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November 17, 2000

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Lester A. Snow, Regional Director
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Via: Federal Express

Betty Riley-Simpson
Bureau of Reclamation
2800 Cottage Way, E-2905
Sacramento, CA 95825

Via: Federal Express

**COMMENTS OF CLEAR CREEK CSD ON THE
PROPOSED FINALIZATION OF CVP M&I SHORTAGE
POLICY, POSITION #4: PROJECT WATER MADE
AVAILABLE FOR AGRICULTURAL PURPOSES THAT IS
SUBSEQUENTLY CONVERTED TO M&I PURPOSES.**

Dear Mr. Snow and Ms. Simpson:

I submit these comments as general counsel for Clear Creek Community Services District, and it is my understanding that Bella Vista Water District joins in my remarks.

At the outset I wish to convey the seriousness and concern with which these comments are submitted. Clear Creek CSD and Bella Vista WD are unique Ag/M&I "transitional" districts among the 112 or so CVP "Ag Contractors" and "M&I Contractors" currently negotiating renewal of their long term water service contracts with Reclamation. Clear Creek and Bella Vista straddle the fault line of perhaps the most controversial water and public policy issue concerning CVP water use -- the conversion of Ag water supplies to M&I water supplies. Nothing would please us more than to stay out of harm's way where this is concerned, but, as a matter of self-preservation, the proposed finalization of the above-referenced M&I shortage policy due to be reviewed in two upcoming "workshops" and finalized in January, 2001, forces us to begin "making a record" preparatory to any measures that may be necessary to defend the future viability of our Districts.

DO NOT REMOVE
BY THE USER PLEASE INSERT
CODE NO. _____
INITIAL _____
DATE _____

Classification	WTR 4-00
Project	500
Contract No.	14381
Parcel ID	38378

Re: Comments Of Clear Creek CSD On The Proposed Finalization Of CVP M&I Shortage Policy,
Position #4: Project Water Made Available For Agricultural Purposes That Is Subsequently
Converted To M&I Purposes.

Clear Creek CSD and Bella Vista WD are unique among the 112 CVP Contractors in three critical respects:

- Clear Creek and Bella Vista are the only true mixed-use Ag/M&I districts (roughly 2/3 Ag and 1/3 M&I). The CVP Ag water irrigation districts provide only tiny amounts of M&I water incidental to their irrigation operations, never amounting to more than 5% of their total CVP water usage. Almost all of the M&I Contractors serve exclusively M&I water; Ag water service from a few M&I Contractors appears to be limited to small amounts for remnants of agricultural land in territories recently annexed to cities.
- Historical circumstances, together with the nature of CVP facilities for water delivery, have forced Clear Creek and Bella Vista to provide 100% filtered, treated, potable water, even though most of that water is currently used for agricultural purposes.
- Clear Creek and Bella Vista have invested heavily in capital facilities to provide 100% potable water for their entire CVP contract supply with the knowledge that they are in transition from Ag to increasing M&I usage.

Some background might be helpful to better understand how we arrived at this position. Clear Creek CSD is a rural water service provider to over 9,000 residents and small farmers in western Shasta County. Clear Creek's 15,000 acre service area is populated by small farms that average about six acres in size, and mostly rural "ranchette" style residential parcels averaging about two acres in size. About two-thirds of Clear Creek's CVP water use is Ag water delivered to about one third of the District's service connections; concomitantly, two-thirds of the service connections receive M&I water that constitutes about one-third of the District's total CVP water use. Bella Vista WD has a very similar land use and water consumption pattern, and similar proportionate usage of Ag and M&I water. Both Clear Creek and Bella Vista were conceived about 40 years ago for the primary purpose of irrigating small farms, but over time rural residential development has gradually changed their character to transitional mixed-use Ag/M&I districts.

A unique factor facilitating this transition is the CVP supply of 100% piped water (supplemented with groundwater in Bella Vista WD), which over the years Clear Creek and Bella Vista have ultimately been required to maintain as a 100% potable water supply. Clear Creek was established using the historically extraordinarily clean CVP water supplied from Whiskeytown Lake, piped by conduit and distributed through a piped distribution system, which met the primary need for delivery of Ag water and otherwise required no filtration or treatment for domestic usage during the first 20 years of the District's operations. The piped

