

## **Appendix D**

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### **Comment Letters and Reclamation's Responses to Comments**

1 23 October 2014

2  
3 **To: Kelly Baker, Fresno Office, Bureau of Reclamation [kmbaker@usbr.gov](mailto:kmbaker@usbr.gov)** Sent via email  
4 From: Patrick Porgans, Solutionist, Porgans & Associates

5  
6 **Re: Comments on Draft environmental Documents for Central Valley Project Interim Renewal**  
7 **Contracts**

Porgans-1

8  
9 **Formal Notice and Objections:** Please let this email communication serve as formal notice and objection to the federal  
10 Bureau of Reclamation's Draft Environmental Assessment of Finding of No Significant Impact for the proposed renewal of  
11 the San Luis Unit, Central Valley Project, interim renewal contracts for the Westlands Water District, Santa Clara Valley  
12 Water District and the Pajaro Valley Water Management Agency.

Porgans-2

13  
14 **Synopsis:** Reclamation's "**Finding of No Significant Impact**" is myopic, inadequate, misleading and out-of-touch with  
15 cumulative ongoing/unmitigated adverse impacts attributable to renewal of interim water contracts that serve lands that  
16 have known and identified acreage that contain high levels of salts and toxic substance, such as selenium. In Westlands  
17 Water District's (WWD) case, it claims, THE DISTRICT HAS NOT DISCHARGED ANY AGRICULTURAL DRAINAGE WATER FROM  
18 ITS SERVICE AREA, since "Kesterson Reservoir" was shutdown as a result of the selenium poisoning and death of more than  
19 10,000 migratory birds.

Porgans-3

20  
21 **Devastating Impacts Attributable to Reclamation's Operation and Management of the SLU/CVP.** Heretofore, the toxic  
22 drainage water was stored at the "Kesterson National wildlife Refuge"; Kesterson Reservoir, and/or released to the San  
23 Joaquin River which flows into the Delta. The water in the reservoir water became so toxic with selenium that it sparked,  
24 what was then, the largest migratory bird disaster in U.S. history. In 1983, the Secretary of the Interior ordered Kesterson  
25 Reservoir shutdown. Reclamation failed to complete the San Luis Drain, and to this day, selenium discharges are being  
26 made in the SLU service area, and the required and most viable solution to the drainage dilemma, reportedly, exceeded the  
27 Congressional expenditure cap imposed on the SLU/CVP.

Porgans-4

28  
29 **FACT:** Reclamation has failed to provide a drainage solution, contractor successfully sued Reclamation for not providing  
30 drainage, and Reclamation continues to deliver water to lands without drainage; exacerbating both surface and subsurface  
31 water contamination; in conflict with state and federal water quality antidegradation policies, the Clean Water Act and the  
32 Endangered Species Act.

33  
34 Reclamation officials need to be mindful that the water it provides to CVP/SLU contractors, does not belong to them or the  
35 project recipients, Reclamation has permits and licenses to use the appropriated water. In California, however, the  
36 appropriation of such water does not provide the permittee or its contractors with "ownership" of the water. The permits  
37 and licenses are subject to terms and conditions that require Reclamation's operation of the CVP/SLU meet specific flow  
38 criteria and water quality standards, adopted to protect agricultural and Public Trust resources, which, as a matter of  
39 record, Reclamation personnel routinely violates, and has yet to be held accountable for it actions. [Note: Detailed  
40 information documenting those violations can be obtained from the State Water Resources Control Board's website  
41 [www.waterboards.ca.gov](http://www.waterboards.ca.gov) or by making a formal public records act request for the evidence.

42  
43 It is very disconcerting to know that a significant amount of water provided by Reclamation is being used to grow and  
44 export water-guzzling crops, such as Alfalfa, hay, and almonds, while senior water right holders and public trust resources  
45 suffer water shortages.

Porgans-5

46  
47 **Exporting Water Growing Water Guzzling Crops:** An estimates 2 million tons of Western alfalfa hay, which required 100  
48 billion gallons of water to produce, was shipped overseas, including to Asia, in 2014, according to Robert Glennon, a water  
49 resource expert at the University of Arizona, also author of "Unquenchable". Glennon's larger point is the need for a  
50 coherent, domestic agricultural policy that treats water as a precious resource.<sup>1</sup> Reclamation is the largest supplier of water  
51 to many of the states in the arid West.

