

SAN LUIS UNIT

FINAL ENVIRONMENTAL ASSESSMENT

INTERIM RENEWAL CONTRACT EA

Appendix F
Comments Received on the Draft EA and Reclamation Responses

November 2007



CENTRAL DELTA WATER AGENCY

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September 18, 2007

Via email jtapia@mp.usbr.gov
and First Class U.S. Mail

Judi Tapia
Bureau of Reclamation
South-Central California Area Office
1243 N Street, SCC-413
Fresno, CA 93721

Re: Draft Environmental Assessment and Seven Draft Findings of No Significant
Impact for the Seven Interim Renewal Water Service Contracts in the San Luis
Unit

Dear Ms. Tapia:

Please accept these comments on behalf of the Central Delta Water Agency concerning the Draft Environmental Assessment and Seven Draft Findings of No Significant Impact for the proposed execution of seven Interim Renewal Water Service Contracts in the San Luis Unit (the "EA").

We have earlier commented upon the Draft Environmental Impact Statement Central Valley Project, West San Joaquin Division, San Luis Unit, Long-Term Water Service Contract Renewal dated January 17, 2006, the Draft Environmental Impact Statements - Supplemental Information Central Valley Project, West San Joaquin Division, San Luis Unit, Long-Term Water Service Contract Renewal on April 10, 2006, and the Central Valley Long-Term Service Contract for Westlands Water District on April 17, 2006. Those comments are enclosed and are incorporated herein by reference.

CDWA #1

1. Extend the Comment Period and Delay and Limit Further Action.

Informed and meaningful comment and public participation, the development and analysis of realistic alternatives and a properly formulated EA, and an informed administrative determination is not possible in the absence of knowing the outcome of several issues.

First, it is unknown whether the San Luis Drainage Unit features selected will ever be

implemented and obtain the essential Congressional authorization. The comment period should be extended to at least thirty (30) days after that is accomplished to analyze and evaluate any congressional requirements. Meaningful comment may then be submitted. Furthermore, the Bureau should consider what contract modifications may then be necessary based on congressional requirements for the drain. In the interim, it is not reasonable, responsible, or necessary to commit to a particular supply beyond an annual basis.

The EA also fails to take into account the recent Delta Smelt ruling in federal court, the future uncertainty of supplies, and the relationship of contract renewal with the San Joaquin River Restoration Plan. In addition, with the outcome of the new Delta Smelt Biological Opinion that is now necessary and wholly uncertain, delay is the only reasonable solution. This is particularly so since an Endangered Species is involved, future supplies are uncertain, and no assessment has been made of the relationship and impact of a new Delta Smelt Biological Opinion.

Another issue not yet finalized is the San Joaquin River Restoration Plan. The plan has not been implemented and Congressional authorization remains absent. Some are seeking revision of the plan. At this time it would be imprudent to proceed without knowing the details of implementation, including Congressional requirements, and evaluating any impacts on the matter at hand.

It would be premature to move forward at this time on an interim contract for any firm supply, or to conclude the EA process at this time. Requirements for Delta Smelt and other environmental needs as well as the possible lack of precipitation adds uncertainty.

2. An Interim Contract Is Unlawful.

CDWA #2

It is erroneously stated in the EA that the Bureau is required to execute interim renewal contracts. However, section 3404(c), relied upon in the EA, contains no such requirement. Instead, the statute uses the words "may be renewed for an interim period". The word "may" is discretionary, and the EA misstates that interim renewal is "required by section 3404(c)".

The Central Valley Project Improvement Act ("CVPIA") expressly states in section 3404:

"(a) - NEW CONTRACTS. - Except as provided in subsection (b) - of this section, the Secretary shall **not** enter into any new short-term, temporary, or long-term contracts or agreements for water supply from the Central Valley Project for any purpose other than fish and wildlife before:

"(i) - the provisions of subsections 3406(b) - -(d) of this title are met."
(Emphasis added.)

Section 3406(b) requires that Central Valley Project ("Project") operations comply with the Endangered Species Act. At present, there is not compliance, witnesseth the Delta Smelt case. Furthermore, other requirements of sub-section (b) are not being met, such as the fish doubling requirements, implementation of a plan for the natural production of anadromous fish, annual dedication of 800,000 acre feet for fishery purposes, development of a fishery mitigation plan for the Tracy Pumping Plant, meeting the flow standards applicable to the Project facilities, and other requirements of subsections (b) and (c) of section 3406. Until all requirements of 3406(b) and (c) are being met, interim renewal is specifically prohibited by section 3404. The EA should correct the misstatement and assess the legality of proceeding in the absence of CVPLA compliance with section 3406(b) and (c).

