta and Trinity River Divisions that provide water for agriculture.
- 6-8: The maximum contract quantities of water service to this area and the contract numbers in Table 1-1 have been updated in the Final EA. The original quantity was reduced in the interim contracts, but the original contract amount is used in the proposed long-term renewal contract. The maximum quantity of CVP water for the City of Shasta Lake has been restored to 4,400 acre-feet. Shasta Dam Area Public Utility District (PUD) and Summit City Public Utility District (PUD) would have been better characterized as "Incorporated into the City of Shasta Lake." In any event, references to them have been deleted from Table 1-1.
- 6-9: Contract numbers in Table 1-1 have been updated in the Final EA.
- 6-10: Keswick County Service Area or Shasta County Service Area #25 – Keswick has its own long-term water service contract with its own unique contract service area. At this time, Reclamation recognizes it as a separate contract from that of Shasta County Water Agency.
- 6-11: Page 1-5 of the Updated Draft EA and page 1-5 of the Final EA refer to the RPA.
- 6-12: Thank you for the clarification. Reclamation agrees.
- 6-13: The quantity of CVP water (4,400 acre-feet) in the renewal contract for the City of Shasta Lake was restored to the sum of the quantities of water identified in the contracts with Summit City PUD and Shasta Dam Area PUD.
- 6-14: Comment is noted regarding renewal of water service contracts. 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 the EA because Reclamation lacks the discretion to not renew the contracts. For the EA, renewal water for the City of Shasta Lake was water previously contracted by the Summit City PUD and the Shasta Dam Area PUD. The contract for the City of Shasta Lake includes a maximum contract quantity of 4,400 acre-feet for M&I water and equals a combined quantity contracted to the Shasta Dam Area PUD and former Summit City PUD. No contractor received an increased supply.
- 6-15: The sentence stating that Clear Creek Community Services District was formed under the Trinity River Division Act of 1955 has been changed to read, "The Clear Creek Community Services District is a local agency formed under the Community Services District Laws, sections 61000 through 61934 of the Government Code of the State of California.
- 6-16: Comment is noted. See also response to Comment 6-10.
- 6-17: These users are subcontractors to the SCWA and are included in the discussion under SCWA.
- 6-18: Refer to response to Comment 6-10.

- 6-19: A new Figure 1-2 was produced for the Updated Draft EA and is also included in the Final EA. The new figure shows the service areas that were missing on Figure 1-2 in the Draft EA.
- 6-20: Comment is noted. The contracts will be for terms that start on the date the contracts are signed, which is now expected to be early 2005. The shifts in signing dates do not affect the environmental analyses, however, as the water needs Analyses showed full development is to be expected by 2025, so no development associated with these contract renewals is to be expected after that date.
- 6-21: The subject of this EA is the renewal of existing contracts with financial and administrative changes but 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 or potential additional water from "related activities." The comments regarding "related activities" are noted. The reader is referred to the PEIS, the 2004 OCAP Biological Opinions, and the Trinity River Restoration Program EIS for accounts of the impacts of these allied actions.
- 6-22: Comment is noted. The concerns mentioned have been addressed in the negotiated contracts. Moreover, 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 lacks the discretion to not renew the contracts.
- 6-23: The contracts have since been negotiated.
- 6-24: See response to comment 1-1.

The comment was submitted in 2000. Since that time, draft contract terms have been negotiated between Reclamation and Clear Creek Community Services District. The draft final contract provisions fall within the bookends, with certain provisions from Alternative 1 and others from Alternative 2.

Reclamation has analyzed the proposed action in accordance with NEPA. The EA and the scope of the analysis were developed consistent with NEPA regulations and guidelines from the Council of Environmental Quality 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 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, which is tied to the CVPIA PEIS, deals with the local effects of water pricing and how that may affect the Shasta and Trinity River Divisions.

- 6-25: The EA does not address future water demands apart from those related to use of the water currently under contract. The EA is tied to the PEIS to evaluate the potential site-specific environmental impacts of renewing the long-term water service to the Shasta and Trinity River Divisions' Contractors. The purpose of this project is to renew the water service contracts, consistent with the provisions of CVPIA. Future water demands are not associated with the stated purpose and need, and are therefore not included in either of the action alternatives. Should future judicial opinions require changes in the operation of the CVP in response to State area of origin laws, those adjustments will be addressed in future environmental reviews as appropriate.

- 6-26: The legislation establishing the CVP spoke of supplementation of existing supplies and that language clearly applies to the Shasta and Trinity River Division Contractors. It may be not always be so clear for some water service contracts, as some Contractors do not have alternative supplies at this time. However, as a practical matter, Reclamation does not intend to penalize any contractor for developing an alternative supply.
- 6-27: The limitation on increases in supply is physical, not legal. The supplies of the CVP are fully committed and additional water for one user can only be obtained by taking it from another.
- 6-28: Reclamation's position is that the No Action Alternative would be a new contract, as described in Table 2-1. We acknowledge Clear Creek Community Services District's position.
- 6-29: The subject of this EA is the renewal of existing contracts with financial and administrative changes but no changes in either the volumes of water under contract or the places of use. The analysis in the EA concerns Reclamation's continued delivery of CVP water, not the implementation of specific yield projects per CVPIA 3408(j). Analysis of other, as yet unidentified, Reclamation projects with the potential to increase contract quantities is outside the scope of this document. Alternative 1, the Contractors' opening proposal, assumes that Reclamation will succeed in finding ways to replace the 800,000 af of water dedicated to fish and wildlife uses under the CVPIA.
- 6-30: This explanatory recital was proposed by the Contractors for inclusion in Alternative 1, and is not used in the parlance of NEPA. The intensity of the loss in reliability would be the same under all of the alternatives. Effects under Alternative 1 would not be unique.
- 6-31: Comment is noted. Reclamation considered the concept of Category 1 and Category 2 a valid element of the renewal contracts, and it was not eliminated by Reclamation prior to the distribution of the Draft EA.
- 6-32: Comment is noted.
- 6-33: Comment is noted.
- 6-34: Comment is noted. Section 3404 of the CVPIA establishes specific rates and charges for CVP water that is transferred. These rates and charges are imposed on the CVP water service contractor that is transferring the water.
- 6-35: Comment is noted. Although Reclamation is required to comply with federal water quality standards, it is not obligated to construct or furnish facilities to improve and maintain the quality of water provided to the Contractors. Although Reclamation will work toward water quality goals in collaboration with other parties, Reclamation does not warrant the quality of water delivered to the Contractors.
- 6-36: The EA and the scope of the analysis were developed consistent with NEPA regulations and guidance from the CEQ, and in conformance with the direction provided in 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 contracts to be a continuation of previous contracts with financial and administrative changes but no changes in either the volumes of water under contract or the places of use. Moreover, all of the contracts except those

with BVWD and CCCSD do not involve any change in the type of use, such as the conversion of irrigation uses to M&I uses. The analysis in the EA addresses the proposed changes to the contracts and the potential environmental effects of those changes. As indicated in the EA, the contract changes would not result in significant effects to the environment.

- 6-37: Comment is noted. Reclamation considered the alternatives to represent bookends. Refer to comment 6-36.
- 6-38: The existing environment is described for seven resource areas in the Updated Draft EA. Refer to Chapter 4 of the Updated Draft EA.
- 6-39: The Draft EA was prepared to comply with NEPA, not CEQA. The No Action Alternative consists of renewing existing water service contracts, as described by the Preferred Alternative of the PEIS. The purpose of the analysis is to compare the effects of the action alternatives 1 and 2 relative to the No Action Alternative. The No Action Alternative essentially maintains the status quo, apart from changes mandated by the CVPIA. The EA analyzes the increment of change between the No Action Alternative and the other action alternatives.
- 6-40: Comment is noted. This matter has since been addressed in negotiations.
- 6-41: See response to Comment 6-40. Also, as noted in earlier responses, the proposed change in the acreage that triggers a presumption of agricultural use would only require a farmer to demonstrate use of CVP water for agricultural purposes. Agricultural rates would still apply to those landholders using water for agricultural purposes. Only those users, if any, who actually were using CVP water for M&I purposes and that were presumed to be farming because of the size of their property would be affected. They would simply be paying M&I rates rather than agricultural rates for M&I uses.
- 6-42: Strong differences of opinion exist with respect to what is “reasonably foreseeable.” There are those, for example, who believe that the relatively low cost of increased storage in Shasta Lake makes at least some increase in water supply reasonably foreseeable. Others differ strongly, and the only reasonably foreseeable aspect of increased water supply might be a prediction that increased water supply in Shasta Lake would not occur for several years. One might reasonably argue, given the disagreement over construction of new storage, that it is reasonably foreseeable that the increased capacity would not be available during the term of the proposed contracts. It is reasonably foreseeable that water management will become more difficult during the term of these contracts, given projections of population growth, but the details are uncertain.
- 6-43: This difference of opinion has been resolved by Section 3(e) of the contract, which states that the Contractors shall comply with applicable requirements of biological opinions resulting from consultation regarding the execution of these contracts that are within their legal authority to implement, but goes on to say that the Contractors may challenge the requirements or seek judicial relief in court.
- 6-44: The definition of what is presumed to be a farming operation differs, not the definition of M&I use. There appears to be substantial concern that many current users would not qualify for agricultural rates in the absence of the presumption of agricultural use based on a 2-acre minimum. If, as Reclamation has been assured, all persons receiving CVP water at agricultural rates are indeed farmers, there will be no change from payment of agricultural rates to M&I rates. However, if the Contractors have been incorrect, some individuals will be shifted from payment of agricultural rates to payment of M&I rates because they will no longer be misclassified as a result of an erroneous presumption. Any changes would result from the correction of errors, not changes in definitions.

- 6-45: The analysis in the EA finds that the renewal of the contracts is in essence a continuation of the “status quo.” Although there are financial and administrative changes to the contracts, they perpetuate the existing use and allocation of resources (that is, the same amount of water will be provided to the same lands for existing and on-going purposes). The analysis in the EA addresses the two alternatives compared to the No Action Alternative, which in essence reflects a continuation of the status quo with CVPIA mandates. For some Contractors the proposed alternatives represent a likely transitional change from less agricultural water use to more M&I use.

As indicated in the EA, these contract changes would not result in significant effects to the environment.

Use of the status quo as the No Action Alternative is supported by CEQ’s opinion concerning renewal of some Friant Division contracts that appeared in the Federal Register on July 6, 1989 and its guidance document, “Forty Most Asked Questions” (on NEPA regulations).

- 6-46: Thank you for the correction. The error has been corrected in the Final EA.
- 6-47: In accordance with NEPA, feasible alternatives that would meet the purpose and need for the proposed action are considered in the EA. Refer to response to Comment 6-36. The bookends approach provided a reasonable range of alternatives that met the purpose and need for the proposed action, and allowed analysis of the project impacts to move forward while contracts were being negotiated.
- The alternatives assessed in the EA represent a range of water service agreement provisions that meet the 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 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 the “bookends.” This EA considers these proposals as bookends to evaluate the impacts and benefits of renewing the long-term water service contracts.
- The removal of Sactzer Dam does not affect the proposed contract renewals, although it is important for various other aspects of implementation of the CVPIA. Furthermore, the 1988-1989 environmental document pertaining to water supply for the City of Shasta Lake is not relevant to this EA because it was prepared prior to the passage of the CVPIA.
- 6-48: As stated in Section 3.6, the EA evaluates the direct effects of the alternatives on socioeconomic resources as well as the potential secondary effects on other resources, including biological resources, that could result from the direct effects on socioeconomic resources. This EA finds the renewals of the contracts to be a continuation of previous contracts, with only financial and administrative changes but no changes in either the volumes of water under contract or the places of use. Therefore, the alternatives would not result in direct effects to any resources other than socioeconomic resources.

Existing conditions and the potential direct and secondary effects on resources, including biological resources, are discussed in Chapter 4. A BA/EFHA was prepared as part of the Endangered Species Act (ESA) consultation. The analysis of existing conditions is a requirement under CEQA, not NEPA. CEQA requires a characterization of existing conditions, whereas NEPA requires a comparison of the environment with and without the proposed action. In many cases, the environment without the action is the same as the existing conditions. However, for a long-term action, during the term of which changes are to be expected independent of the proposed action, the two often differ conspicuously.

- 6-49 Contract numbers in Table 4.1-1 have been updated in the Final EA. CCCSD has requested changes in its service area since 2000. These requests require Reclamation's approval as well as compliance with NEPA and ESA. The district's current service area has been updated to account for these changes.
- 6-50: In March 1999, NSR arranged to meet with CCCSD two weeks before the Draft EA was due to be completed to discuss the information needed for the EA. One hour before the time the meeting was scheduled, CCCSD cancelled the meeting and refused to cooperate with NSR staff until only a few days before the Draft EA was due to be completed.
- Consequently, the information cited was derived from several less desirable sources: the Clear Creek Community Services District Water Conservation Plan (1994) and supplemental information eventually provided to NSR by CCCSD via telephone and fax. Several conversations are documented in the administrative record, including a telephone conversation concerning acreage data with an assistant to Ms. Workman-Flowers (CCCSD) that occurred at 8:30 a.m. on September 18, 2000. Information was also provided to NSR by telephone in 2000—prior to annexations—when the CCCSD was 14,314 acres. NSR was told by CCCSD that a total of 5,817 acres was irrigated and about 4,000 acres were developed as rural residential, leaving (we deduced) about 4,497 acres as undeveloped property.
- 6-51: Correction is noted.
- 6-52: The correction is noted with respect to CVP water, which is delivered via the Muletown Conduit and smaller distributary pipelines. CCCSD's service area receives water from Rainbow Lake, a reservoir on the North Fork of Cottonwood Creek, which supplies Shasta County's oldest irrigation system by means of the Happy Valley Irrigation Canal.
- 6-53: Correction is noted.
- 6-54: Comment is noted. As noted in the response to comment 6-52, some irrigable lands within the CCCSD obtain water from the north fork of Cottonwood Creek under very old water rights, although other lands, as noted in this comment, are wholly dependent on CVP water and the emergency wells in the Cottonwood Creek floodplain. Those wells, and the pipeline connecting them to the areas of use, have been added to the CCCSD since this comment was submitted.
- 6-55: Comment is noted. As noted in the response to comment 6-50, accurate information was not available from the CCCSD during the NEPA process.
- 6-56: The cumulative effects of the CVP and the implementation of the CVPIA were addressed in the CVPIA PEIS. In addition, the EA finds the renewals of the contracts to be a continuation of previous contracts, with financial and administrative changes but no changes in either the volumes of water under contract or the places of use. The cumulative effects of other CVPIA activities, such as Trinity River flows and Whiskeytown Lake releases, are reviewed in other NEPA and ESA documents, particularly the USFWS and NOAA Fisheries Biological Opinions on the OCAP, and are beyond the scope of this document. (See the recent Biological Opinions for the OCAP for extensive discussions of these related documents.) Also, it should be noted that health and safety issues are taken most seriously, and there is precedent for minimal drawdowns of reservoirs being established to protect public water supplies. Moreover, Whiskeytown Reservoir is normally kept near capacity, maximizing recreational use, as there is no compelling reason to draw it down significantly.

