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March 13, 2015

VIA EMAIL (trust@usbr.gov) and U.S. MAIL

Tim Rust  
Bureau of Reclamation  
2800 Cottage Way  
Sacramento, CA 95825

Re: Del Puerto Water District's Comments on United States Bureau of Reclamation's Central Valley Project Municipal and Industrial Water Shortage Policy Draft Environmental Impact Statement (November 2014)

Dear Mr. Rust:

### **Introduction**

Del Puerto Water District ("Del Puerto" or "District") respectfully submits the following comments on the United States Bureau of Reclamation's ("Reclamation") Central Valley Project ("CVP") Municipal and Industrial ("M&I") Water Shortage Policy Draft Environmental Impact Statement, dated November 2014 ("DEIS").

Del Puerto is located south of the Delta and contracts for 140,210 acre-feet ("af") of CVP water used almost exclusively for irrigation and agricultural uses in the District. Over half of the District's 45,000 irrigable acres are planted to permanent crops. CVP water is the sole or predominant water supply for District farmers. CVP supplies are, thus, critical to the economic well-being and indeed survival of District farmers, particularly in years of shortage. South of the Delta contractors in particular, like Del Puerto, are already suffering the most for lack of water due to various constraints on CVP operations. (E.g., DEIS, 1-13 ["Water allocations south of the Delta have been most affected by changes in operations due to the CVPIA and the BOs."].) Even further reductions to Del Puerto's CVP supplies, in times of shortage, could result in dire consequences for farmers in the District. Therefore, the District has a vital interest in any CVP M&I Water Shortage Policy ("WSP"), and Reclamation's consideration and review of the same (including alternatives) as required by law including the National Environmental Quality Act, 42 U.S.C 4371 *et seq.* (1970); 40 C.F.R. § 1500.01-1508.28, ("NEPA").

Unfortunately, however, as explained previously and below, it appears that the alternative WSPs considered in the DEIS are contrary to law, including Reclamation Law, and have not been

evaluated as required by NEPA. Among other problems, impacts to CVP agricultural contractors like Del Puerto have been underestimated and alternative supplies available to M&I contractors have not been adequately considered despite Del Puerto's many prior requests. Thus, Del Puerto objects to adoption of any WSP based on the seriously flawed and inadequate DEIS.

### Prior Comments

Del Puerto encloses and incorporates herein by this reference its prior proposed WSP comments, including, but not limited to, Del Puerto's comments dated April 22, 2005, on Reclamation's Draft Environmental Assessment and Finding of No Significant Impact for the CVP M&I Water Shortage Policy, apparently finalized in 2005 ("2005 Final EA"). The DEIS acknowledges the inadequacy of the 2005 Final EA for evaluating the WSP:

"Because the assumptions supporting the 2005 Final EA have become outdated and due to significant changes in the Delta and CVP/SWP operations, Reclamation decided to undertake the M&I WSP EIS to provide an updated M&I WSP that best recognizes the needs of various segments of the water user community and how those needs could be addressed in times of shortage." (DEIS, ES-5.) (Emphasis added.)

Del Puerto agrees with Reclamation that adoption of a WSP is a major federal action significantly affecting the quality of human environment, for which an EA is inadequate and an EIS is required. (*Pacific Coast Federation of Fisherman's Association v. United States Department of Interior*, 929 F.Supp.2d 1039, 1047 (2013) [*"Pacific Coast"*], citing 42 U.S.C. § 4332(2)(C).)

In addition, while the DEIS states that the 2001 M&I WSP, as modified by Alternative 1B of the 2005 Final EA, "is currently guiding Reclamation's allocation of water," the DEIS acknowledges that it is only a "Draft" which has apparently never been adopted by Reclamation. (E.g., DEIS, ES-11, Table ES-3.) This Draft WSP is the "no action" alternative in the DEIS (*id.*), even though its implementation without adoption may violate the Administrative Procedures Act. For these and other reasons, Del Puerto's prior WSP comments remain relevant and should be considered by Reclamation.

### M&I Priority Conflicts with the Law

The Draft WSP and action alternatives described in the DEIS are illegal, because they are in conflict with federal Reclamation Law<sup>1</sup>, including Section 9(c) of the 1939 Act (43 U.S.C. § 485(c)) which provides in part:

"No contract relating to municipal water supply or miscellaneous purposes or to electric power or power privileges shall be made unless, in the judgment of the Secretary, it will not impair the efficiency of the project for irrigation purposes."

