United States Department of the Interior

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U.S. Fish and Wildlife Service
Region 1
911 N.E. 11th Avenue
Portland OR 97232-4181

U.S. Bureau of Reclamation
Mid-Pacific Region
2800 Cottage Way
Sacramento CA 95825-1898

Dear Interested Party:

Subject: **Central Valley Project Improvement Act Administrative Proposal on Urban Water Supply Reliability**

In September 1995, the Department of the Interior (Interior) invited the public to identify concerns they had regarding implementation of the Central Valley Project Improvement Act (CVPIA). To facilitate public input and discussion, representatives of Interior held a series of public meetings between September 1995 and April 1996. During these meetings, 12 major areas of concern were identified, and individuals volunteered to form work teams and discuss the specific issues pertaining to those areas. In April 1996, Interior committed to the preparation of an Administrative Proposal for each of the 12 areas of concern to address the principal issues raised by stakeholders during the public forum and work team meetings.

To that end, Interior circulated the draft Administrative Proposal on Urban Water Supply Reliability on June 14, 1996, for review by interested parties, and received written comments from 7 parties. Enclosed is the final Administrative Proposal on Urban Water Supply Reliability which has been revised to reflect key comments received, as well as previously raised concerns.

We would like to extend our appreciation to all those who participated in our public process to find ways to resolve this and other CVPIA implementation issues. Completion of this and other final proposals will not end the need for stakeholder involvement in the implementation of the CVPIA. We look forward to working with you and other members of the public in the future as we implement the CVPIA.

Copies of this final proposal can be accessed on the Mid-Pacific Region's home page at http:/www.mp.usbr.gov or can be obtained by calling Ms. Alisha Sterud at 916/979-2435 (TDD 916/979-2310).

Sincerely,

Roger K. Patterson
Regional Director
U.S. Bureau of Reclamation
Mid-Pacific Region

Michael J. Spear
Regional Director
U.S. Fish and Wildlife Service
Region 1

Enclosure

INTRODUCTION

In September 1995, the Department of the Interior (Interior) invited the public to identify any concerns they had regarding implementation of the Central Valley Project Improvement Act (CVPIA) (Title XXXIV of Public Law 102-575). To facilitate public input and discussion, representatives of Interior held a series of public meetings between September 1995 and April 1996. During these meetings, 12 major areas of concern were identified,[1] and individuals volunteered to form work teams and discuss the specific issues pertaining to those areas. In April 1996, Interior committed to preparation of "Administrative Proposals" on each of the 12 areas of concern, addressing the principal issues raised by stakeholders during the public forum and work team meetings. To that end, Interior circulated a draft Administrative Proposal on Urban Water Supply Reliability on June 14, 1996, for review by interested parties. Written comments on the draft proposal were received from seven parties. This Administrative Proposal on Urban Water Supply Reliability has been revised to reflect the key comments received on the draft proposal as well as previously raised concerns. Responses to specific comments are provided in the attached appendix.

BACKGROUND

In January 1993, Central Valley Project (CVP) urban contractors met with Reclamation to discuss the impacts of the 4 previous years of drought on urban communities and to relay their concern that urban contractors needed a reliable contract water supply for future drought contingency planning. Additionally, the drought highlighted the different Municipal and Industrial (M&I) contract shortage provisions[2] that exist among M&I contractors and the potential inequities that could exist when CVP water is allocated using such shortage provisions. The urban contractors also pointed out that one of the purposes of the CVPIA is to achieve a reasonable balance among competing demands for the use of CVP water including M&I needs. As a result of this meeting, Reclamation undertook development of a CVP M&I Water Shortage Policy. The goal of the M&I Water Shortage Policy was to develop a CVP-wide M&I water shortage provision that eventually would be negotiated with all CVP M&I contractors and incorporated into their contracts, provide a minimum level of water supply that, in combination

[1] The 12 areas of concern are the following: conservation, contracting, Anadromous Fish Restoration Plan (AFRP), management of Section 3406(b)(2) water, Restoration Fund, urban reliability, transfers, refuge supply, San Joaquin River, Trinity River, Stanislaus River, and the stakeholder process.