- (Please note: The Updated Draft EA describes cumulative effects by each resource topic. Refer to each resources topic in the Updated Draft EA.)
- 6-57: The new agreements with the McConnell Foundation and with Centerville CSD are not water service contracts; rather, they are exchange agreements. Thus, they do not fall within the scope of this EA.
- 6-58: Comment Noted
- 6-59: Comment is noted. The data presented in Table 4.3-5 was obtained directly from the California Department of Waterways to which individual districts report their water use and distribution. It is unclear why there is so great a disparity between the Department of Waterways' 1994 data for Clear Creek presumably provided by Clear Creek CSD itself and what Clear Creek CSD in its comment submits to have actually occurred. The difference is very small and has no material impact on the analysis findings. The comment is noted and correction accepted as Clear Creek is presumed to be the most credible source regarding its water usage and sales.
- 6-60: Refer to response to Comment 6-50 and 6-55.
- 6-61: The rates presented in Table 4.3.6 were drawn directly from Reclamation's 1994 CVP rate book. The reason for the disparity between the Cost-of-Service rate in this rate book for Clear Creek and the rate experience of Clear Creek noted in the comment is unclear. The difference, however, is very small, and has no material impact on the analysis findings.
- 6-62: The comment criticizes an analysis which generally asserts that the cost of water is a relatively small component of the overall cost to deliver water to M&I customers in the district and the rates paid for water by those customers. Specifically, the comment suggests that this is not the case. However, it then goes on to suggest that much of the cost to deliver water in the county and thus much of the water rates paid by district customers relate to fixed costs associated with district capital costs, capacity and equipment. This only supports the argument presented in the EA that the expense to acquire water (a variable expense depending on the amount of water) represents only a part of the cost of providing water to customers. And, therefore that relatively large percentage increase in the cost of water by and large may cause a relatively smaller percentage increase in the cost of water and thus rates charged to customers. In the case of the CCCSD, the potentially very large increase in CVP M&I water rates under Alternative 2 as compared to other Shasta-Trinity Districts will likely have a meaningful impact on individual customer cost of water in that District. However, in percentage terms, this impact will be smaller than the increase in water cost since a large component of the District's cost is attributed to non-water costs such as debt repayment on facilities.
- If in fact water users in CCCSD are using two and one-half times the water assumed in the analysis, this would have implications for the conclusions. However, even then since the cost of water is only part of the cost of providing water service the impact on rates percentage terms would be relatively lower. This noted, the assumption on average household water usage in the District adopted for the EA analysis is based directly on the assumptions adopted for the CVPIA PEIS which were derived from data for the Central Valley of California published by the State's Department of Water Resources. This approach was adopted per the instructions of Reclamation and the consultants who managed preparations of the PEIS document.
- The restoration charge was factored into the analysis, however, its impacts are minor because a restoration charge would apply under all three alternatives, including the No Action Alternative. However, under the No

Action Alternative, the Restoration Charge is assumed \$12.00 per acre-foot. Under Alternative 2, it is assumed to be \$13.50. The \$1.50 difference contributes to only a very small portion of the estimated water cost and other impacts of Alternative 2 relative to the No Action Alternative.

The assertion that CCCSD charges its M&I customers \$170 per acre foot of water is inconsistent with the District's water rates. In 2004, the District charged a base rate to its M&I customers of \$21.40 a month or \$256.80 a year for the first 200 cubic feet of water each month plus approximately \$0.40 per additional 100 cubic feet. A household that purchased one acre foot of water that year averaged a total annual bill of the \$256.80 plus the \$170, or over \$420 (about \$35 a month). Accordingly, the projected increase in CCCSD CVP M&I water cost under Alternative 2 would result in an approximately 25% increase in the average rate charged for one acre foot of consumption in the District. This is a sizeable increase and will have regional economic impacts (which are estimated in the EA analysis).

- 6-63: The district's 1996 crop census report to Reclamation showed a total of 3,931 irrigated acres: alfalfa hay – 25; other hay – 560; irrigated pasture – 1,785; firewood – 163; Christmas trees – 15; vegetables – 116; nursery – 20; fruits – 902; nuts – 115; and family gardens – 230.

The cropping pattern presented in Table 4.3-7 was obtained from Reclamation's crop report for the District, which itself was based on data submitted by the District from 1996. It is unclear why Reclamation's cropping pattern data for the District derived from a District submittal and the District's separate accounting are different.

The 3,931 acre figure in the text of the EA was also obtained from the Reclamation report for the District, although it was from a different part of that report than the cropping pattern component. It was assumed during the preparation of the EA that a portion of the District's agricultural activity was not assigned to specific crop categories by the District. If adopted, the correction proposed by CCCSD would have no meaningful impact on the findings of the analysis.

- 6-64: The entry in the table is a typographical error. Reclamation's records show that CVP water diverted in 1994 for irrigation delivery was 3,532 acre-feet.
- 6-65: Reclamation reports that it delivered 3,289 acre-feet of agricultural water to CCCAD in 1994. The 3,466 acre-feet may represent total deliveries of agricultural water by the District to its customers, including CVP and non-CVP supplies.

The 1994 cost of service rate presented in the EA was drawn directly from the 1994 CVP rate book prepared by Reclamation. There is no explanation for the difference, but if the correction proposed by CCCSD in this comment were adopted, it would not have a meaningful impact on the analysis results.

- 6-66: At the time of the EAs preparation the water needs assessments for the Shasta-Trinity region CVP contractors were not yet complete and available to Reclamations consultants, NSR. Further, the CVPIA PEIS based its analysis for the region on projections contained in the Shasta County General Plan. Accordingly, this was the approach adopted for the EA as the EA analysis necessarily needed to be consistent with (tier off of) the PEIS
- 6-67: The comment is considered reasonable. However, the EA was prepared applying the same water use models and usage assumptions adopted for the CVPIA PEIS, from which the EA is tied.

- 6-68: The comment makes several good points about the economics of ranchettes. As recreational entities, ranchettes are less price sensitive than commercial farms, but are nonetheless more sensitive than high-density developments. However, the comment argues on the one hand that high-density development would be retarded by the lack of developed infrastructure and on the other that the economics of more costly water will drive development away from ranchettes toward high-density development. Both cannot be true for the CCCSD service area as whole. Given the availability of buildable land and abundant water resources in the lowlands to the east, it seems most probable that the land development pattern will shift relatively little, with less land being irrigated, but the parcel sizes remaining large in much of the service area.

a. The comment is duly noted and considered a reasonable concern. However, per Reclamation's directions, the EA was prepared applying the same water use models and usage assumptions adopted for the PEIS.

These models did not specifically address any water and land use patterns unique to specific regions.

b. Based on the assumptions adopted for the EA (which are consistent with those adopted in the CVPIA PEIS), the conclusions of the EA regarding demographic and land use impacts are felt reasonable. Were the assumptions regarding existing water and land use patterns altered to be consistent with the description summarized under Comment No. 6-68, it would be reasonable to expect potentially substantial demographic and land use impacts coinciding with the CVP M&I water price changes stipulated under EA Alternative 2.

- 6-69: The commentator is also speculating regarding the political motivation of Reclamation, and such speculation cannot and should not be incorporated into the EA analysis. Within the proposal to increase the agricultural acreage limitation from two to five acres it is Reclamation's intent to make agricultural water available to landowners on such small parcels for the purposes of legitimate agricultural activities. It will simply be the landowners' responsibility to reasonably demonstrate that they are or will use the requested agricultural water for agricultural purposes. If this is currently the case, as the commentator appears to indicate, there should be no meaningful land use or water user cost impact from the proposed change in acreage limitation.

Any parcels that would instantly be reclassified would be parcels for which agricultural use cannot be demonstrated. While the "satisfaction of the Contracting Office" may sound to a layman like an arbitrary standard, in fact the circumstances are quite the contrary. The negotiated contract provides specific guidelines for determining whether parcels are receiving CVP water at irrigation rates. The guidelines recognize that the CCCSD surveyed all landholdings between 2 and 5 acres during the term of its first interim renewal contract to determine if those landholders were paying the appropriate rates for CVP water. If the purpose of use has not changed since that survey was completed, those landholders will not be required to submit a new application to CCCSD to receive CVP water at irrigation rates. If the landholder, but not the purpose of use, has changed after the survey was completed but prior to execution of the renewal contract, those landholders will not be required to submit a new application requesting CVP water at the rates for irrigation water. The CCCSD will require a new application requesting CVP water at the rates for irrigation water when there is a change in ownership of any of those landholdings after the date of execution of the renewal contract.

- 6-70: The reference to significant rate increases was due to a proposed change in the rate setting policy to allow for quicker recovery of capital costs. This issue has not yet been resolved, and Reclamation is working with Contractors to determine the best method of achieving this objective.
- 6-71: Ability to pay relief is presumed to be in place for the District under all of the alternatives. Accordingly, there would be no incremental impact related to this issue under the action alternatives relative to the No Action Alternative.

Effects on drinking water and domestic usage are unlikely to be a hardship on even low-income persons, unless they use substantial amounts of water for subsistence agriculture (gardening). If that should be the case, they would be eligible to apply for agricultural rates for their lands. Thus, while impacts could be severe, it is unlikely that that possibility would actually materialize.

- 6-72: The reductions in acreage would be about 11% and 16% under average and dry hydrologic conditions, respectively, and the economic decreases would be 2% and 3%, respectively. The differences in the percentages reflect the fact that the more marginal, less productive lands are removed from production first.

While CVP water use is projected to decline substantially, the actual land under irrigation is projected to fall far less as a result due to a combination of the use of alternative supplies for irrigation and, more notably, the resulting fallowing primarily of high water consuming but marginally economical pasture lands. Accordingly, the anticipated economic impacts of Alternative 2 on the District and regional agricultural economies is relatively small. This is not to suggest that individual farmers will not be directly impacted by the projected increase in the cost of water, only that in aggregate the implications for the area's agricultural economy should be limited given the preponderance of low profit high water consuming pasture.

- 6-73: Correction is noted.
- 6-74: Comment is noted. Refer to responses 6-44 and 6-69.
- 6-75: Comment is noted. Analyses of impacts at both the county and District levels are of interest. On the one hand, as noted, the economic effects on the Redding area would be modest, but the effects on the amount of pasture in the CCCSD would be on the order of 40%. However, pasture is a low-value crop and as the commenter has repeatedly noted in earlier comments, a declining land use in these districts which are in transition to M&I use. To the extent that the water is being applied to good-quality lands and is being used for agriculture rather than equine recreation, it is probable that raising water rates is likely to be reflected in a shift to higher value crops marketable in the rapidly growing local urban markets. The Happy Valley area is already one of the centers for small-scale farming in which produce is marketed at farmers' markets in Redding. An increase in water prices would tend to shift farming from pastures to vegetables, although fallowing of lands would also be expected.
- 6-76: The BA for the Shasta and Trinity River Divisions long-term water service contract renewals was completed in August 2003.
- 6-77: Refer to response 6-69.
- 6-78: The proposed contracts would treat all residents of the CCCSD in the same way, and the CCCSD would be treated the same as all other districts. There would be no differential application of the law and resultant regulations and policies. It is true that increased costs would affect low-income persons more than high-income persons, just as is true of sales taxes. However, the law is being applied evenly and, as noted in response 6-71, it is unlikely that severe, unmitigated impacts would occur.
- 6-79: The EA does not analyze the operational aspects or impacts of other CVP projects. This EA tiers off the PEIS to evaluate potential site-specific environmental impacts of renewing the long-term water service contracts for the Shasta and Trinity River Division Contractors. The purpose of this project is to renew 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 of other related CVPIA activities are not

associated operational changes; the overall implications of are discussed in the 2004 OCAP Biological Opinions.

- 6-80: See response to comment 6-1.

- 6-81: Comment is noted.



LETTER 7

- Board of Directors**
- Nadine Bailey
 - Timber Ass'n MI & WI
 - Daniel Buckley, III
 - Tributary Whitewater Tours
 - Glenn Burton
 - Blue Ridge Landscaping
 - Herb Burton*
 - Trinity Fly Shop
 - Angling Experiences
 - Paul Caranese*, CPA
 - D.H. Scott & Co.
 - Norman Christensen*, M.D
 - Retired Surgeon
 - Jud Ellinwood*
 - Salmonid Restoration Federation
 - Troy Fletcher*
 - Yurok Tribal Fisheries
 - Robert Franklin
 - Hoopa Valley Tribal Fisheries
 - Zake Grader*
 - Pac Coast Federation of Fishermen's Associations
 - Don Johnson
 - Professional Fishing Guide
 - Byron Leydecker*
 - Retired Bank CEO
 - William Morrish*
 - Retired Insurance Executive
 - Seth Norman
 - Author, Associate Editor
 - California Fly Fisher
 - Jaime O'Donnell
 - Aurora River Adventures
 - Gary Seput*
 - Owner, Sam's Grill
 - Tom Weselch*
 - California Trout
 - Alfred Wilkins
 - Attorney
 - Ethan Winterling
 - Educator

*Executive Committee

Bureau of Reclamation
 Mid-Pacific Division
 Attn: Al Candlish
 2800 Cottage Way
 Sacramento, CA 95825-1898

December 5, 2000

Ladies and Gentlemen:

This letter is to offer our comments on the draft Environmental Assessments (EAs) for the renewal of existing long-term contracts for Central Valley Project (CVP) water service.

First, let me say that the proposed contracts are a great disappointment given the contract parameters set forth by the Interior Department at its initial public session in Sacramento. These proposals honor those guidelines in the breach.

EAs for contracts that run for a 25-year period, with the promise of additional contract renewals thereafter, are inadequate as environmental documents. A comprehensive Environmental Impact Statement (EIS) should be completed to comply with the law.] 7-1

Interior reversed its position, at the eleventh hour and without adequate public review and input, and changed contract terms so that the "contract total" for water quantities would be unchanged from existing contracts. Existing contracts that include this "paper water" has resulted in contracts for water delivery well beyond available CVP supplies.] 7-2

Interior also reversed its position at the eleventh hour, again without adequate public review and input, of the tiered pricing provisions of the Central Valley Project Improvement Act (CVPIA) so that these provisions would apply only to the "contract total," not the "base" water supply.] 7-3

The EAs do not adequately analyze the effects of either of the two draft policies in the paragraphs above. In addition, the EAs do not analyze adequately the cumulative effect of applying these policies to remaining CVP water service delivery contracts not yet the subject of renewal – in other words, all CVP water service contracts.] 7-4

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Bureau of Reclamation
 December 5, 2000
 Page two

In addition, the failure to analyze a full range of alternatives, especially alternatives with reduced water quantities, renders all of the EAs inadequate.] 7-5

The effect of the contracts upon endangered species is a critical environmental impact that must be analyzed. However, the public has received inadequate information about those impacts. This omission includes impacts upon the endangered Trinity River Coho salmon, as well as its threatened Steelhead. The public also has not received adequate information about the extent to which the Bureau of Reclamation (Bureau) is in compliance with previous Endangered Species Act (ESA) requirements applicable to existing contracts.] 7-6

The contracts should be renegotiated with reduced water quantities that better reflect both reality and competing water needs, and at higher prices that implement CVPIA tiered pricing requirements properly, and in the spirit of that law, as well as CALFED's "beneficiary pays" requirements.] 7-7

Yours very truly,

 Byron W. Leydecker
 Chair

BWL/mw

- cc: The Hon. Dianne Feinstein
 The Hon. Barbara Boxer
 The Hon. George Miller
 The Hon. Mike Thompson
 The Hon. Ellen Tauscher
 Ms. Mary Nichols
 Ms. Felicia Marcus
 Mr. Mike Spear

Responses to Comment Letter 7 – Friends of the Trinity River (2000)

- 7-1: See response to comment 6-1. Also note that subsequent renewals would, like this one, require environmental reviews unless the laws are changed.
- 7-2: Comment is noted. Although the water service contracts remain unchanged, three other contracts had negotiated reductions in the volumes of water under contract.
- 7-3: Comment is noted. This appears to be a comment on policy rather than a NEPA-related issue.
- 7-4: The cumulative effects of the CVP as a whole were addressed in the PEIS for implementation of the CVPIA. Analysis of potential impacts on all CVP contracts is beyond the scope of the action analyzed in this EA. The purpose of the project is to renew Shasta and Trinity River Divisions' water service contracts to be consistent with section 3404(c) of the CVPIA. This EA evaluates the effects of renewing existing long-term contracts with financial and administrative changes but with no changes in either the volumes of water under contract or the places of use. The EA concerns Reclamation's continued delivery of CVP water.
- 7-5: Pursuant to NEPA, the EA is required to consider reasonable and feasible alternatives that meet the purpose and need for the proposed action. Existing laws, such as the Reclamation Project Act of 1956 and the Reclamation Project Act of 1963, mandate renewal for existing contract quantities when the federal water will be provided for "beneficial uses." The two action alternatives analyzed in the EA provide a reasonable range of alternatives that meet the purpose and need for the proposed action.
- 7-6: The Updated Draft EA and Final EA discuss biological effects to plants, invertebrates, amphibians, reptiles, birds, mammals, and fish. The biological effects that would occur as a result of implementing contract provisions proposed under the action alternatives compared to the No Action Alternative are limited and do not amount to significant negative impacts.

The diversion and use of water are on-going actions. The PEIS analyzed the cumulative effects of long-term contract renewals on a regional basis, and environmental impacts were discussed in detail in the BA/EFHA dated August 2003. Because the contract renewals maintain the status quo for water deliveries under ongoing CVP operations, and in essence change only the legal and financial arrangements of a continuing action, they do not contribute to cumulative effects in any demonstrable manner.

The Updated Draft EA analyzes the impacts of the alternatives on special-status species. The BA/EFHA (August 2003) was submitted to the USFWS and NOAA Fisheries. ESA consultation between Reclamation and these agencies was performed and is discussed in Chapter 6 of this Final EA.