3. The No Action Alternative Is Not Properly Formulated.

CDWA #3

The No Action alternative is characterized as the interim renewal of existing contracts with continued delivery of Project water. Eliminated as an alternative was the true "no action" alternative: Non-renewal. However, "interim renewal of existing contracts" is by definition "action" rather than "no action". It is not maintenance of the status quo. The status quo was a contract with a defined period of existence—a period that expired. No action would be to merely proceed with the status quo, observing the expiration of the contracts.

Furthermore, the renewal is not an "ongoing" project because the project, the long term contract, has been completed. Such being the case, the project, a new contract for water supply in the future, is certainly "major action."

Until the true "no action" alternative is examined, the EA is defective and a FONSI would be wholly inappropriate and unlawful.

CDWA #4

4. The Study Area Was Improperly Limited to Fresno, Kings, and Merced County Areas.

By limiting the study area, the EA fails to analyze the potential impacts to listed and non-listed species outside of the area. Most noticeably, the potential impacts in the area where the water supply is taken from, the Sacramento-San Joaquin Delta, are completely ignored. Moreover, the EA fails to address the impacts on those areas within and without the Fresno, Kings, and Merced areas for a true "no project" alternative. These circumventions of the requirement of an evaluation of the potential impacts on listed and non-listed species is improper.

CDWA #5

5. Supply Reductions for Area of Origin.

It should be expressly stated in any contract that it is subject to reductions in deliveries in order to meet the water needs within Areas of Origin pursuant to law, including without limitation California Water Code section 11460, et seq.

CDWA #6

6. The CVPIA's Right of First Refusal Should Be A Condition of Sale or Transfer.

Section 3405(a)(1)(F) of the CVPIA subjects all transfers outside the Central Valley Project service area to a right of first refusal by entities within the Central Valley Project service area. This should be made an express provision of any contract.

CDWA #7

7. River Regulation Including Salinity Control.

Any contract should expressly be subject to the need to provide river regulation, including salinity control, from time to time, that may result in reductions of contractual deliveries. This should be made abundantly clear to assure that there is no undue reliance on the quantities specified in the contracts.

CDWA #8

8. Mitigation, Public Trust, and Endangered Species Act.

The contract deliveries should be made subject to the express condition of meeting mitigation, public trust, and Endangered Species Act ("ESA") responsibilities and State Water Resources Control Board ("SWRCB") standards. These obligations are indisputable and should be expressed in the contract. (See also 11. below.)

CDWA #9

9. Adjustments for the Drain.

Express provision should be made for adjustments to any contract to meet the obligations of the CVP to provide a San Joaquin Valley Drainage Solution including dilution and/or cleanup of the salt accumulation in the land and groundwater caused by the CVP which could directly or indirectly add salts to the San Joaquin River. Such adjustments should include the appropriate increase in rates to pay for the same and supply reductions consistent with the capacity and characteristics of the actual drain.

CDWA #10

10. Limit Supply to Capacity of Existing Facilities.

The water to be made available should be expressly limited to those amounts which can be reliably provided without new facilities or operations. If new facilities or operations are required to provide water in excess of the amount that the system currently is capable of making available, it should be the subject of a separate long term contract. It should also await the required environmental review and actual permitting and completion of the facilities and permitting of the operations necessary to fulfill such a contract concerning supplies not presently capable of being delivered.

CDWA #11

11. Withhold Action Pending Determination of Service Area and Westlands Claims.

As previously suggested, resolution of the issues pertaining to the responsibility for providing a San Joaquin Valley Drainage Solution is needed. The San Luis Act of June 3, 1960, Public Law 86-488 precluded the construction of the San Luis Unit without provision for a master drainage outlet which has never been provided. Settlement of the Sumner Peck Ranch v. Bureau of Reclamation litigation (Eastern District of California case number F-91-048) reveals an exposure to millions of dollars due to the failure to provide the drainage.

Providing a contract extending water service without including a release or other resolution of the drainage related issues is certainly not in the public interest and doubtlessly will provide the perfect setting for future claims and the needless expenditure of even greater sums of public funds to deal with such claims. Furthermore, no contract should be entered without the dismissal and release of all pending claims including claims of Westlands' constituents and claims made in the Sumner Peck litigation. Further, as with the drain determination, the comment period on the contract and the execution of the contract should await the outcome of the litigation.

CDWA #12

12. Endangered Species Act (ESA).

Any interim contract should be revised to include compliance with all lawful biological opinions regarding the contract and all operations and actions under the contract, and not merely consultations regarding execution of the contract. Furthermore, the language requiring use of existing contract conditions as a baseline should be deleted as inconsistent with the requirements of the ESA and the obligations of the contractor. The Delta Smelt case makes this abundantly clear.

