

February 4, 2015

Mr. Tim Rust
Bureau of Reclamation
2800 Cottage Way
Sacramento CA 95825

Sent via U. S Mail and email to trust@usbr.gov

**SUBJECT: CENTRAL VALLEY PROJECT MUNICIPAL AND INDUSTRIAL WATER SHORTAGE POLICY DRAFT
ENVIRONMENTAL IMPACT STATEMENT (DEIS) - COMMENTS**

Dear Mr. Rust,

The purpose of this letter is to provide comments on the Central Valley Project Municipal and Industrial Water Shortage Policy Draft Environmental Impact Statement (DEIS). We apologize for sending our written comments after the deadline. Our water counsel Martha Lennihan did communicate them to you by telephone before the deadline, and we appreciate the opportunity to have had that dialogue.

The City of Sacramento (Sacramento) provides municipal and industrial water supply to over 475,000 residents and 137,000 customer accounts. In addition, Sacramento is also a wholesale water supplier to a number of local water agencies. Sacramento has an operating contract (often referred to as a settlement contract) with Bureau of Reclamation dated June 28, 1957.

The DEIS indicates in the tables on Pages ES-7 and 4-11 that Sacramento is a water service contractor subject to the Municipal and Industrial Water Shortage Policy (M&I WSP.) The DEIS should be revised to remove Sacramento from the tables identifying it as a water service contractor, and accurately classify the City as a settlement contractor. The hydrologic and other analyses performed for the environmental review should accordingly accurately treat the City's water rights and supply.

We appreciate the opportunity to offer this comment. Please call me at (916) 808-1416 if you have any questions.

Sincerely,



James Peifer, PE
Supervising Engineer

City of Sacramento Department of Utilities
916-808-1400
1395 35th Avenue
Sacramento, CA 95822

McNeillLawOffices

CIVIL LITIGATION & APPEALS

March 13, 2015

Michael Inthavong
Tim Rust
US Department of the Interior
Bureau of Reclamation, Mid-Pacific Region
2800 Cottage Way
Sacramento, CA 95825
trust@usbr.gov
minthavong@usbr.gov

Re: Central Valley Project Municipal and Industrial Water Shortage
Policy Draft Environmental Impact Statement

Dear Messrs. Inthavong and Rust:

Thank you for the opportunity for Clear Creek Community Services District to submit comments on the Central Valley Project Municipal and Industrial Water Shortage Policy Draft Environmental Impact Statement that was released for review on November 14, 2014. As you may recall, Clear Creek Community Services District was represented and made comments at the public meeting in Sacramento that was held on Monday, December 8, 2014. This letter is being submitted to both reiterate the oral comments made at this public meeting and to offer additional comments on the CVP M&I WSP Draft EIS.

Clear Creek Community Services Districts submits the following comments for consideration by the United States Bureau of Reclamation:

1. The CVP M&I Water Shortage Policy should be renamed the "CVP M&I and Agricultural Water Shortage Policy" or simply the "CVP Water Shortage Policy" so that its true intent – to provide a policy for water shortages that applies to both municipal and industrial and agricultural water – is clear from the title. As is evident from the alternatives addressed in the Draft EIS, agricultural water is impacted first and most dramatically by the so-called "Municipal and Industrial" Water Shortage Policy. The table of declining allocations of M&I water & Ag water side-by-side could not be a clearer illustration of how M&I water allocations and Ag water allocations are inextricably intertwined and combined in this policy.

This misnomer has apparently confused even members of Congress – House Bill HR 5781 (the California Emergency Drought Relief Act of 2014, passed by the House on December 9, 2014), Section 204 – Allocations for Sacramento Valley Contractors – mandates agricultural water allocations of 50% to 100% in any “dry” to “wet” year that is not preceded by a “dry” year – an allocation that seemingly flies in the face of the agricultural shortage provisions in the CVP “M&I” Water Shortage Policy. Indeed, HR 5781 even contains provisions that state that it shall not “affect or limit the authority of the Secretary to adopt or modify municipal and industrial water shortage policies” – an indication that the drafters are ignorant of the fact that any legislation affecting the allocation of agricultural water necessarily impacts the draft “M&I” water shortage policy currently being implemented by the USBR.