Porgans-6

52  
53 **Reclamation Does Not Own the Water:** A water right is a legal entitlement authorizing water to be diverted from a  
54 specified source and put to beneficial, nonwasteful use. **Water rights are property rights, but their holders do not own the**

<sup>1</sup> <http://www.cnn.com/2015/10/21/how-china-is-changing-your-dinner-plate.html>

1 **water itself. They possess the right to use it.** [Emphasis added] The exercise of some water rights requires a permit or  
2 license from the State Water Resources Control Board (State Water Board), whose objective is to ensure that the State’s  
3 waters are put to the best possible use, and that the public interest is served.<sup>2</sup> Essentially, Reclamation has a “usufructuary  
4 right” to the appropriated water.  
5

6 **USUFRUCTUARY:** A *Civil Law* term referring to the right of one individual to use and enjoy the property of another, provided  
7 its substance is neither impaired nor altered.  
8

9 *For example, a usufructuary right would be the right to use water from a stream in order to generate*  
10 *electrical power. Such a right is distinguishable from a claim of legal ownership of the water itself. West’s*  
11 *Encyclopedia of American Law, edition 2. Copyright 2008 The Gale Group, Inc. All rights reserved.*<sup>3</sup>  
12

13 Contrary to the public-relations rhetoric, the dramatic decline in Bay-Delta Estuary ecosystem is partly attributable to  
14 Reclamation personnel conflicting roles as water supplier and custodian of “Public Trust” resources. Furthermore, certain of  
15 their actions appear to be in conflict with Reclamation’s implied Mission Statement. Make no mistake, Public Records attest  
16 to the fact that Reclamation’s compliance track-record and mandate to protect “Public Trust” resources is dismal. More  
17 importantly, the ongoing operation of the CVP/SLU has and continues to place the Delta and all those that depend upon it  
18 at an unnecessary level-of-risk.  
19

20 Reclamation personnel assert, and rightfully so, that they have a Congressional mandate and contractual obligation to  
21 provide water to CVP/SLU contractors; albeit, their role as water supplier is only one component of their duties and  
22 responsibilities. Reclamation personnel also have a mandate to protect "Public Trust" resources; i.e., water, avian, aquatic  
23 and terrestrial species.  
24

25 In fact, Reclamation's CVP/SLU project operations are one of the major factors contributing to the decline of the Bay-Delta  
26 Estuary and the increased listing of numerous Bay-Delta dependent species, listed as threatened or endangered under state  
27 and federal Endangered Species Acts.  
28

29 To achieve this ambitious doubling goal, the Act created an **Anadromous Fish Restoration Program** (AFRP), dedicated  
30 800,000 acre-feet of CVP water annually to environmental protection and created the CVPIA Restoration Fund to  
31 implement an ambitious list of restoration projects. Hundreds-of-millions of dollars have been expended on plethora of  
32 studies and a myriad of habitat restoration projects to achieve the CVPIA mandate to double the fish populations. The goal  
33 of doubling fish population began in 1992 and was targeted to be accomplished by 2002. By the way, Porgans & Associates  
34 completed a report for clients that proved most, if not all, of the 800,000 acre-feet of water dedicated for the AFRP is  
35 picked up at Reclamation’s Delta pumps.  
36

37 The Natural Resource Defense Council (NRDC), a ranking member of the “Ecotocracy”, was a major advocate for the  
38 approval and implementation of the 1992 CVPIA and AFRP, publicly expressed dismay in how miserable a job Reclamation  
39 officials did in fulfilling the fish-doubling mandate.  
40

41 *In a few places, the Act has produced real results for salmon. For example, Interior’s salmon population*  
42 *numbers show that runs have improved on small streams... But those results are the exception, rather than*  
43 *the rule. On nearly all of the major rivers of the Central Valley – The Sacramento, The San Joaquin, the*  
44 *Stanislaus, the Tuolumne, the Merced and the Consumnes – salmon numbers have declined, not doubled*  
45 *over the past two decades. Pof course the clearest indication of the failure of agencies to double is the*  
46 *complete closure of the California salmon fishery in 2008 and 2009, as a result of crashing fish*  
47 *populations. That crash also included declining populations of many other Bay-Delta species. Specifically,*  
48 *an independent review of the AFRP concluded that: “The agencies underutilized the authorities granted in*  
49 *the CVPIA to tackle some of the biggest problems in the system, especially concerning water management*  
50 *and the adverse effects of export pumping... ”<sup>4</sup>*  
51

<sup>2</sup>[http://www.waterboards.ca.gov/waterrights/board\\_info/water\\_rights\\_process.shtml](http://www.waterboards.ca.gov/waterrights/board_info/water_rights_process.shtml)

<sup>3</sup> <http://legal-dictionary.thefreedictionary.com/Usufructuary+Right>

<sup>4</sup> The 20<sup>th</sup> Anniversary of the CVPIA – the Failure of Salmon Doubling, posted on Barry Nelson’s Blog, 29 Oct. 2012.

