

No. 15

E-mail from Victor Scoggin, Dated November 8, 2004

From: "Victor Scoggin" <savthecumberland@mindspring.com>
To: "Buford Holt" <bholt@mp.usbr.gov>
Date: 11/8/2004 6:06:43 PM
Subject: Sac Valley Settlement Contracts Flawed

Victor Scoggin
 P.O. Box 247
 pensacola, Tn. 37143

November 8, 2004

Buford Holt

16349 Shasta Dam Boulevard
 Shasta Lake, CA 96019

Dear Buford Holt:

The proposed water contracts for Sacramento Valley Settlement Contractors threaten the environment, economy, and communities. } 15-1

The proposed contracts grant more water than ever used at subsidized prices. } 15-2

The proposed contracts allow for massive water exports from the Sacramento Valley, which threaten working farms in the valley. } 15-3

Also, these proposed contracts threaten endangered salmon. For example, to fulfill these and other Central Valley Project water contracts, the Bureau is proposing to change the operation of Shasta dam and reservoir on the Sacramento River. The agency proposes to eliminate the cold water pool reserved behind the dam used to sustain the Sacramento River's endangered winter run chinook salmon. Loss of this cold water pool will eliminate nearly 20 miles of critical habitat for the winter run salmon in the Sacramento River. } 15-4

By locking in contracts for 40 years, these contracts deny resource managers flexibility in water management as we face climatic shifts, new trends in growth, or new farming practices. } 15-5

Please amend these contracts to address these serious concerns.

Sincerely,

Victor Scoggin
 615-429-5351

- 15-1 See Response to Comment 1-1.
- 15-2 See Response to Comment 1-2.
- 15-3 See Response to Comment 1-3.
- 15-4 See Response to Comment 1-4.
- 15-5 See Response to Comment 1-5.

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Letter from Morisset, Schlosser, Jozwiak & McGaw,
Dated November 11, 2004

LAW OFFICES
MORISSET, SCHLOSSER, JOZWIAK & McGAW
 A PROFESSIONAL SERVICE CORPORATION

REGINA M. CUTLER (WA, OR)
 FRANK R. JOZWIAK (WA)
 KYME A.M. McGAW (WA)
 MASON D. MORISSET (WA)
 THOMAS P. SCHLOSSER (WA)
 ROB ROY SMITH (WA, OR, ID)

1115 NORTON BUILDING
 801 SECOND AVENUE
 SEATTLE, WA 98104-1509

TELEPHONE: (206) 386-5200
 FACSIMILE: (206) 386-7322

OF COUNSEL
 SHARON I. HAENSLY (WA)
 CONTROLLER
 M. ANN BERNHEISEL

November 11, 2004

WWW.MSAJ.COM

Buford Holt
 Bureau of Reclamation, Northern California Area Office
 16349 Shasta Dam Boulevard
 Shasta Lake, CA 96019

Fax : 530-275-2241
 Email: bholt@mp.usbr.gov

Re: Hoopa Valley Tribe's Comments Concerning Sacramento River Settlement
 Contractors Draft Environmental Impact Statement (September 2004)

Dear Mr. Holt:

On behalf of the Hoopa Valley Indian Tribe ("Tribe"), we submit the following comments concerning on the Sacramento River Settlement Contractors Draft Environmental Impact Statement (September 2004) ("DEIS").

The Tribe is extremely concerned about the failure of the DEIS to satisfy the legal requirements of the National Environmental Policy Act ("NEPA"), 42 U.S.C. § 4231 *et seq.*, the Endangered Species Act ("ESA"), 16 U.S.C. § 1531, *et seq.*, and the Central Valley Project Improvement Act ("CVPIA"), Pub. L. 102-575, 106 Stat. 4600 (1992), and to meet the Bureau of Reclamation's ("Reclamation") trust responsibility to the Tribe. These comments reflect the Tribe's ongoing concern with management of the Central Valley Project ("CVP"), which includes the Trinity River Division, and its effect on the federally-reserved fishing rights of the Tribe. The Tribe urges Reclamation to revise and recirculate the DEIS to address the legal deficiencies noted below and to account for the need for the CVP to be managed to protect the Tribe's fishing rights.

A. Nature of the Tribe's Interest

Since time immemorial, the fishery resources of the Klamath and Trinity Rivers have been the mainstay of the life and culture of the Hoopa Valley Tribe. The fishery was "not much less necessary to the existence of the Indians than the atmosphere they breathed." *Blake v. Arnett*, 663 F.2d 906, 909 (9th Cir. 1981) (quoting *United States v. Winans*, 198 U.S. 371, 381 (1905)). The Hoopa Indians follow exacting cultural practices to protect individual runs of fish and to celebrate the bounty of the river that gives life to their people. The salmon fishery also

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holds significant value in the Hoopa culture and economies, and the Tribe holds property rights in the Trinity River Basin fishery. The lower twelve miles of the Trinity River and a stretch of the Klamath River flows through the Hoopa Valley Reservation.

The federal government established the Hoopa Valley Indian Reservation in 1864 pursuant to a statute that required the reservation be "located as remote from white settlements as may be found practicable." Act of April 8, 1864, § 2, 13 Stat. 39, 40. The remote Hoopa Valley Reservation was determined to be a suitable homeland for two reasons. First, the reservation was established in the heart of the Tribe's aboriginal lands, lands the Tribe had occupied since time immemorial and to which they were, and remain, fiercely devoted. Second, the reservation set aside sufficient resources of the Klamath and Trinity rivers for the Indians to be self-sufficient and achieve a moderate living based on fish. See Memorandum from John D. Leshy, Solicitor of the Department of the Interior to the Secretary of the Interior 3, 15, 18-21 (Oct. 4, 1993) (hereinafter 1993 Solicitor Opinion), cited with approval, *Parravano v. Babbitt*, 70 F.3d 539, 542 (9th Cir. 1995), cert. denied, 518 U.S. 1016 (1996).

The CVP has a direct and dramatic effect on fisheries reserved for the Tribe. The Tribe is committed to ensuring that Reclamation actions subject to NEPA reflect and comply with court decisions requiring, for example, that mitigation measures imposed as a result of consultation under Section 7 of the ESA be addressed in draft environmental review documentation prepared pursuant to NEPA. See, e.g., *Westlands v. United States*, 275 F. Supp.2d 1157 (E.D. Cal. 2002), rev'd on other grounds, No. 03-15194 (9th Cir. July 13, 2004) (discussed below). This approach ensures that the public is fully informed and has the opportunity to comment and participate in the decision-making process on all aspects of projects affecting the human environment. Here, the DEIS was issued before the Biological Opinion on the Long-Term Central Valley Project and State Water Project Operations Criteria and Plan ("CVP-OCAP BiOp") (October 22, 2004) was released. The CVP-OCAP BiOp imposes reasonable and prudent measures and terms and conditions that affect the water delivery contracts at issue, undermining the public participation process and calling into question the legality of the DEIS.