CDWA #13

13. San Joaquin River Restoration Plan.

As we stated above, execution of the contract should be delayed pending implementation of the settlement in Natural Resources Defense Council v. Rodgers, Eastern District of California docket number CIV. S-88-1658. Further, any contract should be subject to any requirements for implementation of the settlement.

CDWA #14

14. Contracting for Excessive Quantities.

The quantities of water should be reduced to a level not in excess of the greatest quantity supplied under the previous long-term supply contract. The quantities should also be reduced pro-rata by the quantities of water required to be supplied for CVPIA, Delta Smelt, and other purposes.

CDWA #15

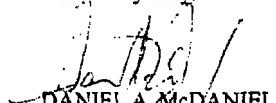
15. The Contract Should Not Be Entered Into Pending Compliance With the Conservation Requirements of the CVPIA.

The draft long-term contracts require implementation of an approved water conservation plan. The Reclamation Reform Act of 1982 requires in section 210(b) that districts develop a water conservation plan. In view of this more than twenty (20) year obligation, having an existing plan approved by the Contracting Officer should be a predicate to entering into another supply contract, even on an interim basis, at this time.

Since during the last fifteen (15) years the CVPIA has continually required in section 3405(e) that the Secretary establish and administer an office on Central Valley Project water conservation best management practices that shall develop criteria for evaluating the adequacy of all water conservation plans developed by project contractors, including the plans required by section 210 of the Reclamation Reform Act of 1982, a contract prerequisite requiring an approved plan should be a minimal requirement even for an interim contract.

These comments are joined by the South Delta Water Agency and are also submitted on their behalf.

Yours very truly,


DANIEL A. McDANIEL
Special Counsel

1. CDWA #1

Under the circumstances existing for these contractors and based on a complete reading of reclamation law, Reclamation has no discretion not to renew existing water service contracts.
(See EA Section 1.1 page 2)

The impact assessment presented in Section 3 of the EA compared conditions under the Proposed Action as compared to the No Action Alternative. The impact assessment focused on non-speculative changes or the absence of changes over the thirty-eight month period (period from the start of the first to the end of the last interim contract) covered in the EA in the infrastructure, physical disturbances, water deliveries, biological resources and human resources in the action area.

The differences between the Proposed Action and the No Action Alternative are known and are not contingent upon the outcome of the issues mentioned.

The interim renewal contracts contain the necessary flexibility to adapt to changing conditions over the interim contract period. (See EA Section 2.0 page 7.)

2. CDWA #2

See response for CDWA #1. (See EA Section 1.1 pages 1 & 2.)

3. CDWA #3

This EA tiers from the PEIS. (Please see EA Section 1.1 pages 1 & 2.) The No Action Alternative within the EA consists of renewing the existing water service contracts as described by the Preferred Alternative of the PEIS. (See EA Section 2.1 page 8.) The No Action Alternative together with negotiated proposals for CVP-wide terms and conditions are the basis for the action alternative. The Proposed Action essentially maintains the status quo apart from changes mandated by the CVPIA. The analysis displays the increment of change between the No Action Alternative and the Proposed Action.

4. CDWA #4

The CVPIA PEIS provided a programmatic evaluation of the impacts of implementing the CVPIA. (See EA Section 1.1 pages 1 & 2.) Four alternatives, 17 supplemental analyses, the Preferred Alternative, and a No-Action Alternative were evaluated in the PEIS. The PEIS analyzed the region-wide and cumulative impacts of the CVPIA including renewal of CVP water service contracts.

This EA analyzed the contract-specific impacts of seven short-term IRC's all of which are related to the delivery of CVP water within the service area boundaries of the contracts. The service area boundaries for the seven IRC's are all contained within the stated counties. The potential impacts to listed and non-listed species related to the amount of water available for contract deliveries CVP-wide were analyzed in the CVPIA PEIS.

Since the IRC will not result changes to operations outside the historic operational range of the CVP, no further NEPA analysis is required.

The IRC's do not contain any requirements that dictate operational actions. CVP water operations are governed by a complex set of requirements including state and Federal laws, regulatory requirements, and agreements. Operational decisions are made based on these requirements not on contract requirements. The existing Biological Opinions for Operations Criteria and Plan for the CVP and SWP facilities analyzed the impacts to listed species from the continued operations of the CVP. For various reasons, Reclamation has reinitiated consultation under the Endangered Species Act with the Service and National Oceanographic and Atmospheric Administration (NOAA) for the Operations Criteria and Plan for the CVP and SWP facilities. The IRC's contain provisions that provide for delivery adjustments related to CVP operations resulting from new laws, regulatory requirements or any successor or future requirements therefore any required changes to CVP operations would be implemented as required in the administration of these IRC's.