<sup>1</sup> The draft/proposed policies also conflict with established California water policy which is that use of water for irrigation is a higher use than M&I uses. (Water Code § 106.)



A policy that gives priority to M&I uses in times of shortage is contrary to Reclamation Law, because the effect is to make contracts relating to municipal water supplies that impair the efficiency of the project for irrigation purposes.

Moreover, notwithstanding the fact that the District (and others) have repeatedly advised Reclamation that the Draft WSP conflicts with Reclamation Law, DEIS continues to sweep this important and controversial issue under the rug. The DEIS fails to explain Reclamation's authority for imposing the same or other WSPs described in the DEIS that give priority in times of shortage to M&I users over irrigation users like Del Puerto, where the farmers depend upon their CVP supply for irrigation purposes particularly in times of shortage and in light of current regulatory restraints that adversely impact delivering CVP water south of the Delta.

The proposed action needs to be revised, if possible, so that it does not conflict with the law including Reclamation Law. Otherwise, the proposed action is ill-advised and illegal and the entire DEIS is tainted.

### **The Proposed Action and its Purpose and Need Are In Conflict**

NEPA CEQ Regulations require an EIS to include a "purpose and need" of the proposed action for which alternatives are considered. (40 C.F.R. § 1502.13.) This is a critical component of an EIS because it determines the scope and character of the proposed action and alternatives. (Mandelker, NEPA Law and Litigation (2014 Edition), § 10.28, p. 673.) Reclamation's own NEPA Handbook acknowledges that an EIS's purpose and need statement is a "critical element that sets the overall direction of the process and serves as an important screening criterion for determining which alternatives are reasonable," and that the proposed action is "the general response to the purpose and need and has a number of alternatives." (Reclamation's NEPA Handbook (Feb. 2012), pp. 8-5, -6.) Thus, the proposed action should not be in conflict with purpose and need for the same.

The DEIS defines the "proposed action" as "adoption of an updated M&I WSP and implementation of guidelines," and would include provision of "information to M&I water service contractors for their use in water supply planning and development of drought contingency plans." (DEIS, 1-5.)

However, the "Purpose and Need" for the proposed action is more broadly stated to be to "provide detailed, clear, and objective guidelines for the allocation of available CVP supplies to [all] CVP water service contractors during shortage conditions." (DEIS, 1-7.) In addition, the DEIS states that "the updated to the M&I WSP is needed to [all] water managers and entities that receive CVP water to help them better plan for and manage available CVP water supplies, and to better integrate the use of CVP water with use of other available non-CVP water supplies." (*Id.*)

Contrary to the purpose and need, the proposed action will apparently only provide needed information and guidance to "M&I water services contractors." Particularly if the WSP Reclamation ultimately adopts allocates less water to agricultural than to M&I contractors in times of shortages, it is the agricultural contractors and their managers that will most need

information and assistance including with respect to what non-CVP supplies will be available to them.

The proposed action must be revised to be consistent with the purpose and need. The revised proposed action should not be for the sole benefit of CVP M&I contractors at the expense of CVP agricultural contractors. Rather, to be consistent with the purpose and need, the proposed action should also include providing CVP agricultural contractors with information and assistance necessary to cope with low water supply and shortage conditions, including mitigation as necessary to protect agricultural public health and safety during severe or continuing droughts.

#### **The Environmental Baseline / No Action Alternative Is Flawed**

NEPA requires an EIS to compare the impacts of proposed action alternatives against a “no action” alternative, or baseline, to allow policy makers and the public to compare the environmental consequences of the status quo to the consequences of the proposed action. (*Ctr. for Biological Diversity v. U.S. Dept. of Interior*, 623 F.3d 633, 642 (9<sup>th</sup> Cir. 2010)).

The DEIS contains an inappropriate baseline. The status quo should not be continued implementation of the Draft WSP because it is only a draft that Reclamation has never legally adopted, and its continued implementation would be illegal at least without further action. Comparing the consequences of proposed alternative WSPs with a draft/illegal WSP is illogical.

In addition, the DEIS’s no-action alternative effectively assumes the existence of the very policy being proposed, which violates NEPA. (See, *Pacific Coast, supra*, citing *Friends of Yosemite Valley v. Kempthorne*, 520 F.3d 1024, 1026-27 (9<sup>th</sup> Cir. 2008) (finding NEPA violation where the “no-action” alternative assumed the existence of the very plan being proposed); *North Carolina Wildlife Fed’n v. North Carolina Dept. of Transp.*, 677 F.3d 596, 603 (4<sup>th</sup> Cir. 2012) (“courts not infrequently find NEPA violations where an agency miscalculates the ‘no build’ baseline or where the baseline assumes the existence of the proposed project”).)

