

United States Department of the Interior

MAR 20 1997



**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 Water Conservation

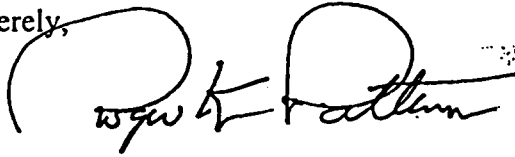
In September 1995, the Department of the Interior (Interior) invited the public to identify concerns they had regarding implementation of the Central Valley Project Improvement Act (CVPIA). To facilitate public input and discussion, representatives of Interior held a series of public meetings between 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 Water Conservation on May 31, 1996, for review by interested parties, and received written comments from 16 parties. Enclosed is the final Administrative Proposal on Water Conservation 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. A process for continued stakeholder involvement will be defined in a separate, forthcoming administrative proposal.

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,

Handwritten signature of Roger K. Patterson in black ink.

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

Handwritten signature of H. Dale Hall in black ink.

H. Dale Hall
Assistant 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 (Title XXXIV of Public Law 102-575) ("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,¹ and individuals volunteered to form workteams 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 workteam meetings. To that end, Interior circulated a draft Administrative Proposal on Water Conservation Criteria on May 31, 1996, for review by interested parties. Written comments on the draft proposal were received from 14 parties. This Administrative Proposal on Water Conservation Criteria 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

Section 210 of the Reclamation Reform Act requires Districts with certain types of contracts for water with Reclamation to prepare and submit Water Conservation Plans (Plans) with appropriate goals, measures, and timetables. Districts are asked to submit updated Plans every 5 years. This paper addresses water conservation requirements specifically applicable to the CVP under Section 3405(e) of the CVPIA. That section directs Reclamation to develop "criteria for evaluating the adequacy of all water conservation plans developed by [CVP] contractors." In response to this directive, Reclamation published its first set of "Criteria for Evaluating Water Management Plans" (Criteria) on April 30, 1993. Sixty districts have completed plans pursuant to the Criteria, including all districts receiving CVP water under interim renewal contracts.

Section 3405(e) also provides for periodic review of the criteria, at least every 3 years. Reclamation initiated a public review of the 1993 Criteria in October 1995. Reclamation's

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.

Water Conservation Office staff then met with the stakeholder workteam to discuss the water conservation Criteria beginning December 19, 1995. Draft revised Criteria were presented to the stakeholder workteam on March 6, 1996, and were subsequently released to the public. Many of the comments indicated that the draft revised Criteria represented an improvement over the 1993 version, although many commenters still raised some concerns. A second draft of the revised Criteria was prepared and released for comment on July 9, 1996. Comments received on that draft were incorporated in the final 1996 Criteria, which were issued on September 10, 1996.

SUMMARY OF ISSUES

The Water Conservation Workteam² identified six major issues surrounding the Water Conservation Criteria: (1) Applicability of certain Best Management Practices (BMP's) in different regions; (2) measurement; (3) the exemption process; (4) consistency of Reclamation's criteria with the voluntary Memorandum of Understanding (MOU) being developed by an Agricultural/Public Interest Group Task Force; (5) tiered pricing by contractor to grower; and (6) discretionary benefits.³ Each of the key issues is discussed below.

² The Conservation Workteam was chaired by Jeff Jaraczski of Northern California Water Association. The other members were David Aladjem, Sacramento River Users; Roberta Borgonovo, League of Women Voters; John Brooks, U.S. Fish and Wildlife Service; Ed Craddock, Department of Water Resources; Debra Goodman, Bureau of Reclamation; Dennis Keller, of Keller, Wegley and Associates, representing the Cross Valley Canal Water District; Laurence Kimura, Friant Water Users Authority; Curtis Lynn, chair of AB-3616 Committee; Max Sakato, Sutter Mutual Company; Dave Sunding, UC Berkeley; Jeanette Thomas, Stockton East Water District; Greg Wang, Central Valley Project Water Association; and Ronnie Weiner-Cohen, Natural Resources Defense Council.