1 The Act also provided guaranteed water deliveries for Central Valley wildlife refuges and wetlands. Some of these  
2 mandated water deliveries have not been provided, as required by law.

3  
4 Although hundreds of millions of dollars have been expended on the goal, only marginal improvements in a few undammed  
5 streams, yield an increase in populations. Conversely, Public Records attest to the fact that Reclamation's "management  
6 and operation" of the CVP/SLU are major factors contributing to the 50-year in-the-making government-induced water  
7 crisis. A crisis that has brought the Bay-Delta Estuary to the brink of an ecological collapse and continues to cause  
8 irreparable damage to private property, listed species and other public trust resources.

9  
10 Notwithstanding, an historical account and ongoing review of the Bureau of Reclamation "performance" indicate it  
11 repeatedly failed following through on similar Congressional mandates, purportedly to resolve short- and long-term  
12 resolution to ongoing irreparable damage attributable to the construction, "management", and operation of CVP/San Luis  
13 Unit projects. A major case in point is Reclamation's failed attempt to double anadromous fish populations, as required by  
14 the 1992 CVPIA.<sup>5</sup>

15  
16 The Bureau of Reclamation released the Draft Environmental Assessment and Finding of No Significant  
17 Impact for the proposed renewal of the San Luis Unit, Central Valley Project Improvement Act. Interim  
18 renewal contracts for the Westlands Water district, Santa Clara Valley Water district and Pajaro Valley  
19 Management Agency.<sup>6</sup>

20  
21 **Mistakes are repeatedly made by water officials that kill listed ESA species:** During the past several years, the  
22 cumulative unmitigated impacts of Reclamation's operation and management of the SLU/CVP have and continue to  
23 have devastating impacts on salmonid and pelagic species resulting from Reclamation and state officials to provide  
24 and ensure the protection they are required for fisheries. Both federal and state officials failed. Last year's mistake  
25 may have caused the loss of the 2017 natural winter run salmon. Despite this mistake, none of the officials were  
26 held accountable for even one dead listed winter-run salmon killed!

27  
28 The head of the watchdog agency overseeing California water said he was "mistaken" last year when he  
29 approved emergency actions that harm threatened fish. "...[h]e was "just wrong" when he concluded last  
30 year that temporarily changing the rules to keep more water in reservoirs would not cause unreasonable  
31 harm to the environment."<sup>7</sup>

32  
33 *Threats*

34  
35 *Currently, Shasta and Keswick dams block winter-run Chinook salmon from nearly all of their historical*  
36 *spawning habitat. The spawning habitat that is accessible is subject to water temperatures that are too*  
37 *warm to support egg and fry survival, particularly during the current California drought, which is one of*  
38 *the most severe on record. In addition to lost and degraded spawning habitat, 98 percent of riparian and*  
39 *floodplain habitat along the Sacramento River is no longer available to support juvenile rearing. Other*  
40 *threats to winter-run Chinook salmon include water withdrawals, predation by non-native species, lack of*  
41 *quality rearing habitat in the Delta, and commercial and recreational fisheries.*<sup>8</sup>

42  
43 **Preliminary Conclusion:** Neither time nor resources afford the opportunity to provide the level of attention it  
44 would take to decipher and effectively prove without question that Reclamation's Finding of No Significant Impact  
45 is not justified; the condition of the Bay-Delta Estuary and pelagic and salmonid species is indicative of ecosystem  
46 on the verge of a government-induced collapse. Public confidence in Reclamation's ability to perform have and  
47 continue to diminish as a result of its roles as water supplier and public trustee The emergency rules provide  
48 provisions for Reclamation to keep enough cold water at Shasta to meet the needs of Sacramento winter-run  
49 salmon; didn't happen. According to fishery agencies, that mistake may have caused the loss of the entire 2017  
50 wild winter-run salmon.

5 [https://www.usbr.gov/mp/cvpia/docs\\_reports/meetings/2013/CVPIA\\_2013\\_Public\\_Meeting\\_Progress\\_and\\_Revisioning\\_1-17-13.pdf](https://www.usbr.gov/mp/cvpia/docs_reports/meetings/2013/CVPIA_2013_Public_Meeting_Progress_and_Revisioning_1-17-13.pdf)

6 <http://www.usbr.gov/mewsroom/newsrelease/detail.cfm?RecordID=50487>

7 Alex Breitler, Staff Writer, Recordnet.com, State water chief admits mistake in management, 19 Feb. 2015.

8 [http://www.nmfs.noaa.gov/stories/2015/09/spotlight\\_chinook\\_salmon.html](http://www.nmfs.noaa.gov/stories/2015/09/spotlight_chinook_salmon.html)