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One unfortunate consequence of the deceptive name given to this policy is the suppressed representation and participation of Ag contractors in the process of formulating the policy options and in the public participation in the environmental review for this draft EIS. I have spoken directly with representatives of numerous Ag contractors and asked why they were not involved in the process, but received the reply that to their understanding this is only a policy for M&I water. I believe this misconception is widespread among Ag contractors and unfortunately undercuts the legitimacy of the entire process.

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2. No accommodation is made in any of the alternatives addressed by the EIS for the delivery of water to households – that means people – located on agricultural parcels receiving agricultural water. Many of the agricultural users in the Clear Creek Community Services District are small farmers who live with their families in households on their farms; that’s about 300 Ag water users and a little over a 1,000 people. They receive their water for household use as an “incidental” use of their Ag water, as is specifically provided for in our water service contract (that is a common feature of many water service contracts and has been a policy of Reclamation from its inception to aid the “family farm”). When agricultural water allocations are reduced to 0%, these users are not only left without any water for their crops, but potentially without any water for themselves and their families. On at least two occasions in recent years Clear Creek CSD has been forced to buy water on the open private market (at considerable expense to the District) because the allocations of Ag water had gone down to 0%, and the District has to figure out some way to provide water to over a 1,000 people. The District has complained numerous times to Reclamation about this irrational and costly total denial of water to people who normally receive incidental Ag water, and I have commented several times in the workshops for the development of the new WSP that this problem has to be corrected. Yet Reclamation has turned a deaf ear, and this draft EIS refuses to even identify the issue I have explicitly raised in your public process much less make any attempt to correct the problem. It should go without saying that the total denial of water to over 1,000 people is a severe “environmental impact” of the proposed WSP in all its versions. Presumably Clear Creek CSD is not alone and there are many other water service contractors with the same problem, even if on a lesser scale. The failure of the draft EIS to even discuss this issue, much less attempt provisions that would correct the problem, is inexcusable.

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3. Any of the water shortage policies that restrict the District's water allocation to an amount less than its demands for beneficial use (and which are below its contractual amount of 15,300 acre feet) violates the District's "area of origin" rights of first use as a "water shed of origin" and/or "county of origin" (see California Water Code §§11460, 10505, and 11128), given that the Clear Creek watershed in Shasta County generates over 112,000 acre feet of water annually – many times the contract quantity of the District. To be clear about this, the District is not suggesting that there needs to be any modification of its water service contract. The District is not asking for water above the contractual maximum amount of 15,300 acre feet. However, when Reclamation is unable to deliver the full amount of water demanded by all the various contractors in the CVP, the allocation process carried out administratively by Reclamation must comply with the State laws relating to "area of origin" pursuant to and as incorporated in the permits given to Reclamation by the State to operate the CVP in the first instance. As long as the water produced in the "area of Origin" for the District exceeds its demands for beneficial use, the WSP must honor the legal obligations imposed on Reclamation at the inception of the CVP to meet the District's needs first in any administrative water shortage allocation process.

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4. The limitation on conversion of Ag water to M&I water for shortage allocation purposes violates the contract rights of the District and effects a taking of its M&I water. This need to be understood in the context of what Reclamation has done CVP-wide without consideration of the impacts on Clear Creek CSD and its unique circumstances.