Here, the proposed action is essentially adoption of an M&I WSP. In order to provide Reclamation and the public with a true understanding of the impacts of such a policy (at least one that takes water from irrigation uses in times of shortage), the DEIS should have compared the impacts of such policy against conditions without such a policy. The DEIS, however, contains no such evaluation, but rather assumes the existence of some M&I WSP in every comparison and scenario studied.

Also, the DEIS does not even compare the action alternatives against *existing* conditions. Rather, except for the no-action alternative, the alternatives are only compared against arguably speculative conditions predicted to exist far into the “future.” (DEIS, 2-14 [“No Action Alternative represents a project of current conditions to the most reasonable future conditions that could occur during the life of the proposed federal action without any action alternative being implemented.”]) This practice is questionable. However, even if this practice is permissible under NEPA<sup>2</sup>, the DEIS should also compare the action alternatives against existing conditions which are not speculative and readily understandable by the public. This is

<sup>2</sup> This practice is generally impermissible under the California Environmental Quality Act. (*Neighbors for Smart Rail v. Exposition Metro Line Const. Authority* (2013) 57 Cal.4<sup>th</sup> 439.)



particularly important since, as the DEIS admits, water supply conditions today are significantly different (indeed, worse) than those existing at the time of the 2005 Final EA and presumably much different from those predicted based on (questionable) modeling to exist far into the future. While the DEIS is intended to inform Reclamation's decision on "the M&I WSP alternative that best meets the purpose and need based on a *full understanding* of the environmental consequences of each alternative (DEIS, 1-12)," the DEIS only provides a *partial* understanding at best.

The baseline is also flawed because the DEIS fails to account for legal provisions, discussed above, that prevent M&I contracts from impairing the efficiency of the CVP for irrigation purposes. The DEIS should incorporate and account for the effects of these legal considerations in its baseline and analyses; otherwise, neither Reclamation nor the public will be fully informed of the true effects, whether beneficial or adverse, of the proposed alternative WSPs.

The DEIS's calculation of the effects of the proposed action by reference to a flawed baseline - implementation of the "Draft" M&I WSP - is an error that infects much of the entire DEIS. Moreover, as explained below, the DEIS's assessment of impacts to surface water, groundwater, and agricultural resources is based on an incorrect calculation and *understatement* of the magnitude of impacts on agricultural users like the farmers in Del Puerto, and to make matters worse impacts on Del Puerto are even further underestimated since they are judged against a flawed baseline, i.e., a non-approved, draft M&I WSP that gives a shortage priority to M&I contractors at the expense of agricultural contractors. Use of an inappropriate baseline, therefore, not only taints and invalidates the DEIS's analysis of impacts, but also serves to further underestimate the adverse impacts to Del Puerto and other agricultural contractors.

### **Lack of Reasonable Range of Alternatives**

NEPA requires that, in addition to analyzing the environmental consequences of a proposed action, agencies "rigorously explore and evaluate" alternatives. (See 40 C.F.R. §§ 1502.1, 1502.14(a), (b), (d); 42 U.S.C. § 4332(d)(C)(iii), (2)(E).) Alternatives are the "heart" of an EIS, and an EIS must include a reasonable range of alternatives. (*City of Carmel-By-The-Sea v. U.S. Dept. of Transp.*, 123 F.3d 1142, 1155 (9<sup>th</sup> Cir. 1997).) The "purpose and need" for the proposed action necessarily dictates the range of "reasonable" alternatives. (*Id.*; *Pacific Coast, supra*, p. 1057.)

