

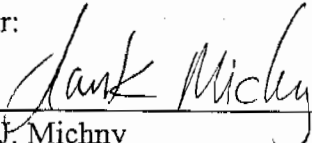
Department of the Interior
Bureau of Reclamation
Mid-Pacific Region
Sacramento, California

RECORD OF DECISION

SACRAMENTO RIVER SETTLEMENT CONTRACTORS
LONG-TERM CONTRACT RENEWAL

February 2005

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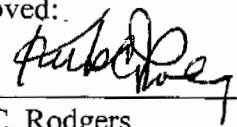


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Date:

2/25/05

Approved:



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Date:

2/28/05

RECORD OF DECISION

SACRAMENTO RIVER SETTLEMENT CONTRACTORS LONG-TERM CONTRACT RENEWAL

I. INTRODUCTION

This Record of Decision (ROD) of the Department of the Interior, Bureau of Reclamation, Mid-Pacific Region, documents the decision for renewal of the Sacramento River Settlement Contracts, the subject of the Final Environmental Impact Statement (FEIS) entitled *Sacramento River Settlement Contractors Environmental Impact Statement*, dated December 2004.

II. DECISION

The Sacramento River Settlement Contracts with 138 contractors will be renewed for 40 years according to the negotiated agreement identified as the preferred alternative in the FEIS. Decisions concerning the renewal of four other contracts will be deferred until their Endangered Species Act consultations are concluded.

The negotiated contracts with the 138 Sacramento River Settlement Contractors (SRSC) will be renewed for terms of 40 years to ensure these contractors the use of both the regulated and unregulated flow of the Sacramento River and its tributaries, provide for the efficient and economical operation of the Central Valley Project (CVP), and provide for reimbursement of the United States for expenditures made for the CVP. This action will also ensure continue beneficial use of water developed and managed by the CVP with reasonable balance among competing demands and incorporate administrative conditions into the renewed contracts to ensure continued compliance with current Federal Reclamation law and other applicable statutes.

The negotiated, renewal contracts will maintain the status quo for 137 of the 138 contracts with the exception of:

- a fee for rescheduling of base supply into the months of July, August, September, or October from any month of the diversion season;
- reducing from 100 to 75 percent the amount of allocated Central Valley Project water (Project Water) which must be paid for whether used or not, plus payment for the amount used in excess of 75 percent;
- rate adjustments for Project Water used for purposes other than agriculture;
- adding an Restoration Charge for each acre-foot of Project Water actually diverted; and
- implementation of a water conservation plan prior to diversion of Project Water.

Current shortage provisions (a 25 percent reduction in supply in critical years) will be maintained. Water quantities under contract will be unchanged for these 137 contracts.

These provisions will also hold for the 138th contract with the Sutter Mutual Water Company, except the water quantity under contract will be reduced to reflect actual historic usage. The reduction in the Sutter Mutual Water company's base supply would be 3,400 acre-feet and the Project Water quantity will be reduced by 38,500 acre-feet, for a total reduction of 41,900 acre-feet.

The preferred alternative is also the environmentally preferred alternative because the predicted environmental impacts of the preferred alternative are very similar to the predicted impacts of the other alternatives, use of groundwater is neither compelled nor foreclosed, and the alternative is acceptable to both parties, giving greater certainty of operations affecting the very complex water storage and distribution of interior California.

III. BACKGROUND

The SRSC include various irrigation districts, reclamation districts, mutual water companies, partnerships, and individuals located in the Sacramento River Basin Northern California. Most of the SRSC have senior, vested water rights under California law to divert surface water from the Sacramento River. Without these contracts it would have been difficult, if not impossible, for the United States to develop the balance of the CVP, which includes facilities on the Trinity, American, San Joaquin, Stanislaus River, and elsewhere in the Central Valley. Most of the SRSC have claims to appropriative rights senior to the CVP or relatively small amounts of riparian rights. In total these rights account for nearly 84 percent of the contract amount.

The original contracts, the first of which was signed in 1964, were based on jointly conducted studies and negotiations and included mutually agreeable quantities of water based on the SRSC independently held water rights (base supply) derived from the natural flow of the river, and the water stored by the CVP (Project Water). The contracts called for payments of the stored water but the base supply water, being based on the natural flow rather than the CVP, continued to be diverted without charge. The base supply quantities reflect an average yield of the SRSC water rights and are supplemented during the months of low natural flow with Project Water giving the SRSC certainty of flow and freeing the United States from the potential of lengthy and expensive adjudication of the CVP and other water rights in the Sacramento River watershed. These contracts were scheduled to expire March 31, 2004, but were extended for 2 years pursuant to Public Law 108-37.