- 7-7: Refer to response 7-5.

programs that are designed to experimentally compare selected policies or practices, by evaluating alternative hypotheses about the system being managed.

We recommend that Reclamation refer to the Glen Canyon Dam Adaptive Management Program, administered by Reclamation's Upper Colorado Regional Office in Salt Lake City, Utah, for guidance, as this program is the most detailed and comprehensive illustration of the adaptive management techniques in use today to manage fish and wildlife resources and overall health of these ecosystems. Note also that the CALFED Bay-Delta Program utilizes an adaptive management approach, which can provide guidance for the language of the program within the final CVPIA Long-Term Contract Renewal drafts, and to which the CVPIA areas may already be legally bound under the programs of CALFED. The affected CVPIA areas will benefit greatly by the inclusion of an adaptive management process that will increase the overall health of the Central Valley, its ecosystems, and its natural resources.

WEST SACRAMENTO CANALS

Reviewing the overall goals of alternatives for the West Sacramento Canals EA, the No Action Alternative and Alternative 1 apparently will have the same impacts. We are concerned about the reductions in CVP deliveries that may lead to increases in ground water use. This may have an adverse effect on nearby projects where their use of surface water, rather than ground water, may affect water quality or biological resources. As mentioned above, a more detailed system of water use and water transfer monitoring may help alleviate adverse water quality and biological resource impacts by balancing the use of surface and ground waters.

Under Alternative 2, it is determined that it would bring in a lower Total Gross Value Production as projected for Alternative 1. The region's agricultural output could decrease by 5%, further lowering potential revenues and could decrease employment by 2.6%. Of the biological species, the food sources of the Aleutian Canada goose and the sandhill crane are threatened under this alternative. Consequently, there is a greater potential for removing land from agricultural production, which may negatively impact the preservation of cultural resources and possibly lead to increased land erosion. From a biological resource perspective, however, this option should seriously be considered in any Preferred Alternative to decrease water usage in the District and allow for more water storage and to limit the effects of agricultural runoff in the District.

FEATHER WATER DISTRICT

Concerning the Feather Water District, the main considerations for other agencies, such as biological considerations, water transfers, and the balance of water distribution among competing demands by CVPIA are not addressed in this EA since they require further documentation. FWS and others should be kept advised of the preparation of these materials. The PEIS reallocated CVP water deliveries from the Feather for fish and wildlife purposes. Thus, Feather's supply of water from CVP has decreased. The EA makes no mention of how the water demand is currently being met.

DELTA-MENDOTA CANAL

In the Delta-Mendota Canal EA, Alternative 1 offers no significantly different impacts from a "no-action" alternative with the exception of geology, groundwater levels, and biological resources. Under Alternative 1, increased groundwater pumping could increase land subsidence, depending on the amount of surface water utilized. The report does not, however, acknowledge the presence of the threatened or endangered species that exist within the Delta-Mendota project area or their critical habitats in the area.

Impacts of Alternative 2 are essentially similar to those in Alternative 1 (including impacts noted above). Additionally, Alternative 2 has a more noticeable effect on agriculture: value of production ranges from -\$1.0 million in an average year (following a dry, five-year period) to a +\$1.2 million during a dry year. There is also a potential increase in unemployment for the region ranging from 120-420 jobs being lost in the region.

CROSS VALLEY CONTRACTORS

Pertaining to the Cross Valley Contractors EA, the impacts anticipated from Alternative 1 and the No Action Alternative are similar. Water quality and supply will remain relatively unchanged. Potential differences in supply due to conditions in a dry year as compared to a wet year are less than 3% of the current levels. Water quality, however, is questionable. Because the average delivery south of the Delta is projected to decline, this may increase ground water demands and may result in application of water of a lesser quality than surface water. Although existing fisheries and biological habitats are likely to experience minimal direct and indirect impacts under these alternatives, more explanation is suggested in this EA to focus on improving water quality for biological resources and municipal uses. Finally it appears that the socio-economic situation in the region will be unaffected by these alternatives.

Under Alternative 2, less ground water pumping may allow farmers to switch to better-quality surface water. More significant changes under Alternative 2 involve biological "resuscitation," where additional water costs could result in an increase in the amount of land left fallow, thereby improving restoration possibilities in the area and the ability to return fallow lands to their natural non-agricultural condition. However, this could also diminish opportunity to increase wetland habitat in the affected area. Total possible economic changes are less than 1%, which provide ample opportunity to increase critical habitat without adversely affecting the regional economy.

FRIANT DIVISION

The Friant Division EA is particularly complete in its analyses of impacts upon its region's communities, economy and natural resources. We note the painstaking detail used to describe the impacted environments in the Friant area and that well-planned alternatives to address direct and indirect environmental impacts are included. We particularly note Section 3 of this document,

pertaining to Affected Environment and Environmental Consequences of the Friant area. We are pleased to note the burgeoning programs in place for biological resource conservation and habitat restoration, specifically the Anadromous Fish Restoration Program. There are concerns, however, about how issues of water quality, drastically fluctuating water levels, excessive harvesting of fish, limited cover and spawning habitats will be addressed throughout the 25 year contract term. Data on the potential for adverse and positive impacts on these fish populations are provided, but we recommend including more detailed comment on active alternatives to address these natural resource concerns.

In Section 3, Ground Water Resources, there is analysis on possible recharging of already depleted and overused ground water sources, but no concrete program to ensure that ground water will be replenished throughout the Friant Division area. We suggest greater emphasis on recharging and limiting draw on ground water supplies. Further, this section should emphasize what can be done to abstain from excessive groundwater use, including limiting use in wet years, among Friant Division agricultural and industrial water users, particularly when attempting to implement riparian habitat restoration programs that will require additional water resources.

In the section on the Environmental Consequences of the Fisheries Resources commentary in this EA, adverse consequences upon the fisheries are likely to occur whenever CVP water is purchased. We are concerned that these purchases will occur randomly and intermittently, and will likely harm the regeneration and maintenance of the fish populations discussed in this section. We would like to see some mention of how the water purchasing and corresponding flow increases or decreases can be "controlled" or monitored to give the greatest opportunity for these fish populations to regenerate.

Overall, Friant water usage policies, especially those related to ground water levels and usage (Section 3) need to ensure that Friant usage will not interfere with Cross Valley Canal Unit or Delta-Mendota Canal supplies and usage.

SAN FELIPE DIVISION

The San Felipe EA addresses the topic of adaptive management, referring to the Vernalis Adaptive Management Plan, taking into account protective measures for fall-run Chinook salmon. In Chapter 4, Reclamation notes that the existing and projected water demands assume implementation of long-term water conservation programs, thus during periods of drought, the ability to reduce demand for water is limited. San Felipe is not the only project that includes water conservation measures. The hardening of demand especially in dry-dry years is an important consideration for all the projects and for their inter-relatedness. We are also concerned that threatened and endangered species in the area will encounter adverse direct and indirect environmental impacts from the project as currently drafted.

CONTRA COSTA CANAL

Contra Costa County's demand for water is expected to grow with continued development, particularly in the eastern portion of the county. The Future Water Supply Study prepared in 1996 calls for the purchase of water transfers, which require separate environmental documentation and therefore were not included in Alternative 1 or Alternative 2. Further analysis of water transfers should be included in the overview assessment of these eight EAs. Moreover, the main difference between alternative 1 and alternative 2 lies in the pricing of water for agricultural needs, while development in the county is mostly coming from the redevelopment of farmland into residential and commercial districts.

SHASTA/TRINITY DIVISIONS

Regarding commentary to specific provisions of the Shasta and Trinity Divisions EA, our analysis primarily focused on Chapter 4, dealing with environmental effects and consequences, however we have a brief comment on earlier sections of this document. In Chapter 2, it is stated that the dispute resolution provisions in the Shasta/Trinity Contract Renewal are only included in Alternative 1. Noting the currently tumultuous state of California water policy, we suggest this be a provision included within the final Contract Renewals, and not simply limited to Alternative 1. Regarding Chapter 4, Reclamation has completed a thorough and well-planned assessment of the impacts to this region, particularly in the areas of water usage, pricing, costs, and the effects upon the local economies.

8-7

Among the given contract renewal alternatives, it appears alternative 2 provides greater opportunity to allow for land fallowing to divert water to other municipal and industrial uses that are expected to increase in the evaluated area for the next 25 years as agriculture will decline. Consequently, options for use of the water saved from land fallowing for habitat and ecosystem restoration should be clearly delineated within Sections 4.4 and 4.5.

8-8

In 4.5.1, Affected Environment, the EA explains that there are "vegetation and wildlife resources that potentially may be affected by" the CVPIA within the Redding Basin area involved in the Shasta and Trinity Divisions. Exactly how these natural resources are affected by the project is not clear in this EA's analysis. The species affected are well detailed in the EA, but how their habitats are impacted by the project is not sufficiently detailed in this section or in the following Environmental Consequences section.

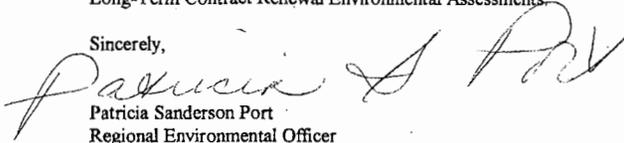
8-9

Thus, we recommend more detail on how the CVPIA Contract Renewals impact these flora and fauna. Pertaining to drafting edits in the same section, Table 4.5-1 repeats the Woodland Habitat Type three times, and the explanation of the Aquatic Habitat Type is cut off in mid-sentence (page 4.5-3). Otherwise, Chapters 4 and 5 appear to have complete analyses of the potential impacts the CVPIA Contract Renewals may have upon Shasta and Trinity Division-area resources.

8-10

We again thank Reclamation for the opportunity to provide comment on the eight CVPIA Long-Term Contract Renewal EAs, and urge Reclamation to seriously consider the suggestions made above and include them within the final CVPIA Contracts. Please feel free to contact us at (415) 427-1477 if you have any questions or require clarification on the above comments to the CVPIA Long-Term Contract Renewal Environmental Assessments.

Sincerely,

A handwritten signature in cursive script, appearing to read "Patricia Sanderson Port".

Patricia Sanderson Port
Regional Environmental Officer

cc:

Laura Fujii, U.S. Environmental Protection Agency, Federal Activities Office
Dr. Theresa Presser, U.S. Geological Survey, Western Regional Office
Joy Winckel, U.S. Fish and Wildlife Service, Sacramento Office

Responses to Comment Letter 8 - USDI, Office of Environmental Policy and Compliance (2000)

- 8-1: Comment is noted.
- 8-2: Comment is noted. The subject of this EA is the renewal of existing contracts with financial and administrative changes but 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 the operations criteria or impacts of water transfers.
- 8-3: Comment is noted.
- 8-4: The subject of this EA is the renewal of existing contracts with financial and administrative changes but 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 the operations criteria or impacts of water transfers.
- 8-5: See response to comment 7-6.
- 8-6: Comments are noted. Adaptive management programs are included in the overall implementation of the CVPIA, and are specified in the CVPIA PEIS Record of Decision under Section 3406(b)(1) – Anadromous Fish Restoration Program and Section 3408(h) – Land Retirement Demonstration Study.
- 8-7: Suggestion is noted. Refer to "Article 33 – Resolution of Disputes" included in each negotiated contract.
- 8-8: Comment is noted. The subject of this EA is the renewal of existing contracts with financial and administrative changes but no changes in either the volumes of water under contract or the places of use. The comment regarding the need to delineate options for use of water saved from land fallowing for habitat and ecosystem restoration is outside the scope of this document.
- 8-9: See response to comment 7-6.

Regarding Table 4.5-1, this table was replaced in the Updated Draft EA with a different vegetation classification.



LETTER 9

NATURAL RESOURCES DEFENSE COUNCIL

December 7, 2000

Bureau of Reclamation
Attention: Mr. Al Candlish
2800 Cottage Way
Sacramento, CA 95825-1898

Dear Mr. Candlish:

On the behalf of its more than 400,000 members, the Natural Resources Defense Council ("NRDC") hereby files its comments on the draft environmental assessments ("EAs") on long-term renewal of Central Valley Project water service contracts prepared by the Bureau of Reclamation ("the Bureau").

We are deeply disappointed by the Bureau's inadequate attempts to comply with the National Environmental Policy Act ("NEPA"), 42 U.S.C. § 4321 *et seq.*, in its proposed long-term renewal of CVP contracts. First, we strongly object to the Bureau's failure to prepare an environmental impact statement on these proposed agency actions that would have significant, far-reaching and fundamental effects. Second, the EAs themselves fail to meet the requirements of NEPA and cannot possibly support a finding of no significant impact by the Bureau. We urge the Bureau in the strongest possible terms to prepare NEPA documentation on long-term contract renewal which comports with the law, as these EAs emphatically do not.

9-1

9-2

I. The Bureau Must Prepare an Environmental Impact Statement on the Proposed Long-Term Contract Renewals.

NEPA requires federal agencies to prepare a detailed environmental impact statement ("EIS") on all "major Federal actions significantly affecting the quality of the human environment." 42 U.S.C. § 4332(2)(C). The purpose of this mandatory requirement is to ensure that detailed information concerning potential environmental impacts is made available to agency decisionmakers and the public before the agency makes a decision. Robertson v. Methow Valley Citizens Council, 490 U.S. 332, 349 (1989).

9-1

Under NEPA's procedures, an agency may prepare an EA in order to decide whether the environmental impacts of a proposed agency action are significant

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Comments on Environmental Assessments on Long-Term Contract Renewal
December 7, 2000
Page 2

enough to warrant preparation of an EIS. 40 C.F.R. § 1501.4(b), (c). An EA must "provide sufficient evidence and analysis for determining whether to prepare an [EIS] ..." 40 C.F.R. § 1508.9(a)(1). The U.S. Court of Appeals for the Ninth Circuit has specifically cautioned that "[i]f an agency decides not to prepare an EIS, it must supply a convincing statement of reasons to explain why a project's impacts are insignificant." Blue Mountains Biodiversity Project v. Blackwood, 161 F.3d 1208, 1212 (9th Cir. 1998) (internal quotation marks omitted), cert. denied, 527 U.S. 1003 (1999). To successfully challenge an agency decision not to prepare an EIS, a plaintiff need not show that significant effects will in fact occur. So long as the plaintiff raises "substantial questions whether a project may have a significant effect on the environment," an EIS must be prepared. Id. (emphasis added, internal quotation marks omitted).

The long-term renewal contracts proposed by the Bureau are virtually certain to have a significant effect on the environment if they are executed. Collectively they cause the diversion of millions of acre-feet of water each year from the natural environment to (primarily) agricultural water users in the Central Valley, for use (primarily) in irrigated agriculture that itself has significant environmental impacts. The Bureau simply cannot, consistent with NEPA, allow these environmental impacts to escape full analysis in an EIS on long-term contract renewals.

A. There is Ample Evidence That Long-Term Renewal Contracts Would Have Significant Environmental Effects.

The Bureau has failed to meet its duty under governing Ninth Circuit precedent to supply a convincing statement of reasons why the execution of long-term renewal contracts would have insignificant environmental effects. By contrast, there is ample reason to believe that executing contracts for delivery of millions of acre-feet of water annually for an effective duration of 50 years would have a significant impact on the environment.

The U.S. Fish and Wildlife Service has recently completed a biological opinion on, among other things, the continued operation and maintenance of the Central Valley Project ("CVP"). U.S. Fish and Wildlife Service, Biological Opinion on Implementation of the CVPIA and Continued Operation of the CVP (November 2000).¹ This biological opinion describes in some detail the adverse environmental consequences that have been caused by the Central Valley Project, consequences that include harm to fish and wildlife from actions such

¹ We incorporate by reference this biological opinion in these comments. We also incorporate the documents referenced in that biological opinion, including the prior biological opinions on the Central Valley Project listed in section 1 of the November 2000 biological opinion.

16 11-00, rick

as water diversion, impoundment, pumping and conveyance; from habitat conversion; from the effects of agricultural drainwater; and from urbanization. All of these effects constitute effects of CVP water service contracts, since they are the consequences of the provision of water under these contracts. See 40 C.F.R. § 1508.8 (defining effects required to be analyzed under NEPA to include indirect as well as direct effects). Because these effects on the environment are significant, they and other effects of signing long-term renewal contracts for the provision of CVP water must be analyzed in an EIS.

