



United States Department of the Interior

BUREAU OF RECLAMATION

Mid-Pacific Regional Office

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REFER TO:

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To: All Interested Persons, Organizations, and Agencies

From: Roger K. Patterson
Regional Director

Subject: Bureau of Reclamation's Final Interim Guidelines for Implementation of Interim Renewal Contracts Pursuant to Section 3404(c) Under Title XXXIV of Public Law 102-575 - Central Valley Project

Enclosed for your information is a copy of the final Interim Guidelines for the Implementation of the Interim Renewal Contract Provisions, Central Valley Project Improvement Act (Title XXXIV of Public Law 102-575) (Interim Guidelines). Comments from meetings held during the last week in March and written comments received through April 22, 1994, provided Reclamation with useful information regarding these Interim Guidelines. We appreciate the time and effort by the public in both of these activities.

The substance of these Interim Guidelines and/or the execution of the interim renewal contracts may be affected by judicial action or other future events. The federal district court in Westlands Water District, et al. v. Bureau of Reclamation, et al. Civ. No. 93-5327 OWW (E.D. Ca.) has recently issued a decision indicating its intent to issue an injunction, anticipated shortly, prohibiting implementation of certain sections of the CVPIA pending compliance with the National Environmental Policy Act. The court's decision and the injunction it issues may, directly or indirectly, affect implementation of other sections of CVPIA, including those providing for the interim renewal of existing long-term contracts.

If you have any questions regarding the Interim Guidelines, please contact John Davis at (916) 978-5030 or Frank Dimick (916) 978-5139 (TTD 978-4417).



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**GUIDELINES FOR IMPLEMENTATION
OF THE INTERIM RENEWAL CONTRACTS
CENTRAL VALLEY PROJECT IMPROVEMENT ACT
(TITLE XXXIV OF PUBLIC LAW 102-575)**

I. OBJECTIVE

The objective of these guidelines is to implement the provisions of Section 3404(c) of Public Law 102-575 (P.L. 102-575) and provide for the interim renewal of existing long-term contracts for Central Valley Project (CVP) water consistent with Federal Laws and associated regulations.

The objective of the interim renewal contracts is to provide existing CVP contractors water deliveries during the period from expiration of the original contract until the environmental documentation is complete in accordance with Section 3404(c) of P.L. 102-575 (interim period). The interim renewal contracts are also intended to provide a means of carrying out the goals and requirements of Title XXXIV of P.L. 102-575 and other provisions of the Federal and state law, and will therefore be modified accordingly.

II. AUTHORITY

The authority for the interim renewal contracts includes the Acts of August 4, 1939, July 2, 1956, June 21, 1963, and Title 34 of P.L. 102-575.

III. APPLICABILITY

These guidelines apply to the interim renewal of all long-term CVP contracts during the interim period.

IV. IMPLEMENTATION

These interim guidelines are effective immediately and will remain in effect until revised or superseded.

Section 3404(c)(1) provides that no long-term repayment or water service contract will be renewed until appropriate environmental review, including the programmatic environmental impact statement (PEIS) on the CVP required under Section 3409 has been completed. The Section further provides that the United States and the contractors may enter into interim renewal contracts during the period between expiration of their long-term contracts at completion of the PEIS and other required environmental documentation. To implement the provisions, Reclamation intends to execute an initial interim renewal contract with each contractor for a term of up to 3-years, and subsequent interim renewal contracts for terms of up to 2-years, until the appropriate environmental review is completed pursuant to Section 3404(c)(1). Subsequent interim renewal contracts will be contingent upon the contractor complying with all terms and conditions of its existing interim renewal contract.

Reclamation will implement the provisions in a consistent manner for all water users, including municipal and industrial (M&I) water users.

V. INTERIM RENEWAL CONTRACTS - Terms and Conditions. Noncompliance with any terms and conditions of its existing interim renewal contract will be considered by the United States to be a breach of contract.

A. Contract Term. The initial interim renewal contract will be for a term of up to 3 years. Subsequent renewal contracts will be for terms of up to 2 years each until the PEIS and other required environmental documentation is completed.

B. Water Supply. The quantity of water under contract will not be increased during the interim period. The quantity of water under contract will be reviewed for reasonable beneficial use based on information submitted by the contractor with adequate supporting documentation for evaluation by the United States including but not limited to, the following information:

1. Agricultural Use. Historical reasonable beneficial use (This includes both water used by the contractor within its service area and water transferred by the contractor for use outside its service area) projected future reasonable beneficial use including projected cropping patterns.
2. M&I Use. Present and future reasonable beneficial use for current and projected populations, commercial, and industrial growth. The contractor's analysis should be consistent with the State of California's population projections, County's and City's general plans, general industrial water use data, and/or other adequate supporting documentation.
3. All Uses. All uses are to comply with the contractor's water conservation plans, and such plans are to comply with Reclamation's current water conservation criteria.

C. Payment. Payment will be required in the contract for the applicable water service rate and payments and surcharges including but not limited to those required by P.L. 102-575.