On October 30, 1992, the Central Valley Project Improvement Act (CVPIA) was signed into law. This act modified the authorized purposes of the CVP and required a wide range of improvements and changes in the operation of the CVP. It also altered various provisions of the repayment and water service contracts, and in doing so provided guidance with respect to the settlement contracts, although it clearly distinguished between settlement contracts and other types of CVP contracts. Those changes are reflected in the negotiated contracts.

IV. ALTERNATIVES CONSIDERED

Potential alternatives were identified during three scoping sessions, a public comment period, and discussions with representatives of the larger SRSC and the Natural Resources Defense Council.

Three action alternatives were initially identified based on the initial contract proposals of Reclamation and the SRSC and the negotiated contract. These were supplemented by two others based on established measures of flow, to enlarge the potential range of physical changes analyzed. These five action alternatives, all of which meet the purpose and need of the agency action, were compared to the Preferred Alternative of the Programmatic Environmental Impact Statement for the Implementation of the CVPIA (PEIS), the no action alternative for this analysis.

Action Alternatives

Negotiated Contracts

The negotiated, renewal contracts call for:

- a fee for rescheduling of base supply into the months of July, August, September, or October from any month of the diversion season;
- reducing from 100 to 75 percent the amount of allocated Central Valley Project water (Project Water) which must be paid for whether used or not, plus payment for the amount used in excess of 75 percent;
- rate adjustments for Project Water used for purposes other than agriculture;
- adding an Restoration Charge for each acre-foot of Project Water actually diverted; and
- implementation of a water conservation plan prior to diversion of Project Water.

Reclamation's Initial Contract Proposal.

The initial proposal called for the status quo with exception of:

- 10 to 25 percent delivery reductions in critical years based on Shasta inflow deficiencies;
- a fee for rescheduling base supply water into the months of July, August, September, or October from any month of the diversion season;
- rate adjustments for project water used for purposes other than agriculture;
- adding an Restoration Charge for each acre-foot of project water actually diverted; and
- implementation of a water conservation plan prior to diversion of Project Water.

The current water quantities under contract would remain unchanged and payment would be required for 100 percent of the Project Water whether used or not.

The SRSC Initial Counter Proposal

The SRSC initial counter proposal called for the status quo, including current water quantities, with exception of:

- 10 to 25 percent delivery reductions in critical years based on Shasta inflow deficiencies, but with compensation for water reductions;
- no rescheduling fees;
- payment only for Project Water actually diverted;
- no rate adjustments for Project Water used for purposes other than agriculture;
- adding an Restoration Charge for each acre-foot of Project Water actually diverted; and
- payment only for Project Water actually delivered; and
- implementation of a water conservation plan prior to diversion of Project Water.

Shortage Provisions Based on Shasta Infow Deficiencies

This proposal called for the status quo with exception of:

- sliding scale reductions based on Shasta inflows with the cutback remaining at the lowest level until full contract quantity is reset upon attainment of 4 million acre-feet of storage in Shasta Lake;
- a fee for rescheduling of base supply into the months of July, August, September, or October from any month of the diversion season;
- reducing from 100 to 75 percent the amount of allocated Project Water which must be paid for whether used or not, plus payment for the amount used in excess of 75 percent;
- rate adjustments for Project Water used for purposes other than agriculture;
- adding an Restoration Charge for each acre-foot of Project Water actually diverted;
- implementation of a water conservation plan prior to diversion of project; and
- reductions in base supply also contained in the negotiated contract.

Shortage Provisions Based on 40-30-30 Sacramento River Index

This proposal called for the status quo with exception of:

- sliding scale reductions based on the Sacramento River Index without a reset requirement at 4 million acre-feet of storage in Shasta Lake;
- a fee for rescheduling of base supply into the months of July, August, September, or October from any month of the diversion season;
- reducing from 100 to 75 percent the amount of allocated Project Water which must be paid for whether used or not, plus payment for the amount used in excess of 75 percent;
- rate adjustments for Project Water used for purposes other than agriculture;
- adding an Restoration Charge for each acre-foot of Project Water actually diverted;
- implementation of a water conservation plan prior to diversion of project; and
- reductions in base supply also contained in the negotiated contract.

No Action Alternative

The no action alternative was defined as the preferred alternative of the CVPIA. This essentially would have resulted in maintaining the existing conditions.

