

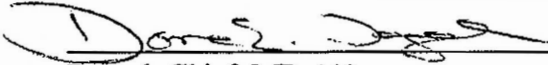
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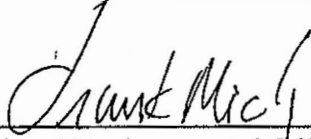
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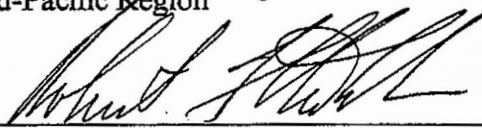
FINDING OF NO SIGNIFICANT IMPACT

PROPOSED AGREEMENT BETWEEN THE UNITED STATES AND THE CLEAR CREEK
COMMUNITY SERVICES DISTRICT FOR THE TRANSFER OF TITLE TO THE CLEAR
CREEK DISTRIBUTION SYSTEM TO THE DISTRICT

CENTRAL VALLEY PROJECT, CALIFORNIA

Recommended:  07/13/98
Branch Chief, MP-440 Date

Concur:  7/13/98
Regional Environmental Officer Date
Mid-Pacific Region

Approved:  7/13/98
Regional Resources Manager Date
Mid-Pacific Region

FONSI No. 98-09-MP

Classification
Project
Comments 11041
Stamp 43786

FINDING OF NO SIGNIFICANT IMPACT

PROPOSED AGREEMENT BETWEEN THE UNITED STATES AND THE CLEAR CREEK COMMUNITY SERVICES DISTRICT FOR THE TRANSFER OF TITLE TO THE CLEAR CREEK DISTRIBUTION SYSTEM TO THE DISTRICT

CENTRAL VALLEY PROJECT, CALIFORNIA

In accordance with Section 102 (2)(c) of the National Environmental Policy Act (NEPA) of 1969, as amended, the Mid-Pacific Regional Office of the U.S. Bureau of Reclamation (Reclamation) has determined that an environmental impact statement is not required for the Proposed Agreement Between the United States and the Clear Creek Community Services District for the Transfer of Title to the Clear Creek Distribution System to the District. This Finding of No Significant Impact (FONSI) is supported by Reclamation's 1998 Environmental Assessment (EA).

Reclamation has recommended for the review and approval of the United States Congress the transfer of title to the following facilities to the Clear Creek Community Services District (District):

- A 5-acre District Office and maintenance complex, including:
 - The District Office building
 - Two maintenance shop buildings
 - A garage
 - Miscellaneous "out" buildings for storage
 - One 350-gallon above-ground diesel tank
 - A fenced storage yard area
 - Parking facilities
 - A chlorination building
- A one-quarter-acre water tank site with a 240-thousand gallon steel tank located at the southeast intersection of Clear Creek Road and Cloverdale Road.
- Approximately 24 miles of pipeline ranging in diameter from 8 to 42 inches and associated easements of 20 to 40 feet in width.

Reclamation has determined that the described facilities and land are not of national importance and may be efficiently and effectively managed by the District. Transfer of title would enable the District to independently operate, maintain, and manage the distribution facilities and to plan for long-term capital improvements to the distribution facilities to assure that long-term water service needs are satisfied.

✓ Reclamation and the District have negotiated a proposed agreement (Agreement No. 8-07-20-L6975) entitled, "Agreement Between the United States and Clear Creek Community Services

District to Transfer Title to the Clear Creek Distribution System to the Clear Creek Community Services District”, hereinafter referred to as the Agreement. Reclamation has recommended that Congress ratify the Agreement to transfer title to the distribution facilities to the District. The Agreement includes terms and conditions that would be applicable to the proposed title transfer.

A Bill authorizing the Secretary of the Interior to implement the terms and conditions of the Agreement has been introduced in the House of Representatives. The Secretary or his designee will utilize the results of the attached EA and this FONSI in determining whether to sign the Agreement and to thereby obligate the United States to implement the terms of the Agreement upon receiving Congressional authorization to do so. The Agreement requires Reclamation to complete the proposed title transfer within 180 days of Congressional ratification in accordance with the terms and conditions of the Agreement.

In the event one or more of the terms and conditions included in the Agreement must be modified to comply with the authorizing legislation, Reclamation and the District must meet within 30 days of ratification to negotiate any necessary changes. The parties must determine whether or not to pursue title transfer consistent with such modification.

Following are the reasons, discussed in detail in the EA, why the impacts of the proposed action are not significant.

