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Karr\$ E. Harrigfeld

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February 21, 2000

VIA FACSIMILE AND U.S. MAIL

Ms. Kellye Kennedy
Bureau of Reclamation
2800 Cottage Way
Sacramento, California 95825

Re: Stockton East Water District/CYPIA Water Acquisition

Dear Kellye:

The following comments on the Draft Environmental Assessment/Finding of No Significant Impact on the Temporary Water Acquisition in Support of Bureau of Reclamation Water Year 2000-2003 Operations (Draft EA) are made on behalf of Stockton East Water District (SEWD).

General Comments

SEWD applauds the Bureau of Reclamation for finding creative ways to meet the needs of its contractors. We wish to insure, however, that mechanisms are in place to insure that such creative solutions are utilized in an equitable manner.

You may recall that SEWD requested water under its contract in 1993. and received a 0% entitlement due to increases made pursuant to Section 3406(b)(2) of the CVPIA. A number of meetings were held during 1993 and 1994 wherein SEWD specifically requested that the Bureau acquire water from other sources to fulfill a portion of the contract water needs for those years. The Bureau denied this request stating that there was no mechanism to purchase water for CVP contractors.

We are pleased that the Bureau of Reclamation has successfully determined a method to assist its contractors. However, prior to implementing the proposed project, SEWD specifically requests that the Bureau develop definitive "criteria" for invoking this authority. It is important that all CVP contractors are on a level playing field. SEWD should have equal access to the benefits of the proposed action. In a 90% exceedance year, the Districts will receive 26% of their contractual entitlement, far less than the 50% proposed for South of the Delta agricultural service contractors.

Specific Comments

Page 3.4: In the Groundwater Resources section there is a discussion of the benefits of providing additional surface water in lieu of farmers extracting water to make up their supplies. This analysis is directly applicable to the agricultural users within SEWD and Central San Joaquin Water Conservation District. If surface water is made available, then the farmers will reduce the amount of groundwater extracted from the critically overdrafted Eastern San Joaquin County Groundwater Basin which would result in the same "benefits to groundwater resources~~ seen in the other regions where the water will be utilized.

Page 4.4: The Draft BA includes a statement in the Cumulative Effects section that "the draft Year 2000 budget submitted to the California Legislature by the Governor contained a line item that provides '\$10 million for DWR to acquire water to assist public water agencies in reducing impacts from near-term water shortages.' This budget item has not yet been approved by the California." Is this in addition to the \$10 million of CALFED federal "non-ecosystem" funding for acquiring water to improve operational flexibility for the CVP being utilized for this proposed action?

Conclusion

We look forward to working with the Bureau to develop the criteria necessary to implement the acquisition of water for the benefit of CYP contractors in this and future years.

Very truly yours,

KARNA B. HARRIGFBLD
Attorney-at-Law

KEH:des

cc: Mr. Kevin KaufiThan, Stockton East Water District
Honorable Michael Machado
Mr. Lester Snow
Mr. Lowell Ploss
Mr. Steve Richie

Letter #1 - Karna E. Harrigfeld, representing the Stockton East Water District (SEWD)

1-1: Comment noted.

1-2: Comment noted.

1-3: Comment noted.

1-4: Comment noted.

1-5: Yes, the \$10,000,000 contained in the draft Year 2000 California state budget is in addition to the \$10,000,000 which is the subject of this BA/FONSI.

1-6: Comment noted.



CENTRAL DELTA WATER AGENCY

235 East Weber Avenue • P. O. Box 1461 • Stockton, CA 95201

Phone 2091465-5883

DIRECTORS
George
Rudy Atss
Altec - - - -srmar
COUNSEL —
Dante Jo” - ~meltm.
— Thomas A’ A:Kerrrd-

February 18, 2000

~~Via Facsimile # (916) 978-5528
and Regular U.S. Mail~~

Kellye Kennedy
Bureau of Reclamation
2800 Cottage Way,
Sacramento, CA 95825

Re: Comments on the BA/FONSI on the “Temporary Water Acquisition in Support of Bureau of Reclamation Water Year 2000-2003 Operations.”

Thank you for the opportunity to comment on the above matter. The proposed project involves the acquisition by the USBR of up to 100,000 acre feet of water from the **Kern Water Bank Authority and up to 5,000 acre feet from the Vilder Water Company**. The acquisition presumably could take place solely in water year 2000 (April 2000--March 2001), or over the course of water years 2000 thru 2003. The acquired water “would be provided by Reclamation to CVP contractors in the West ‘San Joaquin and San Felipe divisions.” (FONSI p. 3).

While the Central Delta Water Agency (CDWA) is pleased that the USBR is purchasing water from willing sellers south of the Delta, the proposed project unlawfully and inappropriately earmarks this acquired water for use by CVP contractors in the West San Joaquin and San Felipe divisions.

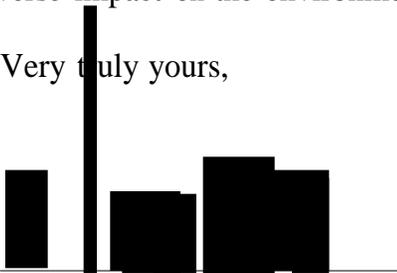
First, the CDWA objects to the use of this water by CVP contractors in the West San Joaquin and San Felipe divisions to the extent the USBR is not in compliance with and/or is not projected to comply with its prior legal obligations to maintain water quality and flows in the San Joaquin River and the Delta. To the extent the USBR is not in compliance with and/or is not projected to comply with its prior obligations, the acquired water must be released from San Luis Reservoir to the San Joaquin River to the extent necessary to meet and maintain compliance with its obligations. Thus far, the BA/FONSI has entirely failed to assess the extent to which this water would be needed to meet and maintain the USBR’s prior obligations.

