

May 31, 2002

VIA FACSIMILE AND E-MAIL

Michael J. Ryan
U.S. Bureau of Reclamation
Shasta Area Manager
16349 Shasta Dam Boulevard
Shasta Lake, CA 96019-8400

Re: Contractors' Red-line of Reclamation 5/15-2002 Draft Contract

Dear Mr. Ryan:

Enclosed for your review and our discussion at the June 5, 2002 negotiating session is a red-line of Reclamation's 5/15-2002 Draft Contract. The red-line was prepared jointly by those Settlement Contractors participating in the Basin-wide Water Management Plan process, including my client, Glenn-Colusa Irrigation District. Following is an explanation of the modifications that we propose.

1. The revisions to the title and preamble are to reflect the bi-lateral nature of the contracts in question and underscore the fact that these are Settlement Contracts.
2. First Recital: We believe that it is better to not "recite" matters that might be contentious.
3. Second and Fourth Recitals: We believe that there is no current dispute about whether the respective parties have a right to divert. The dispute, if any, revolves around the relative priority of the right.
4. Fifth Recital: The modifications focus on the history of the dispute that led to the Settlement Contract and corrects the mischaracterization of our right to Base Supply as being only permissive.
5. Sixth Recital: The modifications reference the current litigation and, again, conform the contract as being between parties with equal status.
6. Article 1.(a): The Base Supply is diverted as of right (and under the Contractors' water rights), not with the permission of Reclamation.

7. Article 1.(b): Exhibit "D" should provide a description of the nature and extent ("categories") of "Charges" being agreed to under the Settlement Contract. We, of course, do not object to paying Charges, but do not want an open-ended obligation.

8. We have corrected the contract's references to numbers through use of words and numerals to reflect the modern usage of only numerals.

9. Article 1.(d)(2): We believe that the proposed modifications reflect the intent of the Parties. Development above Shasta (within the area-of-origin) would be junior to the Contractors but senior to Reclamation.

10. Article 2: We believe it important, where appropriate, to make distinctions between Project Water and the obligations that stem from the diversion and use of this water and Base Supply. We request clarification as to whether costs associated with the construction of Sites Reservoir could potentially fall within the definition of "construction costs of water supply works" in this Article.

11. Article 3(a): We believe that water rights obtained by the Settlement Contractors after the Settlement Contracts were executed should not be included in the Contract Total. An alternative might be to increase the Base Supply in Exhibit "A" to reflect this newly acquired water. It is also important that groundwater be excluded.

12. Article 3(b)(2): We have here deleted the provision for a new fee. We believe that the shifting of water, in fact, confers as much benefit on Reclamation as it does the Contractors. In any event, a further discussion of this issue would require some idea of what the fee being proposed would be.

13. Articles 3(d) and 3(e): We have modified the draft language to properly reflect the distinction between Project Water and Base Supply.

14. Article 3(f): We have modified this provision to reflect the expanded diversion season within most Contractors' service areas.

15. Article 4: Again, we have merely modified the draft language to properly reflect the distinction between Project Water and Base Supply. What does Reclamation propose with respect to Colusa Basin Drain language? Do we need to define "non-Project Water"? It is used in several places but it is not defined.

16. Articles 5(a) and 5(b): We have no objection to discussing a reduction in non-critical years. We do, however, believe that compensation for these material concessions on our part is appropriate. We believe that it would be useful to include a new exhibit to the contract that explains, in detail, how the reduction provisions of Article 5(a) will be applied

to each Contractor. We will also need to consider how this proposal will affect the ability to meet Phase 8 obligations.

17. Article 6 (new): We believe that a reference to integrated water management and Settlement Contractor/Reclamation Partnerships is important.

18. Article 7 (re-numbered¹): We have corrected the draft to reflect the agricultural use restrictions in the contract. (See Articles 7(b) and 8(a).) Some Settlement Contracts may need to have unique provisions with respect to M&I conversion. We have modified the language of Article 7(a) to clarify potential ambiguity.

19. Article 7(b): We, of course, recognize and have no problem with the requirement that we adhere to ESA and other requirements. In this regard, we believe it important that the Settlement Contract itself refer to the proper base-line for analysis.

20. Article 8(a): If we accept “take or pay,” then we cannot accept normal rate setting. In addition, take or pay seems to cut against the conservation and water use efficiency policies within the contract, CVPIA and RRA.

21. Article 8(b)(1): Again, we need a more specific idea and limit on what charges can be for. We need to define categories of acceptable Charges.

22. Article 8(d1) deleted: We are uncertain of the reason for (d1). We need further explanation of this proposed provision.

23. Article 8(e): The modification helps to clarify the purpose of this Article.

24. Article 8(h): The reason for the reference to the specific CVPIA provisions is not clear. We will need further explanation.

25. Article 9(a)(2): Again, the modification is to conform the Settlement Contract to its bi-lateral nature.

26. Article 9(b): We have re-written portions of the first proviso to create a process in which both parties are involved. The second proviso is simply not acceptable. If it is mandated and if it were accepted, we could not participate further in the Phase 8 process.

27. Article 10(e): The addition is for clarification.

28. Articles 10(f), 10(g) and 29: We understand that water conservation provisions need to be included within the Settlement Contract. However, over the years we

¹ All references to Article numbers are to the numbers in the red-lined draft.

have discussed with Reclamation, and Reclamation has agreed to, the development of regional criteria that acknowledge the unique nature of water use and re-use within the Sacramento Valley. Indeed, this was a specific, agreed-upon approach arrived at through the so-called "Garamendi Process." We believe the mere insertion of standard San Joaquin Valley conservation language is back-sliding that does not advance the Basin-wide Water Management Program in which we all have been involved. We will shortly provide you with suggested language that better reflects the actual situation that exists within the Sacramento Valley.

29. Articles 18(a) and 18(b): As noted, the term "non-Project Water" is not defined. We made modifications that attempt to distinguish or clarify how Base Supply is to be treated.

30. Article 20: While it is appropriate for Contractors to consult with Reclamation with respect to the issues dealt with in this Article, it is not appropriate to obtain consent. Perhaps some distinction between the use of Base Supply and Project Water would be appropriate?

31. Article 21. As long as all of the obligations and burdens of each of the individual Contractors are assured, no further requirement should be required for approval.

Please do not hesitate to contact me if you have any questions or need additional information.

Very truly yours,

Stuart L. Somach
General Counsel
Glenn-Colusa Irrigation District

SLS:sb

Encl.

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