5. CDWA #5

These comments do not address or pertain to environmental impacts but rather water rights, and as such, no response is required.

6. CDWA #6

These comments do not address or pertain to environmental impacts but rather water rights, and as such, no response is required.

7. CDWA #7

These comments do not address or pertain to environmental impacts but rather water rights, and as such, no response is required.

8. CDWA #8

These comments do not address or pertain to environmental impacts but rather water rights, and as such, no response is required.

9. CDWA #9

These comments do not address or pertain to environmental impacts but rather water rights, and as such, no response is required.

10. CDWA #10

These comments do not address or pertain to environmental impacts but rather water rights, and as such, no response is required.

11. CDWA #11

These comments address contract content and the timing of contract execution. They do not address or pertain to assessment of the environmental impacts of the proposed contracts, and no response is required.

12. CDWA #12

These comments recommend specific contract content. They do not address or pertain to assessment of the environmental impacts of the proposed contracts, and no response is required.

13. CDWA #13.

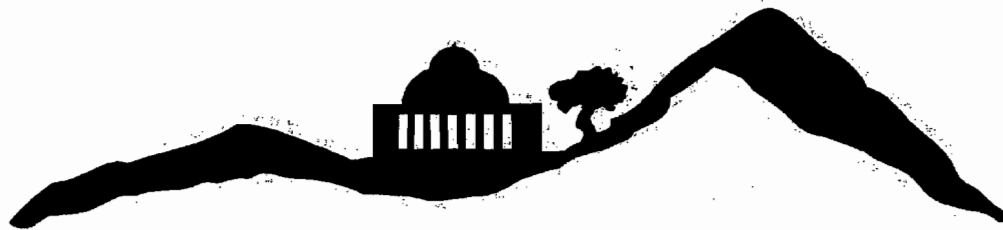
These comments recommend specific contract content. They do not address or pertain to assessment of the environmental impacts of the proposed contracts, and no response is required.

14. CDWA #14.

These comments recommend specific contract content. They do not address or pertain to assessment of the environmental impacts of the proposed contracts, and no response is required.

15. CDWA #15

These comments recommend specific contract content. They do not address or pertain to assessment of the environmental impacts of the proposed contracts, and no response is required



PLANNING AND CONSERVATION LEAGUE

PLANNING AND CONSERVATION LEAGUE FOUNDATION

September 10, 2007

Mrs. Judi Tapia,
Bureau of Reclamation,
South-Central California Area Office,
1243 N Street, SCC-413
Fresno, CA 93721
jtapia@mp.usbr.gov

**Re: Comments on the Draft Environmental Assessment and Finding of No
Significant Impact for San Luis Unit Water Service Interim Renewal Contracts
2008-2001 EA-07-56**

Dear Ms. Tapia:

The Planning and Conservation League (PCL) and the Planning and Conservation League Foundation are writing to submit comments on the Draft Environmental Assessment and Finding of No Significant Impact for San Luis Unit Water Service Interim Renewal Contracts 2008-2001 EA-07-56 (Draft EA). As outlined in our comments below, significant evidence demonstrates that the Draft EA's proposed action will have serious and significant environmental impacts, which will further contribute to the decline of the Bay Delta Estuary and its watersheds, the collapse of Delta species, and the degradation of water quality. Under such circumstances, reliance upon an EA/ FONSI is incompatible with the basic requirements of NEPA. Given these impacts, we respectfully urge the Bureau of Reclamation to withdraw the Draft EA and FONSI and prepare a legally adequate EIS/EIR. In addition, if the Bureau is to proceed with any interim or long term contract renewal, the Bureau must first ensure that any proposed contracts fully comply with applicable laws, as anticipated in section 3404(c) of the

CVPIA.. Such compliance must include new and legally adequate environmental review in accordance with NEPA, CEQA and the Endangered Species Act.

In addition to our comments below, we incorporate by reference the comments submitted by the PCL and PCLF, Natural Resources Defense Council (NRDC) and the California Water Impact Network (CWIN) on September 10, 2007 on the San Luis Interim Contracts.

Inappropriate baseline, no action alternative, and exclusion of project alternatives:

PCL#1

The Draft EA inappropriately relies on a baseline and no action alternative that is based on continued implementation of, and delivery of water under, the existing Central Valley Project (CVP) water service contracts. See, e.g., Draft EA at 8.