B. General Comments

The Tribe believes additional information concerning the long-term Sacramento River Settlement Contracts ("Settlement Contracts") considered for renewal be included in the DEIS. The DEIS contains only a scant description of how the Settlement Contracts came about and no discussion concerning the terms and conditions that the Settlement Contracts have in common, although what appear to be draft forms of contracts appear at Appendix C. It is impossible for DEIS to meet the public disclosure purposes of NEPA without providing the information commenters need to understand the environmental effects of the proposed action. The proposed action cannot be understood without an understanding of actual terms of the Settlement Contracts that stand to be renewed pursuant to the action agency being reviewed. Simply appending draft contract forms, that may or may not accurately reflect the terms of the Settlement Contracts at issue, is insufficient.

16-1 The Draft EIS reflects Reclamation's assessment of impacts on listed species based on both a project-specific Biological Assessment for contract renewals, and the systemwide Biological Assessment prepared for the CVP-OCAP. The Final EIS references the Biological Opinions prepared in response to both the project-specific and systemwide Biological Assessments. The BO on the CVP-OCAP concluded that the operations of the CVP, which include the provision of water for SRSCs, would not likely jeopardize the existence of endangered or threatened species. Public participation in the Draft EIS process has complied with the requirements of NEPA.

16-2 See Chapter 2 of the DEIS and Thematic Response No. 1, History of Settlement Contracts, for a detailed description of the contracts and the operations of the CVP pursuant to the contracts. The commentor's suggested language is generally accurate; however, the language in the Draft EIS better reflects the actual language in the contracts. RPMs identified in the OCAP BO do not apply to the SRSCs. Nevertheless, such measures will further minimize any effects of ongoing water deliveries to the SRSCs. The mitigation measures outlined in the OCAP BO do not relate to or affect the SRSCs.

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16-2

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In order to satisfy the public disclosure requirements of NEPA, the Tribe suggests that Reclamation include a general description of the Settlement Contracts in the introduction section. A general description of the purpose and function of the Settlement Contracts could provide as follows:

Settlement Contracts involve the entities and individuals asserting senior rights to divert water from the natural flow of the Sacramento River, rights that predate development of the CVP. These entities and individuals typically receive both non-CVP water, referred to as Base Supply, and supplemental water from the CVP, referred to as Project Water. Significant terms of the contracts include: an initial 40-year term of contract; CVP water to be priced at an annually adjusted cost-of-service rate; payment of a charge to the Central Valley Project Improvement Act Restoration Fund; opportunities for contractors to engage in water management activities such as transfers, water banking, and ground-water recharge; and communication, cooperation, and coordination between the parties to improve management and operation of the CVP.

16-2,
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The DEIS should also explain what water is available to the Settlement Contractors, making clear that only water which is surplus to other environmental and legal requirements may be provided. The DEIS alludes to this fact, stating that project water "is provided to the SRSCs subject to all of the pricing and other requirements of federal Reclamation law." DEIS at 2-6. However, a more thorough discussion of the fact that the Settlement Contracts can be limited to the delivery of water that is surplus to environmental and other legal requirements is necessary. Surplus water is water that would otherwise flow through the Delta and out to San Francisco Bay.

Language reflecting this surplus principle appears throughout the Settlement Contracts. For example, Article 11 of the Thomas and Karen Alexander contract provides that Reclamation's duty to provide for the "delivery of Project Water for irrigation use or use of Federal facilities pursuant to this Settlement Contract is subject to Federal Reclamation law." See, e.g., Thomas and Karen Alexander Settlement Contract, <http://www.usbr.gov/mp/cvpia/3404c/2004SettleContFOC/2004SettCont-AlexanderThomasKaren04-04-03.pdf>, 6 (last visited Oct. 26, 2004). Article 7(b) further states that Reclamation will make available for delivery to the contractor specified amounts of project water for irrigation and other purposes provided that the contractor complies with "requirements applicable to the Contractor in biological opinion(s)" and "the limitations or requirements imposed by environmental documentation applicable to the Contractor." E.g., *id.* Further, the Settlement Contract provides that in "critical years," the contractor shall be entitled to no more than 75 percent of the contract total. *Id.* at art. 5(b). A "critical year" is defined as those years in which natural inflow to Shasta Lake is less than less than 3.8 million acre-feet; or when "a series of successive prior Water Years, each of which had inflows of less than 4 million acre-feet" result in a cumulative deficiency between 200,000 and 800,000 acre-feet. *Id.* at art. 5(a)(2).

16-3

16-3

Operation of the CVP is very complex and is governed through the implementation of a number of laws, statutes, and requirements. See Appendix C of the FEIS for a comprehensive description of the elements affecting CVP operation. See the subsection relating to surface water in Chapter 3 of the Draft EIS for a more comprehensive discussion of the operational issues surrounding management of the CVP and the effect of various shortage provisions outlined in the alternatives. Individual SRSCs are subject to various environmental laws that govern water diversions, including the Endangered Species Act and the Clean Water Act. Water supplied under Settlement Contracts is provided primarily pursuant to the SRSC's senior water rights status, not as part of a calculation of "surplus" water.

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These provisions, taken separately and together, indicate that the Settlement Contract delivery amounts are not set in stone and may be altered given other legal requirements imposed on Reclamation for uses of CVP Project Water. The DEIS should reflect the “surplus” nature of the Settlement Contracts.

C. Specific Comments

1. The Statement Purpose and Need is Unreasonably Narrow.

NEPA prohibits agencies from narrowing the scope of analysis and the range of alternatives through the selection of an artificially narrow statement of purpose and need. *See City of Carmel by-the-Sea v. United States DOT*, 123 F.3d 1142, 1155 (9th Cir. 1997); 40 C.F.R. § 1502.13. Reclamation’s statement of purpose and need in the DEIS fails this prohibition.

The DEIS provides that the NEPA document is to evaluate the “potential impacts and benefits for [Reclamation] to renew the long-term Sacramento River Settlement Contracts (Settlement Contracts) between Reclamation and the Sacramento River Settlement Contracts (SRSC).” DEIS at 1-1. However, that there is no true evaluation of the “impacts and benefits” of the proposed action is clear from Reclamation’s stated purpose and need for the project: “The purpose of this project is to renew the Settlement Contracts.” *Id.* at 1-3 (emphasis added).