Water Delivery - The existing water service contract and subsequent future interim and/or long-term renewals are independent of the proposed title transfer. Therefore, the proposed action will not affect water deliveries.

Water Use - The proposed transfer is a change in facilities’ ownership only. Because the demand for water is indifferent to changes in ownership or “nameplate” on the facility, there will be no change in water demand nor any physical, operational, or maintenance (O&M) changes affecting the environment as a result of the proposed action.

Land Use - Approval of the proposed Agreement will not adversely affect land use. Land use in the areas served by the distribution facilities is governed by the Shasta County General Plan. The District works cooperatively with Shasta County to minimize the impacts of land use decisions on District facilities, water quality, and service standards. The District also comments on all new development within the District boundaries.

Biological Resources - Reclamation has determined that implementation of the proposed agreement will not result in any physical modifications of the environment or other environmental impacts or activities that will affect designated or proposed critical habitat, or species listed or proposed for listing, under the Federal ESA. Reclamation furnished the U.S. Fish and Wildlife Service (FWS) and the National Marine Fisheries Service (NMFS) each with a copy of the Draft EA containing Reclamation’s no-affect determination and a copy of the Agreement. Reclamation requested comments on the Draft EA and Agreement from both agencies during the public review and comment period. Neither agency provided Reclamation with any comments.

The District operates its system in full compliance with both California Endangered Species Act and the ESA. The District coordinates all maintenance activities that could have potential impacts on biological resources with appropriate resource agencies such as the FWS and the California Department of Fish and Game.

Cultural Resources - No historic properties listed or considered eligible for listing on the National Register of Historic Places will be affected by implementing the proposed Agreement. In a letter to the State Historic Preservation Officer (SHPO) dated September 11, 1996, Reclamation requested concurrence with its determination that the project would not affect historic properties. In response, the SHPO provided a letter dated September 17, 1996, which indicated concurrence with the no-affect determination.

Implementation of the proposed agreement will not include activities that would physically alter the original distribution facilities or the associated lands.

Recreation Resources - The proposed action will not adversely affect recreational resources.

Wetlands Resources - The proposed action will not adversely affect wetlands or other aquatic resources.

Public Health or Safety - The proposed action will not adversely affect public health or safety.

Hazardous Wastes - Reclamation conducted a review and evaluation of known and potential hazardous wastes that may be located on the lands and easements included in the title transfer. No sites were identified as potentially having hazardous wastes. Therefore, the proposed Agreement will not increase the use of, or risk from, hazardous materials.

Indian Trust Assets (ITAs) - The proposed action will not affect any ITAs.

Environmental Justice - The proposed action is consistent with Executive Order 12898 and subsequent Departmental Policy and does not disproportionately impact minority and disadvantaged populations or communities.

Economic Impacts - Both the District and Reclamation agree that issues associated with the original distribution system should be resolved prior to, or concurrent with, title transfer of the subject facilities. Two such issues, both of which are related to the District's current financial status, were identified in the scoping process. The issues are: improper installation of the distribution system and an inadvertent acceleration by Reclamation of the billings for repayment by the District. The District reports excessive increased maintenance and repair costs due to the improper installation of the distribution pipes, specifically use of improper pipeline lining materials. Reclamation engineers have validated through a field study that the original distribution system was installed inconsistent with the applicable designs and specifications developed by Reclamation and in conflict with the engineering practices applicable at the time of installation, thereby, compromising the physical integrity of the system and the ability of the system to deliver water to District customers.

In recognition of the above, Reclamation and the District propose to include in the agreement an adjustment to the present worth payment to be made by the district to the United States at time of transfer to reflect the historic overpayment by the District and the installation error. To compensate for the historic overpayment, Reclamation initially determined the present worth equivalent of the future cashflows which would have been accrued by (been paid to) the United States in the absence of the historic billing errors, and then reduced that amount by a sum equal to the present worth of the historic overpayments¹ to arrive at an adjusted balance of the repayment obligation. Reclamation then determined that the cost of installing proper bedding material consistent with the approved designs and specifications for the original distribution system completely offsets the adjusted balance of the repayment obligation. The United States and the District have tentatively agreed in exchange for the District agreeing to make no further claims relative to the installation and/or repayment issues the repayment obligation would be deemed fully satisfied and title to the original distribution system would be transferred.

Due to the offsetting nature of the financial considerations and the relatively modest present worth equivalent owed relative to the remaining repayment obligation, there will be no expected significant economic impacts from the proposed Agreement.