As mentioned above, the "purpose and need" for the proposed action is to consider adoption of a water supply shortage policy for the benefit of *all* CVP contractors. However, the DEIS considers at least four alternatives shortage allocation policies that benefit M&I contractors at the expense of agricultural contractors, but none that benefit agricultural contractors. This is important for a number of reasons, including the fact that several CVP M&I contractors have banked supplies that may be available in times of CVP shortages, when some or all agricultural contractors lack such supplies or other alternative supplies. The DEIS also seems to assume, erroneously, that only CVP M&I contractors have public, health and safety needs ("PHS") and ignore PHS needs of agricultural contractors. Reasonable alternatives could include, for example, M&I contractors securing alternative water sources in times of shortage through: (1) seller/buyer transfers under the CVPIA; (2) water reallocation programs; and (3) water banking



programs. At a minimum, there should be at least one (1) alternative that provides a larger volume of CVP water to agricultural contractors than urban contractors in times of shortage.<sup>3</sup> Unfortunately, however, the DEIS fails to explore or evaluate these or similar alternatives which may avoid or reduce impairment of CVP supplies of agricultural contractors in times of shortage, and is invalid for that reason. (See, e.g., *Southern Utah Wilderness Alliance v. Norton*, 237 F.Supp.2d 48, 53-54 (D.D.C. 2002) [oil and gas exploration, failed to consider alternatives less damaging to soils].)

Therefore, the DEIS is also invalid because it fails to consider a reasonable range of alternatives.

### **Failure to Adequately Evaluate All Potential Impacts of the Proposed Action Including Impacts to Agricultural Water Service Contractors South of the Delta**

NEPA prohibits uninformed agency action. Thus, NEPA requires Reclamation to take a "hard look" at the environmental consequences of its proposed federal action, and one important ingredient of an EIS is the discussion of steps that can be taken to mitigate adverse environmental consequences. (*Robertson v. Methow Valley Citizens Council*, 109 S.Ct. 1835, 1846-47.) An EIS must consider direct, indirect and cumulative impacts from the WSP, as well as mitigation, to agricultural contractors. (*Id.*; 40 C.F.R. §§ 1502.16, 1508.7, 1508.8, 1508.27(a), (b).) An EIS must be based on "high quality" information and shortcomings of scientific information relied upon must be discussed as well as areas of controversy. (See, 40 C.F.R. §§ 1500.1(b), 1502.1, 1502.12, 1502.22, 1502.24; *Alliance for the Wild Rockies v. Bradford*, 720 F.Supp.2d 1193 (D. Mont. 2010) [flaws in study must be discussed].) "Accurate scientific analysis, expert agency comments, and public scrutiny are essential to implementing NEPA." (40 C.F.R. § 1500.1(b).) Unfortunately, the DEIS fails to meet these and other like standards.

For example, the DEIS used the Statewide Annual Production model (SWAP) to determine groundwater and economic impacts of each alternative. (DEIS, 6-55, 56, and 57.) While the SWAP is discussed in the DEIS and in Appendix D, so far as we can tell the DEIS fails to disclose to the public that the SWAP has been criticized in peer-review as underestimating impacts from reduced deliveries to agricultural contractors. As provided at page 25 of the paper prepared by Professor David Sunding, et al., dated October 24, 2012, titled "An Assessment of Models for Measuring the Economic Impact of Changes in Delta Water Supplies," regarding groundwater extraction<sup>4</sup>:

#### *"Groundwater Extraction*

SWAP is not integrated with any groundwater model, and treats groundwater availability as exogenous. Thus, it does not capture the fact that if there is

<sup>3</sup> We note that the DEIS includes one "M&I Contractor Suggested WSP" (DEIS, 2-16), but the DEIS does not indicate that it includes even one of the alternatives previously suggested by agricultural contractors although the water shortage policy has been under discussion since at least 2001.

<sup>4</sup> In addition to groundwater extraction issues, Professor Sunding's paper also criticizes the SWAP's problematic water requirement data, land use data, aggregation and calibration, and makes recommendations to alleviate the errors produced by the SWAP. (Sunding, An Assessment of Models for Measuring the Economic Impact of Changes in Delta Water Supplies (October 24, 2012), pp. 24-28.) Professor Sunding's paper is enclosed herewith and incorporated herein by this reference.

significant groundwater extraction the groundwater table may fall and pumping costs may rise. In reality, groundwater costs are endogenous in the long run, and will influence the shallow value of surface water.

We would add that to the extent that the SWAP does not account for variability in the quality of groundwater and its ability to serve as a suitable replacement supply for all types of crops, then the model would tend to underestimate the impacts of reductions in surface supplies." (Emphasis added.)