A plain reading of this statement indicates that the result of the EIS is preordained – the renewal of the 145 SRSC Contracts affecting the diversion of 2.2 million acre-feet per year from the Sacramento River and the CDMWC contract entitlement providing an additional 100,000 acre-feet per year. *Id.* at 1-1. By preordaining the renewal of these contracts, Reclamation has unlawfully narrowed “the objective if its action artificially and thereby circumvent[ed] the requirement that relevant alternatives be considered.” *Friends of Southeast’s Future v. Morrison*, 153 F.3d 1059, 1066 (9th Cir. 1998). The DEIS must be revised with a new statement of purpose and need indicating that long-term Settlement Contract renewal is an option, not the only choice available to Reclamation. As discussed above (although unclear from the DEIS introduction), the SRSCs receive both non-CVP water, referred to as Base Supply, and supplemental water from the CVP, referred to as Project Water. Even if the SRSC’s “Base Supply” is to remain unaffected, Reclamation should recognize that it need not provide additional quantities of Project Water, *i.e.*, CVP water in July, August, and September, when providing such flows may impede habitat quality and sufficient water quantity for fish migrating at that time of year. DEIS at 1-6.

The need to protect federally listed fish and wildlife, and the need to provide water sufficient to support the federally-reserved fishing right of the Tribe can, and should, cause a contract for CVP water not to be renewed. The decisions of the federal courts since the enactment of the CVPIA make clear that Reclamation can and should reduce quantities of water delivered when fishery needs demand greater allocations. *See O’Neill v. United States*, 50 F.3d 677, 686 (9th Cir. 1998) (holding that the CVPIA modified priority of water users and thus changed contractual obligations under pre-existing long-term water delivery contracts); *NRDC v. Houston*, 146 F.3d 1118, 1126 (9th Cir. 1998) (invalidating CVP renewal contracts for failure

16-4

The statement of purpose and need is consistent with the requirements of NEPA. Consideration of various methods of drought supply provides a reasonable range of alternatives for consideration in the document. See Chapter 2 of the Draft EIS for a discussion of alternatives considered but eliminated. Also see Thematic Response No. 1 for a description of the original dispute between Reclamation and the SRSCs. To the extent the commentor is addressing the adequacy of the No Action Alternative as described in the Draft EIS, it is important to note that the EIS and the scope of the analysis were developed consistent with NEPA regulations and guidance from the Council on Environmental Quality, and in conformance with the direction provided in *NRDC v. Patterson*, Civ. No. S-88-1658 (*Patterson*) which specifically addressed the application of NEPA relative to contract renewals. In *Patterson*, the court found that “...[o]ngoing projects and activities require NEPA procedures only when they undergo changes amounting in themselves to further ‘major action.’” In addition, the court went further to state that the NEPA statutory requirement applies only to those changes. The analysis in the EIS finds in large part that the renewal of the contracts is in essence a continuation of the “status quo,” and although there are financial and administrative changes to the contract, they perpetuate the existing use and allocation of resources (*i.e.*, the same amount of water is being provided to the same lands for existing/ongoing purposes). The analysis in the EIS therefore addresses the proposed changes to the contract and the potential effects of those changes. The basis of this comparison is the evaluation of the proposed contractual changes as compared to the No Action Alternative that in essence reflects a continuation of the status quo. Use of the status quo as a No Action Alternative is supported by Council on Environmental Quality’s opinion concerning renewal of some Settlement Contracts that appeared in the Federal Register on July 19, 2001, and their guidance document addressing the “Forty Most Asked Questions” (on NEPA regulations). As shown in Chapter 3 of the Draft EIS, such contract changes would not result in significant effects to the environment.

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Flow releases on the Trinity River are determined by hydrologic conditions in the Trinity Basin, not water needs in the Sacramento Basin. For a description of impacts to CVP operations relating to implementation of increased Trinity River flows, see the Trinity River EIS/EIR. See also the Draft EIS page 1-9. The Trinity River Division is a component *part* of the CVP, and the proposed SRSCs are component *actions* of the CVP. There is no interrelationship or interdependency between the Trinity River Fishery Restoration and the proposed renewals of the Settlement Contracts.

SRSCs have senior-vested water rights (claimed water rights in the Sacramento River Basin prior to the construction of Shasta Dam) that allow them to divert significant quantities of natural flow from the Sacramento River, regardless of whether they have a contract for CVP supplies. Similarly, the Hoopa Valley and Yurok Tribes have a federally reserved fishing right and a ROD for the Trinity River Fishery Restoration EIS/EIR that mandates certain flow and related nonflow projects for the benefit of fish in the Trinity River. As the commentor is aware, the federal court decision in Westlands v. United States [cited by commentor at 16-1] reaffirmed the ROD and its flow mandates, ensuring that fishery flows must be delivered.

None of the proposed Settlement Contracts increase the amount of water delivered to the SRSCs. In dry years, when there is too little water, the SRSCs do not receive full contracted supply. The Settlement Contracts do not require Reclamation to supply the maximum contract amount if it is not available. In no case do the Settlement Contracts stipulate that Reclamation shall provide water from the Trinity to provide full contract amounts to SRSCs during critical years. Reviewing input from the SRSC representatives, it was determined that in critical years, districts and member farmers turn to short-term supplies for water; typically increased use of ground-water. See the Draft EIS page 3-3.

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16-4,
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Reclamation concludes that there are no adverse effects to the Trinity River caused by the execution of the Settlement Contracts, and that there is no need to assess an action (i.e., reduced flows to the Trinity) that is prohibited by the Trinity River Fishery Restoration ROD.

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to comply with environmental requirements); *Klamath Water Users Protective Ass'n v. Patterson*, 204 F.3d 1206, 1213 (9th Cir. 1999) (recognizing Reclamation's responsibility to manage project operations to "meet the requirements of the ESA, requirements that override the water rights of the Irrigators"); *id.* at 1214 (holding that Reclamation has "a responsibility to divert the water and resources needed to fulfill the Tribes' rights, rights that take precedence over any alleged rights of the Irrigators").

The need to reduce water deliveries to satisfy the needs of fish is especially true considering the interrelationship, acknowledged by Reclamation, of the Settlement Contracts and the Trinity River Mainstem Fishery Restoration EIS/EIS that mandates certain flow and related non-flow projects for the benefit of fish in the Trinity River. DEIS at 1-9. However, Reclamation does no more than mention the Trinity River EIS. The DEIS should analyze the affects of the renewing the Settlement Contracts on the ability of Reclamation to maintain the ROD-mandated flows in the Trinity River. Despite the interrelationship between the CVP and the Trinity River, Reclamation in this EIS appears content to consider Settlement Contract renewal in a vacuum.