Cumulative Impacts - The proposed Agreement is one of several agreements being considered by the United States to facilitate Congressional transfer of facilities. The title transfer is a change of ownership only and does not include or result in any physical, operational, or maintenance changes affecting the environment. There are no associated changes in District O&M practices or in the delivery and use of Central Valley Project water within the District's service area. With no anticipated changes to the environment, there are no adverse or beneficial impacts and, thus, no contribution to cumulative impacts.

¹ The subject discountings were computed at an interest rate of 6 percent annually. However, the conclusions are applicable at other possible federal discount rates, as well (e.g., 7 percent, 8 percent).

ENVIRONMENTAL ASSESSMENT

PROPOSED AGREEMENT BETWEEN THE UNITED STATES AND THE CLEAR CREEK
COMMUNITY SERVICES DISTRICT FOR THE
TRANSFER OF TITLE TO THE CLEAR CREEK DISTRIBUTION SYSTEM TO THE
DISTRICT

CENTRAL VALLEY PROJECT, CALIFORNIA

U.S. Department of the Interior
Bureau of Reclamation
Mid-Pacific Region
July 1998

INTRODUCTION

The United States Department of Interior, Bureau of Reclamation (Reclamation) has recommended for the review and approval of the United States Congress the transfer of title to the following facilities to the Clear Creek Community Services District (District):

- A 5-acre District Office and maintenance complex, including:
 - The District Office building
 - Two maintenance shop buildings
 - A garage
 - Miscellaneous “out” buildings for storage
 - One 350-gallon above-ground diesel tank
 - A fenced storage yard area
 - Parking facilities
 - A chlorination building
- A one-quarter-acre water tank site with a 240-thousand gallon steel tank located at the southeast intersection of Clear Creek Road and Cloverdale Road.
- Approximately 24 miles of pipeline ranging in diameter from 8 to 42 inches and associated easements of 20 to 40 feet in width.

Exhibit A shows the location of the District boundaries and the general location of the facilities recommended for transfer.

PURPOSE AND NEED

Reclamation has determined that the described facilities and land are not of national importance and may be efficiently and effectively managed by the District. Transfer of title would enable the District to independently operate, maintain, and manage the distribution facilities and to plan for long-term capital improvements to the distribution facilities to assure that long-term water service needs are satisfied.

Reclamation and the District have negotiated a proposed agreement (Agreement No. 8-07-20-L6975) entitled “Agreement Between the United States and Clear Creek Community Services District to Transfer Title to the Clear Creek Distribution System to the Clear Creek Community Services District,” hereinafter referred to as the Agreement. Reclamation has recommended that Congress ratify the Agreement to transfer title to the distribution facilities to the District. The Agreement includes terms and conditions that would be applicable to the proposed title transfer.

A Bill authorizing the Secretary of the Interior to implement the terms and conditions of the Agreement has been introduced in the House of Representatives. The Secretary or his designee will utilize the results of this environmental assessment and any associated Finding of No Significant Impact in determining whether to sign the Agreement and to thereby obligate the United States to implement the terms of the Agreement upon receiving Congressional authorization to do so. The Agreement requires Reclamation to complete the proposed title

transfer within 180 days of Congressional ratification in accordance with the terms and conditions of the Agreement.

In the event one or more of the terms and conditions included in the Agreement must be modified to comply with the authorizing legislation, Reclamation and the District must meet within 30 days of ratification to negotiate any necessary changes. The parties must determine whether or not to pursue title transfer consistent with such modification.

This Environmental Assessment analyzes the environmental impacts associated with the proposed terms and conditions included in the Agreement. Reclamation had made available for a 30-day public review and comment period copies of the Draft EA and the Agreement. Reclamation received no comments.

BACKGROUND

Reclamation operates the Central Valley Project (CVP) for the purpose, among others, of furnishing water for irrigation, municipal, industrial, domestic, and other beneficial uses. The Clear Creek Community Services District (District) and the United States entered into a contract (14-06-200-489-A), dated May 14, 1963, and amended June 30, 1965, which provides for water service from the CVP to the District (hereinafter referred to as the water service component of the original contract) and for the construction and repayment of the costs of distribution and lateral facilities including structures and land for the conveyance of CVP water (hereinafter referred to as the repayment component of the original contract). The District is the sole current beneficiary of the distribution system. The water service component of the original contract was amended and renewed on an interim basis by Contract No. 14-06-200-489-A-IR3 on February 20, 1998 (hereinafter referred to as the existing water service contract).