Aside from whether the model is sufficiently credible to support the DEIS's analysis of the impacts of the various alternatives, at a minimum, the DEIS should (but fails) to inform Reclamation and the public of all its shortcomings and limitations. These include, but are not limited to, that the model underestimates adverse impacts to agricultural contractors south of the Delta and others, and that the model fails to accurately account for the interaction between surface and groundwater and thus "does not account for changes in groundwater pumping caused by fluctuations in surface water deliveries." (Sunding, p 1.) In addition, the DEIS should disclose and discuss the effects on the DEIS's analysis and conclusions of the following SWAP model criticisms and concerns: "the SWAP model is a structural programming model that relies on a large number of assumptions," and it "is non-econometric and does not produce standard errors that allow the analyst to assess the statistical significance of results." (*Id.*)

Also regarding groundwater extraction, Professor's Sunding's paper notes that "it is uncertain if the model accounts for the availability of groundwater, the installed capacity to pump, and/or the ability to transport groundwater to places without availability/capacity." (*Id.*) In this regard, we note that there is no evidence that the SWAP or the DEIS's impact analysis takes into account the proposed action in light of California's recent Sustainable Groundwater Management Act (SB 1168, 1319 and AB 1739)<sup>5</sup>, which undoubtedly will limit the availability of groundwater to off-set CVP losses to agricultural contractors resulting from a pro-M&I WSP and will lead to additional economic impacts.

The farmers within Del Puerto stand to be acutely affected by the proposed action and have limited access to affordable alternative water supplies, which is in stark contrast to CVP M&I contracts that *do* have access to such supplies. For those farmers with access to suitable quality groundwater, a WSP that gives priority to M&I users would require them to increase groundwater pumping, which will cause energy impacts and could contribute to land subsidence. Alternatively, a WSP that gives priority to M&I users would require District farmers to fallow lands which could lead to air quality impacts. While the DEIS acknowledges these impacts (to some extent), the full extent of these impacts have not been studied and are unknown because, among other things, the baseline is flawed and the SWAP model "understates" impacts from reductions in CVP supplies to agricultural contractors.

In addition to underestimation of proposed action impacts to CVP agricultural contractors and their constituents, the DEIS also appears to ignore other potential impacts altogether. For example, the DEIS fails to evaluate the potential growth-inducing impacts of providing M&I contractors with additional supplies in times of shortage.

<sup>5</sup> See, e.g., Water Code § 10720, *et seq.*



For these, and other reasons<sup>6</sup>, the DEIS fails to contain an adequate compilation and disclosure of relevant, accurate and complete data and information, including baseline information, for adequate disclosure of environmental impacts sufficient for Reclamation to make an informed decision on whether to adopt a WSP.

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## Conclusion

For the above reasons, the proposed action to adopt a M&I WSP (including the no-action alternative) that gives priority to M&I contractors in times of shortage is contrary to law, including Reclamation Law, and the DEIS does not comply with the requirements of NEPA. Therefore, Del Puerto objects to the same, and Reclamation should not finalize the DEIS. If Reclamation is inclined to continue consideration of adoption of a WSP, then Reclamation should first revise the proposed action and WSP alternatives such that they are in compliance with the law and consistent with the statement and need - which is to propose a shortage policy for the benefit of all contractors - and then redraft and revise the DEIS and re-circulate the same for public review and comment in compliance with law including NEPA.

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Del Puerto thanks Reclamation for the opportunity to comment on the proposed shortage policy. It bears repeating that such policy is of critical importance to the District and its farmers who are almost totally reliant upon CVP supplies in times of shortage, particularly in light of the current drought and regulatory constraints on delivery of CVP water supplies to south of Delta contractors.

Sincerely,



Anthea G. Hansen, General Manager  
DEL PUERTO WATER DISTRICT

### Attachments:

- November 22, 2010 letter from William D. Harrison/Del Puerto to Timothy G. Rust/Reclamation
- November 30, 2000 letter from William D. Harrison/Del Puerto to Mr. Lester Snow/Reclamation
- January 9, 2001 letter from William D. Harrison/Del Puerto to Ms. Betty Riley-Simpson/Reclamation
- November 26, 2001 from William D. Harrison/Del Puerto to Alisha Sterud/Reclamation
- April 22, 2005 from William D. Harrison/Del Puerto to Mr. David Lewis/Reclamation
- Sunding, et al., An Assessment of Models Measuring the Economic Impact of Changes in Delta Supplies (October 24, 2012)

<sup>6</sup> Del Puerto joins in the comments on the DEIS submitted by San Luis & Delta-Mendota Water Authority.