1 **Suggestions:** Take off the blinders; deal with drainage; cease delivering water to lands that have known and  
2 unresolved drainage problems. Move expeditiously to retire those lands and put the water to use and meet your  
3 mandate to provide water to the wildlife refuges and wetlands as required by the CVPIA; cease contaminating the  
4 waters of the state; comply with the water right permits and licenses; stop killing the Bay-Delta Estuary, and all  
5 life-forms dependent upon its sustainability. Remember, Reclamation already is credited for destroying the  
6 Colorado River Delta, which was once the largest Delta, and now only a remnant remains.  
7

8 P/A attempt to make direct contact with you, as per the directive in Reclamation's press release; however, your  
9 message said you will be out of the office for some time. Please confirm receipt of this email, and post the  
10 comments, accordingly, with today's date. Thank you.  
11

12 Respectfully,  
13  
14

15 Patrick Porgans, Solutionist  
16 Patrick Porgans & Associates  
17 P.O. Box 60940  
18 Sacramento, CA 95860  
19 [porgansinc@sbcglobal.net](mailto:porgansinc@sbcglobal.net)  
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22

23 cc: Interested parties

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## Response to Patrick Porgans' Comment Letter, October 23, 2015

**Porgan-1** Comment noted. The comment does not raise concerns or issues specific to the environmental analysis presented in Environmental Assessment (EA)-15-023. As such, no changes have been made to the EA and no response is required.

**Porgan-2** Comment noted. The Finding of No Significant Impact (FONSI) for EA-15-023, *Central Valley Project Interim Renewal Contracts for Westlands Water District, Santa Clara Valley Water District, and Pajaro Valley Water Management Agency 2016 – 2018* and its scope of analysis were developed consistent with National Environmental Policy Act (NEPA) regulations, guidance from the Council on Environmental Quality (CEQ), and the Department of the Interior's NEPA regulations. In accordance with NEPA, an EA is initially prepared to determine if there are significant impacts on the human environment from carrying out the Proposed Action. Reclamation has followed applicable procedures in the preparation of EA-15-023 which includes the required components of an EA as described in the CEQ's NEPA regulations (40 CFR 1508.9): discussion of the need for the proposal, alternatives as required, environmental impacts of the proposed action and alternatives, and listing of agencies and persons consulted.

An EA is defined by CEQ as a "concise public document" that "briefly provide[s] sufficient evidence and analysis for determining whether to prepare an environmental impact statement or a finding of no significant impact" (40 CFR 1508.9). As described in Section 1.1, EA-15-023 tiers off the Central Valley Project Improvement Act (CVPIA) Programmatic Environmental Impact Statement (PEIS) to evaluate potential site-specific environmental impacts of executing five interim renewal contracts specific to Westlands Water District (WWD) and one interim renewal contract for the three-way partial assignment for WWD, Santa Clara Valley Water District (SCVWD), and Pajaro Valley Water Management Agency (PVWMA). Delta exports of CVP water for delivery under interim renewal contracts is an on-going action and the diversion of CVP water for export to South-of-Delta contractors are described in the PEIS (see Chapter III of the PEIS).

Furthermore, as described in Section 1.2 of EA-15-023, the purpose of the Proposed Action is to execute six interim renewal contracts in order to continue delivery without interruption of CVP water to the contractors, and to further implement CVPIA Section 3404(c), until their new long-term renewal contract can be executed. As such, the analysis in EA-15-023 finds in large part that the execution of an interim renewal contracts are in essence a continuation of the "status quo", and that although there are financial and administrative changes to the contract, the contract continues the existing use and allocation of resources (i.e., the contract is for the same amount of water and for use on the same lands for existing/ongoing purposes). On February 6, 2014, the Eastern District Court of California found that "[a]n action that does not change the status quo cannot cause any change in the environment and therefore cannot cause effects that require

analysis in the EA” and that the “conclusion applies with equal force to...the content of the EA’s impact analysis, including Plaintiffs’ arguments that...the EA contains no analysis of the impact of agricultural runoff and subsurface drainage from Westlands’ CVP-irrigated lands” (Document 88 for Case 1:12-cv-01303-LJO-MJS). The EA therefore focused on the potential environmental effects resulting from proposed changes to the contracts as compared to the No Action Alternative.