The EA's inappropriate baseline and no action alternative results in a no action alternative and a proposed project that are functionally the same. By blurring the distinction between the project and the no action alternative, the draft EA deprives the public of information necessary to determine the impact of approving the proposed action, and to determine how non-renewal would differ from the proposed action. The proposed action cannot be lawfully approved, according to the law of NEPA, without full disclosure and analysis of the environmental consequences associated with approval of this project. The no-action alternative "provides a benchmark, enabling decision-makers to compare the magnitude of environmental effects of the action alternatives." CEQ, *Forty Most Asked Questions Concerning CEQ's NEPA Regulations*, Question 3, 46 Fed. Reg. 18026, 18027 (1981). NEPA regulations "require the analysis of the no action alternative even if the agency is under a court order or legislative command to act." 46 Fed. Reg. at 18027.

Without renewal, the existing contracts would expire on December 31, 2007. After that date and without the proposed action under the Draft EA, the Bureau of Reclamation would not have the authority to make deliveries under the previous water service contracts. In fact, as the Bureau is aware, the Bureau has the authority to reduce water contract amounts, the obligation to ensure the reasonable and beneficial use of water, and the further obligation under NEPA to analyze a reasonable range of alternatives.

PCL #2

By relying on an inappropriate no action alternative, and failing to analyze any alternatives that are functionally different from the project and the no action alternative, the Bureau has failed to meet these legal obligations. Moreover, the EA is flawed in its summary dismissal of the project alternative based upon the non-renewal of contracts, based upon the tautological ground that the Bureau has "no discretion not to renew existing water service contracts." Draft EA at 18.

In addition, the recent decision in *Natural Resources Defense Council v. Kempthorne*, United States District Court Judge Oliver Wanger (Eastern District of California) found that current Bureau of Reclamation operations of the CVP, including delivery under the existing contracts, are not in compliance with the federal Endangered Species Act.

PCL #3

Therefore, the no action alternative as proposed under the draft EA would not have ESA compliance, and thus is not legally viable. The circumstances described in *Kempthorne* also poignantly illustrate why the EA cannot rotely rely upon the years-old analysis in the earlier CVPIA PEIS to come to terms with environmental conditions and legal obligations as they exist in 2007.

In order to comply with NEPA, CEQA and other environmental laws, we strongly urge the Bureau to withdraw the Draft EA and complete a new analysis with an appropriate baseline, no action alternative, and project alternatives. Such a no action alternative must assume that the original contracts expire on December 31, 2007.

Inadequate analysis of impacts:

A FONSI is appropriate only where there is not even a fair argument that significant impacts may occur. This FONSI therefore is proper only if the proposed project is virtually certain to cause no significant impacts on the environment, including flow, fisheries, or habitat of the Delta, and if no substantial evidence in the record would support a contrary conclusion.

Despite the Draft EA's nominal conclusions, that virtual certainty does not come close to existing here. The proposed project would facilitate pumping of up to 1,385,590 acre feet annually of water from the Bay Delta watershed for delivery to the San Luis contractors.

The Bay Delta Estuary is already experiencing an unprecedented collapse, with several species, including the threatened Delta smelt, at record low populations. Recent scientific reviews completed by the Pelagic Organism Decline research groups have determined that recent pumping levels and operations of the Central Valley Project (CVP) and the State Water Project (SWP) are a significant contributor to the decline in these species. Diversion rates were cut just this June to protect threatened Delta smelt. Diversion rates were cut five times during the winter and spring of 2003 to reduce the numbers of fish killed at the state and federal export pumps. Even so, the Endangered Species Act "take limit" for spring-run Chinook salmon was exceeded twice that year (The Bay Institute Ecological Scorecard, 2004

PCL #4

<http://www.bay.org/Scorecard/Year%20in%20Water/YiWExSum>). Any project that facilitates the diversion of over 1 million acre feet of water therefore poses an unmistakable risk of significant environmental effects, and the Draft EA conclusion that there is not even a fair argument that such effects will occur lacks any rational basis.

PCL #5

In addition to the impacts associated with exporting water from the Delta, as required under the proposed action, there are also serious environmental impacts associated with the proposed action of delivering Delta water to drainage impaired lands in the San Luis Unit. According to the Bureau's own environmental documentation, there are over 376, 751 acres in the San Luis Unit that are drainage impaired lands. These lands also have naturally occurring toxins such as selenium. It is well known that providing irrigation water to these lands results in the production of significant amounts of toxic drainage

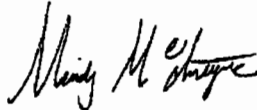
water that then contaminates both surface and groundwater sources. The Draft EA inappropriately fails to analyze these significant impacts.