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delivery system for Ag water was well suited to the rugged topography and disbursed geographic area of Clear Creek's service territory. South of Redding in the Central Valley you will find that piped delivery systems for Ag water are rare or nonexistent; Ag water typically is delivered only in canals and ditches, ruling it out as a means of delivered residential domestic supply. Clear Creek's high quality water happened to be just as good for domestic use as irrigation, and in 1963 it was not foreseen that many years later it would need to be treated for human consumption. Twenty years into its operations Clear Creek had a substantial residential population dependent on its domestic water supply, and increasingly stringent water quality standards eventually required construction of a filtration plant (even though there had been no change in the water quality from Whiskeytown Lake). Several years ago Clear Creek completed a \$5,000,000 expansion and modernization of its treatment plant, to allow fully compliant treatment of Clear Creek's entire CVP contract water supply as M&I water. Bella Vista WD has made similar investments to also supply all of its water in compliance with Safe Drinking Water Act standards.

Both Clear Creek and Bella Vista have CVP water contracts for which the full contract total may be used as either Ag or M&I water. In fact, Clear Creek and Bella Vista paid for their full contract quantities on an "accept and pay" basis for about 32 years (1963-1995), even though they often did not use the full amount of water, with the belief that they were making an "investment" in the availability of water vitally necessary to meet their Districts' future needs. The Needs Analysis approved by Reclamation October 3, 2000 for renewal of Clear Creek's long term water service contract does indeed show that future demand in the year 2025 is estimated to be more than double the amount of the District's full contract quantity. Given the transitional nature of water usage from Ag to M&I in both Clear Creek and Bella Vista, we fully anticipate that the proportion of M&I usage will continue to grow, and in the long term it may approach the full contract total.

Bear in mind that the investments made by Clear Creek CSD and Bella Vista WD for future M&I usage were to plan for and cope with the inevitable transition process to greater M&I usage in these districts; not to promote that process. Clear Creek and Bella Vista have no land use authority, no zoning power, no authority over subdivisions, no ability to refuse building permits. If water is available we are legally obligated to provide service to a landowner in the District who requests it. From this perspective, the only open question is not "if?" but rather "how quickly" will the increased demand for M&I water materialize.

This brings us to a head-on collision with Reclamation's proposed M&I shortage policy pertaining to increased usage of M&I water (see copy attached). Under this policy, standard M&I water quantities would be frozen at the September 30, 1994 level. M&I usage above that amount would be a new inferior class of M&I

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water that would be subject to shortages as if it were Ag water. The CVP water allocation process for shortages would ratchet down CVP supplies of this inferior M&I water much more quickly than if it were standard M&I water, regardless of the public health and safety impacts to residential domestic water users drawing from that inferior M&I supply. Attached is a table showing the descending levels of water supply for Agriculture (and inferior M&I) and standard M&I as shortage conditions worsen. Note that Ag and inferior M&I drops 25% before any shortage is imposed on standard M&I, and at the 75% floor for standard M&I the quantities for AG and inferior M&I continue to drop in a range from 50% to 25%. In theory, the delivery of inferior M&I water could drop to 0%. One has to wonder if Reclamation, or anyone else, seriously believes that M&I residential customers could absorb or accept such Draconian shortages.

The shortage policy on "inferior M&I water" is transparently an effort to prevent increases in usage of CVP M&I water, by causing those who increase M&I usage to incur the risk of a public health and safety nightmare. The problem faced by Clear Creek CSD and Bella Vista WD is that these districts will be increasing their M&I water usage (within their contract total) regardless of the threat posed by this prospective shortage policy. The transition from Ag to M&I usage will continue in Clear Creek and Bella Vista, whether the districts really want it or not.

Moreover, Clear Creek and Bella Vista believe that they have a contractual right to use amounts up to the full contract total in their existing water service contracts to provide for increasing M&I demand, without subjecting portions of it to an arbitrary and discriminatory shortage policy. Undeniably Reclamation has a certain amount of freedom to devise prudent and rational regulatory policies for M&I water in the CVP generally, to cope with shortages in CVP water supplies. However, if Reclamation has a contractual commitment to provide M&I water to a Contractor up to the contract total, then it would breach the covenant of good faith and fair dealing to effectuate the essential purposes of the contract, if Reclamation were to attach an inferior classification to quantities of M&I water that would make it practically worthless, undesirable, or even dangerous to use. Further, I believe it would be illegal under state law if Clear Creek were to accept such "inferior M&I water" and then attempt to impose the necessary corresponding shortages on residential M&I customers receiving the inferior water supply. It should be clear that Clear Creek and Bella Vista cannot accept the imposition of such an M&I shortage policy on their water service contracts.