- Porgan-3** Comment noted. The comment does not raise concerns or issues specific to the environmental analysis presented in EA-15-023. As such, no changes have been made to the EA and no response is required.
- Porgan-4** Comment noted. The comment does not raise concerns or issues specific to the environmental analysis presented in EA-15-023. As such, no changes have been made to the EA and no response is required.
- Porgan-5** Comment noted. The comment does not raise concerns or issues specific to the environmental analysis presented in EA-15-023. As such, no changes have been made to the EA and no response is required.
- Porgan-6** Comment noted. The comment does not raise concerns or issues specific to the environmental analysis presented in EA-15-023. As such, no changes have been made to the EA and no response is required.
- Porgan-7** Comment noted. The comment does not raise concerns or issues specific to the environmental analysis presented in EA-15-023. As such, no changes have been made to the EA and no response is required.
- Porgan-8** Comment noted. The comment does not raise concerns or issues specific to the environmental analysis presented in EA-15-023. As such, no changes have been made to the EA and no response is required. See also response to Porgans-2.
- Porgan-9** Comment noted. The comment does not raise concerns or issues specific to the environmental analysis presented in EA-15-023. As such, no changes have been made to the EA and no response is required.
- Porgan-10** The comment letter provided by Patrick Porgans on October 21, 2015 has been included as an appendix to the EA.



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October 23, 2015

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Ms. Kelly Baker  
Bureau of Reclamation  
South-Central California Area Office  
1243 N Street  
Fresno, CA 97321

Re: Westlands Water District's Comment Letter to FONSI-15-023

Dear Ms. Baker:

Orrick represents Westlands Water District which appreciates this opportunity to comment on the Draft Environmental Assessment/Finding of No Significant Impact (EA/FONSI) for Central Valley Project Interim Renewal Contracts for Westlands Water District, Santa Clara Valley Water District, and Pajaro Valley Water Management Agency 2016-2018 (FONSI-15-023).

WWD-1

While NEPA review likely was not required for the IRCs<sup>1</sup>, Westlands agrees that its IRCs will not have a significant impact on the environment. Westlands requests, however, that the clarifications and information set out below concerning its legal and contractual entitlement to the concurrent contract amounts be considered by Reclamation.

**Background:**

WWD-2

Westlands is the largest agricultural water district in the United States, made up of more than 1,000 square miles of prime farmland in western Fresno and Kings Counties. Westlands has federal contracts to provide water to 700 family-owned farms that average 875 acres in size. These farms produce more than 60 different high-quality commercial food and fiber crops sold for the fresh, dry, canned and frozen food markets, domestically and abroad. More than 50,000 people live and work in the communities dependent on Westlands' agricultural economy. The family farms in the District are among the most productive and water-efficient in the world, largely due to improved access to cutting edge irrigation and other technological innovations.

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<sup>1</sup> NEPA review is not required where, as with the IRCs, the federal action (1) does not irretrievably commit resources; (2) is part of an ongoing action that does not change the status quo; and (3) is non-discretionary.



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### **Westlands Has A Statutory and Contractual Right To Renewal at the Existing Contract Amount:**

In 1956, Congress amended the Reclamation Project Act of 1939 to include specific provisions for renewal of agricultural water service contracts. *See* Act of July 2, 1956, ch. 492 § 1, 70 Stat. 483 (codified as amended at 43 U.S.C. § 485h-1 (2000)). Specifically, section 485h-1(1) directs Reclamation to include “in any long-term contract hereafter entered into under [43 U.S.C. § 485h(e)], if the other contracting party so requests, [provisions] for renewal thereof under stated terms and conditions mutually agreeable to the parties.” The statute explicitly creates a “right of renewal.” *Id.*<sup>2</sup> Under Reclamation law, Reclamation is required to renew water delivery contracts that include mutually agreed upon renewal provisions, so long as the agreed-upon terms are met. *See Natural Res. Def. Council v. Houston*, 146 F.3d 1118, 1126 (9th Cir. 1998) (acknowledging the right to renewal); *see also Madera Irr. Dist. v. Hancock*, 985 F.2d 1397, 1401–02 (9th Cir. 1993) (holding that contractors have a legally protected property interest in a “right to renewal”).