According to Bureau documents and other reports¹, significant land retirement and cessation of irrigation is the only effective means of addressing this water quality and environmental problem. According to Bureau documents, significant land retirement and cessation of irrigation is the environmentally preferable alternative for addressing this water quality and environmental problem. These circumstances belie the casual assumption in Recital 10 of the interim contracts, the basis of the Draft EA, that project water will be put to reasonable and beneficial use. Consistent with this finding, the Bureau analyze an alternative assumes retirement of drainage impaired lands and a proportional decrease in total contract amounts.

As determined by numerous scientific and court findings that postdate the CVPIA PEIS and are excluded from the EA, there are significant impacts associated with the operation of the CVP, the export and delivery of Delta water to the San Luis Unit through water service contracts. If the project is to proceed, we urge the Bureau to ensure that all contracts are consistent with environmental laws, including the federal and state Endangered Species Acts, the Clean Water Act, all water laws, and both CEQA and NEPA prior to final approval. In particular, NEPA compliance, including a full Environmental Impact Statement, and corresponding CEQA compliance by the appropriate contractor, must be completed prior to any final approval of interim or long-term contracts. In addition, the BOR must ensure that contract amounts are consistent with hydrologic, legal, and biological realities.

Due to the significant concerns outlined above, and the comments previously submitted by NRDC, we urge the Bureau to withdraw the draft EA and prepare a full EIS in compliance with NEPA should the Bureau decide to proceed with this project.

Sincerely,



Mindy McIntyre
Water Program Manager
Planning and Conservation League
Planning and Conservation League Foundation

¹ Department of Fish and Game. Letter Re Groundwater Pumping/Water Transfer Project for 25 Consecutive Years Environmental Assessment (EA) / Initial Study (IS) / Mitigated Negative Declaration (MND) / Finding of No Significant Impacts (FONSI) SCH No. 2007072012. August 6, 2007.

State Water Resources Control Board, Division of Water Quality. Consideration of a Resolution Adopting Emergency Regulations that Establish Minimum Requirements for the Design, Construction, Operation, and Closure of Solar Evaporators as Components of Integrated On-farm Drainage Management Systems. July 16, 2003

Articles 9.7 – Integrated On-Farm Drainage Management. State's Health and Safety Code Sections 25209.10-25209.19.

Central Valley Regional Water Quality Control Board. Comments on the Draft Environmental Assessment and Initial Study for the 25-Year Water Transfer Project for the San Joaquin River Exchange Contractors Water Authority. August 6, 2007.

Broadview Water District, Panoche Water District, San Joaquin River Exchange Contractors Water Authority. Westside Regional Drainage Plan. May 2003.

Jose I. Farja P.E.; Special Investigations Branch, Chief Department of Water Resources (DWR), San Joaquin District. Solar Evaporator for Integrated on-Farm Drainage Management System at Red Rock Ranch, San Joaquin Valley, California.

1. PCL #1

See response to CDWA #3

2. PCL #2

See response to CDWA #1

3. PCL #3

Reclamation will comply with the ESA prior to making a decision on the proposed project. (See EA Section 3.3.2 pages 55 – 58 and Section 4.2 page 69)

4. PCL #4

See response to CDWA #1

5. PCL #5

The EA analyzes the water quality and groundwater impacts related to interim contract renewal. (See EA Section entitled "Impacts of Agriculture on Groundwater pg 35, Production of Drainage Water pages 36 & 37 and EA Section 3.1.2 Environmental Consequences to Water Resources pages 39 & 40.)



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Lisa Coffman
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Dorothy Green
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Joan Hartmann
treasurer

Lloyd G. Carter
director

Malinda Chouinard
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September 18, 2007

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VIA EMAIL: jtapia@mp.usbr.gov

Re: San Luis Unit Interim Renewal Contracts Draft EA & Draft FONSI

Dear Ms. Tapia:

Thank you for the opportunity to provide comments on the Draft EA and Draft FONSI for the San Luis Unit Interim Renewal Contracts.

C-WIN reiterates its previous objection to the issuance of FONSI for these interim contracts. Among other things, the Bureau's decision to issue FONSI is based on the illogical assumption that simply because the interim contracts will not cause any increased water use, there "will be no effect on surface water supplies or quality." As C-WIN recently stated in its September 7, 2007 letter to the Bureau regarding the interim contracts:

As the Bureau is well aware, the status quo regarding water deliveries has been fundamentally altered over the past few months by a series of judicial decisions. More importantly, these judicial decisions have called into question the Bureau's and other agencies' prior assumptions regarding the capacity of the Delta ecosystem to sustain the status quo volume of deliveries. In this light, the issuance of a FONSI is inappropriate. The environmental impacts of status quo deliveries under these interim contracts must be thoroughly re-evaluated. If the affected ecosystems are in enough peril to warrant interim injunctive relief, it is inconceivable that the issuance of interim contracts could be found to have no significant impact on the environment.