Other evidence of significant environmental effects from long-term water service contracts include the evidence submitted by the plaintiffs in *NRDC v. Patterson*, No. Civ. S-88-1658 LKK (E.D. Cal.), which we also incorporate in these comments by reference. The main point here is an obvious one: Through the proposed contracts, the Bureau is proposing to commit to the diversion of millions of acre-feet of water from the natural environment and to the delivery of that water to farms and cities for a nominal period of 25 years and an effective period of 50 years (given the right of renewal contained in the contracts). Activities of this scale and type cannot help but have significant environmental impacts, particularly in light of the significant impacts that have occurred to date under the current and previous CVP water service contracts. Moreover, the scale and duration of the activities that would be committed to under the proposed contracts threaten to cause a deterioration in the current state of the environment, as the environmental effects of the activities mandated under the proposed contracts are added to the environmental harm that has been caused to date under the current and previous contracts. For all these reasons, the Bureau must prepare an EIS on long-term contract renewal.

B. NEPA's Regulations Make Clear That an EIS Must Be Prepared Here.

NEPA's implementing regulations list a variety of factors that federal agencies are required to consider in determining whether a proposed action may significantly affect the environment and hence must be the subject of an EIS. 40 C.F.R. § 1508.27. While the Bureau has failed to undertake an adequate evaluation of these factors here, nearly all of the factors (any one of which is sufficient to require preparation of an EIS) are satisfied in the case of the proposed long-term contracts. For example:

- Water pollution from agricultural drainwater, which is triggered and would be made possible by the delivery of water under the proposed contracts, "affects public health" in a substantial way. See 40 C.F.R. § 1508.27(b)(2).

- The area to be served under the proposed contracts is in "proximity" to "prime farmlands," "wetlands" (including riparian wetlands), and "ecologically critical areas" (such as the Sacramento-San Joaquin Delta). See *id.* at 1508.27(b)(3).
- The effects of the water diversions, impoundments and deliveries required under the proposed contracts, and the consequences of the irrigated agriculture made possible by deliveries pursuant to the contracts, "are likely to be highly controversial." See *id.* at 1508.27(b)(4).
- The "possible effects" of the activities and actions made possible by the proposed contracts "are highly uncertain or involve unique or unknown risks," especially in light of the lengthy duration of the contracts. See *id.* at § 1508.27(b)(5).
- Since numerous CVP contractors are not prepared to sign long-term renewal contracts at the present time and will negotiate such contracts in the future, executing the proposed contracts would "establish a precedent for future actions with significant effects or represents a decision in principle about a future consideration." See *id.* at § 1508.27(b)(6).
- In light of the environmental effects that have occurred from CVP operations to date, and in light of the long duration of the proposed contracts (during which many additional actions will necessarily be taken), the proposed contracts are related to other actions with "cumulatively significant impacts." See *id.* at § 1508.27(b)(7).
- In light of the well-established adverse effects of CVP activities on threatened and endangered species and their habitat, as shown by the biological opinions cited previously in this letter, the proposed contracts "may adversely affect an endangered or threatened species or its habitat that has been determined to be critical under the Endangered Species Act of 1973." See *id.* at § 1508.27(b)(8).

The evidence in favor of an EIS being required here is overwhelming – particularly since "the threshold for requiring an EIS is quite low." *NRDC v. Duvall*, 777 F. Supp. 1533, 1538 (E.D. Cal. 1991). In that same case, Chief Judge Emeritus Karlton further held that:

only in those obvious circumstances where no effect on the environment is possible, will an EA be sufficient for the environmental review required by NEPA. Under such circumstances, the conclusion reached must be close to self-evident ...

Id. We urge the Bureau in the strongest terms to prepare the required EIS on the proposed long-term contract renewals, in order to comply with the requirements of NEPA.

II. The Environmental Assessments Fail to Meet the Requirements of NEPA.

Even if an EIS were not clearly required here, the EAs prepared by the Bureau are so inadequate as to violate NEPA on their own. They fall far short of the analysis that is necessary to meet NEPA's requirements and to support a finding of no significant impact.

A. The EAs Fail to Consider a Reasonable Range of Alternatives.

NEPA's implementing regulations call analysis of alternatives "the heart of the environmental impact statement," 40 C.F.R. § 1502.14, and they specifically require an alternatives analysis within an EA, *id.* at § 1508.9. The statute itself specifically requires federal agencies to:

study, develop, and describe appropriate alternatives to recommended courses of action in any proposal which involves unresolved conflicts concerning available uses of resources.

42 U.S.C. § 4332(2)(E). Because the Bureau's EAs on long-term contract renewals look only at a narrow range of alternatives and fail to evaluate numerous reasonable alternatives, the EAs violate NEPA.

The caselaw makes clear that an adequate alternatives analysis is an essential element of an EA, in order to allow the decisionmaker and the public to compare the environmental consequences of the proposed action with the environmental effects of other options for accomplishing the agency's purpose. In a leading NEPA case in which it overturned an EA for failure to consider alternatives adequately, the Ninth Circuit pointedly held that "[i]nformed and meaningful consideration of alternatives ... is ... an integral part of the statutory scheme." Bob Marshall Alliance v. Hodel, 852 F.2d 1223, 1228 (9th Cir. 1988), *cert. denied*, 489 U.S. 1066 (1989). To meet NEPA's requirements an EA must consider a reasonable range of alternatives, and courts have not hesitated to overturn EAs that omit consideration of a reasonable and feasible alternative. See People ex rel. Van de Kamp v. Marsh, 687 F. Supp. 495, 499 (N.D. Cal. 1988); Sierra Club v. Watkins, 808 F. Supp. 852, 870-75 (D.D.C. 1991).

Each of the contract-renewal EAs considers only two alternatives, in addition to the no-action alternative. Given the scope and importance of the proposed agency action under review, this small number of alternatives is by itself a violation of NEPA's requirement to consider a reasonable range of alternatives. What makes matters worse is the similarity

between the alternatives that the EAs do consider. For example, each of the alternatives, the two action alternatives and the no-action alternative, specify exactly the same quantities of water under contract. The similarities between the alternatives, though, do not stop with water quantity. The summary tables that compare the alternatives repeatedly use the phrases "Same as NAA [No Action Alternative]," "Similar to NAA" and "minor changes" to describe the components of the alternatives. See, e.g., Draft Friant Division Long-Term Contract Renewal Environmental Assessment ("Friant EA"), at Table DA-1.² See also *id.* at 3-57 ("The impacts of EA Alternative 1 are assumed to be identical to the impacts to [sic] the NAA because the water supply and pricing scenarios are identical in both alternatives. The only differences in the alternatives are administrative."), 3-58 ("the NAA and Alternative 1 are assumed to have the same environmental consequences because of their similarities and the fact that the only differences are contractual arrangements among the parties to the contracts").

In addition to considering too few alternatives that are too similar to each other, the EAs reject or ignore several obvious and reasonable alternatives. These unexamined or rejected reasonable alternatives include:

- Alternatives that decrease the water quantities under contract. Each of the alternatives in the EAs contains the exact same water quantities that are currently under contract. It plainly is reasonable for the Bureau to consider and evaluate the option of changing those quantities. The Bureau should consider changing the contract quantities to (a) a level that matches the actual level of deliveries in recent, normal water years, and (b) a level that would leave a meaningfully larger amount of water in the environment compared with current use, so that the EAs can illustrate the choices and consequences between consumptive and nonconsumptive uses of water. The EAs' rejection of the alternative of reducing water quantities, see, e.g., Delta-Mendota Canal Unit Environmental Assessment, Long-Term Contract Renewal, at 2-9, ignores the fact that such an alternative is reasonable and accords with the purpose and need for the agency action under evaluation. See also 40 C.F.R. § 1502.14(a) (agencies must "[r]igorously explore and objectively evaluate all reasonable alternatives").
- An alternative that increases the cost of water to full market rates. Each of the action alternatives in the EAs charges the minimum price for water under the contract. The Bureau should evaluate at least one alternative that prices water at the level the water

² The EAs are all very similar. Thus, each of the comments contained in this letter applies equally to each of the EAs. Each citation to a specific EA is intended as an illustration and in no way suggests that the comment is restricted to that particular EA.

would receive on the open market.³ At a minimum, the Bureau must consider price increases that would "encourage the full consideration and incorporation of prudent and responsible water conservation measures." Reclamation Reform Act of 1982, Sec. 210(a), 43 U.S.C. 390j(a).

- An alternative that does not give the contractor a specific right to renew the contract. (While it is possible that there is no right of renewal contained in Alternative 2, the EAs do not make this clear and do not analyze the environmental consequences of this difference, if it does exist in the alternative.)
- Alternatives that affirmatively mandate or encourage increased water conservation by water users, through (a) aggressive, prescriptive requirements for water conservation and (b) through financial incentives for water conservation.

Each of the above reasonable alternatives can and should be analyzed and considered for contracts in each of the CVP divisions. In addition, for contracts in each individual division the Bureau should consider at least one strongly environmentally protective alternative that is tailored to the leading environmental problem relating to the operation of that division. So, for example, the Bureau's NEPA analysis for long-term renewal contracts for the Friant Division should consider at least one alternative that conditions the provision of water service on effective restoration of the San Joaquin River and/or creates specific incentives in the contract for restoration of the river.⁴ As a further example, the NEPA analysis for the Delta-Mendota Canal Unit should consider at least one alternative that conditions the provision of water service on discrete improvements in protection and restoration of the Sacramento-San Joaquin Delta and/or creates specific incentives in the contract for such increased environmental protection and restoration of the Delta.

The EAs prepared by the Bureau fail to evaluate a reasonable range of alternatives and hence violate NEPA. We urge the Bureau to prepare NEPA documentation for long-term contract renewals that meets NEPA's requirements for alternatives analysis and that, at a minimum, fully analyzes the alternatives described above.

³ The Bureau clearly has discretion to consider higher prices. See, e.g., Reclamation Project Act of 1939, sec. 9(e), 43 U.S.C. 495h(e) (rates shall be "at least sufficient to cover an appropriate share of the annual operation and maintenance cost..."); Reclamation Reform Act of 1982, sec. 208(a), 43 U.S.C. 390hh(a) ("the price...shall be at least sufficient to recover all operation and maintenance charges..."); see also *NRDC v. Houston*, 146 F.3d 1118, 1125-26 (9th Cir. 1998) (Bureau has discretion over terms of renewal contracts, including price and quantity).

⁴ The Friant EA fails to conduct an adequate analysis of the effect of the proposed contracts on the San Joaquin River and on restoration of the river.

B. The EAs Fail to Disclose and Analyze Adequately the Environmental Impacts of the Proposed Action.

NEPA's implementing regulations require that an EA "provide sufficient evidence and analysis for determining whether to prepare an [EIS]." 40 C.F.R. § 1508.9(a). For the reasons discussed above, the EAs fail to discuss and analyze adequately the environmental effects of long-term contract renewals. Courts have not hesitated to overturn EAs that fail to contain an adequate discussion of the environmental consequences of a proposed agency action, e.g., *Foundation on Economic Trends v. Heckler*, 756 F.2d 143 (D.C. Cir. 1985), and the EAs prepared by the Bureau here deserve that same fate.

The discussion and analysis of environmental impact contained in the EAs is cursory and inadequate, and it falls far short of NEPA's requirements. As an example, the discussion of water-quality impacts contained in the Friant EA shows the cursory and conclusory "analysis" contained in all of the EAs. First, the analysis is breathtakingly brief, occupying a single page with considerable space between the short paragraphs – a plainly inadequate treatment in light of the great importance of water quality to public health and the environment. Friant EA at 3-34. Second, the analysis essentially says that there will be no change in water quality impacts under the No Action Alternative and Alternative 1 – without describing in any meaningful way what the qualitative impacts of existing water quality is on human health and the environment and why those impacts will not change for better or for worse. *Id.* The six-sentence analysis of the effect of Alternative 2 appears to say that this alternative would cause some changes, but the EA fails to describe what those changes would mean for human health and environment. *Id.*

This plainly inadequate discussion of environmental impacts is, sadly, far from an isolated example. For example, the same document's discussion of fishery impacts occupies approximately a page and a half and concludes (with no analysis), for the no-action alternative and for Alternative 1, that there would be "no impacts to fishery resources" – a conclusion based apparently on the logic that no changes in environmental impacts from the current effects equals no environmental impacts at all. *Id.* at 3-48. On the next page, the EA presents the amazing, thoroughly unsupported statement that "Alternative 1 and 2 have little or no effect on surface water quantities and flows," *id.* at 3-49, despite the fact that both alternatives would result in the diversion and delivery to irrigated agriculture of more than a million acre-feet of water each year for 25 or 50 years. Elsewhere in the same document, the Bureau presents the astonishing and unsupported statement that "Alternative 1 is assumed to have similar effects to the NAA. Therefore, there are no impacts to biological resources under this alternative." *Id.* at 3-76.

In addition to failing to disclose or to analyze adequately the environmental effects of the proposed contracts, the EAs impermissibly restrict the timeframe of their analyses. None of the study periods extends forward more than 25 years, e.g., Friant EA at 1-4, despite the fact that each of the contracts contains an easily satisfied conditional right of renewal that means that the likely and effective duration of these contracts would be 50 years. By failing to analyze the environmental effects of the contracts in the likely event that they are renewed under the right of renewal contained in the contracts, the Bureau has violated NEPA.

We urge the Bureau to prepare NEPA documentation that adequately discloses and analyzes the environmental effects of the contracts over the full lifetime of the contracts, including the renewal period, as the draft EAs do not.

C. The EAs Fail to Analyze Cumulative Impacts Adequately.

These proposed long-term renewal contracts do not exist in a vacuum but instead add to more than half a century of environmental impacts from the construction, operation and maintenance of the CVP. The fact that these contracts would operate for at least a quarter century, and likely then would be renewed for another quarter century, means that their environmental effects will also be added to additional actions that will take place over the next 50 years. These facts make an adequate analysis of cumulative impacts especially important for these proposed contracts.

The Ninth Circuit has made clear that NEPA mandates "a useful analysis of the cumulative impacts of past, present and future projects." Muckleshoot Indian Tribe v. U.S. Forest Service, 177 F.3d 800, 810 (9th Cir. 1999). That Court has further directed that "[d]etail is required in describing the cumulative effects of a proposed action with other proposed actions." Id. The very cursory cumulative-effects discussions contained in the EAs plainly fail to meet these standards of adequacy.

The cumulative-effects discussions contained in the EAs are cursory, unanalytic, unenlightening, and often illogical. Here, in full, is the Friant EA's cumulative effects "analysis" of the proposed contracts' cumulative effects on surface water:

The cumulative effects of all foreseeable projects will be to place additional demands on the available water supply. Also, the restoration projects may result in additional flows in local rivers for habitat restoration. Implementation of Alternative 1 or 2 will not influence the cumulative effects of other projects to surface water resources.

Friant EA, at 3-12. In addition to being almost entirely uninformative, this three-sentence discussion asks more questions than it answers. What are the foreseeable projects, and what are their additional demands likely to be? What impact would the proposed contracts have on the opportunities to restore the San Joaquin River? What other cumulative impacts might occur over the life of the project? How is it possible to conclude that the diversion of more than a million acre-feet of water every year, for 25 or 50 years, "will not influence cumulative effects" on surface water?

The Ninth Circuit has not hesitated to reject cumulative-impact statements that are "too general and one-sided to meet the NEPA requirements" and that fail to provide the "useful analysis" mandated by the caselaw. Muckleshoot, 177 F.3d at 811. The inadequate cumulative effects discussions contained in the contract renewals EAs fail these tests and deserve rejection here.

III. Conclusion.

The contract-renewals EAs prepared by the Bureau fall well short of NEPA's established requirements. We urge the Bureau to prepare NEPA documentation on the proposed contracting actions which complies with all requirements of the law.

Sincerely,



Drew Caputo
Senior Attorney

Hamilton Candee
Senior Attorney

cc: Hon. David Hayes, Deputy Secretary of the Interior
Hon. John Leshy, Solicitor
Hon. George Frampton, Chairman, CEQ

Responses to Comment Letter 9 – Natural Resources Defense Council (2000)

- 9-1: See response to comment 6-1.
- 9-2: Given the legal and regulatory constraints, the two action alternatives in the EA provide a reasonable range of alternatives that meet the stated purpose and need.