Alternative 1, the continued implementation of the current 2001 Draft M&I WSP, and Alternative 4, the "Updated M&I WSP", provide that Ag water converted or transferred after September 30, 1994 for M&I use would be subject to the Ag water shortage allocation, despite its actual use for M&I purposes. This essentially makes any water converted from Ag water to M&I water in order to accommodate a growing urban population completely unreliable and useless – as any such converted water will continue to be subject to an agricultural water allocation that could result in a 0% allocation to the new M&I users. It is essentially a check on the large Ag water contractors that use 99% of their contractual water for Ag purposes, to prevent them from turning into M&I water "banks" that sell off Ag water at mark-ups of 1000% (give or take) while fueling unconstrained new development made possible by a new source of urban M&I water. The possibility of such wholesale conversions of Ag to M&I water did not exist until about 2001 when Reclamation changed all of the existing exclusively Ag water service contracts in the CVPIA process (which authorized water only for "irrigation" purposes) to dual purpose contracts that allow water for either Ag or M&I purposes. The original (never finalized) September 11, 2001 WSP – limiting the conversion of Ag to M&I water – had to be put in place to, among other things, put a constraint on Reclamation's creation of this vast pool of potential M&I water that did not exist in the past.

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However, Clear Creek CSD (unlike the Ag contractors with hundreds of thousands of acre feet of purely AG water prior to their contract conversions) has

always been a “mixed use” contractor going back to a 1965 water service contract that allowed the District to use its entire contract quantity for either M&I or Ag use without constraint. Further, Clear Creek CSD (unlike any other CVP contractor we know of) filters and treats 100% of all of the water it takes from Reclamation, and all of the water it serves to customers is 100% potable water, delivered 100% through pipes and meters (as opposed to canals and ditches common to Ag water delivery), with plans and long term population growth projections that indicate that eventually nearly 100% of the District’s contract quantity will be used for M&I purposes, with investments in filtration capacity and land space provided on federal land for expansion of the treatment plant to accommodate 100% M&I water for its full contract quantity as the need develops over the life of its water service contract. Even the Ag water usage in Clear Creek CSD draws from the same major pipeline, which means that filtered treated potable water is being applied to fields and orchards for Ag water usage – a practice unheard of in the CVP and a fact that militates toward the ultimate conversion of all Ag water to M&I usage in the long term due to obvious economic and practical considerations. (The origin of this anomalous water usage lies in the unique circumstances of the creation of the Reclamation facilities that serve the District; suffice to say the current circumstances were not foreseen in 1965.) The WSP alternatives now being considered and their constraints on present and future Ag-to-M&I conversion are a betrayal of the historical promises and assurances of Reclamation to the District that its water was and is freely usable for either Ag or M&I, and legally the incorporation of such constraints on conversion into the water service contract via the WSP creates a breach of contract and a “takings” of the District’s property interests.

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The conversion limitation in the WSP is then exacerbated by an artificial “cap” on M&I water placed in the “Terms and Conditions” of the WSP alternatives (see Alternative #4, Term and Condition No. 3) that constrains M&I water to the amount shown in a Water Needs Analysis developed in the year 2000 by the Bureau of Reclamation – without the knowledge of the District and without consultation with the District – that unilaterally and erroneously projected the District’s future water demand for M&I to be 8,283 acre feet. However, in Appendix A to the draft EIS for the WSP, the Bureau (more accurately, though still unilaterally) predicts that the projected M&I demand for the District will be its full contract quantity of 15,300 acre feet. The NEPA environmental review is based on projected full contract quantity use of 15,300 acre feet of water as M&I – a calculation with which the District agrees and that Reclamation now describes as based on “more accurate data” (see p. 2-20 of the draft EIS); yet the actual WSP alternatives still contain the old inaccurate WNA analysis as a limiting factor on M&I use. The two-fold consequence is that the environmental analysis is conflicted/inaccurate, and Clear Creek CSD is falsely limited to 8,283 acre feet of M&I water – leaving it with contract and condemnation damages for the remainder of its contract water that it cannot use, sell or trade as M&I water.