Starting with Westlands’ First IRC, each successive interim contract has contained a mutually agreed upon right to renewal. Article 2 of Westlands’ first Interim Renewal Contract provided:

WWD-3

[U]ntil completion of all appropriate environmental review, *and provided that the Contractor has complied with all terms and conditions* of the interim renewal contract in effect for the period immediately preceding the requested successive interim renewal contract, *this Contract will be renewed*, upon request of the Contractor, for successive interim periods each of which shall be no more than two (2) Years in length. Also, except as provided in subdivision (b) of this Article, in order to promote orderly and cost-effective contract administration, the terms and conditions in subsequent interim renewal contracts *shall be identical* to the terms and conditions in the interim renewal contract immediately preceding the subsequent interim renewal contract. (Emphasis added)

Article 2, Contract No. 14-06-200-495A-IR1 (Dec. 27, 2007); *See also* Contract Nos. 14-06-200-3365A-IR5-B (Feb. 28, 2001); 14-06-200-8092-IR5 (Feb 28, 2001); 14-06-200-W055-IR5 (Feb 28, 2001); 14-06-200-3365-IR5-A (Feb 28, 2001); 14-06-200-8018-IR5 (Feb. 28, 2001)

Subsequent Interim Renewal Contracts have incorporated Article 2 by reference. For example, Westlands’ 2012 Interim Renewal Contract contained the following language: “This Contract shall be effective from March 1, 2012 and shall remain in effect through February 28, 2014, and thereafter

<sup>2</sup> In 1963, Congress expanded this right of renewal to M&I contracts. *See* Renewal of Water Supply Contracts Act, Pub. L. No. 88-44, §§ 1, 2, 77 Stat. 68 (1963).



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↑ *will be renewed* as described in Article 2 of IR1<sup>3</sup> if a long-term contract has not been executed with an effective commencement date of March 1, 2014.” (Emphasis added) The phrase “will be renewed” in each of the interim renewal contracts grants Westlands a legally protectable right to renewal under Reclamation and Contract law. *See* 43 U.S.C. § 485h-1(1).

WWD-3  
cont.

Moreover, Westlands’ compliance with the prior IRCs terms and its request to renew the contracts are all that is necessary to trigger the renewal provision. Because Westlands complied with the prior IRCs terms and conditions and requested renewal, Reclamation is obligated to issue the IRCs on “identical... terms and conditions” as the prior IRC, including the current contract amount.

#### **Westlands Can Beneficially Use the Current Contract Amount:**

Reclamation and Westlands first entered into a long-term water service contract in 1963, entitling Westlands to 1,008,000 acre-feet (“AF”) of CVP water per year. As a consequence of the Judgment entered on December 30, 1986, in *Barcellos and Wolfsen, Inc., et al., v. Westlands Water District, et al.*, No. CV 79-106-EDP (E.D. Cal. Dec. 30, 1986), that amount increased to the current amount, 1,150,000 AF of CVP water per year. When added to its various assignments, Westlands is contractually entitled to 1,196,948 AF of CVP water per year. As stated above, Westlands is contractually entitled to renewal on “identical” terms without further analysis; however, Westlands also has a demonstrated ability to beneficially use the full contract amount.

WWD-4

Assessing the number of acres available for farming is the starting point for determining the amount of CVP water that Westlands’ farmers can beneficially use. Historical data shows that since 2000, Westlands has had no less than 523,056 acres available for crops during any given year. *See* Table 2. Assuming an average volume of 2.5 AF/acre<sup>4</sup>, Westlands’ ability to beneficially use CVP water exceeds the current contract amount, as it has every year. *See, e.g.*, Table 2 and Chart 1. These acreage calculations on their own exceed the current contract amount without accounting for the specific needs of Westlands’ increased permanent crops or other beneficial uses, such as, storing water and recharging other sources.

#### **Reduced CVP Deliveries Have Increased the Amount of Fallowed Lands:**

WWD-5

↓ The shortage provisions of the IRCs permit Reclamation to reduce or cease water deliveries to Westlands, without liability, for “errors in physical operations of the Project, drought, other physical causes beyond the control of the Contracting Officer or actions taken by the Contracting Officer to

<sup>3</sup> “IR1” refers to Westlands’ first interim renewal contract with Reclamation, executed in 2007.

<sup>4</sup> Reclamation’s water needs methodology for Westlands is based on a “Calculated FDR” of 2.7 AF/acre in 1999 and 2.3 AF/acre in 2025, for an average of 2.5 AF/acre. Westlands believes that 2.5 AF/acre is a very conservative estimate for the amount of water necessary to meet its needs. Environmental considerations and Westlands’ current cropping patterns could raise this number to at least 2.9 AF/Acre.