LETTER 10

Golden Gate Audubon Society

2530 San Pablo Avenue, Suite G • Berkeley, California 94702
Phone: (510) 843-2222 • Fax: (510) 843-3331 • Email: ggass@compuserve.com

Americans Committed to Conservation • A Chapter of the National Audubon Society

December 8, 2000

Al Candlish
Bureau of Reclamation
2800 Cottage Way
Sacramento, CA 95825
Sent by FAX: 916-978-5094

Dear Mr. Candlish:

The Golden Gate Audubon Society appreciates the opportunity to comment on the Bureau of Reclamation's draft Environmental Assessments (EAs) on the proposed long-term renewal of Central Valley Project (CVP) water service contracts.

We believe the draft EAs are inadequate and violate NEPA. We believe the long-term renewal contracts for each CVP division require an Environmental Impact Statement (EIS) that fully analyzes a broader range of alternatives. We also wish to incorporate by reference the comments dated December 7, 2000 filed by the Natural Resources Defense Council on the draft EAs.]-10-1

Thank you for considering our comments.

Sincerely yours,

Arthur Feinstein
Executive Director

Responses to Comment Letter 10 – Golden Gate Audubon Society (2000)

10-1: See response to comment 6-1.

FAX TRANSMITTAL

DATE: 12/8/00

TO: *Al Candlish*

COMMENTS

CO.ORG: *Bureau of Reclamation*

LETTER 11

PHONE:

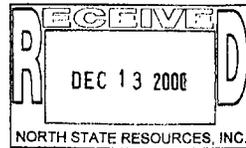
FAX: *916-978-5094*

FROM: *Cynthia Koehler, Legal Director*

PAGES TO FOLLOW: *1*

SAVE THE BAY

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December 8, 2000

Al Candlish
Bureau of Reclamation
2800 Cottage Way
Sacramento, CA 95825

RE: Environmental Assessment for CVP Water Service Contract Renewals

Dear Mr. Candlish:

I write on behalf of Save San Francisco Bay Association's thousands of members to inform you of our objections to the draft environmental assessments (EAs) on long-term renewal of Central Valley Project water service contracts prepared by the Bureau of Reclamation. The draft EAs are inadequate and violate NEPA on various grounds. At the most basic level, the contracts are virtually certain to significantly effect the environment. Taken together, they would result in the diversion of millions of acre-feet of water each year from the natural environment. The Bureau's truncated review fails to adequately review a reasonable range of alternatives, and fails further to analyze and disclose to the public and decision makers the environmental impacts - direct and cumulative - of the proposed actions.

11-1
11-2
11-3

We incorporate here by reference the extensive comments prepared by our colleagues with the Natural Resources Defense Council and filed with your office yesterday.

Thank you for your consideration of our views on this important matter.

Sincerely,

Cynthia Koehler /sk

Cynthia Koehler
Legal Director

cc: Hon. David Hayes, Deputy Secretary of the Interior
Hon. John Lesby, Solicitor
Hon. George Frampton, Chairman, CEQ

SAVE THE BAY

Save San Francisco Bay Association

LETTER 11

Responses to Comment Letter 11 – Save San Francisco Bay Association (2000)

- 11-1: Contrary to the comment's assertion, the effect of the renewals is to maintain the status quo rather than generating significant new impacts. While it is true that millions of acre-feet are diverted for a combination of food production and other human purposes, the renewal does not change the quantities diverted. Three contracts out of the several hundred in the CVP have reduced quantities of water under contract, but the actual diversions will not change. Also see response to comment 7-6.
- 11-2: See response to comment 9-2.
- 11-3: See response to comment 7-6.

LETTER 12

The Bay Institute
of San Francisco

"Restoring the Bay's ecosystem from the Sierra to the sea."

FAX COVER SHEET

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EXECUTIVE DIRECTOR

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DATE: 12-8-00

TO: MR. AL CANDLISH

Phone # _____

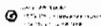
Fax # (916) 978-5094

FROM: GRANT DAVIS

OF PAGES (including cover sheet) 2

Comments: HERE'S OUR TBI'S COMMENTS
ON THE LONG-TERM CONTRACT
RENEWAL. THANKS
ORIGINAL IS IN THE
MAIL TODAY.

55 Shaver Street, Suite 330 • San Rafael, CA 94901
(415) 721-7680 • email: bayinfo@bay.org • website: www.bay.org • (415) 721-7497 fax



The Bay Institute
of San Francisco

"Restoring the Bay's ecosystem from the Sierra to the sea."

December 8, 2000

Bureau of Reclamation
Attention: Mr. Al Candlish
2800 Cottage Way
Sacramento, CA 95825-1898

Dear Mr. Candlish:

On the behalf of the Board and staff of The Bay Institute (TBI), I am hereby filing our brief comments on the draft environmental assessments ("EAs") on long-term renewal of Central Valley Project water service contracts prepared by the Bureau of Reclamation.

We are quite disappointed by the Bureau's inadequate attempts to comply with the National Environmental Policy Act (NEPA), 42 U.S.C. § 4321 *et seq.*, in the proposed long-term renewal of CVP contracts. We are also very concerned about the Bureau's failure to prepare an environmental impact statement on proposed agency actions that would have significant, far-reaching and fundamental effects. We believe the contract renewal EAs prepared by the Bureau fall well short of NEPA's established requirements and would urge the Bureau to prepare NEPA documentation on the proposed contracting actions that comply with all requirements of the law.

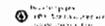
12-1

Thank you for your consideration of TBI's comments.

Sincerely,


Grant Davis
Executive Director

55 Shaver Street, Suite 330 • San Rafael, CA 94901
(415) 721-7680 • email: bayinfo@bay.org • website: www.bay.org • (415) 721-7497 fax



Responses to Comment Letter 12 – The Bay Institute of San Francisco (2000)

12-1: See response to comment 6-1.



LETTER 13

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION IX

Cross Media Division (CMD-2)
Federal Activities Office - 75 Hawthorne St., San Francisco, CA 94105

**FACSIMILE
TRANSMITTAL**



TO: Al Candlish

Organization: Central California Area Office, BOR

Subject: EPA Comments on Long-Term Contract Renewals

Ph #: _____

Fax #: 916-978-5094

FROM: Laura Fujii

Ph #: 415-744-1601

Fax #: _____

E-Mail Address: _____

Date Sent: December 8, 2000

Number of pages including cover sheet: 22

Comments:



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

Al Candlish
Bureau of Reclamation
2800 Cottage Way
Sacramento, California 95825

December 8, 2000

Bill Luce
Bureau of Reclamation
South-Central California Area Office
1243 N. Street
Fresno, CA. 93721

RE: Proposed Long Term Contracts and Associated Environmental Assessments

Gentlemen:

This letter responds to your concurrent requests for comments on several draft long term Central Valley Project water contracts and the associated Environmental Assessments that analyze the environmental effects of those draft contracts as part of the Bureau's compliance with the National Environmental Policy Act (NEPA).

As you know, EPA has had a long institutional interest in these renewal contracts. In 1989, EPA made a rare formal referral of these contracts to the Council on Environmental Quality when the Department of the Interior proposed signing long term renewals without any environmental review. After passage of the Central Valley Project Improvement Act (CVPIA) in 1992, our office has worked closely with Interior as it has implemented the many complicated provisions of that Act, including those calling for the CVPIA Programmatic Environmental Impact Statement (PEIS). The PEIS has been a massive undertaking, and it serves as the foundation of NEPA compliance for these contracts as well as other provisions of the CVPIA.

EPA filed detailed formal scoping comments when Interior began the process of negotiating the long term renewal contracts. In that many of our earlier comments are still relevant to the proposed contracts and Environmental Assessments, we are attaching a copy of our scoping comments to this letter. In this comment letter, we will only briefly discuss the following issues:

LETTER 13

NEPA Issues

Interior proposes to rely on Environmental Assessments for most of its environmental review at the CVP "unit" level. As indicated in our scoping letter, EPA is concerned that unit-level Environmental Impact Statements (EISs) should be prepared, tiering off of the PEIS, rather than relying on Environmental Assessments. We appreciate that the Environmental Assessments are substantial, but believe that the complicated nature of the issues raised in the contracts would benefit from the full public disclosure and full public comment provisions that are part of the Environmental Impact Statement process. We are also concerned that the Environmental Assessments do not articulate a clear rationale or standard for differentiating between those units that will prepare EISs (American River and San Luis) and those relying on only Environmental Assessments.

13-1

EPA is also concerned that the Environmental Assessments have been prepared in advance of the execution of the Record of Decision on the PEIS. As second-tier NEPA documents, the Environmental Assessments would benefit from the certainty of decisions being evaluated in the first-tier document (the PEIS), as those decisions directly affect the range of alternatives and range of potential effects that must be evaluated at the CVP unit level.

13-2

Finally, EPA is concerned that the analysis in the Environmental Assessments does not fully take into account the site-specific circumstances in the different CVP units. These Environmental Assessments differ primarily in the analysis of pricing alternatives, but do not evaluate different potential effects on, for example, groundwater overdraft or water quality impacts of contract alternatives.

13-3

EPA recommends that Interior reevaluate its overall NEPA compliance approach when it completes its Record of Decision on the PEIS, which we understand will be in the immediate future. At that time, Interior should reconsider its rationale for deciding between Environmental Assessments and Environmental Impact Statements at the unit level, and reconsider whether some or all of these Environmental Assessments should be revised and released as Environmental Impact Statements.

13-4

Contract Issues

EPA has reviewed representative proposed contracts, as well as the standard form of contract. We recognize that individual contracts are the result of multiple party negotiations, and that each contract can be and has been tailored somewhat to account for local conditions. Our comments are therefore limited to the major issues raised by long term contracts. In our view, those major issues are as follows:

1. **Contract quantities.** EPA has frequently expressed its concern that the contract quantities included in the current long term contracts do not accurately reflect the delivery capability of the CVP, especially after regulatory actions under the Clean Water Act, the CVPIA and the Endangered Species Act are considered. In some years, virtually all CVP contractors receive all the water called for in the current contracts. However, in many years - and for some

13-5

districts, in most years - the CVP is unable to deliver the entire amount of water called for in the current contracts. In other words, the current contracts "overcommit" the CVP. The analysis in the PEIS suggests that this problem will become more acute in the future, as senior water rights holders upstream develop their water supplies. See PEIS, Figures IV-79 and IV-80 and accompanying text.

EPA recognizes that this contract quantity issue does not affect all CVP contractors uniformly, and that it is primarily a problem on the west side of the San Joaquin Valley. Calling this a "problem" is not intended to be any kind of value judgement on those particular districts and, in fact, EPA acknowledges that many of these water-short contractors are leaders both in water use efficiency and in addressing water quality issues. Nevertheless, the complex combination of California water rights, contracts, and plumbing creates a situation where certain CVP units and CVP contractors consistently bear the shortages in CVP delivery capabilities.

EPA is concerned that this "overcommitment" of CVP supplies has the potential to adversely affect Interior's ability to effectively assist in addressing California water needs and environmental needs. The Bureau and Interior will not be able to continue their strong leadership role in CALFED and other broad-based efforts if they are contractually biased by unrealistic water delivery targets.

In its contract negotiations with west side contractors, Interior has attempted to deal with this contract quantity issue directly by dividing contractual quantities into "base" amounts and "supplemental" amounts. See, for example, the draft Broadview Water District contract, at Section 3(a). We strongly support this approach to the contract renewals. We suggest that Interior develop a consistent process for determining, on a contract by contract basis, the proper allocations of "base" and "supplemental" quantities. We believe the "base" amount should reflect recent historical realities but also factor in the anticipated future limitations on CVP supplies noted and evaluated in the PEIS.

Although we are supportive of Interior's approach to the contract quantity issue, we are concerned about proposed contract language that arguably requires the Secretary to pursue additional water supply for these contracts. See Section 19(c). We appreciate that this is only a statement of intent, but it raises the same concerns noted above about maintaining Interior's objectivity in the broader debate over California water resources. Further, this language is premature under the CVPIA. The CVPIA required Interior to develop alternatives for least cost yield enhancement, but reserved for Congress the decision about whether to pursue those yield enhancement options and which options to pursue. See CVPIA Section 3408(j).

2. **Right to Renew.** Since our initial involvement in these contracts in 1989, EPA has argued that long term water service contracts are not and should not be permanent entitlements, but rather that they should be subject to review at the end of each contract period to reevaluate water supply and environmental conditions in a rapidly changing state. The CVPIA made a similar conclusion when it retained for the Secretary the discretion as to whether to renew these contracts at the end of the first long term renewal. See CVPIA Section 3404(c).

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Given its historical position, EPA is generally supportive of the contract renewal provisions in proposed contract Section 2(b). In particular, we support the strong statement in Section 2(b)(3) requiring that any subsequent renewal must include a reevaluation of the contract in light of conditions at that time.

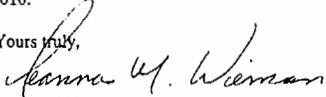
At the same time, however, we believe that the provisions of Section 2(b)(2) should be clarified or supplemented. Section 2(b)(2) enshrines a concept that first arose during the stakeholder discussions referred to as the Garamendi Process. The concept is that contractors can "earn" a second renewal by meeting certain requirements of water conservation, water measurement, etc. EPA supports this approach theoretically, but believes that the requirements described in proposed contract Section 2(b)(2) do not provide clear objectives or standards for "earning" a second renewal. In particular, we believe that the contract needs to define, either in Section 2 or in Section 26, the "definite water conservation objectives" that must be met. Deferring this definition to a later time is inappropriate given that the contractual agreement for renewal is being made now. In addition, we believe that renewal should be conditioned on compliance with water quality improvements required under the state and/or federal clean water acts.

3. **Tiered Pricing.** EPA has frequently expressed its support for the concept of tiered pricing as a mechanism for encouraging economically-efficient water uses in both the agricultural and urban sectors. The CVPIA requirements for tiered pricing were an expression of similar support for this idea. EPA appreciates that implementing tiered pricing in the real world is difficult, given the vastly different circumstances of different districts and the different approaches to managing water supplies in different hydrologies. Nevertheless, we are concerned that the new interpretation of tiered-pricing as applying to the combined "base" and "supplemental" contract amount has the net impact of eliminating the effect of tiered pricing in many districts. This is, once again, a problem caused primarily by unrealistic contract quantities, but it seriously limits the usefulness of the tiered-pricing tool. We recommend that Interior reconsider this issue, and perhaps develop more carefully tailored, district or unit level approaches to tiered pricing that can effectuate the intended purposes of the tiered pricing mechanism.

Conclusion

EPA wishes to acknowledge the significant efforts made by Interior staff over the past several years in developing an approach to long term CVP contracts that is fair to the districts involved and implements the reforms envisioned by the CVPIA. We stand ready to offer our support on working through issues raised in our comments or on other issues raised during the comment period. If you have any questions about these comments, please call Laura Fuji at (415)744-1601 or Carolyn Yale at (415)744-2016.

Yours truly,


Deanna Wieman
Deputy Director
Cross Media Division

cc: Lester Snow
David Nawi
Janice Schneider



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

January 8, 1999

Mr. Alan R. Candlish
Bureau of Reclamation
2800 Cottage Way
Attn: MP-120
Sacramento, CA. 95825

Dear Mr. Candlish:

The Environmental Protection Agency (EPA) has reviewed the Notice of Intent for **Long-term Contract Renewal, Central Valley Project, California**. Our review is pursuant to the National Environmental Policy Act (NEPA), Council on Environmental Quality (CEQ) regulations (40 CFR Parts 1500-1508), and Section 309 of the Clean Air Act. We have also addressed the proposed water need methodologies which will be used in association with the contract renewals.

The Bureau of Reclamation (Bureau) proposes to prepare environmental documents for the purpose of renewing existing long-term and interim water supply contracts for the Central Valley Project (CVP) in California. Specific quantities of water to be in the renewal contracts will be subject to a needs assessment. At this time, the Bureau is proceeding as if the project impacts would require preparation of an EIS. Section 3404© of the Central Valley Project Improvement Act (CVPIA) authorizes renewal of existing long-term water service contracts for 25 years after appropriate environmental review including the completion of a Programmatic Environmental Impact Statement (PEIS) on the CVP required under Section 3409. The final PEIS is scheduled for release in June 1999. The additional environmental document(s) for contract renewal will tier off of the final PEIS. The long-term contract renewal environmental document(s) will be prepared on a regional basis. The specific regions will be determined following scoping. Furthermore, individual service areas may be combined together in one document if they have related issues.