5. One of the “Issues of Known Controversy” listed in Section 1.6 include an acknowledgment that “[t]he EIS should analyze the impacts to water service contractors who have limited access to alternative water supplies and to ‘mixed

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use' contractors." Clear Creek CSD is one of these few "mixed use" contractors, but it appears that, yet again, none of the alternatives considered by the EIS analyze the impacts on such "mixed use" contractors, especially as to those individuals living on agricultural parcels, as indicated in above comment number 3, and the conversion of agricultural water to M&I water by "mixed use" contracts with growing urban populations, as indicated in above comment 4. The EIS continues to ignore the reality of a growing urban population in mixed-use water districts and the consequent need for increased M&I use as well as the environmental impacts of this increased use.

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6. Despite numerous and on-going complaints from CVP contractors in workshops and other Reclamation forums for discussion of the WSP that have occurred over the last 10 years, the WSP alternatives continue to punish contractors for the development of non-CVP water sources that may supplement rather than replace CVP water allocations. See for example Term and condition No. 1 in alternative No. 4, which states that Reclamation may "consider" the extent to which non-CVP water is available in making shortage allocations of CVP water if the non-CVP water is not solely used to replace CVP supplies. That is, a CVP contractor that may have other non-CVP water available during a drought may also receive a lesser allocation of CVP water so that more needy water users without those alternatives can be given more water by Reclamation. Somehow Reclamation seems not to understand that this WSP discourages the development of alternative water sources and investment of capital in the facilities to that kind of water available, at a time when we should be looking for water anywhere we can find it. The Draft EIS needs to acknowledge this dis-incentive to water development and its adverse environmental consequences, compared to a policy that allows and encourages the development of new water sources.

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7. Reclamation claims that it has the privilege or authority to determine for the water service agency contractors whether is or is not a "water shortage emergency" for purposes of making allocations of M&I water below the 75% historical use level. This conflicts with Water Code §350 et seq. that puts that authority only in the hands of the individual water agencies. The draft EIS cannot perform accurate review on a false premise imbedded in the WSP. This need to be revised or the EIS may be found lacking.

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8. It appears that the wrong map was used as Figure 4-2. Shasta Division and Trinity River Division Water Service Contractors. Instead of the Shasta and Trinity divisions, the Delta Division is pictured.

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Respectfully Submitted,



WALTER P. MCNEILL
MCNEILL LAW OFFICES



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December 23, 2014

David G. Murillo, Regional Director
United States Bureau of Reclamation
Mid-Pacific Region
2800 Cottage Way
Sacramento, CA 95825-1898

Subject: Request for Extension of the Public Review Period for the Central Valley Project (CVP) Municipal and Industrial Water Shortage Policy (M&I WSP) Draft Environmental Impact Statement (Draft EIS)

Dear Mr. Murillo:

The Contra Costa Water District (District) requests an extension of time for public review of the Draft EIS to **March 13, 2015**.

I appreciate that Reclamation has provided regular updates on the status of the CVP M&I WSP and I am pleased that Reclamation is moving forward with finalization of the policy. The process toward finalization has been extraordinarily protracted, as evidenced by the fact that the current draft M&I WSP dates back to 2001. Efforts in 2003-2005 produced a draft revised policy and a NEPA environmental assessment but the proposed policy in those documents was not adopted. In reinitiating efforts towards a final M&I WSP in 2010, Reclamation held a number of stakeholder workshops and NEPA NOI meetings that extended into 2011. Subsequently, stakeholders were told that issues had arisen with the continuity of Reclamation's consultant contract, which led to delay of more than a year in work towards an M&I WSP. More recently, stakeholders were informed that the consultant's work had resumed and that a draft EIS would be issued in 2014. But stakeholders did not anticipate that the window of time offered by Reclamation for public review would be only 45 days and span the end-of-year holiday period when many stakeholder employees and advisors take vacations. The fact that Reclamation has taken many years to develop and publish the Draft EIS should not cause a sudden and impractical rush towards closure at the expense of receiving adequate stakeholder and public comment.

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David G. Murillo, Regional Director
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Page 2

The Draft EIS is a document of substantial length and great detail that will require approximately three months for proper review. Accordingly, I am requesting that the review period be extended to Friday, March 13, 2015. Thank you for your consideration of this request. Please contact me at (925) 688-8034 if you have any questions.