Apart from this general observation, we wish to draw your attention to two additional flaws in the Draft EA.

CWIN #1

CWIN #2

First, the Bureau improperly decided to eliminate from further consideration the alternative of reducing interim renewal contract water quantities. Although Reclamation law "mandate[s] renewal of existing contract quantities when beneficially used," the record does not support the conclusion that "[i]n the case of each San Luis Unit contractor, the contractor's water needs equaled or exceeded the current total contract quantity." (page 19) As C-WIN previously pointed out in its September 7, 2007 letter (attached), the Bureau is required by federal and state law to ensure that CVP water is put to reasonable and beneficial use. Yet, the Water Needs Assessments, relied upon by the Bureau to quantify beneficial use, are inadequate to accomplish this task. Among other things, these analyses fail to take into account many aspects of the drainage problem. Rather than repeat the comments on this issue contained within our September 7, 2007 letter, we incorporate those comments here.

CWIN #3

In addition, the cumulative effects analysis on page 57 of the proposed action on biological resources is grossly insufficient. That section concludes that the "[i]nterim renewal contract, when added to other past, present, and reasonably foreseeable future actions, represent a continuation of existing conditions which are unlikely to result in cumulative impacts on the biological resources of the study area and other portions of the San Luis Unit." Again, this analysis is based upon the illogical assumption that simply because the interim contracts do not increase deliveries from the status quo, they will have no cumulative impact on the environment. This simply misses the point of performing a cumulative impacts analysis. For example, the Bureau should examine the amount of salt and toxic trace element loading that will result from the next 26 months of deliveries in light of other past, present, and reasonably foreseeable future actions. The close relationship between the proposed action and the Bureau's "no action alternative" does not excuse the Bureau from examining the cumulative impacts of the chosen alternative on the environment.

C-WIN requests that the Bureau withdraw these NEPA documents and instead pursue a more thorough analysis of the significant environmental impacts that will result from extending status quo water deliveries for an additional 26 months. This analysis should consider as a viable alternative reductions in interim renewal contract quantities.

Sincerely,



Lisa Coffman
Executive Director

Attachment: C-WIN Letter Re Interim Contracts, dated Sept. 7, 2007

1. CWIN #1

The EA considers the effects of the proposed action – execution of interim renewal contracts on water resources (See EA Section 3.1 pages 23 – 40). The finding of no significant impacts is not based solely on the assumption that interim renewal contracts will not cause any increased water use. The finding is based on the complete analysis contained in the EA.

2. CWIN #2

Reduction of contract amounts was considered in certain cases but rejected from analysis. The reasons for that determination are set forth in EA Section 2.3 pages 19 & 20.

3. CWIN #3

Given the proposed project and the context in which it is proposed (i.e., implementation of the CVPIA) the cumulative effects analysis is appropriate and adequate.



NATURAL RESOURCES DEFENSE COUNCIL

September 18, 2007

Mrs. Judi Tapia
Bureau of Reclamation
South-Central California Area Office
1243 N Street, SCC-413
Fresno, CA 93721

RE: NRDC Comments on Draft Environmental Assessment (EA) and seven Draft Findings of No Significant Impact (FONSI) for the proposed execution of seven San Luis Unit interim renewal water service contracts

Dear Mrs. Tapia,

Thank you for the opportunity to provide comments on the above-referenced NEPA documents on the proposed new Interim Renewal Contracts for the San Luis Unit. We have already submitted comments on the proposed contracts themselves, as well as the very similar proposed long term renewal contracts for these same contractors, and we also submitted comments on the NEPA documents for the San Luis Unit (SLU) proposed long term renewal contracts. Because many of the issues and flaws identified in those earlier documents are repeated in these new documents, rather than repeat our earlier comments we incorporate each of our earlier comment letters herein by reference. We also incorporate by reference our original NEPA comment letter from 2000 about the EAs prepared on long term renewal contracts for the DMC and other CVP Units as well as our more recent comment letters on the DMC contract renewal NEPA documents and on the San Luis drainage evaluation Draft EIS circulated by USBR recently.