Over the last 10 years, EPA has worked with the Bureau and other resource agencies on issues which should be addressed when considering long-term water supply contract renewals for the CVP. In fact, between February 1989 (EPA Referral of Friant Unit Contract Renewals to Council on Environmental Quality (CEQ)) and passage of CVPIA in October 1992, EPA and the Bureau worked extensively on defining the issues, scope, and alternatives for a proposed EIS on the Friant Water Service Contract Renewals (Friant EIS). The following materials are incorporated by reference: EPA Comments on Environmental Review Process for CVP Contract renewals, March 1992; Friant Contract Renewal EIS EPA/BOR Agreements, 1992; EPA Comments on Friant Contract Renewal EIS Scoping Report, May 1991; and EPA Scoping Comments, Friant Contract Renewal EIS, January 1991. Copies are enclosed.

Project File

While we acknowledge the remarkable shifts in policy, management, and planning for water resources in California which have occurred, we believe that many of the issues and agreements made with the Bureau in 1992 are still relevant to the current contract renewal effort. Key points are highlighted below.

We have long supported tiering contract renewals from a programmatic system-wide analysis of CVP operations and hydrologic effects, and, with some reservations, believe that the Programmatic CVPIA EIS (CVPIA PEIS) serves this function well. However, considering the many regional and localized concerns which are not covered in the CVPIA PEIS, we suggest that an EIS should be assumed the appropriate level of analysis for contract renewals unless a close screening of issues and potential impacts, conducted with ample public participation, supports a different conclusion. We note that the programmatic EIS for the CVPIA did not address or evaluate water quantity, water quality, or specific terms and conditions for contract renewals.

The Scoping Notice states that the long-term contract renewal environmental document(s) will be prepared on a regional basis and tiered to the final CVPIA PEIS. The CVPIA PEIS evaluated options for operational criteria, water management (for instance, pricing and transfers), and ecosystem restoration priorities for the CVP. The contract renewal EISs should clearly link proposed contract renewal actions with the management direction established by the CVPIA PEIS Record of Decision and to currently planned or reasonably foreseeable rulemaking and regulations.

Alternatives should examine ways in which renewed contracts can provide adequate supply reliability for contractors and flexibility to implement all CVPIA provisions. There must also be flexibility to accommodate future shifts in water policy which may affect the CVP. We urge the Bureau to structure the renewed contracts to fully reflect the redirection of the CVP, pursuant to CVPIA, to provide ecosystem restoration and a reliable water supply. EPA firmly believes that long-term water supply contract renewals should focus on determination of available supplies and bringing contract commitments into alignment with these supplies. The water needs analyses which support contract renewals should evaluate both the supply and demand side of water management in the contract areas. Reclamation should work with contractors to consider all available tools for enhancing water management flexibility and reliability. These tools could include water transfers, conservation, pricing, irrigation efficiencies, operational flexibilities, market-based incentives, water acquisition, conjunctive use, voluntary temporary or permanent land fallowing, and wastewater reclamation and recycling. Information on the needs methodologies and results of the assessments should be incorporated into the contract renewal environmental impact documents.

Our detailed comments (attached) discuss a number of issues which we believe must be addressed in contract renewals. Among the most important is resolving the gap between CVP supplies and current levels of CVP contract commitments. The CVPIA PEIS documents that under all implementation alternatives the amount of water which Reclamation could reliably deliver in average long-term and dry period conditions is less than the total contract quantities.

We appreciate the opportunity to review this NOI. Please send four copies of the Draft environmental impact statement to this office at the same time it is officially filed with our HQ Office of Federal Activities. If you have any questions, please call me at (415) 744-1566, or contact David J. Farrel, Chief, Federal Activities Office at 415-744-1584.

Sincerely,



Deanna Wieman, Deputy Director
Cross Media Division

Enclosures: Detailed comments
EPA Comments on CVPIA Draft PEIS, April 1998
EPA Comments on Environmental Review Process for CVP Contract
Renewals, March 1992
Friant Contract Renewal EIS EPA/BOR Agreements, 1992
EPA Comments on Friant Contract Renewal EIS Scoping Report, May
1991
EPA Scoping Comments, Friant Contract Renewal EIS, January 1991

MI003182
Filename: cvprenew.wpd

cc: Jim White, Department of Fish and Game
Nanette Engelbrite, Western Area Power Administration
Wayne White, US Fish and Wildlife Service
Victoria Whitney, State Water Resources Control Board
Mary Nichols, California Resources Agency
Gary Stern, National Marine Fisheries Service
US Corps of Engineers, San Francisco & Sacramento
Pat Port, Department of the Interior
Lester Snow, CALFED
Wendy Pulling, NRDC
Donna Tegelman, BOR, MP-400

DETAILED COMMENTS**Water Needs Assessment**

EPA has concerns with both the assumptions and methods of the water needs analysis. The Bureau's "needs analysis" described at the Water Demands Workshop appeared to have the following steps: 1) calculating contractors' historical beneficial use of water; 2) projecting future beneficial use (for the 25 year contract horizon); 3) examining comprehensively the water sources available to the contractor; and 4) determining the quantity of CVP water to be entered in a renewal contract, using this supply/demand information. We urge the Bureau to clearly describe the assumptions underlying use of this methodology to project future beneficial use and to explain how this calculation will help determine contract quantity.

We are concerned that plant evapo-transpiration data used to compute crop water use (such as Bulletin 113) is open to dispute. Thus, the Bureau should take care in developing its historical documentation of beneficial use as well as any future projections. In addition to technical questions regarding water use, long-term projection (25 years) of future use by existing contractors is subject to many unforeseeable factors (technology, economics, potential water transfers, etc). This is especially true for agricultural use. For the purpose of establishing a determination of future beneficial use, we would strongly recommend a different approach. We suggest considering a less technically detailed "certification" of expected future beneficial use, backed up by terms in the contract that monitor compliance and continued beneficial use.

Step 3, examining comprehensively the water sources available to the contractor, is very important. In fact it appears to draw on information required in the Contractor's water conservation plans. Several potential sources such as water exchanges, transfers, and groundwater, may be difficult to document and/or project. The EIS should clearly document how this step is done, disclose assumptions made regarding groundwater use, transfers, and exchanges and discuss limitations in information which could affect conclusions regarding water supplies available to water contractors.

In regards to Step 4, we urge the Bureau to clearly state how it intends to use the water needs analysis in determining contract quantities. EPA does not regard the purpose of contract renewals as using CVP contract supplies to "fill a gap" between calculated needs and available supplies. Instead, we believe the Bureau has a number of tools to help improve water management and supply reliability and to help ensure a sustainable water balance between supply and demand. Available tools include water transfers, conservation, pricing, irrigation efficiencies, operational flexibilities, market-

based incentives, water acquisition, conjunctive use, voluntary temporary or permanent land fallowing, and wastewater reclamation and recycling. We urge the Bureau to use these tools to improve water management and supply reliability and to factor the use of these tools into its evaluation of contract quantities. In this step, one might incorporate assurances that water would not go to waste, go to environmentally harmful areas, and would support water quality objectives. We suggest that short-term integrated demand/supply management be the first focus with long-term integrated demand/supply management as a goal.

In conclusion, we suggest the Bureau document historical beneficial use of CVP water; certify expected future beneficial use; help users plan and implement supply reliability measures through other programs; and equitably allocate supplies expected to be available from the existing CVP.

Shortages

EPA is concerned with contract quantities which consistently exceed available water supply, thus creating "shortages". Contract supply commitments should be tailored to reflect supplies reasonably expected to be available under varying conditions (e.g., wet versus dry years). We fear that retaining contract quantities which exceed available supplies gives the impression of unreliable commitments and may imply a "need" to develop additional supplies. Often development of "new supplies" is only reallocation of scarce water from environmental in-stream beneficial uses to consumptive uses.

EPA advocates an approach which is focused on efficient use and management of existing scarce water supplies. The quantity of allocated water in the contracts should be based on existing, developed project supplies and not on contractors' needs, demands, or anticipated additional supplies. We strongly urge the Bureau to avoid contract quantity commitments exceeding expected supplies and to avoid allocating shortages relative to inflated supply commitments.

From the contractors' perspective, there may be times when shortages are unavoidable and will need to be addressed. As stated above, EPA advocates the use of multiple tools by the Bureau to help contractors plan and manage for supply reliability, including during shortage periods.

Environmental Needs

The needs assessment must include full consideration of environmental needs. EPA believes that it is inappropriate for the renewal contracts to account for environmental restrictions solely through the use of a "shortage provision." A shortage provision is an appropriate mechanism for providing flexibility in the event of future unanticipated environmental or other impositions on CVP water use. However, it should not be used to implement existing environmental obligations under the CWA or ESA. These existing obligations should be evaluated in the needs analysis and factored into the assessment of water quantities available for contracts.

Documentation of Beneficial Use

Beneficial use must be clearly defined. For instance, the needs assessment should state the dates between which the beneficial use measurement was taken, rationale for this measurement period, how beneficial use will be interpreted, and whether and how differences in seasons and type of water use will be considered.

Groundwater and water reuse is also of concern. CVP water replenishes groundwater in certain areas through a number of "paths," such as canal seepage, over-irrigation, and spreading of high flow (flood) waters. This use should be documented. We request the Bureau disclose whether this use is being counted as historical beneficial use, and if it would be counted in a contractor's future water "need." We note that there are areas, such as the San Joaquin, where this casual "conjunctive use" of surface/groundwater has not stabilized groundwater levels or acted as a beneficial use. In fact, irrigation may contribute to severe water quality problems.

The CVPIA PEIS states that the right to reuse seepage and return flows has been covered in all alternatives and would not need to be revisited in subsequent NEPA documents (Ch VI-8). EPA questions whether any real impact analysis associated with reuse has been done. There is the question of actually documenting water balance within a basin, including amounts of seepage and return flows, and amounts of on-farm and downstream reuse. We note that this detailed information appears not to be available in many cases and that this issue has been raised in CALFED, as well. Changes in on-farm and within-district efficiency may well affect other uses within a basin by altering the quantity, timing, and quality of water available. On another page (VI-10) the CVPIA PEIS admits that implementation of water conservation measures was not handled at a site specific level, and suggests possibly including this topic in the contract renewal EISs. This is an analysis which is best done at a site and case-specific level. We urge the Bureau to follow-up on the suggestion in the CVPIA PEIS to

evaluate implementation of reuse and water conservation measures and their potential effect on quantity, timing, and quality of water available.

Reservation of Rights

EPA understands that there have been ongoing discussions about a "right to renew", and/or about the meaning of and continued applicability of language in the "1956 Act." EPA's view of the 1956 Act was presented in full at the time of the CEQ referral in 1989. See Letter from Gerald Yamada to Chairman A. Alan Hill dated April 13, 1989. EPA believes the 1956 Act discussion of renewals was largely superseded by the explicit provisions in the CVPIA addressing contract renewals. See CVPIA Section 3404. Under the CVPIA, after the first 25 year contract, additional renewals or extensions are clearly at the Secretary's discretion. While recognizing the legitimate desire of all parties to reserve possible legal arguments, EPA believes it would be inappropriate for the Bureau to grant a right to renew or other legal advantage to contractors in the renewal contract greater than they are entitled to receive under the explicit language of the CVPIA.

Water Supply and Demand

We strongly believe the Bureau should utilize tools such as pricing, conservation, conjunctive use, and monitoring and accounting to help improve supply reliability and ensure a more balance between water supply and demand.

Pricing

It has been demonstrated over the last decade that variable pricing of water can significantly influence water demand and supply. Pricing which accurately reflects the economic and environmental costs of water increases the ability to ensure scarce supplies are used efficiently. The contract renewal EISs should include an in-depth discussion of pricing and how it will be utilized by the Bureau and within water districts. We urge the Bureau to reevaluate the tiered pricing structure which is based upon contract quantities. Although there are price incentives to avoid excessive water use at the high end, these price incentives are rarely triggered in some areas due to the infrequent use or inability to provide these large contract quantities.

The EISs should also fully evaluate the Ability-to-pay policy and the Bureau's ability to ensure project repayment. We urge the Bureau not to utilize the ability to pay subsidy, especially given the need to repay project costs.

Conservation

Conservation can play a critical role in managing water demand and supply. We note that the Reclamation Reform Act states the Secretary of the Interior shall use all legal existing authorities to encourage conservation and that CVPIA Section 3045 encourages use of variable pricing and conservation. We urge the Bureau to consider conservation as a project goal and to describe ways to encourage conservation. The EISs should include a discussion of National Energy Policy Act requirements, how conservation affects water markets, demonstration of compliance with water conservation plans, reclamation methods and efforts, and improved irrigation technologies. Consistency with CALFED goals should be clearly demonstrated. Water use efficiency is a major component of the CALFED Program, thus close coordination with CALFED will be necessary to ensure consistency, where appropriate, in methodologies for computing efficiencies and benefits, and to ensure complementary objectives. We advocate use of conservation performance requirements in the contracts and strong assurances that certain levels of conservation will be attained.

As promised in the Reclamation Water Conservation Criteria – 1999, prospective renewal contractors should be required to have an adequate water management plan in place and to have demonstrated good progress in implementing that plan. Contract terms should make clear that future CVP supplies are conditioned on continuing conservation efforts, including, in the context of the conservation plans, shortage management. In particular, EPA advocates full implementation of the documentation and coordinated planning of use of supplies available to the contractor, including ground water; and the water measurement elements. We also urge incorporation of a shortage management element. Conservation and shortage management issues will vary from area to area.

For CVPIA, water measurement devices are required for contract renewal [3405(b)]. We understand this requirement can be addressed in an approved, adequate conservation plan. We also note that there is a lot of debate regarding the sort of measurement or metering requirements which are appropriate. The EIS should describe the debate and clearly state which measurement devices or metering requirements are considered by the Bureau to be appropriate for contract renewals.

Groundwater

Groundwater is a critical element in water supply and demand. Not only is it an alternative source to surface water supply, if used prudently, groundwater can provide significant flexibility in meeting demand at different times and from a number of different water sources. The EIS should fully document groundwater sources - how, when, and

by whom groundwater is used. Identify information gaps and where there are no direct groundwater measurements. The EIS should document the historical and anticipated (in alternatives) relationship between CVP surface supplies and groundwater. There should also be documentation of long-term groundwater trends within basins. We note that portions of the Sacramento, around urbanizing areas, are over drafted, and that major areas in the San Joaquin and Tulare basins are seriously over drafted. EPA is concerned with potential tradeoffs between surface water and groundwater use. We urge the Bureau to carefully evaluate the long-term implications of providing CVP surface water to avoid groundwater overdraft.

EPA supports the creation of groundwater management basins and institutional mechanisms to collect information, manage, and monitor groundwater use throughout California. The scoping materials from the Bureau suggest that one of the renewal-related actions under consideration is "conversion to conjunctive use." If the Bureau may propose "conversion to conjunctive use" in some areas, which we consider a promising concept, then the EIS should address the need for measurement and management of the combined resources of surface and groundwater supplies to stabilize supplies over the long term. Note that the appropriate management unit might not be the contracting district, unless the district is quite large (e.g., Westlands).

The conjunctive use issues flagged in the scoping materials lead us to suspect that developing an effective conjunctive use program and offering this as an implementable contract option could take longer than the contract renewal time frame. Perhaps the Bureau should consider making "managed conjunctive use" a separate program. For the purpose of the contract renewals, sufficient information should be disclosed about the objectives, requirements, and suitable locations for conjunctive use so that it can be included as an option within the contracts.

Monitoring and Accounting

Effective and sustainable management of CVP water supplies depends on an accurate knowledge of water supply availability and water use. This knowledge can only be obtained through monitoring and accounting of water supply and demand. We urge the Bureau to make a firm commitment to timely and accurate monitoring and accounting. This commitment should include dedicated funding for this effort.

NEPA Issues**EIS versus EA**

The Bureau should clearly describe the criteria for determining whether an EA or EIS is the appropriate level of NEPA analysis. These criteria should consider cumulative effects, how the Service areas or Districts are bundled, whether the potential impacts are bounded by existing environmental or programmatic analyses, and whether prior environmental analyses have provided information at a sufficient level of detail to meaningfully assess alternatives, impacts, and mitigation measures. We recommend the Bureau clearly state which contract renewals will be considered for EIS level analysis. EPA believes an EIS should be presumed the correct level for analysis of the long-term contract renewals, especially for areas with known or suspected irrigation caused water quality problems, groundwater overdraft, and incomplete information on ecosystem needs. An EIS level of evaluation is especially appropriate given the complex and controversial issues surrounding the needs assessment, reallocation of water to all CVP purposes, and management of California's scarce water supply in the context of high demand. Clearly describe whether unit wide evaluations will be made and whether there will be contract by contract evaluations.