³ The Workteam also raised a number of other issues that are either subsumed in the major issues discussed in this proposal or addressed elsewhere. They are: (1) Deference to the San Joaquin Valley Drainage Report; (2) applicability of Water Conservation Plan requirement to refuge water and 800,000 acre-feet; (3) public comment on Plan acceptability; (4) nonapplicability of Water Conservation Plan requirement to non-CVP supplies; (5) evaluation procedures of BMP's; (6) definition of good water management; (7) content of annual reviews; and (8) applicability of Water Conservation Plan requirement to dedicated water supplies. Issue 1 is dealt with in the revised Criteria; Issue 2 in the Refuge Water and "B2" Administrative Proposals; Issue 3 will be addressed in the revised guidebook for preparing Water Conservation Plans; Issue 4 will be addressed in the revised guidebook for

DISCUSSION OF ISSUES AND INTERIOR PROPOSALS

Applicability of Best Management Practices (BMP's) in Different Regions

Stakeholder Views. Some water users have argued that it is inappropriate to establish a single set of criteria for water conservation plans in the CVP service area due to regional variations in soil types, hydrologic considerations, presence of return flows, riparian habitat, conjunctive use, reuse of water, cropping patterns, economic considerations, and drainage conditions. In particular, Sacramento Valley water users believe that the mandatory BMP for measurement, and the exemptible BMP's for canal lining and incentive block pricing, are inappropriate for their region. They believe that they are already practicing good water management, because any "excess" irrigation water is eventually recaptured in the Sacramento River, in groundwater basins, and through reuse, or provides riparian or wetland habitat values. They also argue that, while pesticide use in the Sacramento Valley has decreased dramatically in recent years, reduced drainage flows could have negative impacts on habitat due to resulting increased pesticide concentrations.

Environmentalists, on the other hand, are skeptical about the habitat benefits of Sacramento Valley water use patterns, arguing that water provided by return flows is not a desirable substitute for high-quality in-stream flows. They argue that the timing of return flows may not match fish in-stream flow needs, and that the quality of return flows is likely to be degraded. They also argue that the river stretch between diversions and return flows would benefit from decreased diversions. Last, they contend that incidental groundwater recharge and return flows into the river are not as efficient as a planned conjunctive use program with supplies from water conservation, facilitated by volumetric measurement and pricing.

It has been suggested that regional criteria be developed in lieu of a single set of criteria for the whole CVP. Some people believe that regional criteria are unnecessary in light of the exemption process contained in the Criteria, which they believe will allow each District to tailor a plan that fits local conditions. Others are concerned that heavy reliance on the exemption process creates an unnecessarily negative perception about a district's conservation planning process. However, there was consensus in the Water Conservation Workteam that the possibility of regional criteria should be explored.

preparing Water Conservation Plans; Issue 5 in the revised Criteria; Issue 6 in the discussion in this proposal regarding regional criteria; Issue 7 will be addressed in the revised guidebook for preparing Water Conservation Plans; and Issue 8 in the revised criteria.

Interior Response. Interior agrees that regional criteria are worth exploring, and therefore plans to develop such criteria for one area as an experimental first step. We propose to develop a set of regional criteria for the Sacramento Valley, given its unique conditions and circumstances, because the development of regional criteria has been suggested primarily in response to concerns about the appropriateness of BMP's for that area. These regional criteria would largely be the same as the CVP-wide Criteria, except on those issues where a separate approach may be warranted, such as, for example, on measurement and pricing.

Some questions were raised regarding the applicability of the existing Water Conservation Criteria to Sacramento Valley districts during the interim period before regional criteria are developed. Interior will use the final revised CVP-wide Criteria to evaluate all conservation plans or plan updates submitted by any district prior to the adoption of regional criteria. We expect to adopt regional criteria for the Sacramento Valley by October 1997. The regional criteria will be used to evaluate conservation plans that have not yet been submitted under the CVPIA by Sacramento Valley districts, which are the plans from the Sacramento River water rights contractors.