Since 1967, the District has operated and maintained the distribution and lateral facilities constructed pursuant to the repayment component of the original contract (hereafter said facilities are referred to as the original distribution system) and has demonstrated its capability to perform such operation and maintenance (O&M) in a manner satisfactory to the United States. The original distribution system, which consists of approximately 127 thousand linear feet (24 miles) of pipes and laterals, allowed the District to become operational for distribution of CVP water. Since that time, the District has, through its own funding and resources, added on to the original distribution system more than 254 thousand linear feet (48 miles) of pipes and laterals. Title to the original distribution system is held by the United States; all additions are held by the District. The original and additional facilities are operated as one integrated system.

The District and Reclamation have negotiated the agreement which details the terms and conditions applicable to the proposed title transfer. Following approval of the United States Congress of the Agreement, the Secretary is authorized to transfer title to the original distribution system to the District consistent with said terms and conditions.

Over the past 30 years, the District has submitted to the United States more than \$860,000 in principle and municipal and industrial interest payments toward repayment of the original distribution system. However, a recent review of the repayment provisions included in the repayment component of the original contract shows that historic billings by the United States to the District were erroneously accelerated, thus resulting in a significant financial loss to the District as a result of payment of those billings. In addition and in response to complaints by the District, Reclamation staff have documented through field review and inspection the existence of defective pipeline installation resulting in an increased rate of failure of the original distribution system than would otherwise be reasonably expected. After mutual consideration of these matters and for the purposes of the proposed title transfer only, Reclamation and the District have agreed -in exchange for the District's promise not to make any further claims regarding past billings and/or the installation of the original distribution system the District's outstanding repayment obligation will be deemed fully satisfied upon title transfer.

Language in the existing water service contract provides for the delivery of CVP water to the District and compliance with Federal statutes, including Reclamation Law and the Central Valley Project Improvement Act (CVPIA). CVP water delivery and associated laws and regulations will not be modified as part of the title transfer. Following title transfer, the District will continue to comply with all relevant Federal and State laws, including environmental laws and regulations, applicable to non-federal water facilities. The District, which has been responsible for O&M of the original distribution facilities since 1967, will continue to operate and maintain the original distribution facilities to best serve District customers. Managing and regulating uses of the facilities and associated lands and easements will become the sole responsibility of the District.

ALTERNATIVES

Action Alternative. Reclamation and the District propose to enter into the Agreement, as summarized in Attachment 1, which authorizes the Secretary to transfer title to the original distribution facilities to the District following approval of the Agreement by the Congress. The transfer of title will occur within 180 days after Congressional approval.

The transfer of title will divest Reclamation of responsibility for O&M, management, and regulation of the transferred facilities. The District currently performs those responsibilities on behalf of the United States, pursuant to the terms of its existing repayment agreement. The proposed action is a transfer of title only, and would not result in physical changes to the environment or changes in the purpose, operation, or capacity of the original distribution facilities. Title will be transferred by quitclaim deed. As the proposed transfer of title involves only land and facilities on the land, the quitclaim deed would not transfer any water or water rights.

No-Action Alternative. Under the No-action Alternative, the Secretary or his designee would not transfer title. For the purposes of this analysis, it is assumed that Congress would not approve the title transfer without the Agreement.

AFFECTED ENVIRONMENT AND ENVIRONMENTAL CONSEQUENCES

The proposed action will not result in physical changes to the environment or changes in the purpose, operation, or capacity of the distribution facilities. Environmental protections associated with the existing water contract between the United States and the District will remain in place.

Endangered Species. As required by section 7(a)(2) of the Endangered Species Act of 1973, as amended (ESA), Reclamation is required to ensure that the proposed transfer of facilities would not jeopardize the continued existence of federally-listed species or adversely modify designated critical habitat.

The following listed and proposed species are known to occur in the project area:

LISTED AND PROPOSED ENDANGERED AND THREATENED SPECIES THAT MAY OCCUR IN THE AREA

Listed Species

Birds

American peregrine falcon, *Falco peregrinus anatum* (E)
Aleutian Canada goose, *Branta canadensis leucopareia* (T)
bald eagle, *Haliaeetus leucocephalus* (T)

Fish

winter-run Chinook salmon, *Oncorhynchus tshawytscha* (E)
winter-run Chinook salmon critical habitat, *Oncorhynchus tshawytscha* (E)
delta smelt, *Hypomesus transpacificus* (T)