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November 22, 2010

Timothy G. Rust  
M&I WSP Program Manager  
Bureau of Reclamation  
2800 Cottage Way  
Sacramento, CA 95825

Via FAX: (916) 978-5290  
Email: [TRust@usbr.gov](mailto:TRust@usbr.gov)

Re: October 21, 2010 Draft Municipal and Industrial Water Shortage Policy

Dear Mr. Rust:

The following comments on the above referenced draft policy are provided on behalf of the Del Puerto Water District ("District").

We understand from your statements at the October 28, 2010 workshop that Reclamation will prepare a separate new document under the National Environmental Policy Act (NEPA) that will analyze and evaluate the effects of this proposed policy on irrigation contractors. Because we believe the water supply impacts on south of the Delta irrigation contractors will be significant, we would ask that the extent of this reduction be modeled and clearly identified. Furthermore, this new documentation needs to analyze and measure the effects of this policy against the true, no-policy, no-M&I preference alternative. We look forward to this analysis and reserve our right to comment on this new document.

We have already commented on prior drafts of this policy, both verbally and in writing, and have attached our comment letters of November 30, 2000, January 9, 2001 and November 26, 2001 for your consideration in this current regard. We have also attached our letter dated April 22, 2009 that provided our comments on a prior proposed Draft EA/FONSI your consideration.

This proposed policy is similar to prior draft policies, making only minor modifications, and would have substantially the same negative impacts on irrigation contractors as noted in this prior correspondence. As pointed out therein, this proposed policy cannot be justified and enforced in light of Section 9(c) of the 1939 Act. Furthermore, we see nothing in this latest draft that addresses either how this proposed policy can be pursued in light of the applicable law for Reclamation providing municipal water supplies, or how Reclamation intends to mitigate the obvious impacts this proposed policy would have on irrigation contractors.

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Accordingly, we encourage you to reconsider this draft policy and develop a new policy that does not interfere with the irrigation purpose of the Project, as described in the attached correspondence. Additionally, we hope and trust that the further evaluation of this proposed policy under NEPA will evaluate, among other things, the true effects of this proposed policy on CVP agricultural contractors located south of the Delta such as the District, particularly in light of the current regulatory constraints on the movement CVP water supplies through the Delta.

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Thank you for the opportunity to comment on this proposed policy. If you have any questions regarding our position, please contact me.

Sincerely,



William D. Harrison, General Manager  
DEL PUERTO WATER DISTRICT

Cc: Board of Directors  
Ernest Conant, Esq.  
CVPWA  
SLDMWA



# Del Puerto WATER District

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November 30, 2000

Mr. Lester Snow, Regional Director  
Department of the Interior  
Bureau of Reclamation  
Code: MP-100, Regional Office  
2800 Cottage Way, Room E-1604  
Sacramento, CA 95825-1898

RE: Proposed M&I Water Shortage Policy

Dear Mr. Snow:

We understand that you are considering finalizing a policy regarding M&I water shortages and are seeking comments on a draft prepared on November 20, 2000 draft and circulated at a workshop held on November 21, 2000. Although there have been a number of draft policies over the years, we understand that this is the first time that such a policy is intended to be finalized.

As you know the Del Puerto Water District's contract for 140,210 acre-feet of CVP water is used almost exclusively for irrigation within the District. About half of the irrigated acreage within the District is planted to permanent crops. The reliability of the District's water supplies to irrigate these plantings is crucial to our survival.

We understand that some M&I Contractors are suggesting that the final policy be modified from that set forth in the November 20<sup>th</sup> draft in several respects for the primary purpose of providing greater reliability to M&I Contractors. Insofar as the inevitable result of such changes would be to reduce deliveries to agricultural Contractors, we urge you to reject such suggestions.

In fact, we fail to understand how the M&I Shortage Policy as set forth in a November 20<sup>th</sup> draft and in prior drafts can be justified and enforced in light of Section 9(c) of the 1939 Act (43 USC §485h(c)) which provides in part:

"No contract relating to municipal water supply or miscellaneous purposes or to electric power or power privileges shall be made unless, in the judgment of the Secretary, it will not impair the efficiency of the project for irrigation purposes."

We acknowledge that some priority should be given for M&I purposes that are needed to protect public health and safety, and that fish and wildlife purposes should also be subject to "human health and safety" requirements as has been provided for by Section 3406(b)(2)(C) of the CVPIA. We also acknowledge that there are a few M&I Contractors which historically have had various M&I priority provisions in their contracts which reasonably could have been entered into with a Secretarial determination that such priorities would not impair the efficiency of the project for irrigation purposes.

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