As part of settlement of litigation, in January 1997, eight of the largest diverters among the Sacramento River water rights contractors agreed to develop a basinwide water management plan in cooperation with Reclamation and in consultation with the State of California and other interested parties. The process for gathering information and developing the plan is set out in an MOU between Reclamation and the contractors. The parties to the MOU agree to actively encourage participation of other interested water rights contractors in the MOU. The MOU stipulates that the plan is to be developed by January 1, 1999, and will be implemented by January 1, 2000. The Districts have agreed that the basinwide water management plan will include, among other items, Water Conservation Plans, as well as opportunities for using incentives to improve water management, such as approaches to improving water measurement and for incentive pricing structures. Interior would expect the conservation plans included in the basinwide management plan to be developed under the regional criteria, assuming that regional criteria can be successfully developed.

Interior is committed to a conservation policy that encourages and facilitates the most efficient use of water for the benefit of all users. The foundation of this policy recognizes the importance both of protecting the environment and its associated resources, and of preserving California's agricultural lands, a limited resource that has been and continues to be vital to the well-being of the State. In developing regional criteria for the Sacramento Valley or elsewhere, we remain committed to improving water use efficiency and to establishing incentives for reduced water use wherever such reductions are warranted. We will evaluate the effectiveness of the regional criteria closely before proceeding with a similar approach for other areas. If we find for any reason that regional criteria are not as effective as the existing

Criteria, we will continue to use the existing Criteria for evaluation of Water Conservation Plans.

Other parties commented that regional criteria should also be developed for their district or service area. While we are willing to consider the adoption of regional criteria for other regions, we believe it is essential to evaluate the success or failure of the first set of regional criteria before committing to further regional criteria. Therefore, we will revisit this issue upon request after completion of the Sacramento Valley regional criteria.

Measurement

Stakeholder Views. Environmentalists believe that measurement is a critical element of improved water management. They argue that an entity cannot manage water efficiently or improve upon current water management practices unless the quantity of water delivered to each water user is accurately measured. While they acknowledge some water users' argument, primarily in the Sacramento Valley, that the water use is already 100 percent efficient because all excess water eventually returns to the river, environmentalists believe that the argument ignores concerns regarding the timing of return flows relative to fish needs, reduced instream flows between diversion and return flow points, and water quality impacts of return flows. Furthermore, they argue that the analysis of the cost-effectiveness of on-farm conservation measures is based upon quantification of water savings, which requires accurate measurement and volumetric pricing.

In addition to arguing that excess water returns to the river, water users assert that excess water provides riparian habitat and ground-water recharge benefits. They also argue that they are already measuring the use of water, as it enters the service area, at various places within the service area, and as it leaves the service area. Accordingly, they maintain that these measurements, when combined with other information pertaining to known factors such as evapotranspiration (ET), consumptive use, deep percolation, and water duties for locally grown crops, provide enough information to determine whether they are using water efficiently. They believe, therefore, that any benefits that might result from measurement of individual customers' water use would be too small to justify the cost.

Interior Response. There is merit in both positions. It may well be true that some water users are already managing their water efficiently enough that the measurement requirements contained in the current water conservation criteria would provide little benefit and could be burdensome on the users. It may also be true in parts of the Sacramento Valley that "excess" irrigation water is not lost to the overall hydrologic system by contributing to ground water and providing wildlife habitat. However, some form of measurement will be needed to determine the validity of these arguments.