[2] CVP M&I contractual shortage provisions range from those that are silent on the issue of apportionment of CVP water supply between agricultural and M&I contractors to those calling for agricultural contractors to have their water supply reduced by 25 percent of contract supply before any water shortage can be imposed on M&I contractors.

with M&I contractors drought water conservation measures, would sustain urban areas during drought situations, and lastly provide sufficient information to urban contractors for use in development of future drought contingency planning. This proposal is not intended to adversely impact fulfillment of the environmental requirements of the CVPIA.

The Draft M&I Water Shortage Policy was released to all interested parties, organizations, contractors, and agencies for comment on February 17, 1994. This draft interim policy identified three levels of water supply: a regulatory level where the minimum water supply would be the greater of 75 percent of contract entitlement or 85 percent of historic usage; a hydrologic shortage with a minimum level of 75 percent of historic use; and finally, a public health and safety water supply level that would be triggered when CVP water supplies were severely constrained. After reviewing comments, Reclamation adopted the draft as an interim policy on which to base contract amendments, pending completion of ongoing studies associated with the CVP yield and the Programmatic Environmental Impact Statement (PEIS) required under Section 3409 of the CVPIA.

On October 12, 1995, California State Senate Bill 1011 (California Act) was signed into law. The California Act highlighted the concerns of the CVP urban contractors by emphasizing the critical importance of urban water supply reliability by requiring urban suppliers to prepare a water shortage contingency analysis detailing specific actions they must take during water shortages. It also requires urban water suppliers to accomplish an assessment of the reliability of its water service to its customers.

Actual M&I deliveries in 1994 were approximately 336,000 acre-feet (19 percent) of total CVP water deliveries of approximately 1,759,000 acre-feet. Projected M&I demand in the year 2022 is approximately 683,000 acre-feet, which translates into 18 percent of projected total deliveries of 3,859,000 acre-feet[3].

[3] Actual deliveries and projected demands were obtained from the 1996 CVP Irrigation and M&I ratesetting books. Total deliveries include only those amounts of CVP water made available for M&I and agricultural uses and excludes deliveries of base supplies under Sacramento River settlement contracts, CVP water delivered under the Exchange contracts, and CVP water delivered under Friant Division contracts.

SUMMARY OF ISSUES

The Urban Water Supply Reliability Work Team identified 13 issues.[4] Interior considered 3 of the 13 issues as key issues which this administrative paper addresses. The three issues are (1) what minimum level of reliability should be provided to urban water contractors, (2) how should other water supplies developed by a contractor be considered/protected in urban shortage allocations, and (3) what should be the reliability of water converted or transferred from irrigation to M&I use? Each of the key issues is discussed below.

DISCUSSION OF ISSUES AND INTERIOR PROPOSALS

What Minimum Level of Reliability Should Be Provided to Urban Water Contractors?

Stakeholder Views. Urban contractors believe that a reliable water supply is needed to sustain the urban economy and support urban populations. Additionally, urban contractors believe that long-term infrastructure and land use planning, as well as manufacturing, commercial, or residential capital investment, cannot be supported by short-term administrative policies affecting the reliability of urban water supplies. The urban contractors support their position by stating that: M&I contractors pay higher rates for CVP water than agricultural contractors; urban areas have more gross regional product than agricultural service areas; agricultural areas have greater ability to tolerate and adjust for water shortages (urban areas can reduce use during water shortages, but the flexibility to reduce water use past a certain point is severely limited); and lastly, urban areas need to know the reliability of CVP supplies in order to determine the investment needed to firm up supplies of water as part of their drought contingency planning process.

Agricultural contractors believe that the CVP already is overly constrained and that the guarantee of any minimum level of reliability to one class of CVP urban contractors will impact agricultural water service users and should require a reallocation of CVP costs. Agricultural contractors believe that urban contractors should firm up their reliability through voluntary water transfers. Agricultural contractors believe the CVPIA gave M&I contractors access to agricultural water and that any additional reliability should be through a willing buyer and seller arrangement. Additionally, agricultural interests argue that "fairness" dictates that giving preference to urban contractors in the delivery of CVP water is not justifiable given the

[4] Attachment A contains a list of issues identified by the Urban Water Supply Reliability Team.

demands[5] that have already been placed on the CVP water supply by the CVPIA, Endangered Species Act of 1973 (ESA), and Bay-Delta. Furthermore, agricultural interests believe that if a preference is given to urban contractors in water allocations during drought years, then agricultural interests should be compensated. Lastly, if a preference is given to urban contractors because they are paying a higher cost for the water, then there may be some agricultural contractors with particularly high value crops that may want to pay more for greater water supply reliability from the CVP.