Purpose and Need

It is EPA's view that the central federal action is water service contract renewals and that the purpose of this action should be to set out terms through these contracts through which existing CVP supplies will be distributed for beneficial use in the future. The project purpose should also embrace managing CVP supplies, by both the Bureau and contractors, in ways which will improve supply reliability and promote ecosystem protection and water quality. The concept of distribution should include allocation through contracts to specific parties and contract terms permitting exchanges and transfers in order to ensure the contracts allow use of the water for all beneficial uses recognized in State law. For example, distribution should consider avoidance of areas, such as selenium-loaded areas, where the use would likely result in environmental harm or waste of the water. Supply reliability can be addressed in part by the quantities made available, scheduling and rescheduling flexibility, wheeling options, conservation practices, and other management strategies. We note that reliability of stated contract supplies would be undermined by a significant discrepancy between the contract quantity and supplies which the Bureau can reasonably expect to make available. Good management of the resource should be assured through terms requiring conservation planning, implementation, and monitoring.

In summary, the purpose and need statement should reflect the intent to use renewal of existing contracts to provide contractors with assurance of reliable, long-term water supply; support the Bureau's environmental protection and restoration responsibilities pursuant to CVPIA and other applicable laws; promote water conservation; support appropriate water transfers; and to promote balanced, sustainable use of ground and surface water supplies.

In 1992 EPA and the Bureau had extensive discussions regarding the purpose and need for the proposed Friant contract renewal EIS (Friant Contract Renewal EIS EPA/BOR Agreements, February 1992). We believe many of the issues discussed are still applicable and incorporate these discussions by reference.

Baseline

The selection of the No Action alternative is a critical step in the environmental analysis since it provides the baseline for comparison with other action alternatives. It is EPA's position that the "no action" alternative is not a no impact baseline. EPA believes strongly that to interpret the "no action" alternative as having "no impacts" is inconsistent with NEPA regulations. Continuation of the existing management situation would constitute a discretionary commitment of resources that is, effectively, an action affecting the environment. The alternatives analysis of the EIS should portray the environmental consequences of every alternative..." in comparative form, thus sharply defining the issues and providing a clear basis for choice among options for the decisionmaker and the public." (40 CFR Part 1502.14).

The EIS should document existing conditions; explain the changes which have occurred (e.g., pre-project and past impacts); and describe the ecosystem restoration objectives of the CVPIA and CALFED. Furthermore, the EIS should adequately document cumulative impacts, including past, present and reasonably foreseeable actions. Past cumulative effects greatly influenced the "existing conditions" which should be documented in the EIS and represent deficiencies (adverse impacts) which may be perpetuated under the action and no action alternatives. Furthermore, we do not believe it is sufficient to establish compliance with certain environmental protection laws (such as the Endangered Species Act and Clean Water Act), where the status quo may reflect unacceptable conditions and trends resulting from on-going activities, including water diversions. Nor will "current conditions" provide adequate guidelines for gauging desired levels of environmental restoration and enhancement. Information in the EIS should assist in establishing the possible deficiencies in current conditions and defining restoration and enhancement goals (EPA Scoping Comments, Friant Contract Renewal EIS, January 1991). In addition, it is our position that mitigation measures (defined in 40 CFR 1508.20) should be addressed for adverse effects of alternatives

measured relative to current conditions, rather than relative to the expected future conditions under "no action" (Friant Contract Renewal EIS EPA/BOR Agreements, February 1992).

Consistent with the CVPIA PEIS, the contract renewal action and EIS should also be premised on the supplies which may be available in the future given the existing storage and conveyance system. This configuration should be retained in all alternatives. EPA does not consider adding onto or changing the configuration of this storage and conveyance system as within the scope of the contract renewal action.

Alternatives

Geographic Scope

Given the potential divergent supply options, we urge the Bureau to carefully consider the geographic scope for the environmental analysis. We recommend development of criteria to help determine the appropriate scale for analysis. For example, if conversion to conjunctive use is considered, the analysis might require a basin-wide view versus a district-wide view. Regardless of the water supply option, the EIS should evaluate the potential environmental impacts wherever they may occur. If significant adverse impacts are documented, the EIS should consider ways of mitigating these impacts.

Development of Alternatives

The CVPIA PEIS did not describe or evaluate specific contract alternatives or strategies. Thus, we believe it is critical that the EIS on contract renewals fulfill this need by evaluating different contract strategies and alternatives. We urge the Bureau to develop alternative contract terms and conditions which provide strong incentives for water conservation, tiered pricing, conservation goals and performance requirements, water transfers, reopener clauses, flexibility, restoration goals, project repayment, and monitoring. We also recommend consideration of elements common to all alternatives.

All reasonable alternatives should be considered including those which may be beyond the Bureau's current statutory authorities or those contrary to the initial priorities for the CVP established by Congress in 1937. For example, the Bureau should consider alternatives which provide water for other CVP purposes such as fisheries. We advocate evaluation of an alternative which provides a set dedicated yield with a mechanism to provide flexibility to adapt to changes in water supply and demand. Variations could include tiered contract quantities or guaranteed lifeline amounts.

Again, we urge an approach which focuses on demand management and effective, efficient use of existing supplies.

Cumulative Impacts

Full disclosure of indirect and cumulative impacts is of specific concern. NEPA requires evaluation of indirect and cumulative effects which are caused by the action (40 CFR 1508.8(b) and 1508.7). Indirect effects may include growth-inducing effects related to induced changes in the pattern of land use, population density or growth rate, and related effects on air and water and other natural systems, including ecosystems." (40 CFR 1508.9(b)). CEQ regulations also state that the EIS should include the "means to mitigate adverse environmental effects." (40 CFR 1502.16(h)). This provision applies to indirect effects as well as direct effects. Changes in water quality or downstream effects which may be indirectly caused by Contract terms and conditions, constitute indirect effects and should be evaluated in the EISs. These indirect effects and appropriate mitigation measures for adverse impacts should be fully disclosed in the EISs.

We recommend the long-term contract renewal EISs include a full evaluation of cumulative impacts at different landscape scales, e. g. Unit-wide, District-wide. The EISs should also include a summary of the CVP-wide cumulative impact analysis provided by the CVPIA PEIS.

Fish and Wildlife Issues

We recognize the significant progress made through the CVPIA in addressing region-wide past adverse cumulative impacts to fish and wildlife from historical operations of the CVP. However, the CVPIA and its PEIS has not addressed all local or district specific impacts. For example, fish and wildlife issues within the Upper San Joaquin River (i.e., Friant Unit) were not adequately addressed in the CVPIA. Thus additional evaluation may be appropriate when considering direct, indirect, and cumulative impacts to fish and wildlife in the context of specific contract renewals. The contract renewal EISs should evaluate the ability to restore or enhance fish and wildlife habitat and wetlands which have been affected by water diversions and by changes in flows, timing, and water quality as a result of CVP water supplies. This evaluation should "follow the impacts" and examine the impacts that may extend beyond the contract boundary.

EPA advocates evaluating Endangered Species Act and Clean Water Act compliance, requirements, and possible reallocation of water for environmental compliance as part of the contract renewal process. To do otherwise, may result in lost

opportunities and the inability to reallocate water for environmental requirements without extensive "takings" litigation. The evaluation of environmental requirements should consider flows, temperature needs, seasonality, and other water quality components and factors of critical importance to threatened and endangered species.

Water Quality Issues

We suggest the Bureau consider the water quality standards discussions and agreements made in 1992 in regards to the Friant Contract Renewal EIS (Friant Contract Renewal EIS EPA/BOR Agreements, February 1992) which are incorporated by reference. EPA continues to believe that water requirements to meet water quality standards and protect beneficial uses established by either the EPA or the State of California (State), pursuant to the federal Clean Water Act, must be satisfied before calculating water available for contract renewals. Due to the need to meet water quality standards, we wish to highlight the need for flexibility in the contracts' terms to ensure adaptability to potential changes in water policy and water quality standards.

General Water Quality Comments

1. Potential impacts to surface and ground water quality should be fully evaluated in the contract renewal EISs. The evaluation should include discussions on drainage and return flow quality; the role of agricultural chemicals (e.g., pesticides, fertilizers); management of discharges; and the impacts of water quality on crops, aquatic resources, and wildlife.
2. The EISs should discuss the proposed contract renewals compliance with State and local water quality management plans and State-adopted, EPA-approved water quality standards. EPA recommends that the project be fully coordinated with the appropriate Regional Water Quality Control Board to ensure protection of water quality and maintenance of beneficial uses.
3. Evaluate the potential of proposed contract renewals to cause adverse aquatic impacts such as increased siltation and turbidity in surface water sources; changes in water quality and quantity; changes in dissolved oxygen, and temperature; and habitat deterioration. Include a discussion on in-stream flow impacts of water diversions and return flows.
4. Identify sensitive aquatic sites such as wetlands which are currently present. Outline past and potential beneficial uses of these areas, and disclose potential impacts from the proposed project.

5. Discuss specific monitoring programs that are in place or will be implemented to determine potential impacts on surface and drinking water quality and beneficial uses. Evaluate whether maintenance and protection of water quality can be guaranteed.

General Comments

Environmental Justice

In keeping with Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations (EO 12898), the EIS should describe the measures taken by the Bureau to: 1) fully analyze the environmental effects of the proposed Federal action on minority communities, e.g. Indian Tribes, and low-income populations, and 2) present opportunities for affected communities to provide input into the NEPA process. The intent and requirements of EO 12898 are clearly illustrated in the President's February 11, 1994 Memorandum for the Heads of all Departments and Agencies.

Comments on Water Demands Workshop Handouts

These comments are based upon a review of only the Handouts. The commentator was unable to attend the Workshop. Thus, we recognize the comments below may have been addressed during the Workshop and verbal presentations.

1. Demands overhead chart. The development of estimates for future use should include estimates for environmental needs. In addition, future use estimates must consider the potential effects of different pricing structures, efficiency measures and methodologies (e.g., improved irrigation methods, cropping patterns), land retirement, groundwater management (e.g., conjunctive use), water reclamation and recycling, and water transfers.
2. Why? overhead chart. Beneficial use should be clearly described, including the period used to measure beneficial use and criteria for determining what is beneficial use.
3. Process overhead chart. In addition to the principles to be considered, the process should consider modernization (e.g., improved agricultural practices), beneficial uses beyond historical agricultural use (e.g., fish and wildlife, water quality), and conservation. We urge the Bureau to take an approach which encourages a trend towards low water use, high value crops.
4. Residential Demand overhead chart. The description of residential demand should describe the underlying assumptions regarding type of appliances, water efficiency

requirements, and type of landscaping. For instance, the requirements of the National Energy Policy Act should be described and fully integrated into the determination of residential demand.

5. Non-Residential Demand overhead chart. We urge the Bureau to consider a method of determining non-residential demand which is not based upon the historical amount of water used. Given the requirements of the National Energy Policy Act and significant advances in non-residential water use conservation, we believe a method based upon historical water use may result in an unrealistically high estimate of demand. As for residential demand, the underlying assumptions regarding appliances, water efficiency, and landscaping should be clearly described.

6. 1a. Interior Demand overhead chart. The Bureau should describe the assumptions used to determine gpcd. Conservation and requirements of the National Energy Policy Act should be fully integrated into the determination of interior demand.

7. 1b. Landscape Demand overhead chart. Assumptions regarding the type of landscaping and irrigation methods should be provided. Again, the National Energy Policy Act and conservation requirements should be integrated into the demand calculations.

8. 3a. Unaccounted for beneficial uses overhead chart. Other beneficial uses which must be considered include environmental and in-stream beneficial uses. For instance, non-residential water use could supply incidental beneficial uses, e.g. settling ponds, discharges to wetlands.

Miscellaneous Comments

1. If references to previous documents are used, the DEIS should provide a summary of critical issues, assumptions, and decisions complete enough to stand alone without depending upon continued referencing of the other documents.

Responses to Comment Letter 13 – U.S. Environmental Protection Agency, Region IX (2000)

- 13-1: Ample opportunity for public comment was provided during the contract negotiation process, which extended over several years, including the 60-day comment period allowed for the negotiated contracts and the two 30-day comment periods for the two drafts of the EA on the proposed water service contracts. Because the contract renewals essentially maintain the status quo with respect to environmental effects, EAs rather than EISs were prepared for the contract renewals, except in those cases in which land use changes driven by other forces in the respective service areas created the potential for controversy, or, as in the case of the Sacramento River Settlement contracts, where the sheer volume of water involved in the form of water diverted under senior water rights made the contracts attractive targets for court challenges. Also see response to comment 6-1.
- 13-2: This comment is now moot. The Record of Decision on the CVPIA PEIS was released on December 7, 2000.
- 13-3: Reclamation disagrees, particularly with respect to the Updated Draft EA and the ten long-term water service contract renewals it addresses. Considerable attention is given to the evolving nature of the districts involved, where land uses are expected to remain constant or nearly so. Groundwater (overdraft issues) and water quality were not considered issues that would be affected by the renewal of existing contracts because the proposed financial and administrative changes would not change either the volumes of water under contract or the places of use. Moreover, the service areas covered by this EA lack substantial groundwater resources. While Shasta County has large groundwater resources, they underlie areas outside the service areas of these contracts.
- 13-4: Comment noted.
- 13-5: The subject of this EA is the renewal of existing contracts with financial and administrative changes but no changes in either the volumes of water under contract or the places of use. The contracts do not over commit resources because the full quantities are only delivered when the water is available. Moreover, commitments can be reversed, as happened with the provision of 800,000 acre-feet for environmental use under the CVPIA.
- 13-6: Comment noted.
- 13-7: Comment noted.



LETTER 14

Pacific Coast Federation Of Fishermen's Associations

Incorporated
Old Coast Guard Building, West Crissy Field,
The Presidio

P.O. Box 29370, San Francisco, California 94129-0370
USA Tel: (415)561-5080 Fax: (415)561-5464

Fax Transmission

DT: Dec 8, 2000 FX#: 916 978-5599

TO: Bureau of Reclamation Attn: Al Candlish

FM: Zeko Grader

RE: CVP

Page 1 of 3 For Info Call _____

Message: _____

Stewards of the Fisheries

Pietro Puzosano
President
David Birt
Vice-President
Barbara Sichel
Secretary
Robert Miller
Treasurer
In Memoriam:
Nathaniel S. Bingham
Harold C. Christensen

Please Respond to:
 Southwest Office
P.O. Box 29910
San Francisco, CA 94129-0910
Tel: (415)561-5080
Fax: (415) 561-5464



WEB: <http://www.pond.net/~pcffa>

Office of the President
215 Spruce Street
Half Moon Bay, CA 94019
Tel: (650) 726-1607
Fax: (650) 726-1607

W. H. "Zeko" Grader, Jr.
Executive Director
Glen H. Spain
Northwest Regional Director
Mitch Farns
Resurrection/Recovery Director
Vivian Bolin
Western Conservation Director
Duncan MacLean
Salmon Advisor

Northwest Office
P.O. Box 11170
Eugene, OR 97440-3370
Tel: (541) 689-2000
Fax: (541) 689-2500

BY FAX

7 December 2000

Bureau of Reclamation
Mid-Pacific Division
Att: Al Candlish
2800 Cottage Way
Sacramento, CA 95825-1898

Re: Comments on Draft Environmental Assessments [EAS] for Renewal of Existing
Long-term Water Service Contracts for Central Valley Project [CVP]

Dear Mr. Candlish

The Pacific Coast Federation of Fishermen's Associations [PCFFA] represents the men and women of the West Coast's professional fishing fleet. Our members are engaged in fisheries that depend directly on the quality of CVP-impacted rivers, estuaries, and nearshore ocean environments.

We have reviewed the 6 December letter by Congressman George Miller to Secretary Babbitt on the subject of these proposed contract renewals, including the insufficiency of their environmental review, and that of the Trinity County Board of Supervisors of the same date on the subject. We concur and echo the concerns and recommendations Congressman Miller and Trinity County.

PCFFA has been engaged in this very CVP contract renewal issue for more than 15 years. Our testimony before the Council on Environmental Quality a dozen years ago contributed to the Administration's decision that CVP contract renewals would be the subject of comprehensive environmental review. We pressed for, and secured that same comprehensive environmental review policy when Congress deliberated the Central Valley Project Improvement Act [CVPIA] four years later.