Second, consistent with the Watershed Protection Act (California Water Code 11460 set seq.), the acquired water should be used to meet the Vernalis pulse flow and/or Vernalis water quality objectives as contained in the 1995 Water Quality Control Plan to the extent necessary to maximize deliveries to area of origin New Melones' contractors.

Third, the delivery of water from the San Luis unit to areas with drainage problems or areas adversely impacting drainage problem areas or areas contributing to the salinity of the San Joaquin River is unreasonable without a master drain or the equivalent thereof.

Furthermore, with regard to NEPA compliance, a threshold evaluation which NEPA requires the BA/FONSI to conduct is a comparison of the environmental impacts of the proposed project with the environmental impacts in the absence of the project. Unfortunately, the BA/FONSI has thus far failed to adequately conduct this evaluation. In particular, the BA/FONSI has failed to analyze and compare the quantity and quality of drainage entering the San Joaquin River with and without the proposed project. In order to adequately analyze and consider the project's impacts on the San Joaquin River's water quality and flow, the BA/FONSI must identify with more precision where the water will be delivered pursuant to the project. The BA/FONSI states that "[t]he water would be distributed to the contractors in these divisions [West San Joaquin and San Felipe] using the allocation formulas that Reclamation normally uses for these contractors." (FONSI p. 3-2). What are these formulas, and which contractors are most likely to receive some of the acquired water and in what quantity? For the sake of analyzing the environmental impacts, worst-case scenarios based on reasonable assumptions can and should be used. Once the **potential users of the acquired water are identified, the BA/FONSI should then adequately investigate and analyze the surface and subsurface drainage from these users to the San Joaquin River with and without the proposed project.** Following this evaluation, the BA/FONSI should assess and analyze the project's impacts on the San Joaquin River's water **quality and flow.**

Without the above investigation, analysis and discussion, the BA/FONSI has failed to meet the minimum requirements set forth in NEPA. As such, the USBR's finding that the proposed project will not have a potentially significant adverse impact on the environment is not supported by substantial evidence.

Very truly yours,

Dante John Nomellini, Jr.
Co-counsel for the
Central Delta Water Agency

DJR/djr

Letter #2 - Dante John Nomellini, Jr., Central Delta Water Agency

- 2-1: The proposed project would not result in impacts on operations or flows in the San Joaquin River. Operations and flows in the San Joaquin River would be identical under both the No-Action Alternative and either of the project alternatives.
- 2-2: Comment noted.
- 2-3: Reclamation continues to work towards the long-term resolution of drainage issues in the San Joaquin Valley. Until there is a long-term resolution, Reclamation intends to continue to support the Grasslands Bypass Project (GBP) and assumes the project will continue through the term of all of the alternatives. The GBP involves the use of a 28 mile segment of the San Luis Drain to convey agricultural drainage water to the San Joaquin River. In September 1996, the United States entered into the Grasslands Bypass Use Agreement (Agreement) with the San Luis Delta Mendota Water Authority (Authority). Since initiation of the project, selenium, salt, and other constituents discharged from the project area to the San Joaquin River have been reduced. This Agreement sets limits on selenium load on a monthly and annual basis, and these limits require annual reductions in discharges each year as the project proceeds. Those districts likely to receive acquired water which could potentially affect drainage in the San Joaquin River are members of the Authority and therefore have agreed to comply with the provisions of the Agreement. Discharge limits established in the Agreement will be adhered to under both the No-Action Alternative as well as under the Water Purchase Alternative (Water Year 2000) and Option Purchase Alternative (multi-year).
- 2-4: CVP contractors within the West San Joaquin and San Felipe divisions are projected to receive CVP water allocations of less than 100 percent under the No-Action Alternative. The purchase of water by Reclamation under either the Water Purchase Alternative or the Option Purchase Alternative is intended to reduce the shortfall, not to provide “new” or “additional” CVP water supplies. Consequently, the acquired water in combination with the supplies provided under the No-Action Alternative would still be within historical CVP deliveries.

As described in the EA, Reclamation would provide acquired water to contractors within the West San Joaquin and San Felipe divisions of the CVP pursuant to the terms and conditions of their current contracts for water service. The specific contractors who will receive acquired water were identified in Table 2-1 of the draft EA. Table 2-1 has been revised in the Final EA to include current estimated water deliveries for each CVP Contractor likely to receive acquired water under both the No-Action Alternative and under the Water Purchase Alternative. Reclamation cannot know which districts would exercise options under the Option Purchase Alternative, so water deliveries to specific contractors cannot be predicted for that alternative.

Section 3.2.2.1 of the EA states that under the No-Action Alternative farmers within some of the contracting districts would likely make up all or some of the shortfall by pumping groundwater. Therefore, the analysis assumes total water use by CVP Contractors under the Water Purchase and Option Purchase alternatives would be similar to the quantity of water used under the No-Action Alternative. Consequently, there would be minimal, if any, quantifiable effect on drainage to the San Joaquin River. Assuming there was a quantifiable difference in return flows to the San Joaquin River with a water purchase, as compared to the No-Action Alternative, the additional drainage would still be within historical quantities and regulated by the discharge restrictions established in the Agreement discussed in response to comment 2-3.

- 2-5: Based on the evidence supplied in the EA and the clarifications provided above, Reclamation stands by the adequacy of the EA/FONSI and the finding that neither of the proposed alternatives would have a significant adverse impact on the environment.