Interior Response. Reclamation's experience from the last drought where M&I contractors submitted numerous requests for hardship and critical needs water because reduced water allocations did not meet their minimum water supply needs demonstrated that urban contractors need a minimum level of water supply reliability. Reclamation, however, believes that scarce water supplies available during below normal type water years require more stringent measures to ensure that available water is prudently and wisely used. The most important measure is that urban contractors who receive this minimum level of reliability must be implementing significant water conservation practices.

Reclamation proposes to simplify and clarify the Draft M&I Water Shortage Policy that was released for comment in February 1994 by reducing the policy from three levels to two. One level will show the minimum level of reliability to be 75 percent of historic use adjusted for growth[6] and adjusted for quantities of water associated with the implementation of any extraordinary water conservation action and/or practice.[7] The second level will reflect a public health and safety level. This shortage policy would give urban interests the information they need for water operation planning and yet give Reclamation the flexibility to operate and manage the CVP during times of water shortage.

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[5] Agricultural interests reference Section 3406(b)(2), refuge water supplies and Trinity River flows; ESA requirements on pumping, temperature control, and gate closures; Bay/Delta Accord requirements for increased outflow and restricted pumping; Folsom Reservoir reoperation, new demands on the system by new contracts or contractors that have not exercised their contract to date (Public Law 101-514 contracts, East Bay Municipal Utility District [EBMUD]).

[6] "Adjusted for growth" refers to a process whereby Reclamation reviews historical delivery records for past water usage and allows contractors to provide documentation to support any increases in the historical record baseline populations/industry. It would be capped at the level of full contractual amounts.

[7] An extraordinary water conservation action or practice is considered to be any conservation action or practice implemented by an urban contractor that is more stringent than required by Reclamation's "Criteria for Evaluating the Adequacy of All Water Conservation Plans" dated September 30, 1996, as amended, supplemented, or replaced.

Once adopted, Reclamation proposes to implement such an M&I Water Shortage Policy in a way that minimizes impacts to agricultural contractors. An analysis will be done to quantify any impacts and explore possible mitigation measures before this policy is finalized. This policy, as modified, will continue to be only an interim policy until ongoing studies associated with the CVP yield and the PEIS required under Section 3409 of the CVPIA are completed. Once such studies and the PEIS are completed, the goal is to modify the M&I Water Shortage Policy again, if necessary, make it available for public review and comment, complete any additional applicable environmental requirements, and ultimately adopt a final policy.

How Should Other Water Supplies Developed by a Contractor Be Considered/Protected in Urban Shortage Allocations?

Stakeholder Views. Some CVP contractors have a number of sources of water supply. Others rely entirely on the CVP for water supply. In making allocations to M&I contractors during shortage years, should Reclamation take into account the availability of these other supplies? Should the reliability of CVP water supply given to a contractor who relies solely on the CVP be greater than the reliability of CVP water supply given to a contractor who has developed other water supplies? Additionally, should the CVP provide a level of reliability to M&I contractors who have other sources of supply when the result would be reduced deliveries to agricultural contractors?

Urban contractors and other interests believe that the availability of other water supplies should not be taken into account by Reclamation in making allocations to M&I contractors. According to urban contractors, additional investments in alternative or supplemental sources of supply were not intended to increase the yield of the CVP, but to minimize current and future shortages within the contractor's service area. Urban contractors believe that even if the shortages are limited to 25 percent of supply, some urban populations will not tolerate the mandatory rationing, conservation, and economic disruption that may be required to achieve a 25-percent reduction in water use. Urban contractors further state that by including available supplies from other sources, Reclamation would substantially diminish the value of existing investments and deter the development of new sources of supply. There would be no incentive for contractors to develop long-term water transfers, water banking programs, or other projects that increase the availability of dry year supplies. Lastly, urban interests contend that all M&I contractors are allocated CVP costs on an equal basis and, therefore, it would be inequitable to create differences in the allocation of benefits. However, urban contractors also recognize that there may be times when water supply conditions are so critical that all sources of supply must be taken into account when making CVP allocations, such as when the CVP cannot deliver a minimum supply to the wildlife refuges or when deliveries to agriculture are so low that maintenance of trees and vines is in jeopardy.