The Bureau's current proposal to skirt the public policy developments of the past 15 years and to deliberately thwart the intent of the CVPIA by offering long-term, guaranteed-renewable water sales contracts without consideration of the effect they and their proposed successors may have on California's rivers, estuaries, and nearshore environments is inexplicable, unacceptable, and will certainly lead straight back to the political turmoil and litigation which surrounded the issue in the mid-1980s. 14-1

The livelihoods of California's professional fishermen depend upon and deserve the Bureau's responsible conduct of CVP management. We view the proposal to proceed with the proposed contract renewals without adequate National Environmental Policy Act review not only as irresponsible but as a clear violation of CVPIA policy. 14-2

Sincerely,

W. F. "Zeke" Grader
Executive Director

Responses to Comment Letter 14 – Pacific Coast Federation of Fisherman Associations (2000)

14-1: Comment noted.

14-2: Comment noted.

LETTER 15

From: Tom Stokely <tstokely@trinityalps.net>
 To: <acandlish@mp.usbr.gov>
 Date: 12/8/00 2:37PM
 Subject: Comments on Draft EA for CVP Contract Renewals

Dear Mr. Candlish,

Please accept this on behalf of the County of Trinity. A hard copy letter should have already arrived or will arrive shortly. I will also fax you the letter below.

Sincerely,

Tom Stokely,
 Senior Planner
 Trinity County Planning Dept.
 PO Box 156
 Hayfork, CA 96041
 530-628-5949

TRINITY COUNTY BOARD OF SUPERVISORS
 P.O. BOX 1258
 WEAVERVILLE, CA 96093-1258

December 6, 2000

Bureau of Reclamation
 Mid-Pacific Division
 Attn: Al Candlish
 2800 Cottage Way
 Sacramento, CA 95825-1898

Re: Draft Environmental Assessments (EAs) for Renewal of Existing Long-term Water Service Contracts for Central Valley Project (CVP)

Dear Mr. Candlish:

The Board of Supervisors recommends that the Draft Environmental Assessments for renewal of CVP long-term water service contracts not be approved. The impacts of this proposed federal action are significant and cannot be approved under a Finding of No Significant Impact. A comprehensive CVP-wide EIS for water contract renewals should be prepared.

The cumulative impacts of renewing 25 long-term water service contracts is a significant cumulative impact which requires preparation of an EIS.

As demonstrated in Table ES -1 from the "Trinity River Mainstem Fishery Restoration EIS/EIR" (USFWS, Trinity County, Hoopa Valley Tribe and BOR, November, 2000), there are significant impacts from blanket renewal of long-term CVP water service contracts. This can be seen in the

ALC 01 12-11-00

15-1

difference between the "Existing Conditions (1995) base year and the No Action Alternative in the year 2020. In particular, renewal of contracts from the American River Division will increase CVP demand by 320,000 acre-feet per year by the year 2020. This significant impact will manifest itself with reduced carryover storage in Shasta and Trinity reservoirs, with resultant impacts to recreation, as well as listed species in the Trinity River such as coho and steelhead, and impacts to the Sacramento River listed species such as winter and spring chinook. This is evidenced by increases in violation of Trinity and Sacramento river temperature compliance, and Shasta Lake carryover storage requirements per the 1993 NMFS Biological Opinion.

As a result of the October 20, 2000 ESA consultation by NMFS on the Trinity River Mainstem Fishery Restoration EIS, Trinity Lake carryover storage should not go below 600,000 acre-feet. A comprehensive EIS on CVP contract renewals should evaluate impacts to this Trinity Lake carryover storage requirement for protection of the Trinity River's fishery.

We are extremely disappointed that without adequate public review and input, Interior reversed its contract negotiation position very recently and changed contract terms so that the "contract total" for water quantities would be unchanged from existing contracts even though historic deliveries have been far less. Renewal of these contracts which includes this "paper water" will continue to result in contracts for water delivery well beyond available CVP supplies. As a county of origin for the CVP, we believe the citizens and resources of Trinity County will be significantly harmed by this overcommitment of water.

We are also extremely disappointed that Interior reversed its position, again without adequate public review and input, of the tiered pricing provisions of the Central Valley Project Improvement Act (CVPIA) so that these provisions would apply only to the "contract total," not the "base" water supply. Such a position will not encourage water conservation, nor will it assure long-term repayment of the CVP by water contractors.

The EA's do not adequately analyze the above impacts in a singular or cumulative sense with other ongoing actions CVP-wide. A Finding of No Significant Impact would not be justifiable in this case. In addition, the EAs do not analyze adequately the cumulative effect of applying these policies to remaining CVP water service delivery contracts which have not yet expired - in other words, all CVP water service contracts.

The contracts should be renegotiated to reflect the legal requirements of CVPIA, then a CVP-wide contract renewal EIS should be prepared to deal with the above issues cumulatively. A Finding of No Significant Impacts is not justifiable.

Sincerely,
out

December 6, 2000

15-2

15-3

15-4

Bureau of Reclamation
Mid-Pacific Division
Attn: Al Candlish
2800 Cottage Way
Sacramento, CA 95825-1898

Re: Draft Environmental Assessments (EAs) for Renewal of Existing Long-term Water Service Contracts for Central Valley Project (CVP)

Dear Mr. Candlish:

The Board of Supervisors recommends that the Draft Environmental Assessments for renewal of CVP long-term water service contracts not be approved. The impacts of this proposed federal action are significant and cannot be approved under a Finding of No Significant Impact. A comprehensive CVP-wide EIS for water contract renewals should be prepared.

The cumulative impacts of renewing 25 long-term water service contracts is a significant cumulative impact which requires preparation of an EIS.

As demonstrated in Table ES -1 from the "Trinity River Mainstem Fishery Restoration EIS/EIR" (USFWS, Trinity County, Hoopa Valley Tribe and BOR, November, 2000), there are significant impacts from blanket renewal of long-term CVP water service contracts. This can be seen in the difference between the "Existing Conditions (1995) base year and the No Action Alternative in the year 2020. In particular, renewal of contracts from the American River Division will increase CVP demand by 320,000 acre-feet per year by the year 2020. This significant impact will manifest itself with reduced carryover storage in Shasta and Trinity reservoirs, with resultant impacts to recreation, as well as listed species in the Trinity River such as coho and steelhead, and impacts to the Sacramento River listed species such as winter and spring chinook. This is evidenced by increases in violation of Trinity and Sacramento river temperature compliance, and Shasta Lake carryover storage requirements per the 1993 NMFS Biological Opinion.

As a result of the October 20, 2000 ESA consultation by NMFS on the Trinity River Mainstem Fishery Restoration EIS, Trinity Lake carryover storage should not go below 600,000 acre-feet. A comprehensive EIS on CVP contract renewals should evaluate impacts to this Trinity Lake carryover storage requirement for protection of the Trinity River's fishery.

We are extremely disappointed that without adequate public review and input, Interior reversed its contract negotiation position very recently and changed contract terms so that the "contract total" for water quantities would be unchanged from existing contracts even though historic deliveries have been far less. Renewal of these contracts which includes this "paper water" will continue to result in contracts for water delivery well beyond available CVP supplies. As a county of origin for the CVP, we believe the citizens and resources of Trinity County will be significantly harmed by this overcommitment of water.

We are also extremely disappointed that Interior reversed its position, again without adequate public review and input, of the tiered pricing

provisions of the Central Valley Project Improvement Act (CVPIA) so that these provisions would apply only to the "contract total," not the "base" water supply. Such a position will not encourage water conservation, nor will it assure long-term repayment of the CVP by water contractors.

The EA's do not adequately analyze the above impacts in a singular or cumulative sense with other ongoing actions CVP-wide. A Finding of No Significant Impact would not be justifiable in this case. In addition, the EAs do not analyze adequately the cumulative effect of applying these policies to remaining CVP water service delivery contracts which have not yet expired – in other words, all CVP water service contracts.

The contracts should be renegotiated to reflect the legal requirements of CVPIA, then a CVP-wide contract renewal EIS should be prepared to deal with the above issues cumulatively. A Finding of No Significant Impacts is not justifiable.

Sincerely,

TRINITY COUNTY BOARD OF SUPERVISORS

Ralph Modine, Chairman

TRINITY COUNTY BOARD OF SUPERVISORS

Responses to Comment Letter 15 - Trinity County Board of Supervisors (2000)

- 15-1: Since this comment was written, the flows in the Trinity River have been set by a judicial opinion, and the contract renewals have no effect on the Trinity River's flows. Also see the response to comment 6-56.
- 15-2: As noted in response 15-1, the flows in the Trinity River have already been established by a judicial order and will not be affected by these contract renewals. Moreover, should area of origin rights be upheld by the courts and changes in operations required by the State Water Resources Control Board, Reclamation would adjust its operations as required by law.
- 15-3: The comment appears to be asking for either the types of analyses presented in the CVPIA PEIS or those finalized in the 2004 OCAP Biological Opinions. In either case, the analyses requested, which are appropriately addressed in these other documents, are beyond the scope of this EA.
- 15-4: See response to comment 7-4.

Responses to Comment Letter 16 – State Clearinghouse and Planning Unit (2004)

Letter 16 contains no comments.

DEPARTMENT OF TRANSPORTATION

P.O. BOX 486073
REDDING, CA 96049-6073
PHONE (530) 225-3369
FAX (530) 225-3020

LETTER 17



*Flex your power!
Be energy efficient*

IGR/CEQA Review
Sha-Tri-Admin
Long-Term Contracts Renewal
Draft EA FONSI
SCH# 2000114007



October 1, 2004

Mr. Buford Holt
U.S. Bureau of Reclamation
16349 Shasta Dam Boulevard
Shasta Lake, CA 96019

Dear Mr. Holt:

Caltrans District 2 has reviewed the Draft Environmental Assessment and Draft Finding of No Significant Impact submitted on behalf of the U.S. Bureau of Reclamation, for the proposed long-term Ventral Valley Project water service contract between Reclamation and Contractors within the Shasta and Trinity River Divisions.

Based on the project information submitted, approval of this project will not adversely impact facilities under our jurisdiction; therefore, we have no comment.

Thank you for providing us the opportunity to review this project. If you have any questions, or if the scope of this project changes, please call me at 225-3369.

Sincerely,

MARCELINO GONZALEZ
Local Development Review
District 2

Responses to Comment Letter 17 – California Department of Transportation (2004)

Letter 17 contains no comments.

LETTER 18

STATE OF CALIFORNIA

Arnold Schwarzenegger, Governor

NATIVE AMERICAN HERITAGE COMMISSION
915 CAPITOL MALL, ROOM 384
SACRAMENTO, CA 95814
(916) 653-4082
(916) 657-5390 - Fax



October 5, 2004



Mr. Buford Holt
U.S. Bureau of Reclamation
16349 Shasta Dam Blvd.
Shasta Lake City, CA 96019

Re: Updated Draft Environmental Assessment for the Long-Term Contract Renewal, Shasta and Trinity River Diversions

SCH# 200114007

2000114007

Dear Mr. Holt:

Thank you for the opportunity to comment on the above referenced Environmental Assessment.

Section 800.2 of the Federal Section 106 process (36 CFR PART 800) requires that agencies consult with Native American tribes in order to provide them with "a reasonable opportunity to identify (their) concerns about historic properties, advise on the identification and evaluation of historic properties, including those of traditional religious and cultural importance, articulate (their) views on the undertaking's effects on such properties, and participate in the resolution of adverse effects."

Enclosed is a list of Native American individuals/organizations who may have knowledge of cultural resources in the project area. This list should provide a starting place in locating areas of potential adverse impact within the proposed project area. The Commission makes no recommendation of a single individual or group over another. By contacting all those listed, your organization will be better prepared to address claims of failure to consult with the appropriate tribe or group. A minimum of two weeks must be allowed for responses following notification. If there has been no response following the two week period, we recommend that you follow-up by telephone to ensure that the information was received.

Lack of surface evidence of archeological resources does not preclude the existence of archeological resources. Lead agencies should include provisions for accidentally discovered archeological resources during construction per California Environmental Quality Act (CEQA), Public Resources Code §15064.5 (f); Health and Safety Code §7050.5; and Public Resources Code §5097.98 mandate the process to be followed in the event of an accidental discovery of any human remains in a location other than a dedicated cemetery and should be included in all environmental documents. If you have any questions, please contact me at (916) 653-6251.

18-1

Sincerely,

Carol Gaubatz
Program Analyst

cc: State Clearinghouse

10/05/2004 09:10 AM FAX 916 657 5390

NAHC

002

Native American Contacts Shasta County October 5, 2004

Carol Y. Bowen
1797 Shasta Street
Anderson, CA 96007
(530) 365-0940

Wintun

Pit River Tribe Environmental Office
Sharon Elmore, Cultural Information Officer
37014 Main Street
Burney, CA 96013
(530) 335-5062

Ajumawi Band Cultural Resources Representative
Leta Nalton
PO Box 1253
Burney, CA 96013

Pit River

Pit River Tribe of California
Jessica Jim, Chairperson
37014 Main Street
Burney, CA 96013
(530) 335-5421
(530) 335-3140 Fax

Pit River
Achomawi - Atsugewi
Wintun

~~Illmawi Band Cultural Resources Representative~~

~~Cecelia Silvas
P.O. Box 48
Fall River Mills, CA 96028
(916) 335-2777~~

~~Pit River - Illmawi~~

~~Pit River Tribe of California
Virginia Sutter, Tribal Administrator
37014 Main Street
Burney, CA 96013
(530) 335-5421
(530) 335-3140 Fax~~

~~Pit River
Achomawi - Atsugewi
Wintun~~

Itsatawi Band Cultural Resources

Vivian Martinez
3520 Park Street
Shasta Lake, CA 96019
(530) 241-6119

Pit River

Pit River Tribe of California
Michelle Berditschewsky, Environmental Coordinator
37014 Main Street
Burney, CA 96013
(530) 335-5062

Pit River
Achomawi - Atsugewi
Wintun

Madesi Band Cultural Resource Representative

Angel Winn
PO Box 141
Montgomery, CA 96065

Pit River

Redding Rancheria
Tracy Edwards, Chairperson
2000 Redding Rancheria Road
Redding, CA 96001
(530) 225-8979
Fax: (530) 241-1879

Wintun
Pit River
Yana

This list is current only as of the date of this document.

Distribution of this list does not relieve any person of statutory responsibility as defined in Section 7050.5 of the Health and Safety Code, Section 5097.94 of the Public Resources Code and Section 5097.98 of the Public Resources Code.

This list is only applicable for contacting local Native Americans with regard to cultural resources assessment for the proposed Updated Draft Environmental Assessment for the Long-Term Contract Renewal, SCH# 200114007, Shasta County.

LETTER 18

Native American Contacts
Shasta County
October 5, 2004

Redding Rancheria
 Barbara Murphy, Chief Executive Officer
 2000 Redding Rancheria Road Wintu
 Redding, CA 96001 Pit River
 Yana
 (530) 225-8979
 Fax: (530) 241-1879

Roaring Creek Rancheria
 PO Box 52 Pit River
 Montgomery 96065
 CA
 (530) 335-5421

Winnemem Wintu Tribe

Caleen Sisk-Franco, Tribal Chair
 14840 Bear Mountain Road Wintu
 Redding, CA 96003
 winnemem@msn.com
 (530) 275-2737
 (530) 275-4193 FAX

Wintu Educational and Cultural Council
 Robert Burns
 12138 Lake Blvd. Wintu
 Redding, CA 96003
 (530) 246-3313

Wintu Tribe and Toyon-Wintu Center
 2675 Bechelli Lane Wintu
 Redding 96001
 CA

wintu_tribe@hotmail.com
 (530) 226-8088
 (530) 223-2879 - Gene Malone
 (530) 242-1374 - Carol Sinclair

This list is current only as of the date of this document.

Distribution of this list does not relieve any person of statutory responsibility as defined in Section 7050.6 of the Health and Safety Code, Section 5097.54 of the Public Resources Code and Section 5097.98 of the Public Resources Code.

This list is only applicable for contacting local Native Americans with regard to cultural resources assessment for the proposed Updated Draft Environmental Assessment for the Long-Term Contract Renewal, SCH# 200114067, Shasta County.

Responses to Comment Letter 18 – Native American Heritage Commission (2004)

18-1: Because the proposed action consists solely of the renewal of long-term water service contracts, it does not involve any construction. Therefore, it does not involve the potential for discovering archaeological resources.