NRDC #1

The proposed FONSI for these 7 interim contracts make a number of findings that cannot be substantiated in light of the Bureau's own Final EIS on alternative means of addressing the SLU drainage problems, including the need for extensive land retirement in the SLU, and the Interior Department's own admissions about the impacts of CVP exports to the SLU on fisheries and water quality in the Delta. The proposed findings

NRDC #2

that there will be no significant effects on surface water quality, ground water quality, biological resources, endangered species or cumulative environmental impacts if these massive contracts are renewed for another 26 months cannot be sustained based on the record before the Interior Department in the various drainage cases and proceedings, the pending OCAP cases and consultations, the recent SWRCB proceedings on Bay-Delta standards and water quality, the recent litigation over the proposed Intertie, the DWR administrative process on a proposed South Delta Improvement Project, etc.

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**NRDC Comments on EA and seven Draft FONSIs for the proposed execution of
Seven San Luis Unit Interim renewal water service contracts**

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NRDC #3

The recent rulings in the Delta Smelt litigation have highlighted the fact that conditions in the Delta and upstream have changed significantly since the existing SLU contracts were executed. Business as usual has clearly caused substantial and increasing harm and therefore the option of simply extending the same terms and water quantities for another 26 months will inevitably create significant new impacts. Given the statements already made by SLU contractors about their ability to reduce contract quantities in the future, as well as Interior's own admissions about the economic and environmental advantages of substantial land retirement in the SLU, we believe any interim agreement to provide water to the San Luis Unit contractors must include a reduction in the maximum amount to be delivered that is significantly less than the existing contract totals. Any needs analysis for the proposed action should consider the needs of the Bay-Delta estuary and the reasonableness of continued irrigation of lands with severe drainage impairments and not simply the water supply demands of agriculture in the SLU.

We urge the Bureau to withdraw its draft NEPA documents on these 7 proposed contracts and reissue more complete and legally supportable draft NEPA documents that adequately evaluate the significant environmental impacts cited above and those impacts that were discussed in our previous comment letters that we have incorporated by reference.

Thank you for considering our comments.

Sincerely,



Hamilton Candee
Senior Attorney

1. NRDC #1

See response to CDWA #1

2. NRDC #2

See response to CDWA #1

3. NRDC #3

See response to CDWA #1

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From: Amy Barnes
To: Bruce, BranDee; Leigh, Anastasia; Nickels, Adam; Tapia, Judi; Welch, Patrick
Date: 10/5/2007 2:43:14 PM
Subject: San Luis Unit Water Service Contracts Interim Renewal (07-SCAO-238)

Tracking #07-SCAO-238

Project: San Luis Unit Water Service Contracts Interim Renewal – 2008 - 2011

The proposed activities associated with Reclamation executing an interim water service contracts with San Luis Unit contractors for continued project water conveyance will have no potential to affect historic properties. The San Luis Unit is part of the West San Joaquin Division of the Central Valley Project. The purpose of the proposed action is to execute seven San Luis Unit interim contracts for up to 26 months beginning in January 1, 2008 for Westlands Water District and January 1, 2009 for the other six interim contractors. Execution of these seven interim contracts is needed to continue delivery of CVP water to these contractors until their new long-term contract can be executed. Water delivery is essential to continue agricultural production and municipal viability for these seven contractors. This undertaking is an administrative action and limited to existing facilities.

As the proposed action has no potential to affect historic properties pursuant to 36 CFR 800.3(a)(1), no additional consideration under Section 106 of the National Historic Preservation Act is required.

Thank you for the opportunity to review the proposed action. Please place a copy of this concurrence with the EA.

Amy J. Barnes
Archaeologist
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CC: Myers, Laura

From: Patricia Rivera
To: Tapia, Judi
Date: 12/17/2007 8:27:49 AM
Subject: Re: ITA Review Please! San Luis Unit Interim Contract Renewal

Judi, I have reviewed the Proposed Action to approve the 26 month interim renewal of the seven San Luis Unit contracts with contract provisions as negotiated. In order to enter into a contract, the provisions of the contract must be negotiated between the prospecting contracting parties, in this case Reclamation and the San Luis Unit contractors. (Negotiations between Reclamation and San Luis Unit contractors have recently been completed and a representation of the negotiated draft interim water service contract can be found in Appendix A.) The negotiated interim contracts do not include tiered pricing as CVPIA does not required tiered pricing to be included in interim contracts. The interim contracts do not contain any drainage language. They have a similar definition of M&I as the No Action Alternative. Under the Proposed Action, there is no requirement to obtain court confirmation for the interim contracts under the Proposed Action. Water measurement and conservation requirements are the same as under the No Action Alternative. I concur the proposed action does not affect Indian Trust Assets. The nearest ITA to the proposed site is approximately 6 miles East and it is the Santa Rosa Rancheria. Patricia

>>> Judi Tapia 12/7/2007 8:31 AM >>>

Please let me know if there is anything else that you need! I can send you the whole EA if that would be helpful. Thanks!

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