2. The Range of Alternatives is Unreasonable.

The alternative section "is the heart of the environmental impact statement." 40 C.F.R. § 1502.14. The Council on Environmental Quality (CEQ) regulations provide that an EIS "shall include" a discussion of the environmental impacts "of the proposed action and alternatives...." 40 C.F.R. § 1508.9. The DEIS is insufficient because it fails to meet this standard.

The DEIS discusses six alternatives: no action, the preferred alternative (a negotiated contract renewal), Reclamation's initial contract proposal, the SRSC's initial counter proposal, cutbacks based on Shasta Inflow, and cutbacks based on a 40-30-30 Sacramento River index. DEIS 2-3. As Table 2-1 indicates, the differences between the alternatives are minor,¹ and none of the alternatives discussed provide for not renewing the contracts or reducing the contract delivery amounts. *Id.* at 2-3. This inadequate range of alternatives is likely the result of the DEIS' unreasonably narrow statement of purpose and need.

In addition, the DEIS' alternative section suffers from a number of other legal shortcomings. The DEIS fails to provide a true "No Action" alternative. The DEIS also completely fails to include an alternative which requires the contracts to provide for CVPIA-mandated fishery restoration flows. Finally, the DEIS wrongfully eliminates consideration of reasonable "no renewal" and a "reduced delivery" alternatives based on flawed statutory analysis and the DEIS' unreasonably narrow statement of purpose and need.

a. No Action Alternative

The No Action Alternative adopts the Preferred Alternative of the CVPIA Programmatic Environmental Impact Statement ("PEIS") prepared in October 1999, which evaluated the

¹ "In all but two cases . . . contract amounts remain unchanged." DEIS at 3-2.

16-5 See the Draft EIS at page 2-25 for a discussion of why nonrenewal of the contracts was determined to be infeasible.

16-6 The No Action Alternative consists of renewing existing water service contracts as described by the Preferred Alternative of the CVPIA PEIS. The analysis displays the increment of change between the No Action Alternative and the other alternatives. Alternatives that considered "No Contracts" and "Reduced Deliveries" were properly considered and eliminated as outlined in Chapter 2 of the Draft EIS. Also see Response to Comment 16-4. See Response to Comment 16-9 for a discussion of provisions for fishery restoration flows for the Trinity River

16-7 Chapter 2 of the Draft EIS presents descriptions of the alternatives considered, including alternatives considered but eliminated. As noted in Chapter 2, page 2-25, it is difficult to speculate how Reclamation and the SRSCs would respond to a "No Contract" Alternative; Reclamation concluded, however, that a no contract renewal would likely lead to greater environmental impacts than under the No Action and Preferred Alternatives and also was legally infeasible. Thus that alternative was eliminated from detailed consideration. See also Response 16-4.

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impacts of implementing the CVPIA, including the renewal of existing long-term contracts. The Preferred Alternative of the PEIS presumed the renewal of the Settlement Contracts at full amount. DEIS at 2-2. Thus, the No Action Alternative of the DEIS also presumes contract renewal at full levels. This is legally impermissible.

“No Action” means that the proposed activity (here, renewal of the Settlement Contracts) would not take place, and the resulting environmental effects from taking no action would be compared with the effects of permitting the proposed activity or an alternative activity to go forward. Thus, the proper “No Action” Alternative in the DEIS would allow the Settlement Contracts to expire at the end of their current term. The EIS would then evaluate the environmental effects of not renewing the contracts versus renewing the contracts. No such analysis occurs in the DEIS. Instead, Reclamation attempts to pass off a “status quo” alternative as “no action.” The DEIS must be revised to address a true “No Action” alternative within the meaning of NEPA.

b. CVPIA-mandated Fishery Restoration Flows Alternative

Second, the DEIS fails to include an alternative that includes contract language reflecting CVPIA-mandated fishery restoration flows.

The analysis of an alternative that provides for the renewal of the settlement contracts with specific terms and conditions protective of fish and wildlife is necessary. A CVPIA-mandated fishery restoration flow alternative could either be incorporated into the DEIS as a stand-alone alternative or, at minimum, should be integrated with the Preferred Alternative as a contract term that must be included in the renewals of the negotiated contracts. If renewed, the Settlement Contracts will lock-in terms for another 40 years. While the contracts generally provide that deliveries (and by implication the diversions necessary to accomplish those deliveries) will comply with the requirements of federal law, the contract language does not specifically reference the requirements of federal law that require priority be given to providing sufficient flows to protect and restore specified anadromous fisheries, including those of the Trinity River. *E.g.*, Trinity River Act of 1955, Pub. L. 84-386, 69 Stat. 710 (1955); CVPIA § 3406(b)(23); *see also* Solicitor’s Opinion, “Proposed Contract with Grasslands Water District,” U.S. Dept. of Interior (Dec. 7, 1979). The DEIS should consider an alternative that incorporates language specifically referencing these obligations.

Contract language acknowledging Trinity River restoration requirements reflects long-standing congressional directives that prioritize Trinity fishery releases over transbasin diversions to Central Valley contractors and is consistent with the federal government’s trust responsibility to protect and preserve the Tribe’s federally reserved fishing right. The Tribe’s request is narrowly tailored to require compliance with scientifically based fishery flow requirements set forth in the Trinity River Flow Study. These requirements must be implemented pursuant to CVPIA § 3406(b)(23), and should be included as conditions on supply made available for delivery to CVP settlement contractors.

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Project operations under the Preferred Alternative would be very similar to those under the No Action Alternative. Therefore, relative to the No Action Alternative, no impacts to fishery flows would occur under the Preferred Alternative. Also see the October 2004 BO on the CVP-OCAP, which concluded that continued CVP and SWP operations would not be likely to jeopardize threatened and endangered species. Because the Preferred Alternative would have no impact on fishery restoration flows, it would not be reasonable to evaluate a “fishery restoration flows” alternative. See also Response 16-4.

16-9

Flow requirements on the Trinity River are determined by hydro-logic conditions in the Trinity Basin and are unrelated to water demands in the Sacramento Valley. CVPIA § 3406(b)(23)(B), relates to the prescribed flow regime in the Trinity River and has been evaluated through a separate EIS/EIR. Trinity River flows are in the process of being fully implemented and do not relate to the SRSC contract amounts or frequency of deliveries to SRSCs. See also Response 16-4.