Other urban contractors state that they do not have the financial resources to develop alternative sources of supply, and they need greater protection in shortage situations.

Agricultural contractors are concerned that limited CVP water supplies may be given to an M&I contractor that has the resources and capability of developing its own reliability. They question the wisdom of giving such M&I contractors this benefit at the expense of other CVP contractors.

Interior Response. Reclamation strongly encourages all of its contractors to develop supplemental sources of water supply. It is not Reclamation's intent to penalize any contractor who has a supplemental source of water supply when calculating the minimum level of water supply during water shortages. The decision of whether Reclamation will consider other sources of water supply available to its M&I contractors depends on the overall water year type and CVP system operational constraints. For example, in previous years of critical water availability, Reclamation has asked M&I contractors to identify the minimum amount they need to supplement their other sources of water supply. Under such situations, the water allocation may drop below 75 percent of historic usage to some M&I contractors.

The availability of other water supplies is part of the decisionmaking process. By basing the allocation on 75 percent of "historic use," we partly incorporate the impact of other water supplies. However, Reclamation will need to work with the contractors with diversified water supplies on a contractor-by-contractor basis to ensure that Reclamation's policy does not encourage water use simply to increase the amount calculated as an urban contractor's historic use for purposes of having a larger allocation during critical water years. As part of the historic use calculation for water shortage allocations, Reclamation would be willing to adjust the calculated urban contractor's historic use quantity if an urban contractor could demonstrate that it used its supplemental water supplies first before using CVP water supplies.[8] The use of supplemental water supplies benefits the CVP during all water year types.

Reclamation recognizes that M&I contractors need a minimum level of reliability and yet that level should not be so high that it becomes a disincentive to M&I contractors to firm up other sources of water supplies. Reclamation is working with CVP contractors south of the Sacramento-San Joaquin Delta on a draft reallocation agreement through which M&I contractors are attempting to firm up supplies in dry years. Additionally, to encourage other M&I contractors to firm up their existing supplies, Reclamation could propose a two-tier level of reliability. The first tier would be given to M&I contractors as a minimum reliability level regardless of other supplies. The second tier would be a higher percentage, but would require an M&I contractor to pay a charge for this additional level of reliability. In essence, the CVP could be the "other source of supply" for some M&I contractors. The two-tier level of reliability may be explored in future discussions. Such discussions will be open to the public and we will also

[8] One urban contractor asked what would be the water allocation to an urban contractor who has not used CVP water in the past but may need to obtain CVP water during a water short year. Reclamation recognizes that this is a legitimate concern and Reclamation has worked in the past with such contractors and will work in the future with such contractors in allocating a water supply.

seek public comments on any two-tier proposal. The Urban Water Supply Reliability Work Team will also be notified of future discussions on this approach and be given an opportunity to participate in future meetings.

What Should Be the Reliability of Water Converted or Transferred from Irrigation to M&I Use?

Stakeholder View. Agricultural interests believe that the water shortage criteria which applies to agricultural water converted to M&I water through contract assignment or water transfers should not change because of such conversion or water transfer. If urban water supply reliability is applied when water is converted or transferred to M&I, other agricultural contractors will be impacted negatively.

Some urban interests generally agree. Other 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. Additionally, urban interests believe that increased reliability could be earned by water supply contractors with a proven history of efficient conservation.

Interior Response. Interior believes that the draft M&I Water Shortage Policy, once finalized, 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. 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. As such, Reclamation agrees with maintaining the same water shortage criteria as was applicable to the water before the transfer or conversion occurred on all actions after September 30, 1994. However, an urban contractor could request that a permanent conversion from an agricultural shortage to an M&I water reliability shortage be authorized, provided that there are no adverse impacts to agricultural or other urban water supplies.