Invertebrates

vernal pool tadpole shrimp, *Lepidurus packardii* (E)
vernal pool fairy shrimp, *Branchinecta lynchi* (T)
valley elderberry longhorn beetle, *Desmocerus californicus dimorphus* (T)

Amphibians

California red-legged frog, *Rana aurora draytoni* (PE)

Proposed Species

Fish

Sacramento splittail, *Pogonichthys macrolepidotus* (PT)

Reclamation has determined that implementation of the proposed agreement will not result in any physical modifications of the environment or other adverse environmental impacts that would affect designated or proposed critical habitat, or species listed or proposed for listing,

under the Federal ESA. Reclamation furnished the U.S. Fish and Wildlife Service (FWS) and the National Marine Fisheries Service (NMFS) each with a copy of the Draft EA containing Reclamation's no-affect determination and a copy of the Agreement. Reclamation requested comments on the Draft EA and Agreement from both agencies during the public review and comment period. Neither agency provided Reclamation with any comments.

The District operates its system in full compliance with both California Endangered Species Act and the ESA. As required by Section 9 of the ESA, the District is required to ensure that its O&M activities do not "take" species that are listed under the ESA. "Take" is defined by the ESA as "to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect" any listed species. The District coordinates all maintenance activities that could have potential impacts on biological resources with appropriate resource agencies such as the FWS and the California Department of Fish and Game.

Cultural Resources. Reclamation must comply with the National Historic Preservation Act prior to executing the proposed Agreement. Reclamation has concluded that no historic properties listed or considered eligible for listing on the National Register of Historic Places will be affected by implementing the proposed Agreement. In a letter to the State Historic Preservation Officer (SHPO) dated September 11, 1996, Reclamation requested concurrence with its determination that the project would not affect historic properties. In response, the SHPO provided a letter dated September 17, 1996, which indicated concurrence with the no-affect determination.

Implementation of the proposed agreement will not include activities that would physically alter the original distribution facilities or the associated lands. It is recommended that, when the District conducts future O&M in sensitive areas or near known historic or prehistoric sites, a qualified archeologist be consulted prior to initiating potentially disturbing activities.

Water Delivery. The existing water service contract and subsequent future interim and/or long-term renewals are independent of the proposed title transfer. Therefore, the proposed action will not affect water deliveries.

Water Use. The proposed transfer is a change in facilities' ownership only. Because the demand for water is indifferent to changes in ownership or "nameplate" on the facility, there will be no change in water demand nor any physical, operational, or maintenance changes affecting the environment as a result of the proposed action.

Land Use. Land use in the areas served by the distribution facilities is governed by the Shasta County General Plan. The District works cooperatively with Shasta County to minimize the impacts of land use decisions on District facilities, water quality, and service standards. The District also comments on all new development within the District boundaries. Approval of the proposed Agreement will not adversely affect land use.

Economic Impacts. Both the District and Reclamation agree that issues associated with the original distribution system should be resolved prior to, or concurrent with, title transfer of the

subject facilities. Two such issues, both of which are related to the District's current financial status, were identified in the scoping process. The issues are: improper installation of the distribution system and an inadvertent acceleration by Reclamation of the billings for repayment by the District. The District reports excessive increased maintenance and repair costs due to the improper installation of the distribution pipes, specifically use of improper pipeline lining materials. Reclamation engineers have validated through a field study that the original distribution system was installed inconsistent with the applicable designs and specifications developed by Reclamation and in conflict with the engineering practices applicable at the time of installation, thereby, compromising the physical integrity of the system and the ability of the system to deliver water to District customers.

In recognition of the above, Reclamation and the District propose to include in the agreement an adjustment to the present worth payment to be made by the District to the United States at time of transfer to reflect the historic overpayment by the District and the installation error. To compensate for the historic overpayment, Reclamation initially determined the present worth equivalent of the future cashflows which would have been accrued by (been paid to) the United States in the absence of the historic billing errors, and then reduced that amount by a sum equal to the present worth of the historic overpayments¹ to arrive at an adjusted balance of the repayment obligation. Reclamation then determined that the cost of installing proper bedding material consistent with the approved designs and specifications for the original distribution system completely offsets the adjusted balance of the repayment obligation. The United States and the District have tentatively agreed in exchange for the District agreeing to make no further claims relative to the installation and/or repayment issues the repayment obligation would be deemed fully satisfied and title to the original distribution system would be transferred.