Sincerely,



Jerry Brown
General Manager

JB/MP:wec



LA08

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March 13, 2015

Mr. Tim Rust
Program Manager
United States Department of the Interior, Bureau of Reclamation
2800 Cottage Way, MP-410
Sacramento, CA 95825

Subject: M&I Water Shortage Policy Draft Environmental Impact Statement

The Contra Costa Water District (CCWD) appreciates the opportunity to comment on the Draft Environmental Impact Statement (DEIS) for Central Valley Project (CVP) Municipal and Industrial (M&I) Water Shortage Policy (WSP). CCWD serves untreated and treated water to approximately 500,000 people throughout central and eastern Contra Costa County. CCWD is the first CVP contractor and the largest M&I contractor, and the CVP has historically been, and will continue to be, its primary water supply. In 1998, CCWD invested \$450 million to construct the Los Vaqueros Project to improve water quality for its customers and to provide emergency storage. Since then, CCWD's customers have invested an additional \$210 million to construct the Middle River Intake on Victoria Canal and the Los Vaqueros Reservoir Expansion Project to further protect delivered water quality and to improve water supply reliability.

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CCWD opposes Alternative 2 (Equal Agricultural and M&I Allocation) and Alternative 3 (Full M&I Allocation Preference) in the DEIS. Alternative 2 does not give priority to delivering water supply relied upon by M&I contractors to meet Public Health and Safety requirements, and neither alternative represents a reasonable methodology for allocating water shortages among CVP contractors.

CCWD supports Alternative 1, the No Action Alternative in the DEIS inasmuch as it is the current policy being implemented, which is described on Page 2-4 as the "2001 Draft M&I WSP, as modified by Alternative 1B from the 2005 EA". The No-Action Alternative and 2001 M&I WSP reflect Reclamation's historical practice over many decades in allocating water during shortages to sustain urban areas during periods of drought and to protect public health. CCWD also supports further evaluation of Alternatives 4 and 5 in the DEIS. Alternatives 1, 4, and 5 should all be modified to remove inconsistencies between the DEIS and the current Draft WSP related to considerations for allocations under Public Health and Safety conditions, described in the following comments.

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Public Health and Safety

The DEIS notes that Reclamation will strive to meet "unmet" Public Health and Safety demand, considering the availability of an agency's non-CVP supplies. The approach of providing only

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for unmet PH&S demands provides a disincentive for contractors to invest in new non-CVP supplies, and penalizes agencies that already have made such investments. While it is recognized that *extraordinary conditions* may warrant adjustments to CVP allocations, adjustments for available non-CVP supplies should be the exception, not the rule, and should not be applied where the CVP is the primary supply. CCWD requests the following clarifications to the DEIS and WSP regarding Public Health and Safety. The proposed changes are consistent with historical practice and the 2001 Draft WSP.

Page 2-8

During water shortage conditions, Reclamation will strive to deliver CVP water to M&I water service contractors at not less than their ~~unmet~~ PHS water supply level, provided that sufficient CVP water is available, if: 1) the Governor declares an emergency drought condition due to water shortage; or 2) Reclamation, in consultation with the contractor, determines that an emergency exists due to water shortage. *At times of extraordinary circumstance, Reclamation may determine that it is necessary to vary the allocation of M&I water among contractors, taking into consideration a contractor's available non-CVP water.* At that time, the PHS level and unmet need would be determined by the contractor and reviewed by Reclamation.

The PHS water criteria in this analysis are used to estimate the water that is needed for consumption, for operation of necessary water and wastewater facilities, and to avoid economic disruption. The PHS needs will be calculated using the M&I water service contractor's domestic, commercial, institutional, and industrial demands and system losses. ~~M&I water service contractors are expected to first use their non-CVP supplies to meet their PHS demands.~~

Reclamation would ~~then~~ use CVP water to assist the M&I water service contractor to meet ~~the unmet need portion of~~ their respective PHS demand. Unmet need is calculated as the difference between a contractor's PHS demand and its *reasonably* available non-CVP supplies. CVP water provided for PHS needs would be non-transferable.