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Decisions of the federal courts since the enactment of the CVPIA make clear that Reclamation can and should reduce quantities of water delivered when fishery needs demand greater allocations. See *O'Neill*, 50 F.3d at 686; *NRDC v. Houston*, 146 F.3d at 1126; *Patterson*, 204 F.3d at 1213. The Ninth Circuit has expressly recognized Reclamation's obligation to meet the water needs of vested tribal fishing rights. *Patterson*, 204 F.3d at 1214 (holding that the Bureau has "a responsibility to divert the water and resources needed to fulfill the Tribes' rights, rights that take precedence over any alleged rights of the Irrigators"). Accordingly, the terms of the Settlement Contracts should expressly acknowledge these requirements, and the impacts of incorporating those requirements into the contracts should be assessed in a revised DEIS.

16-9,
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Express subordination of delivery obligations to fishery restoration needs is hardly unprecedented. *E.g., id.* Reclamation has historically included fishery restoration requirements as among the conditions on supply available to satisfy interim renewal contracts. For example, in *California Trout v. Schaefer*, 58 F.3d 469 (9th Cir. 1995), the court noted that an interim renewal contract for allocations from the New Melones Reservoir provided "a maximum of 75,000 acre-feet of water annually, subject to availability after the Bureau satisfied the water needs of in-basin users and higher priority out-of-basin users." *Id.* at 471. The "in-basin" needs given priority under that contract included those of "fish and wildlife resources" in the Stanislaus River Basin established under CVPIA § 3406(c)(2). *Id.* Given that precedent, Reclamation should consider an alternative heeding the command of CVPIA to meet their trust responsibility to the Tribe in the terms of the Settlement Contracts.

16-10

The only way to substantially reduce the risk of future controversy with water contractors over the Trinity River is to include a provision that specifically binds the SRSCs to the CVPIA § 3406(b)(23) mandate. The failure to include such an alternative that may provide for a reduction in contract amounts based on the CVPIA is related to Reclamation's speculative, and erroneous, dismissal of an alternative that would provide for the renewal of contracts with a reduction in the amount of water provided. See DEIS at 2-26. Nowhere does Reclamation acknowledge that federal laws, including the ESA and the CVPIA, and federally reserved tribal fishing rights take precedence over the rights of irrigators.

16-11

c. No Contract Renewal Alternative

The rationale provided by Reclamation as to why a "No Contract Renewal" option was rejected from consideration is incorrect as a matter of law. As a threshold matter, Reclamation's conclusion that the "nonrenewal of the contract is also legally infeasible" based on Public Law 88-44 (77 Stat. 68) and 43 U.S.C. § 485h is simply wrong. DEIS at 2-25.

16-12

The Act of June 21, 1963, Pub. L. 88-44 provides that the Secretary "shall, upon request of the other party to any long-term contract . . . include provision for renewal thereof subject to renegotiation . . ." Pub. L. 88-44, § 1 (emphasis added). By its plain language, this Act does not require contract renewal; rather, it simply required the Secretary include a provision for the renewal of the long-term contracts. Including a provision for renewal does not mean that the contracts must be renewed. Moreover, the fact that the Act requires renegotiation implies that

- 16-10 The commentor suggests that Settlement Contracts should be reduced to better guarantee fishery flows in the Trinity River. The frequency of various water releases, and subsequent releases into the Trinity River, are unrelated to inflow to Shasta Reservoir, which is the primary determinant of supply to SRSCs. The systemwide effect of implementing fishery restoration on the Trinity River were the subject of the Trinity River EIS and the PEIS, and are assumed to be in place for all of the alternatives considered in this EIS. See also responses to comments 16-4 and 16-8.
- 16-11 Reclamation's trust responsibility is documented in the Trinity EIS/EIR and the CVP-OCAP BA/BO consultation process. However, that trust responsibility is unrelated to the renewal of the Settlement Contracts. See response to Comment 16-4 for a more detailed discussion of the SRSCs and the Trinity River.
- 16-12 See Chapter 2 of the Draft EIS, p. 2-25 for a discussion of the basis for eliminating an alternative of no contract renewal.

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either the contract terms may be changed or the contracts not renewed at all after the expiration of their original term.

Likewise, nothing in 43 U.S.C. § 485h mandates the renewal of any contract, including the Settlement Contracts. Rather, 43 U.S.C. § 485h provides that “[t]he Secretary is authorized to enter into contracts to furnish water for municipal water supply or miscellaneous purposes.” 43 U.S.C. § 485h(c) (emphasis added). The authorization to enter into contracts does not equate to a requirement that contracts be entered into or that contracts, once created, must be renewed (at the same water delivery amount) in perpetuity. Likewise, 43 U.S.C. § 485h provides that “the Secretary, in his discretion, may enter into either short- or long-term contracts to furnish water for irrigation purposes.” 43 U.S.C. § 485h(e) (emphasis added). This too is not a mandate to issue, or renew, delivery contracts. Finally, even the draft contract forms appended to the DEIS at Appendix C acknowledge that renewal is only an option, not a right. Under “Term of the Contract,” section 2(a) provides that “renewal may be made for successive periods . . .” E.g., Appendix C, USBR Ex. 3, R.O. Draft 06/21-2002 at 7. Therefore, there is no basis in federal law for rejecting a “No Contract Renewal” alternative.

Reclamation’s policy objections to the “No Contract Renewal” alternative also are insubstantial. First, Reclamation states that “[t]his alternative was eliminated from further consideration in this EIS because it would not meet the objectives of both Reclamation and the SRSCs to provide water supplies to the various M&I and agricultural users within the contractors’ service areas, and would not meet the purpose of the proposed action.” DEIS at 2-25 (emphasis added). Far from providing a reasoned explanation for why the “No Contract Renewal” alternative was rejected, this statement admits that the purpose and need is artificially, and unlawfully, limited to permit a discussion of alternatives that only consider contract renewal. Second, Reclamation states that the absence of a contract would mean “the inability of the SRSCs to divert water during critical irrigation months.” *Id.* In the absence of a contract, the irrigators would have to “divert water in accordance with the natural hydrograph of the River.” *Id.* The Tribe fails to see how a holistic approach to irrigation that takes into account the Sacramento River’s natural flow, not to mention the needs of fish and wildlife, is a bad thing.