Due to the offsetting nature of the financial considerations and the relatively modest present worth equivalent owed relative to the remaining repayment obligation, there will be no expected significant economic impacts from the proposed Agreement.

Hazardous Wastes. Reclamation conducted a review and evaluation of known and potential hazardous wastes that may be located on the lands and easements included in the title transfer (attached). No sites were identified as potentially having hazardous wastes. Therefore, the proposed Agreement will not include any activities which would increase the use of, or risk from, hazardous materials.

Indian Trust Assets (ITAs). ITAs are legal interests in property or rights held in trust by the United States for Indian tribes or individuals. Trust status originates from rights imparted by treaties, statutes, or executive orders. The proposed action will not affect any ITAs.

Environmental Justice. A Presidential Executive Order and subsequent Departmental Policy requires that Federal agencies ensure that their actions do not disproportionately impact minority

¹ The subject discountings were computed at an interest rate of 6 percent annually. However, the conclusions are applicable at other possible federal discount rates, as well (e.g., 7 percent, 8 percent).

and disadvantaged populations or communities. This proposed action was determined to have no effect on these issues of concern.

In addition to the above analysis, Reclamation has determined that the proposed transfer will not adversely affect recreational resources, wetlands or other aquatic resources, or public health or safety.

Cumulative Impacts. The proposed Agreement is one of several agreements being considered by the United States to facilitate Congressional transfer of facilities. The title transfer is a change of ownership only and does not include or result in any physical, operational, or maintenance changes affecting the environment. There are no associated changes in District O&M practices or in the delivery and use of CVP water within the District's service area. With no anticipated changes to the environment, there are no adverse or beneficial impacts and, thus, no contribution to cumulative impacts.

Consultation and Coordination. Pursuant to a request by the District, the FWS provided the District the names of the listed, proposed, and candidate species under the ESA which may occur in the area where the facilities are located. Reclamation consulted with the District in arriving at the no-affect determination. Reclamation also consulted with the State Historic Preservation Officer in determining that no historic properties will be affected.

Reclamation made the Draft EA and Agreement available for a 30-day public review and comment period. Copies of these documents were submitted to approximately 80 parties including the FWS, the NMFS, the Environmental Protection Agency, the District, the California Office of State Historic Preservation, the California Department of Fish and Game, the California Department of Water Resources, the National Resources Defense Council, the Sierra Club, and the Environmental Defense Fund. Reclamation sent a letter to over 2,000 interested parties informing them of the availability of these documents for review and comment and, as a result, Reclamation sent 28 additional packages of documents to those parties responding to that letter. Reclamation also issued a news release regarding the public review and comment period and notified numerous newspapers. Reclamation requested comments to the Draft EA and Agreement. However, no comments were received.

Summary of Proposed Agreement

The information below summarizes the principal elements of the Agreement as negotiated by Reclamation and the District. The summary is presented article by article as enumerated in the draft Agreement:

Article 1, Definitions. Article 1 includes a definition of the "Distribution System" to mean the distribution and lateral, surface drainage and lateral works constructed by the United States for the District pursuant to the amended water service and repayment contract, the control tank; all lands and interests in lands held in connection with those works; appurtenant fences and structures; permits, licenses, rights-of-way, easements, leases and other real property interests allowing access and use; associated equipment, fixtures, parts, inventories and tools; additions, replacements, and betterments associated with the works; and one copy each of all available data, plans, designs, reports, records, or other materials related to the above.

Other important definitions include the following:

- | | |
|---------------------|--|
| "CVP Water" | Water appropriated by the United States for the operation of the CVP; |
| "Rates" | Payments determined annually by the Contracting Officer (the Secretary of the Interior or a duly authorized representative) in accordance with the then-current CVP water rate-setting policies; |
| "Charges" | Payments in addition to the "Rates" determined annually by the Contracting Officer, including, but not limited to, the payments required by section 3407 of the Central Valley Project Improvement Act (CVPIA); |
| "Transferred Works" | Components of the Clear Creek South Unit, which were previously transferred to the District for O&M pursuant to the terms and conditions of the amended water service and repayment contract, and are not included in the "Distribution System." |

Inclusion of the above definitions is necessary to provide for the continuation of: CVP water deliveries pursuant to the interim water service contract and any subsequent interim or long-term renewals or amendments; payment of all "Rates" and "Charges" applicable to CVP water deliveries; and O&M by the District, previously transferred to the District for O&M under the amended water service and repayment contract but not proposed to be transferred pursuant to the title transfer agreement.

