



United States Department of the Interior

BUREAU OF RECLAMATION
Mid-Pacific Regional Office
16349 Shasta Dam Boulevard
Shasta Lake, California 96019

IN REPLY
REFER TO:
MP-440
WTR-4.0

July 11, 2002

VIA ELECTRONIC MAIL ONLY

Stuart L. Somach
General Counsel
Glenn-Colusa Irrigation District
400 Capital Mall, Suite 1900
Sacramento, CA 95814-4407

Subject: Sacramento River Settlement Contract - Reclamation Response to Contractors'
May 31, 2002, Draft Contract

Dear Mr. Somach:

The Bureau of Reclamation's guiding principle in the Sacramento River Settlement Contract Renewal Negotiations remains the same as when the original contracts were negotiated nearly 40 years ago. That is, given the uncertainties of an unadjudicated river system, we believe the various parties should conduct themselves in a manner that respects both Contractors' interests in providing irrigation water and the United States' interests in operating the Central Valley Project (CVP), one of the Nation's most significant water resource management infrastructures.

As negotiations continue, Reclamation's actions will be predicated upon protecting: (1) the Federal investment; (2) CVP Project Water Service Contractors and other CVP purposes; and (3) the environment. Reclamation's proposals have been prepared with these principles in mind, as well as on the belief that most of the existing language has served all parties well over the past several decades.

In this proposal, Reclamation conveys a reasonable offer we believe meets our mutual needs. The offer is presented as a "package" and represents some give and take from the parties' recent proposals. The cornerstones of the package include:

1. Leaving water quantities untouched both as to total volume and allocation between Base Supply and Project Water (subject to verification by a water needs assessment).

2. Continuing to assure the Sacramento River Settlement Contractors a minimum 75 percent allocation of water, even in critically dry years.
3. Calculating Project Water payment annually using cost-of-service rates and appropriate charges.
4. Requiring payment for the benefit of rescheduling the monthly quantities in Exhibit A from one month to another.
5. Implementing a modified “take or pay” principle.
6. Requiring Contracting Officer approval of Contractor proposals to transfer Base Supply and Project Water.
7. Continuing the principle that return flows can be used and reused by the District within that District’s boundary, but Reclamation is not relinquishing any right it may have to such return flows once the water leaves the District’s boundary.

The proposed package honors commitments made 40 years ago and allows us to continue our strong partnership in the future. With that in mind, the following comments will explain the changes Reclamation has made in the enclosed draft contract. In preparing this proposal, we have considered the points raised by the Contractors’ in our negotiation sessions.

1. The initial title block identifies the United States Department of the Interior, Bureau of Reclamation, and the Central Valley Project. This allows Reclamation to readily identify the document.
2. With respect to the title, we understand the Contractors’ desire to differentiate this settlement contract from a strictly water service contract. However, the term Water Rights Settlement implies a permanent adjustment of water rights such as was accomplished in the San Joaquin Exchange Contracts. As a compromise, the proposed language demonstrates the contract was entered into as settlement of a water rights dispute, and that it also provides for the delivery of Central Valley Project water.
3. We have accepted the majority of the changes you proposed in the preamble. We believe that the reference to the 1939 Act should include reference to section 9 as well as section 14 as there is an element of Central Valley Project water.
4. We have changed the first “Whereas” to eliminate the detailed itemization of project purposes as requested by the Contractors and have replaced it with a generic statement of purposes.
5. We have accepted your proposed changes to the second and fourth “Whereas” clauses.