Moreover, Reclamation’s “speculation” as to what “could” happen under a no renewal scenario highlights the importance of providing a full discussion of not renewing the contracts so that all the environmental, cultural, and socioeconomic effects of not renewing the contracts can be fully analyzed by the agency. See 40 C.F.R § 1502.16 (discussing elements of environmental effects analysis of alternatives). For instance, there is absolutely no support for Reclamation’s bare assertion that, absent a contract ability to withdraw surface water, irrigators would deplete groundwater resources to the point that such groundwater withdrawals threaten “biological resources.” DEIS at 2-25. What “would likely result” or what “could happen” does not provide reasoned grounds to dismiss an otherwise viable alternative within the jurisdiction of the agency, especially when such speculation is based on a bare record. *Id.*; see also *id.* at 2-26 (rejecting alternative to provide reduced contract amount on same speculative bases). Reclamation has not taken a “hard look at the “no renewal” alternative. E.g., *Marsh v. Oregon Natural Resources Council*, 490 U.S. 360 (1989).

16-13

See Chapter 2 of the Draft EIS, page 2-25 for a discussion of the basis for eliminating an alternative of no contract renewal. Predictions of likely effects to groundwater from non-renewal were based in part on discussions with and input from the SRSC representatives. Based on this input, it was determined that in critical years, districts and member farmers turn to short-term supplies for water; typically increased use of groundwater. See the Draft EIS page 3-3.

16-12,
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d. Reduced Delivery Alternative

Reclamation's objection to an alternative that considers renewing the Settlement Contracts, but with reduced delivery amounts, fails for the same reasons discussed above concerning the rejection of the "no renewal" alternative. See DEIS at 2-26. As a matter of federal law, Reclamation can, and should, reduce contract deliveries when necessary to provide increased flows for federally protected fish and to support the Tribe's federally reserved fishing right. A reduced delivery alternative should be considered and a full analysis of its environmental effects performed in a revised DEIS.

Accordingly, Reclamation should consider additional alternatives that do not simply continue the status quo. Alternatives addressing nonrenewal, renewal at reduced contract delivery amounts, and renewal including contract terms incorporating the CVPIA-mandated fishery restoration flows warrant further consideration.

3. The DEIS Fails to Consider the Environmental Effects of the Proposed Actions.

The DEIS' discussion of the affected environment and environmental consequences associated with renewing the contracts under all the alternatives discussed in the DEIS is also rendered inadequate by the DEIS' unreasonably narrow statement of purpose and need. By limiting the discussion of alternatives to only those that will renew the Settlement Contracts, Reclamation has avoided discussing the environmental consequences of either reducing contract deliveries or not renewing the Settlement Contracts at all. The DEIS should be revised to provide other alternatives. This, in turn, will require a comprehensive analysis of the environmental consequences, both positive and negative, of reducing or eliminating Settlement Contract deliveries of CVP water, as such, and leaving more water in the Sacramento River. A comparative analysis of differential environmental effects of a full spectrum of alternatives to the proposed action must be undertaken in order to allow the public a meaningful opportunity to assess the proposed action.

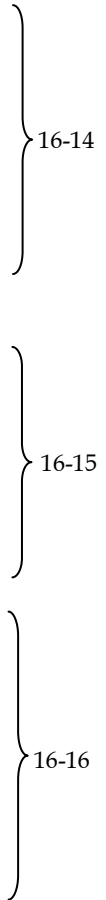
The DEIS' analysis of the potential effects of the renewal of the Settlement Contracts on "Indian trust assets" is also wholly inadequate. DEIS at 3-143 – 3-144. Not only does the analysis comprise a mere page and a half, the "Indian trust assets" analysis is narrowly limited in scope to the "Sacramento Valley." *Id.* at 3-143. Such a limited scope precludes any consideration of the continued impacts of decreased river flows on other parts of the CVP, including the Trinity River. The DEIS should consider the environmental effects of their proposed actions throughout the CVP and interrelated diversions, not just within the "Sacramento Valley."

The requirements to manage federal agency actions to provide habitat and sufficient water to protect salmon populations, and correspondingly, the Tribe's livelihood, have been well known since the Hoopa Valley Reservation was created and the Tribe's federally-reserved fishing right was secured in 1864. The DEIS must take into account the impacts continued irrigation withdrawals, at substantially the same level for the next 40 years, will have on the

16-14 The statement of purpose and need is consistent with the requirements of NEPA. As discussed in response to comment 16-15, consideration of various methods of drought supply provides a range of alternatives for consideration in the document. See Chapter 2 of the DEIS for a discussion of alternatives considered but eliminated. Also see Thematic Response No. 1 for a description of the original dispute between Reclamation and the SRSCs. The alternatives suggested by the commentor were considered, but eliminated from further consideration, as noted in Chapter 2 of the Draft EIS.

16-15 The Draft EIS includes consideration of alternatives that have greater frequencies of drought-year supplies than the No Action and Preferred Alternative. As noted in DEIS Chapter 3, the reduced water supplies under these alternatives could be used for purposes other than supply to SRSCs. Thus, the commentor's request for a "reduced contract" alternative is functionally the same as alternatives with greater frequencies of drought-year supplies. The statement of purpose and need is consistent with the requirements of NEPA, Reclamation Law, and the CVPIA PEIS Preferred Alternative, all of which contemplate renewal of the SRSCs. See Chapter 2 of the DEIS for a discussion of alternatives considered but eliminated. Also see Thematic Response No. 1 for a description of the original dispute between Reclamation and the SRSCs.

16-16 Departmental Manual Part 512, Chapter 2, titled Departmental Responsibilities for Indian Trust Resources requires Reclamation to "identify any impacts of Departmental plans, projects, programs or activities on Indian trust assets, or tribal health and safety." Because there is no causal link between the restoration activities on the Trinity and the proposed execution of the Settlement Contracts, Reclamation has concluded that (1) there is no impact to the Hoopa Valley Tribe's Indian trust assets, and (2) defining the EIS study area as the areas where SRSC water is used (i.e. the SRSC Service Area), is an appropriate and logical approach to defining the scope of the EIS. Those counties within the SRSC service area are Shasta, Tehama, Glenn, Butte, Colusa, Sutter, Yolo, Sacramento, and Yuba.



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Reclamation has identified no causal link between the execution of the SRSCs, the use of such contracted water for irrigation, and the Hoopa Valley Tribe's federally reserved right to take fish in the Trinity River, hence the finding of "No Impact" for all five alternatives. See the Draft EIS at pages 3-5, 3-16, 3-17 and 3-143 to 3-144. Note that the overall decrease in SRSC diversions associated with the reduction of ACID and SMWC contract amounts would provide Reclamation with additional flexibility in meeting other contract and environmental water needs. However, as noted on DEIS p. 3-3, it is speculation to predict specifically where the water would be allocated.