Article 2, Term of Agreement. Article 2 provides for the Agreement to become effective upon ratification by Congress. Article 2 expressly provides that Congress must ratify this agreement within 5 years of the date of the Agreement.

Article 3, Transfer of Right, Title, and Interest from the United States to the District. As provided by subarticle 3(a), the Secretary of the Interior (Secretary) is required within 180 days of ratification to transfer all right, title and interest of the United States in and to the Distribution System consistent with the terms and conditions included in the Agreement. The document conveying title is to be in a form substantially consistent with that shown in Appendix A of the Agreement.

Subarticle 3(b) provides for Reclamation and the District to determine whether or not to pursue title transfer should Congress modify the terms or conditions included in the Agreement. Reclamation and the District will meet within 30 days of ratification to negotiate modifications, if needed, to accommodate the legislation.

Article 3(c) allows the District to elect not to proceed with title transfer if a material defect, which was unknown at the time the Agreement was ratified, is found and not corrected. The United States may correct the defect or elect not to proceed with the title transfer.

Article 4, Payment.

- Agreement by the United States and the District that past payments made by the District for the Distribution System pursuant to the amended water service and repayment contract constitutes complete and total payment by the District for the Distribution System; and
- The District agrees to hold the United States harmless relative to any further claims related to the installation of and/or the prior record of billings and payments relative to the Distribution System.

Article 5, Responsibility for Facilities Following Title Transfer. Upon title transfer, the District will assume all duties and costs associated with the operation, replacement, maintenance, enhancement, and betterment of the Distribution System. The District will not be eligible for any funding under Federal Reclamation laws to assist the District relative to those activities. However, the District's right to request and/or receive Federal assistance under Federal programs (e.g., Federal Emergency Management Act programs) will not be affected by the title transfer, with the exception of any changes in eligibility attributable to transfer of facilities from Federal to non-Federal ownership.

Article 6, Applicability of the Existing Water Service and Repayment Contract.

Subarticle 6(a) clarifies and confirms that CVP water service to the District will be unaffected as a result of title transfer. The District will continue to receive, schedule, and measure CVP Water consistent with the terms of its interim water service contract, as may be amended, supplemented or renewed, and will pay all rates and charges associated with CVP water service. Reclamation law will continue to be applied to CVP Water independent of the title transfer.

Subarticle 6(b) maintains the District's obligations to operate and maintain the Transferred Works as defined herein pursuant to the terms of the amended water service and repayment contract following the subject title transfer. Consistent with the provisions included in Article 4 of the Agreement, Subarticle 6(b) declares the repayment requirements included in the applicable water service and repayment, relative to the Distribution System, to be inoperative.

Subarticle 6(b)(4) restricts the use of the reserve funds required to be accumulated and retained by the District under the amended water service and repayment contract to be available solely for extraordinary expenses associated with the Transferred Works following title transfer.

Subarticle 6(b)(7) expressly limits application of Article 33 (Title to Remain in the United States) of the existing water service and repayment contract to the Transferred Works upon completion of the proposed transfer of title.

Article 7, Assignment -- Successors and Assigns Obligated. Article 7 authorizes the District to transfer or assign the Agreement and/or any right or interest in it without approval of the United States. However, the provisions of the Agreement will apply to any successors and assigns of the District.

Article 9, Condition of Distribution System, Lands, and Associated Rights-of-Way. Article 9 provides for mutual agreement by the two parties that the documents identified in Appendix C and D of the Agreement accurately describe the condition of the Distribution System and the associated lands, respectively, at the time of execution of the Agreement (the listed documents include a recent review of O&M examination of the Original Distribution System, the results of the hazardous waste inspection, and statements regarding District land use and management practices). Article 9 further provides that any significant changes in the general condition of the Distribution System prior to, or at the time of, title transfer will be reflected by an addendum to the Agreement signed by the District and the United States prior to title transfer.

Article 10, Access to Documents Related to the Distribution System. Subarticle 10(a) required Reclamation to provide the District within 90 days of the effective date of the Agreement a complete written list of all leases, licenses, easements, and contracts with third-parties ("third-party agreements") related to the Distribution System. Within 60 days of receipt of that list, the District must advise Reclamation of those documents it wishes to have copied by Reclamation and provided to the District. The copies must be provided by Reclamation within 60 days of receipt of the request from the District.

Subarticle 10(b) requires that Reclamation provide the District with reasonable access to all non-privileged United States records pertaining to the design, construction, operation and maintenance of the distribution system. The District is to notify Reclamation of the specific records it wishes to have copied; said copies are to be provided within 45 days of the receipt of the request from the District.