6. We have accepted a portion of your recommended change to the fifth “Whereas”, but have also modified your language as discussed at the June 26, 2002, negotiation.
7. Reclamation has accepted the majority of the change proposed to the sixth “Whereas”. Some editorial revisions remain to be discussed.
8. Article 1(a). This contract was not intended to equate Base Supply with a quantified amount of water to be diverted under a water right. Our proposal recognizes the Contractors’ right to divert from the river without quantifying that right.
9. Article 1(b) reflects discussions at earlier negotiation sessions and attempts to identify specific charges that would be applicable.
10. Article 1(d) 2. We have returned to the language of the existing contract and have changed the benchmark date to that used in the original contract.
11. Article 2. In addition to making what had been a further proviso to Article 2 into a separate stand-alone subarticle (b), we have agreed to the Contractors’ suggested language indicating that conversion to a 9(d) contract applies to Project Water only.
12. Article 3(a). We did not include the addition of the word “surface.” We do not understand why it is necessary and need further explanation why it adds value to the contract. We have added the phrase “during the period April through October” in order to make this section consistent with the definition of Base Supply.
13. Article 3(b). We have accepted language offered by the Contractors and have modified that language to reflect that diversions made pursuant to after-acquired water rights are not a part of Base Supply or Project Water. We have added language requiring the Contractor to identify in their schedule any water to be diverted during the months of April through October pursuant to water rights acquired by the Contractors after the execution of the Existing Contract.
14. Article 3(c). We have modified the existing scheduling provision to provide for advance scheduling of the Contract Total.
15. Article 3(c) has been modified but retains the requirement that diversions during the period July-August/September not exceed the aggregate of the Contract Totals for those months. This article allows a Contractor to move diversion of water from one month to another (subject to restrictions) and requires that the Contractor pay a fee based upon storage costs for the flexibility being provided by Reclamation facilities. The CVP has had constraints placed on its operational flexibility in the period since the signing of the original contracts. Given the direct diversion nature of the Contractors’ water rights, it is appropriate to recover a fee for this service provided at the Contractors’ request.

16. Article 3(e). Reclamation's modifications to this Article retain the original intent of these contracts to meet the demands for water associated with a specific service area. The Contracting Officer's approval is proposed to ensure proposed transfers meet with Reclamation's Guiding Principles for these contracts.
17. Article (3)(f). The Contractors' change cannot be agreed to, as it would negate the rest of the contract. Reclamation's proposal clarifies that the settlement contract is intended to cover each season from April through October.
18. Article 3(g)(4). Reclamation has retained the waiver of liability for errors in operations. Without examples of how this language has unfairly burdened the Contractor over the past 40 years, we cannot agree to increasing our exposure.
19. Article 4. Reclamation agrees with the principle that return flows can be used and reused by the District within that District's boundary, but Reclamation is not relinquishing any right it may have to such return flows once the water leaves the District's boundary.
20. Article 5. Reclamation has deleted the concept of "incremental deficiencies" contained in this Article, and returned to the original contract language.
21. Article 6. Reclamation has retained most of this Article. However, the last sentence has been deleted, as it would require Reclamation to commit to agreements outside the scope of this contract.
22. Article 7(a). Reclamation agrees with the rewording of this Article, with the addition of "related" to clarify that landscape irrigation relates to domestic use, and not to agricultural purposes.
23. Article 7(b). Reclamation cannot agree to the Contractors' proposed change regarding establishment of a baseline, as the U.S. Fish and Wildlife Service (or the National Marine Fisheries Service) determines the baseline to be used in preparation of biological opinions.
24. Article 8(a). Reclamation is modifying its position on "take or pay" to provide that only 75 percent of the Project Water will be subject to "take or pay". Project Water delivered to the contractor in excess of 75 percent of the amount shown in Exhibit A will be paid for only if actually diverted. Article 8(j)(1) has also been changed to reflect this modification.
25. Article 8(d1). This Article is required to properly account for the fees collected for the movement of water from one month to another, as provided for in Article 3(c)(2).
26. Article 8(e). Reclamation cannot agree to the Contractors' proposal, as it would limit the scope of the activities described in this Article.

27. Article 8(h). Reclamation has changed this Article to reference the proper section of the CVPIA that applies to transfers of Project Water to non-CVP contractors.
28. Article 9(a)(2). Reclamation has modified the Contractors' proposal to clarify that this provision applies to Article 9(a) only.
29. Article 9(b). - ***To be reviewed by Regional Solicitor*** -
30. Article 10(e). Reclamation believes that the existing language is adequate.
31. Article 10(f). We received the Contractor's proposal but we have not yet reviewed it.
32. Article 20. Reclamation's believes the original language of this Article retains the intent of these contracts to meet the demands for water associated with a specific service area.
33. Article 21. Reclamation must retain approval over consolidations in order to verify the financial integrity of the new entity and to ensure the proposed consolidation is accomplished in a manner that recognizes Reclamation's interests in operating the Central Valley Project.
34. Article 29. Water Conservation - We received the Contractor's proposal but we have not yet reviewed it.

Sincerely,

/s/

Michael J. Ryan
Area Manager

Enclosure