The first step in resolving the measurement controversy in the Sacramento Valley is to collect additional information regarding overall water uses within each District. As part of the above-mentioned MOU, we will be working with those Districts that have not yet submitted plans under the CVPIA, along with other interested stakeholders, to assess how they are currently measuring water and what indirect benefits and/or impacts are resulting from current water use patterns. The MOU specifically provides for an evaluation of water delivery and use within the Sacramento Valley; a water balance for the Sacramento River Watershed, including the identification of opportunities to meet full wildlife refuge water supply needs with the Sacramento Valley; best management practices and opportunities for conjunctive use of surface and ground-water resources consistent with protecting safe yield of both resources and applicable law; opportunities for using incentives to improve water management, such as approaches to improving water measurement and for incentive pricing structures; opportunities for environmental enhancement through modification in water management, such as decreasing diversion of surface water and altering the timing of diversions and releases to coincide with fishery needs; and an analysis of the use of water transfers to improve the water supplies of other water users within the Sacramento Valley. As these efforts proceed, we will be working with stakeholders to develop a consensus on what regional criteria should be adopted for evaluation of Water Conservation Plans to be developed under the regional management plan.

The Exemption Process

Stakeholder Views. The Criteria contain two categories of Best Management Practices—those considered "critical," which are mandatory—and those considered "exemptible," which are mandatory unless a District demonstrates that the practice is not cost-effective, financially feasible, legal or environmentally possible for the District to implement. Concerns raised about the exemption process include questions as to the appropriateness of requiring demonstration of a practice that "does not make sense" given some of the concerns discussed above regarding appropriateness of certain BMP's in different regions. Additional concerns include questions regarding the degree of documentation necessary to justify an exemption and the desirability of a programmatic exemption approach.

Interior Response. The concerns regarding the appropriateness of requiring Districts to demonstrate why they should be exempted from a particular BMP appear to be rooted primarily in the view described above that certain practices are inherently inappropriate for certain regions. Given our intent to develop a set of regional criteria for the Sacramento Valley, this concern should be alleviated as to that area. We have also included in the final revised Criteria an attachment describing examples of nonapplicability for each exemptible BMP. If the nonapplicable category fits the district, the district can write "NA," and quote the relevant sentence from the attachment. Where a BMP is "applicable" but not feasible, the

user must demonstrate why it is not feasible. We are also considering whether the exemption process under development in the AB 3616 discussions could provide helpful documentation guidance.

Consistency of Reclamation's Criteria With State Program

Stakeholder Views. As a result of a State law passed in 1990, AB 3616, a 6-year effort recently culminated in the signing of an MOU between the Department of Water Resources (DWR) and members of the AB 3616 Advisory Committee regarding efficient agricultural water management practices (EWMP's). The EWMP's are intended to be used by DWR and others to encourage efficient water management by agricultural suppliers. There are many similarities between Reclamation's Criteria and the EWMP's in the MOU, but some EWMP's are treated differently in the MOU than in Reclamation's Criteria. For example, water measurement and pricing are treated in the MOU as practices that must be evaluated for costs and benefits before any decision is made as to their implementation. In Reclamation's final revised Criteria, measurement and volumetric pricing are mandatory practices. This raises the question of whether plans developed under the voluntary AB 3616 MOU would be acceptable to Reclamation.

Interior Response. It is desirable for both the voluntary MOU and Reclamation's Criteria to be as consistent and complementary as possible, and that is our goal for the long-term. However, there remain some significant differences between the MOU and the Criteria in the handling of the measurement and pricing issues. We are hopeful that these differences can be resolved through the development of the regional criteria described above. It has been suggested by the California Department of Water Resources that we evaluate how the MOU's "Net Benefit Analysis" deals with these issues regionally. We will do so in the process of developing regional criteria, and will continue to work toward the goal of creating one agricultural conservation program for the Sacramento and San Joaquin Valley basins that can be supported by both Federal and State agencies. It is our goal to have a single program in place by 1999, when the Criteria will next be reviewed and likely revised.

Tiered Pricing (Contractor to Grower)

Stakeholder Views. The environmental community feels very strongly that, along with measurement, pricing is an important foundation for improved water management. They believe that CVP contractors have historically enjoyed subsidies that have been an economic disincentive to manage water efficiently, and advocate the use of district pricing structures that will give growers more accurate signals regarding the true value of water. They have supported the mandatory BMP of volumetric pricing and the exemptible use of tiered (increasing block) pricing.