V. BASIS OF DECISION

The decision was based on feasible alternatives to meet objectives of Reclamation within associated requirements, and the evaluation of impacts as provided within the EIS.

Factors Considered by Reclamation in Making the Decision

Effects on the Physical Environment

- Changes in surface water supplies
- Impacts on groundwater levels and quality
- Impacts on water quality
- Land subsidence
- Infrastructures
- Air quality
- Geology and soils

Effects on the Biological Environment

- Threatened and endangered species
- Special status species
- Essential fish habitat
- Aquatic, wetland, and upland habitats
- Vernal pools
- Agricultural habitat

Effects on the Sociocultural Environment

- Cultural and historic resources
- Indian Trust Assets
- Environmental justice
- Land use and agricultural production
- M&I land use and water costs
- Power supply and demands
- Regional economics
- Recreation
- Demographics

Overall Consideration of Environmental Impacts

Based on the analysis presented in the EIS, the negotiated contract renewals either have no impact or less-than-significant adverse impacts on biological, physical, and cultural resources and will provide for stability of operation of the CVP to the benefit of the public and the natural environment.

VI. IMPLEMENTING THE DECISION AND ENVIRONMENTAL COMMITMENTS

Reclamation and the SRSC have negotiated and will implement all practicable means to avoid or minimize environmental harm, enhance water conservation, and ensure continuity of operations. Implementation of water conservation measures and measures to protect listed species will be the responsibility of the respective contractors.

VII. COMMENTS RECEIVED ON THE FINAL EIR/EIS

After issuing the Final EIS in December 2004, Reclamation received two comment letters.

Representatives of the Hoopa Valley Tribe called for further language concerning the maintenance of flows in the Trinity River. Specifically, the Tribe's representatives called for a contract provision expressly subordinating delivery obligations of Project Water to fishery restoration on the Trinity River, greater discussion of the provisions of the Central Valley Project-Operating Criteria and Procedures mitigation measures, and urges revision of the FEIS to give greater emphasis to this concern for protection of the Tribe's Trust Assets. Reclamation and the Tribe agree that the Tribe's Trust Assets must be protected. However, Reclamation does not consider the measures proposed by the Tribe to be necessary to achieve that goal, and this position is strengthened by the recent conclusion of litigation concerning the ROD concerning flows in the Trinity River. Given the decision of the litigants not to appeal the 9th Circuit Court of Appeals ruling, the ROD stands, and water will be maintained in storage in Trinity Reservoir for releases to the Trinity River in accordance with the ROD. Therefore, there will be no impact on the Tribe's Trust Assets from renewal of the SRSC.

The U.S. Environmental Protection Agency stated that some of their comments on the Draft EIS had been addressed, but expressed the opinion that site-specific information concerning impacts to water quality was still lacking. Specific concerns in this regard were noted with respect to the Colusa Basin Drain and reaches of the Sacramento River and concerns that existing conditions will lead to continued degradation. Reclamation disagrees with the concern that renewal of these contracts will adversely affect water quality. On the contrary, Reclamation believes renewal of these contracts retards degradation during the low flow/high demand months. Most of this water can be legally diverted and used in the absence of these contracts, and the principal effects of the contracts is to give the government an element of influence over the timing and place of use of the unstored water and to ensure that stored water is available to the SRSC during the low flow months to support farming and incidentally reduce the concentrations of dissolved substances in the water during the periods of low natural flow and high use. Moreover, absent these contracts, there would be no basis for Reclamation to require water conservation, a generally desirable step

which, ironically, worsens the problems in the Colusa Basin Drain (Drain) unless actions are taken to deliberately release water to the Drain that could be conserved by SRSC. Releases to the Drain are made solely at the discretion of individual SRSCs and are not under the control of Reclamation, although the provision of Contract Water under these contracts facilitates agreements between water rights holders along the drain to maintain an acceptable minimal water quality in the Drain.

The EPA also expressed concerns over differences the water demand projects used by Reclamation and those being developed by the Department of Water Resources in their current update of Bulletin 160, and the lack of analysis for the period between 2025, when full use of contract supplies is anticipated, and 2044, the last full year of the renewed contracts. Reclamation sees no need to speculate on impacts beyond the full use of the water under contract. Once that total is reached the effects of the contracts remain unchanged although the larger context of water use will surely be changing, in the face of continued population growth and technological change, in ways that will be addressed as specific changes are proposed.