1. Water Service Rate. Interim renewal contracts will require the payment of the appropriate cost of service and full cost water rates established by Federal law and the current CVP ratesetting policy. The water rates will be adjusted annually in accordance with Reclamation Reform Act of 1982 (RRA).
2. Operation and Maintenance (O&M) Non-interest Bearing Deficit Accelerated payment of O&M non-interest bearing deficits will be required. Section 106 of Public Law 99-546 requires the Secretary of the Interior to

include in each new or amendatory contract for delivery of water from the CVP provisions ensuring that any annual deficit incurred by a CVP water contractor in the payment of the operation and maintenance costs of the CVP is repaid by such contractor under the terms of such new or amended contract. The contractors will be required to pay the United States their outstanding CVP O&M non-interest bearing deficit over the term of the interim renewal contract. A contractor may request a longer repayment period than the term of the interim renewal contract and the Contracting Officer may approve a payment period extension. However, approvals for payment period extensions will include contractual provisions that require the deficit to accrue interest at the rate described in section 106 of the Act of October 27, 1986 (P.L. 99-546) (100 Stat. 3050). Exceptions to this requirement for any extensions to bear interest may be granted on an individual basis because of undue hardship [such as natural disasters, accidents within the District (e.g., physical breakdown of facilities or other emergencies threatening or causing interruption of service), financial insolvency, etc.,] or other conditions that result in a substantial reduction (i.e., more than 50 percent) in available water supply. Granting of any exceptions will be at the sole discretion of Reclamation and must be fully documented and justified in writing.

3. **Payments and Surcharges Required by P.L. 102-575.** The following charges will be paid into the Restoration Fund:
 - a. **Restoration Payments.** These charges will be included pursuant to Section 3407(d)(2) of P.L. 102-575. Charges will be computed in accordance with separate interim guidelines developed for Section 3407 of P.L. 102-575.
 - b. **Friant Surcharge.** This surcharge will be included in interim renewal contracts for CVP water supplies from the Friant Division pursuant to Section 3406(c) of P.L. 102-575. Charges ranging from \$4.00 to \$7.00 as specified in Section 3406(c) will be assessed.
 4. **Monthly Payments.** Interim renewal contracts will provide that the water service rate as defined in section C(1) above will be made on a monthly basis two months in advance of delivery. Payments and surcharges as defined in section C(3) above will be for water delivered in accordance with the interim guidelines being developed for Section 3407 of P.L. 102-575.
- D. **Water Transfer.** Separate interim guidelines for water transfers have been developed pursuant to Section 3405(a) of P.L. 102-575 and will be utilized in implementation of water transfers. All interim renewal contracts will comply with these guidelines, as revised and updated.
- E. **Water Quality.** The provisions contained in Section 3405(c) of P.L. 102-575 will be added to the standard water quality provision. The contractor shall be responsible for compliance with all State and Federal water quality standards applicable to surface and subsurface agricultural drainage discharges generated through the use of Federal or contractor facilities or CVP water provided by the contractor within its boundaries.
- F. **Water Measurement.** Pursuant to the intent of Section 3405(b) of P.L. 102-575, beginning with the first year of the first interim renewal contract, the contractor shall ensure all surface water delivery systems within its service

area are equipped with water measuring devices or water measuring methods consistent with the Department of the Interior, Bureau of Reclamation Water Measurement Manual within five years of the date of the initial contract renewal. The contractor shall ensure that water delivered for irrigation purposes measured at each agricultural turnout and that water delivered for M&I purposes is measured at each M&I service connection. The contractor shall be responsible for installing, operating, maintaining and repairing these measurement devices at no cost to the United States. All measurement methods employed by the contractor shall also be implemented at no cost to the United States. Measurement devices or water measuring methods of comparable effectiveness installed or implemented pursuant to this Article must be acceptable to the Contracting Officer. The contractor shall use the information obtained from such water measuring devices or water measuring methods for billing purposes. The contractor shall include a summary of the information obtained from such water measuring devices or water measuring methods in the annual report required under the water conservation article.

The contractor shall inform, in writing, Reclamation and the State of California annually as to the monthly volume of surface water delivered within its boundaries.

- G. Water Conservation. The interim renewal contracts will require the contractor to prepare and be implementing a water conservation plan. Reclamation has developed "Criteria for Evaluating Water Conservation Plans" dated April 30, 1993 (Criteria). All water conservation plans, including those required under Section 210 of the RRA, will be evaluated to determine if they meet these Criteria. These Criteria were developed pursuant to Section 3405(e) of P.L. 102-575. The contractor must have a water conservation plan that meets Reclamation's water conservation criteria prior to execution of the interim renewal contract unless there are, in the opinion of Reclamation, extenuating circumstances beyond control of the contractor for developing and implementing a water conservation plan that meets Reclamation's water conservation criteria. In addition, contracts for M&I water will require such contractors to implement Best Management Practices identified by and time frames issued by the California Urban Water Conservation Council unless any such practice is found by Reclamation to be inappropriate for such contractor.

The contractor will be required to submit to the Contracting Officer annual reports on the status of implementation of the water conservation program.

At subsequent 3-year intervals, the contractor will be required to submit to the Contracting Officer for review an updated water conservation plan that meets with Reclamation's then current water conservation criteria.

Step 5 B(3) in Reclamation's water conservation criteria of Best Management Practices tasks a district/entity to: "Implement an increasing tiered block water pricing structure, or other water pricing structure, that promotes the most effective management of water." Reclamation will require any district/entity that does not implement an increasing tiered block pricing structure within 18 months of the execution of its interim renewal contract to have a tiered pricing contractual provision in any subsequent interim renewal contract. Reclamation intends to review the contractor's progress in implementing this provision at least annually to ensure that the district/entity is complying with all the terms and conditions of its water conservation plan and contract.

- H. Water Shortage. The water shortage article will provide that a shortage occur during any year in the quantity of water made available to the contractor by the United States through and by means of the CVP. The cause of the water

shortage may be drought or other causes including but not limited to, compliance with federal and state laws and regulations. The interim renewal contracts will contain language that gives the United States the authority on how Project water is allocated within the CVP.

- I. **Discretionary Provisions of RRA.** The interim renewal contract will subject the contractor to all discretionary provisions of the RRA.
- J. **Standard Articles.** The current standard articles will be included in the interim renewal contracts such as the Water and Air Pollution Control, Equal Opportunity, Compliance with Civil Rights Laws and Regulations and Officials Not to Benefit.