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federally-reserved fishing rights of the Tribe. In addition, a discussion of means to reduce or mitigate for the adverse affects on the Tribe's fishing rights should also be considered. 40 C.F.R. § 1502.16(h).

4. The DEIS Improperly Defers Consideration of Mitigation Measures Required by NOAA Fisheries in the CVP-OCAP BiOp.

The DEIS improperly defers consideration of impacts to threatened and endangered species pending completion of ESA § 7 consultation with NOAA Fisheries. DEIS at 5-2; 1-11 ("It is anticipated that formal consultation on long-term OCAP will be completed by the end of 2004"). Such a speculative approach is impermissible under NEPA, as illustrated by the ruling in *Westlands*, 275 F. Supp.2d at 1182-85, *rev'd in part on other grounds*, No. 03-15194 (9th Cir. July 13, 2004). In *Westlands*, the DEIS at issue did not adequately analyze the impact of the proposed action on certain ESA-listed species. *Id.* at 1183. Further, the court found that the DEIS "did not consider or identify mitigation measures" for those effects, other than to "specify that mitigation for impacts ... would consist of consulting with the Service on impacts and implementing any required conservation measures." *Id.* As a result, the court concluded that Reclamation violated NEPA.

This wait-and-see approach is precisely the approach adopted in this DEIS, which acknowledges that ESA § 7 consultation on the CVP-OCAP was not completed at the time the DEIS was published. DEIS at 5-2 (referencing "draft Biological Assessment" in CVP-OCAP). As the *Westlands* court found, the approach taken by Reclamation here "defers consideration of mitigation efforts" and "precludes the parties from meaningful analysis." *Id.* at 1184; *see also id.* at 1188 ("The omission of discussion of mitigation measures foreclosed any public input on the issues of whether and what CVP operations management alternatives existed and were feasible; and whether alternate water sources existed or if reduced flows could reduce the impact on species and other CVP users").

NOAA Fisheries' release of the CVP-OCAP BiOp on October 22, 2004, after the publication of the DEIS, makes the words of the *Westlands* court ring true here. The CVP-OCAP BiOp includes consideration of the effects on threatened and endangered species by Reclamation's proposed action of renewing water delivery contracts. CVP-OCAP BiOp at 10 (noting that "under the ESA, NOAA Fisheries is still required to adequately analyze the impacts to listed fish species from unscreened diversions receiving contract water and the return of that water to the river"); *see also id.* at 40 (discussing water service contracts and deliveries as interrelated action). The CVP-OCAP BiOp specifically concludes that "facilities and operations of CVP and SWP contractors are not exempted from take included in this opinion unless specified in the incidental take statement." *Id.* This is due to the adverse effects water diversions have on threatened and endangered species. "The diversion and storage of natural flows by dams and diversion structures on Central Valley waterways have depleted stream flows and altered natural cycles by which juvenile and adult salmonids base their migrations." *Id.* at 69. The "impacts to flows and water temperatures" caused by CVP diversions "reduce the suitability and availability of habitat," may "kill[] salmonids through direct entrainment in Project diversions," and result in "changes in water quality." *Id.* at 89, 170; *see also id.* at 192.

16-17

The OCAP BO (Appendix A to this Final EIS) concluded that continued operation of the CVP and SWP are not likely to jeopardize threatened or endangered species. None of the RPMs identified in the OCAP BO apply to the SRSCs. See Thematic Response No. 7 for more information regarding the relationship between the OCAP BO and SRSCs. Reclamation's trust responsibility is documented in the Trinity EIS/EIR and the CVP-OCAP BA/BO consultation process. However, that trust responsibility is unrelated to the renewal of the Settlement Contracts.

Contract renewals would not alter existing divisions and thus would not alter or affect the fishery. Independent of contract renewal, Reclamation, the contractors, and other parties have taken steps to reduce effects on fish, including the construction of modern fish screens. Please see Thematic Response No. 8 for a description of fish screening efforts by the SRSCs. Also, it is important to note that summer flows are generally driven by temperature management, not water deliveries to points below the temperature compliance points defined in the OCAP BO.

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Accordingly, the CVP-OCAP BiOp imposes a number of Reasonable and Prudent Measures (RPMs) and terms and conditions relevant to Reclamation's contracts for water delivery. The first RPM necessary to minimize the take of listed species requires Reclamation to "gather information regarding the effects of water temperatures and flow fluctuations" on listed species "and operate to water temperature objectives that will avoid or minimize effects to listed salmonids, consistent with meeting applicable conditions in CVP and SWP water rights permits." *Id.* at 212. Likewise, Reclamation "must comply or ensure compliance by [its] contractor(s)" with the first "non-discretionary" term and condition which implements the RPM. *Id.* at 216. The terms and conditions implementing the first RPM noted above require Reclamation to monitor and provide written reports to NOAA Fisheries of incidental take of listed salmonids associated with water deliveries. *Id.* In addition, the CVP-OCAP BiOp imposes discretionary "conservation recommendations." *Id.* at 235. With respect to contract water deliveries, these recommendations include working to "minimize take from unscreened diversions that are a part of water contract renewals" by completing funding and construction of fish screens "to reduce entrainment of listed salmonids that receive CVP contract water" and providing information on the effects of agricultural return flows from CVP water contracts on listed salmonids "prior to the renewal of long-term contracts." *Id.* at 236.

The RPM relating to temperature monitoring and its associated terms and conditions will have both discrete and cumulative impacts on water supplies available for diversion to meet the contractual obligations proposed in the DEIS. Yet, by unlawfully deferring consideration of mitigation, the DEIS fails to consider the impacts of the RPMs on the proposed Settlement Contract renewals.

None of these RPMs or terms and conditions that will have significant impacts beyond those of the proposed action are discussed in the DEIS. This directly violates the *Westlands* decision that requires the environmental impacts of mitigation measures be discussed "with reasonable thoroughness" in draft NEPA documents. *Id.* at 1192. These measures and their environmental impacts must be disclosed to the public in a process that "included public participation," *i.e.* they must be disclosed in a manner that allows meaningful public scrutiny, comment, and participation. *Id.* at 1198. By deferring discussion of species impacts and, thereby, failing to account for the mitigation required by the CVP-OCAP BiOp, the DEIS fails to meet these requirements. The public has thus been deprived of the opportunity to meaningfully review the cumulative effects of diverting over 2.2 million acre feet of water from the natural course of the Sacramento River and the associated actions that will be required under the ESA to mitigate the effect of these continued improvident diversions.