Appendix A: M&I Contractor Data Summary

The M&I Contractor Data Summary in Appendix A of the DEIS shows CCWD's estimated 2010 Public Health and Safety level as 70,827 acre-feet. It is noted that this value was calculated by Reclamation based on information contained in CCWD's 2010 Urban Water Management Plan. CCWD provides CVP water to retail customers and on a wholesale basis to municipal customers within its service area. The calculated PH&S amount in the DEIS only considers CCWD's retail customers and does not include commercial, institutional, and industrial demands for CCWD's municipal customers. The 2010 estimated Public Health and Safety Value should be updated to

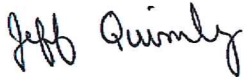
Tim Rust, Program Manager
United States Department of the Interior, Bureau of Reclamation
M&I Water Shortage Policy Draft Environmental Impact Statement
March 13, 2015
Page 3

79,500 acre-feet. This value includes 80% of commercial/institutional and 90% of industrial demands for CCWD's municipal customers.

Once Reclamation has had the opportunity to review the comments received on the DEIS for the M&I WSP, CCWD looks forward to participating in a public stakeholder process to select a policy alternative to be adopted in a final M&I WSP. It is critically important that CCWD and the other M&I contractors are consulted throughout the process and have an opportunity to engage in a transparent, collaborative discussion before Reclamation finalizes the M&I WSP.

Thank you for your consideration of CCWD's comments. Please call me at (925) 688-8310 if you have any questions.

Sincerely,



Jeff Quimby
Director of Planning

JQ/MP:wec



Shasta County

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February 24, 2015

Mr. Tim Rust
 Bureau of Reclamation
 Resources Management Division
 2800 Cottage Way
 Sacramento, CA 95825

Subject: Central Valley Project Municipal and Industrial Water Shortage Policy Draft
 Environmental Impact Statement

Dear Mr. Rust:

This letter is in reference to the Central Valley Project Municipal and Industrial Water Shortage Policy Draft Environmental Impact Statement (Draft EIS). We encourage the Bureau of Reclamation to provide further analysis and discussion of recreation and the cold water pool.

Shasta County is home to Shasta Lake, keystone of the Central Valley Project (CVP) and a significant recreation asset to our community. This document purports to guide Reclamation's management of this critical resource. Cold water pool considerations have gravely impacted CVP operations. The City of Shasta Lake's drinking water supply has been curtailed. Transfers have been denied. This document should examine these impacts. It falls short in several respects.

Chapter 10, Aquatic Resources, lists many endangered fish. These presumably drive cold water needs. There is a lack of discussion of the timing of their cold water demand. There is no quantification of the relative size of the cold water pool in Shasta Lake or the relative impacts of the various alternatives. In fact, the Draft EIS makes it appear that there will be no such impacts. And yet, the cold water pool has been cited in many adverse water supply actions in recent years. If the cold water pool is driving decision making, it should be carefully analyzed in this document.

Chapter 16, Recreation, does not adequately evaluate local recreation impacts. Shasta Lake brings \$60M into the local economy each year – when it's full. Per Table 3-1, the No Action alternative cannot deliver even public health and safety water in ten percent of all years. Even this small change will have far-reaching impacts on available recreational opportunities and the economy. The Draft EIS fails to analyze these.

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February 24, 2015
Mr. Tim Rust, Project Manager
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Shasta County hosts key elements of the CVP. We greatly value its contributions to the local region and to the state as a whole. It needs to be carefully managed to maximize these benefits. This document is the avenue to do so. We look forward to appropriate modifications and improvements in future drafts to achieve these goals.

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Very truly yours,



Leonard Moty, Chairman
Board of Supervisors
County of Shasta