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↑ meet legal obligations.” Article 12(b), Contract No. 14-06-200-495A-IR1. Westlands’ assignment contracts contain similar Articles. *See* Contract Nos. 14-06-200-3365A-IR5-B; 14-06-200-8092-IR5; 14-06-200-W055-IR5; 14-06-200-3365-IR5-A; 14-06-200-8018-IR5. Using these provisions, Reclamation allocated Westlands zero percent of its contractually entitled amount in 2014 and 2015, in part, because Reclamation was obligated to first dedicate and manage 800,000 AF of CVP yield for “fish, wildlife, and habitat restoration purposes.” CVPIA, § 3406(b)(2).<sup>5</sup>

The recent lack of CVP water delivery due to environmental commitments has severely harmed the family farms in Westlands’ service area. While Westlands and the farmers in Westlands’ service area have acquired water from other sources, they have been unable to replace the full loss of CVP water. Indeed, the recent increase of fallowed acres clearly demonstrates the impact that decreased CVP supplies have had in recent years and proves that Westlands’ farmers can beneficially use the full contract amount, now more than ever. As Table 1 shows, when Westlands receives substantially less than its contractually entitled amount, farmers fallow<sup>6</sup> more land. Indeed, Figure 3 on page 31 of the FONSI shows the recent rise in fallowed lands within Westlands; however, the FONSI does not explain the simple reason for this rise. Westlands’ family farmers rely upon CVP water to grow their crops. Any reduction in CVP water deliveries directly reduces their ability to plant every acre, particularly when Reclamation forecasts a zero percent allocation of CVP water for the year. These farmers are left with no choice but to limit the number of acres they plant based on the volume of water they expect to be delivered; and to fallow their remaining acres with hopes that increased deliveries in the future will allow them to plant all of their land.

**Conclusion:**

This information further demonstrates Westlands’ legal and contractual right to contract renewal on “identical” terms and conditions as the prior IRCs, as well as its ability to beneficially use the full contract amount. Accordingly, this information provides additional support for FONSI-15-023.

Very truly yours,

A blue ink signature of Cynthia J. Larsen, written in a cursive style.

Cynthia J. Larsen

<sup>5</sup> The shortage provisions underscore why NEPA review is not required for these Interim Renewal Contracts. Simply put, the IRCs do not irretrievably commit any resources as evidenced by Reclamation allocating Westlands’ zero percent of its entitled CVP water in both 2014 and 2015. *See* Table 1.

<sup>6</sup> Fallowed acres are lands that are uncultivated for a given season. Fallowed land does not indicate land that is retired from agricultural use. Fields may be left fallow to allow soil nutrients to replenish, or, as here, because the farmers plant crops based on the amount of water they can reasonably expect for the season.

WWD-5  
cont.

## Attachments to Westlands' Comment Letter

**Table 1: Historical Allocations of CVP Water for South of the Delta Agricultural Contractors<sup>7</sup>**

YEAR	TOTAL ACREAGE	ALLOCATION <sup>8</sup>	WET/DRY YEAR	FALLOW
2015	568,050	0%	Critically Dry	233,382
2014	568,004	0%	Critically Dry	220,629
2013	568,003	20%-25%	Dry	121,251
2012	567,977	30%-40%	Dry	90,781
2011	568,173	55%-80%	Wet	53,068
2010	568,700	5%-45%	Normal	122,598
2009	568,652	0%-10%	Dry	156,982
2008	568,627	40%-45%	Dry	99,663
2007	568,547	35%-50%	Dry	96,409
2006	559,056	65%-100%	Wet	54,944
2005	560,547	75%-90%	Wet	66,804
2004	560,670	65%-70%	Normal	70,367
2003	563,633	70%-75%	Above Normal	76,654
2002	579,645	65%-70%	Normal	94,557
2001	564,274	47%-49%	Dry	73,802
2000	564,191	65%	Above Normal	46,748

<sup>7</sup> Data from [http://www.usbr.gov/mp/cvo/vungvari/water\\_allocations\\_historical.pdf](http://www.usbr.gov/mp/cvo/vungvari/water_allocations_historical.pdf); and <http://wwd.ca.gov/wp-content/uploads/2015/05/Water-Supply-Charts.pdf>; and <http://wwd.ca.gov/news-and-reports/crop-acreage-reports/>.