We are sensitive to the fact that changes in Reclamation's proposed shortage policy may upset a tenuous political compromise between California's CVP irrigation Contractors and the urban M&I users, concerning highly charged issues as to the future of CVP water usage generally. It is not our desire to shape CVP-wide policies based solely on our local interests, nor are we trying to open a wider ranging

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public policy debate. On the other hand, as a matter of survival Clear Creek and Bella Vista cannot quietly accede to a proposed policy that threatens the future viability of District operations and violates their contractual rights to M&I water. We believe there should be a path somewhere between blanket application of this policy and wholesale rejection of it, that protects the interests of Clear Creek CSD and Bella Vista WD while also addressing the CVP-wide concerns of Reclamation, the irrigation Contractors, and the urban M&I users. In the upcoming workshop sessions, and privately if you wish, we would like to open a dialogue with Reclamation so we can find the path to a solution. With Reclamation's cooperation and assistance I am confident we will do so.

Respectfully submitted,

LAW OFFICES OF WALTER P. McNEILL



WALTER P. McNEILL

WPM/p

Encs.

cc: Senator Dianne Feinstein (Via: Facsimile to D.C. Office)
Congressman Wally Herger (Via: Facsimile to D.C. Office)
Char Workman Flowers, General Manager, Clear Creek CSD
Bob Dietz, General Manager, Bella Vista WD

M&I Shortage Policy - Central Valley Project

POSITION #4: Application of M&I Shortage Policy to Project Water made available for agricultural purposes that is subsequently converted to M&I purposes.

BACKGROUND:

- The CVPIA Administrative Proposal for Urban Water Supply Reliability dated June 9, 1997 (Urban Reliability Policy), states that Interior believes the final M&I Water Shortage Policy should apply only to that portion of CVP water used historically for M&I purposes and identified as projected M&I demand as of September 30, 1994.
- Any permanent transfer or assignment of CVP water that occurs after September 30, 1994 that converts water used for agricultural purposes to M&I purposes should retain the agricultural shortage.
- September 1994 was selected because it was the end of the fiscal year in which the draft M&I Water Shortage Policy was released for comment. Capital costs including capital interest were allocated to the M&I purpose based on those 50-year delivery schedules. A contractor that has historically paid for an expected build-up of M&I deliveries will have M&I reliability for those deliveries.
- An urban contractor could request a permanent conversion from an agricultural water to an M&I water be authorized with the M&I reliability shortage, provided it could be demonstrated there were no adverse impacts (water supply or financial) to agricultural or other urban water supplies.
- Agricultural interests believe the water shortage criteria applied to agricultural water converted to M&I water through assignment or transfers should not change because of such conversion or transfer. If urban reliability is applied when water is converted or transferred to M&I, other agricultural contractors will be impacted negatively.
- If reliability is increased when water is converted or transferred to M&I, other agricultural contractors as a group face the impact not only of relatively gradual conversion within their service area, but the magnified impacts of deeper shortages on an ever-smaller base, whether or not the particular contractor has been involved in any conversion. Such contractors have almost no ability to plan for or control these impacts, whereas once M&I contractors know that the reliability of converted water retains its original status, they are in position to plan for and acquire whatever quantities they need to assure the desired level of reliability.
- Some urban contractors believe that the reliability associated with the conversion of water from agriculture to M&I use could be permitted provided that the changes occurred over a specific number of years. Water supply contracts could be renegotiated for increased reliability from such conversions. Urban interests believe

that increased reliability could be earned by water supply contractors with a proven history of efficient conservation.

ADMINISTRATION POSITION:

- The 75 percent reliability shall apply only to that portion of CVP water used historically for M&I purposes and identified as projected M&I demand as of September 30, 1994. An urban contractor could request a permanent conversion from an agricultural shortage to an M&I water reliability shortage be authorized. Reclamation must determine that such a conversion would result in no adverse impacts to agricultural or other urban water supplies.

M&IShortIssue4agconvM&I.wpd

INFERIOR M&I and

Current Water Allocation Process	
Agriculture	M&I
100%	100%
95%	
90%	
85%	
80%	
75%	100%
70%	95%
65%	90%
60%	85%
55%	80%
50%	75%
45%	
40%	
35%	
30%	
25%*,**	75%
20%*	70%
15%*	65%
10%*	60%
05%*	55%*
00%*	50%*
	45%*
	40%*
	35%*
	30%*
	25%*

* This is what is in the models. ** There may be an allocation of hardship water provided only for survival of tress and vines.