Subarticle 10(c) requires the Secretary to retain custody of all records pertaining to the Distribution System for 1 year following title transfer. The District will have a continued right to access such records. In the event the Secretary and the Archivist of the United States determines that the subject records are no longer needed by the United States, the United States shall offer said records to the District for permanent custody.

Article 11, Third-Party Agreements. Upon title transfer, the United States will assign to the District all its rights, duties, obligations, and responsibilities which exist as a result of third-party agreements. Article 11 requires the District to honor all third-party agreements.

Article 12. Cooperation. Article 12 requires the United States to cooperate with the District in regard to any future claim, lawsuit, administrative proceeding, or other matters concerning the Distribution System which arise following title transfer. The District shall reimburse the United States for all costs incurred when such activities are undertaken at the request of the District for its benefit.

Article 13, Compliance with Laws and Regulations. Article 13 requires the District to comply with all applicable Federal and State laws and regulations.

Article 14, Applicability of Federal Reclamation Laws Following Title Transfer. Article 14 expressly states that the Distribution System shall no longer be regarded or treated as either a CVP or United States facility following title transfer. However, all provisions of the Federal Reclamation laws, including the ownership and full-cost pricing provisions of the Reclamation Reform Act of 1982 (RRA) and the CVPIA, will continue to be applicable to CVP water provided to the District, pursuant to its interim water service contract, as may be amended, supplemented, or renewed.

Article 15, Liability. The liability language included in the proposed Agreement is consistent with the "standard title transfer liability language" recommended by the Department's Solicitor for inclusion in all title transfer agreements.

Article 18, Dispute Resolution. Article 18 provides that the parties will attempt, in good faith, to resolve any controversy or claims arising out of, or related to, the Agreement, and prompt negotiations will be undertaken to resolve such matters in accordance with the time and performance requirements detailed therein. In the absence of resolution pursuant to negotiations, either party may demand non-binding mediation to seek or guide the parties to a resolution in accordance with the instructions included in Article 18.

The following "standard contract articles" are also included in the proposed Agreement:

Article 8. Officials Not To Benefit.

Article 16. Charges for Delinquent Payments.

Article 17. Contingent Upon Appropriations or Allotment of Funds.

Article 19. Notices.

Title Transfer Program Criteria. Under Reclamation's Title Transfer Program, there are six major criteria that must be met before any project is transferred. The information below identifies each of the criteria and summarizes how the title transfer is consistent with the criteria, or, alternatively, why the criteria is not applicable to the proposed title transfer.

- The Federal Treasury, and thereby the taxpayer's financial interest, must be protected.

Reclamation believes that the Treasury will be kept whole at the time of title transfer as a result of agreement by the District to give up any further claims relative to the over collection and installation issues.

- There must be compliance with all applicable State and Federal laws.

The Agreement will become effective only upon ratification by the Congress, as required by Section 6 of the Reclamation Act of 1902 (Article 2 of the Agreement).

The Agreement clarifies that the District will not be eligible for Federal funding under Federal Reclamation law for the subject facilities following title transfer with the exception of Federal assistance, which may be available to the District by virtue of the transfer of said facilities from Federal to non-Federal ownership (Article 5 of the Agreement). The Agreement clearly states that the District shall comply with all applicable Federal and State laws and regulations (Article 13).

The Agreement confirms that all provisions of the District's existing interim CVP water service contract, as may be amended, supplemented, or renewed, are to continue in full force and effect following title transfer; and that all provisions of the Federal Reclamation laws, as amended and supplemented, including, but not limited to, the applicable ownership and full-cost pricing provisions of the RRA and the CVPIA, shall continue to be applicable to such water service (Articles 6 and 14).

- Interstate compacts and agreements must be protected.

There are no interstate compacts and agreements related to the subject facilities.

- The Secretary's Native American trust responsibilities must be met.

There are no known Native American trust responsibilities related to or impacted by the subject facilities.

- Treaty obligations and international agreements must be fulfilled.

There are no treaties or international agreements related to the subject facilities.

- The public aspects of the project must be protected.

There are no authorized or incidental purposes other than the delivery of irrigation and municipal and industrial water. Any current legitimate uses of lands included in the Distribution System for easements or other uses are covered by third-party agreements. The Agreement requires the District to honor all rights, duties, and obligations which exist as a result of third-party agreements (Article 11 of the Agreement).