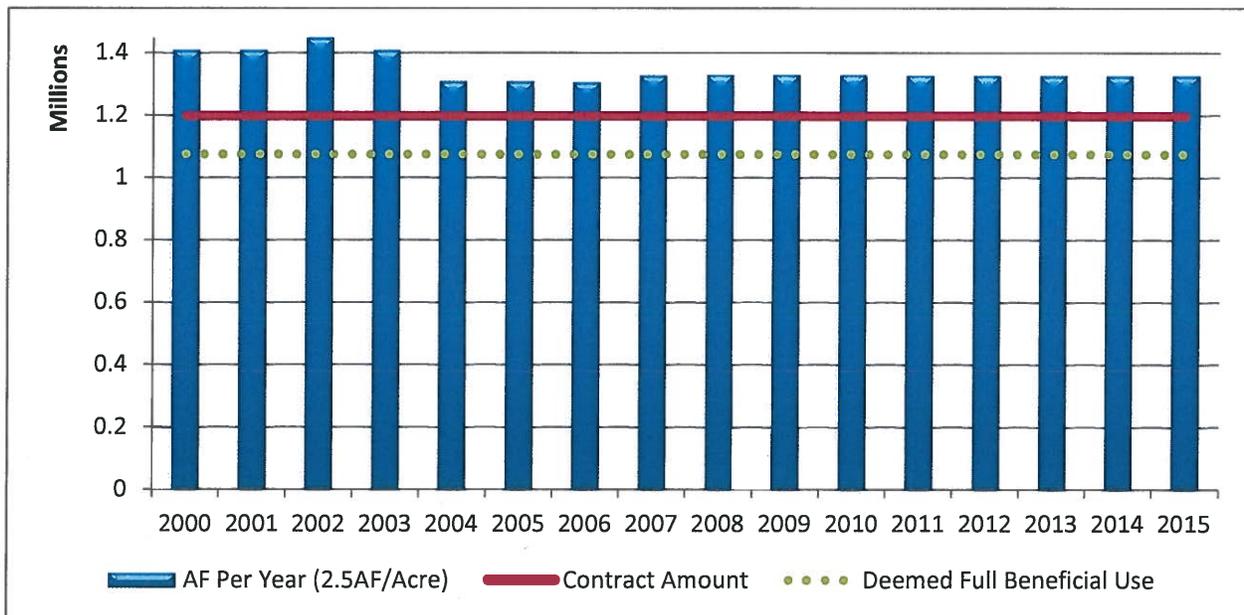
<sup>8</sup> Allocation in terms of the percentage of Westlands' contract.

## Attachments to Westlands' Comment Letter

**Table 2: Westlands' Sample Beneficial Use<sup>9</sup> Calculations (2000-2015)**

YEAR	TOTAL ACREAGE	RETIRED ACRES <sup>10</sup>	AVAILABLE ACRES	2.5 AF PER ACRE
2015	568,050	36,560	531,490	1,328,725
2014	568,004	36,560	531,444	1,328,610
2013	568,003	36,560	531,443	1,328,608
2012	567,977	36,560	531,417	1,328,543
2011	568,173	36,560	531,613	1,329,033
2010	568,700	36,560	532,140	1,330,350
2009	568,652	36,560	532,092	1,330,230
2008	568,627	36,560	532,067	1,330,168
2007	568,547	36,560	531,987	1,329,968
2006	559,056	36,560	522,496	1,306,240
2005	560,547	36,560	523,987	1,309,968
2004	560,670	36,560	524,110	1,310,275
2003	563,633		563,633	1,409,083
2002	579,645		579,645	1,449,113
2001	564,274		564,274	1,410,685
2000	564,191		564,191	1,410,478

**Chart 1: Westlands' Sample Beneficial Use Chart (2000-2015)<sup>11</sup>**



<sup>9</sup> These calculations are for illustrative purposes. Westlands' intentionally used only its irrigable acres and the average Calculated FDR from the Water Needs Assessment (2.5 AF/acre) as an example of the floor for its beneficial use. Westlands' actual ability to beneficially use CVP water greatly exceeds the amounts shown in this table and chart.

<sup>10</sup> Only 36,560 acres of land have been officially retired from Westlands' service area. These acres were retired through the Peck and Britz Settlements. The last land acquisitions for these settlements occurred in 2004.

<sup>11</sup> The Contract Amount (1,196,948 AF) includes the six contracts at issue in this EA as well as the Oro Loma assignment of 4,000 AF (14-06-200-7823J); Deemed Full Beneficial Use (1,074,261 AF) is calculated per Reclamation's Water Needs Methodology.

## **Response to Westlands Water District Comment Letter, October 23, 2015**

- WWD-1      Comment noted. The comment letter provided by Westlands Water District is included as an appendix to the Environmental Assessment (EA)-15-023. As such, information included in the comment letter will be part of the administrative record considered by Reclamation.
- WWD-2      Comment noted. The comment does not raise concerns or issues specific to the environmental analysis presented in EA-15-023. As such, no changes have been made to the EA and no response is required.
- WWD-3      Comment noted. As stated in Section 2.3.1, Reclamation has no discretion not to renew existing water service contracts as long as the contractors are in compliance with the provisions of their existing contracts.
- WWD-4      Comment noted. The comment does not raise concerns or issues specific to the environmental analysis presented in EA-15-023. As such, no changes have been made to the EA and no response is required.
- WWD-5      See Response to Comments WWD-1 and WWD-3.