Agricultural water users have mixed views as to the efficacy of tiered pricing structures. Some believe that tiered pricing has been a useful tool to discourage excessive irrigation in areas with drainage problems. Others have used tiered pricing as a tool to encourage or discourage ground-water pumping as part of a conjunctive use program. Where ground water is not being managed conjunctively, however, tiered (increasing block) pricing could have an adverse effect by encouraging undesirable use of ground water. Some water users also believe that tiered pricing structures would discourage water use patterns that provide incidental benefit as wildlife habitat.

Interior Response. District pricing structures are an important tool for promoting efficient water management. However, we recognize that tiered pricing is not appropriate or useful in all situations. In the process of developing the regional criteria for that area, we will analyze what kinds of pricing structures might be appropriate in the Sacramento Valley. We also have broadened the exemptible tiered pricing BMP in the final revised Criteria to include all forms of incentive pricing. Water users have indicated their desire for additional clarification as to what other pricing structures might be acceptable, and we have, accordingly, listed in the Criteria the following suitable goals for pricing structures: (1) Encouraging more efficient water use at the farm level; (2) supporting planned conjunctive use of ground water; (3) increasing ground-water recharge; (4) reducing problem drainage; and (5) improved management of environmental resources.

Discretionary Benefits

Stakeholder Views. The 1993 Criteria stated that the benefits of discretionary programs will not be granted to Districts that do not have Plans that meet our Criteria (hereinafter "acceptable Plans") or are not implementing such plans in good faith. The Conservation Workteam discussed the appropriateness of Reclamation withholding discretionary benefits pending receipt of acceptable Conservation Plans, but only partial consensus was reached.

Environmentalists believe that Districts have little incentive to develop and implement Conservation Plans due to the absence of any enforcement mechanisms or sanctions for noncompliance. They argue that withholding discretionary benefits is an effective inducement to encourage districts to develop and implement conservation plans, stating that most of the acceptable Plans that have been completed come primarily from those districts facing contract renewals, for which an acceptable Water Conservation Plan was a prerequisite.

Some water users believe that Reclamation does not have the legal authority to condition discretionary actions on the completion of an acceptable Water Conservation Plan. Additionally, they are concerned about the possibility that Reclamation might withhold permission on certain discretionary actions, such as water transfers, due to Districts' decisions

to delay preparation of acceptable Water Conservation Plans, because they were waiting for the forthcoming revision of the Criteria.

Interior Response. We believe that it is appropriate and consistent with the CVPIA to require completion of an acceptable Water Conservation Plan as a condition of a renewed contract. Accordingly, we will continue such a requirement. We also believe that development and implementation of a Water Conservation Plan is an important tool for the evaluation of proposals for water transfers, and will therefore encourage that plans be in place for those Districts wishing to have expeditious approval of proposed transfers. While this policy does not mean that no transfers will be approved for districts that have not yet submitted Conservation Plans, it does mean that approval of transfers will likely take longer for districts without acceptable Conservation Plans because more analysis will be required to establish that "real" water is proposed for transfer.

SUMMARY AND SCHEDULE OF PROPOSED ACTIONS

Most of the issues raised during the Conservation Workteam discussions have been addressed in the final revised Criteria, with the significant exception of the cluster of issues dealing with regional variation, measurement, and pricing. As is stated in the final revised Criteria, these issues will be addressed through the development of regional criteria. As a first step in that process, we will work with stakeholders and the interested public over the coming months to develop consensus on an approach for the issues of measurement and pricing appropriate to the Sacramento Valley. We expect to issue proposed regional criteria in July 1997, with final regional criteria issued in October of 1997.

Some commenters have requested that Interior issue rules and regulations guiding preparation of the Criteria. We agree that it would be valuable to issue general rules regarding the process for triennial review and modification of the Criteria, and intend to do so. We expect that draft rules on the triennial review process will be published in April 1998. Further, whenever we propose to change the Criteria, we will provide notice and an opportunity to comment to all interested parties.

In addition, we found the participation of the water conservation workteam helpful in this effort, and we would consider a similar approach when we conduct our next review of the Criteria.