The deferral of mitigation analysis also results in excluding from consideration a number of reasonable alternatives, including non-renewal, and renewal at reduced delivery amounts that would more accurately reflect current delivery constraints. *See* DEIS at 2-25 – 2-26. These alternatives warrant further consideration, especially considering their ability to reduce impacts to listed species and, potentially, improve flow and water quality conditions. In sum, the DEIS must be revised and recirculated after taking into consideration of the CVP-OCAP BiOp.

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5. The DEIS Fails to Consider Effects on Indian Trust Assets.

The DEIS states that “no Indian Trust Asset exists within the study area for this EIS.” DEIS at 5-3. As a practical matter, this statement is not true. The only reason why “no Indian trust asset” is present is because of the unduly narrow scope of the EIS’s study area – the Sacramento Valley. *Id.* at 3-143. The DEIS fails to consider the impact of current water withdrawals from the Sacramento River on other parts of the CVP including the Trinity River Diversion and the Trinity River. Thus, the consideration of “Indian trust assets” fails to acknowledge the nature of water rights associated with tribal fishing rights. For example, the Tribe’s federally reserved fishing right guarantees to the Tribe the right to a fishery that is supportive of a moderate standard of living. As has been repeatedly acknowledged by the federal courts, tribes are entitled to sufficient water in rivers flowing through their lands to support a fishery that will meet those needs. *See* pages 1-2, above. Accordingly, as the needs of the Tribe and the fishery change, so must the water delivery contracts affecting the ability to sustain that fishery.

As such, the Tribe remains very concerned that contractually dedicating the vast amounts of water that are specified in Settlement Contracts will make it increasingly difficult for the CVP to adequately protect tribal fishery resources, as the limited supply that is available for fishery purposes is subject to increasingly greater demands as a result of foreseeable drought, global warming, population growth, and urban development. The DEIS fails to adequately address the cumulative impacts of these various factors on Reclamation’s ability to provide for and protect the fishery resources within its charge. *See, e.g.*, CVPIA § 3406 (b)(23) (identifying trust responsibility to protect the fishery resources of the Hoopa Valley Tribe as constraint on operation of CVP facilities).

6. The DEIS Fails to Address the M&I Shortage Policy.

The DEIS does not adequately disclose the terms of the renewal contracts; therefore, it is impossible for the Tribe to discern whether the terms of the Settlement Contracts specifically reference Reclamation’s proposed revised M&I Shortage Policy. None of the draft contracts appended at Appendix C contains a clause relating to the M&I Shortage Policy. The DEIS must be revised to reference and analyze the effects of the M&I Shortage Policy on the proposed renewals of the Settlement Contracts.

The M&I Shortage Policy has been under development for a number of years and has yet to be completed or subjected to necessary review under NEPA or the ESA. The CVP-OCAP BiOp specifically states that any contract that does not specifically reference the revised policy will not be subject to its provisions. CVP-OCAP BiOp at 41. The DEIS does not discuss the revised policy, its impacts, or implications. In the event that the revised M&I Shortage Policy is completed prior to execution of these contracts, and the final Settlement Contracts are further revised to reflect the M&I Shortage Policy, recirculation or supplementation of the DEIS will be necessary in order to assess the impacts of incorporating those revised shortage provisions into the Settlement Contracts.

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16-18

Reclamation inadvertently omitted the identification of Indian trust assets within the SRSC study area on page 5-3 of the Draft EIS. This has been corrected in the redline version of the corrected EIS available in Chapter 4 to this EIS. However, Reclamation correctly identified all six tribes on page 3-143 of the Draft EIS. Indian trust assets exist on the trust lands of the following:

- Redding Rancheria in Shasta County
- Paskenta Band of Nomlaki Indians in Tehama County
- Grindstone Rancheria in Glenn County
- Cachil Dehe Band of Wintun Indians of the Colusa Indian Community in Colusa County
- Cortina Band of Wintun Indians of the Cortina Rancheria in Colusa County
- Rumsey Indian Rancheria of Wintun Indians in Yolo County

However, Reclamation concludes that future execution of the SRSCs does not adversely affect the use, quality, character, or nature of the six tribes’ trust assets located in the EIS study area. Therefore, Reclamation concludes there are no impacts to the Indian trust assets of the Redding, Paskenta, Grindstone, Colusa, Cortina, or Rumsey Tribes as a result of execution of the Settlement Contracts.

Reclamation has found no substantive information that supports a causal link between the restoration activities on the Trinity (including the Hoopa Valley Tribe’s Indian trust assets. and that the EIS study area (i.e., the SRSC Service Area) boundary continuing the areas where SRSC water is used, is an appropriate and logical approach to defining the scope of the EIS. For more information, see response to comment 16-16.

Reclamation can find no clause in the Settlement Contracts that lends itself to an interpretation that Trinity River water could be used to sustain any shortfalls in water allocation to SRSCs during critical years. As was stated previously, Reclamation cannot find the causal link in the SRSCs that indicates the execution of such contracts will be an adverse affect to the CVP’s ability to adequately protect tribal fishery resources.

Letter from Morisset, Schlosser, Jozwiak & McGaw, Continued

- 16-18
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- Clearly, the Hoopa Valley Tribe and Reclamation disagree about Reclamation's conclusion that the Tribe's Trinity River fishery and the Tribe's right to take fish are unaffected by the proposed execution of the SRSCs. Reclamation's NEPA guidance [8.8.14 in Reclamation's NEPA Handbook referencing the ITA attachment dated August 31, 1994, Part IV Assessing Impacts to ITAs, Paragraph IV-13 What Happens If Indian Communities Disagree with Reclamation's Conclusions Concerning Impacts to Their ITAs]. This guidance indicates that such a "disagreement should be discussed in the NEPA document for consideration by the decision maker." To meet this guidance Reclamation will insert the following statement in the Indian Trust Asset Section of the SRSC EIS:
- "The Hoopa Valley Tribe has informed Reclamation through its legal counsel that the Tribe finds that the SRSC EIS inadequately addresses the potential effects caused by the proposed renewal of the Settlement Contracts on the Tribe's federally reserved fishing rights (a trust asset of the Tribe), located in the Trinity River. In particular, the Tribe asserts that the Settlement Contract renewals will adversely affect Reclamation's obligation in the Trinity River Fishery Restoration ROD to maintain flows at ROD mandated levels. Reclamation's subject matter experts find no causal link between the renewal of Settlement Contracts and the ability for the Hoopa Valley Tribe to exercise their federally reserved fishing rights, or Reclamation's obligation under the Trinity River Restoration ROD to maintain flows at mandated levels."
- No mitigation is proposed in the Draft EIS to avoid impacts to threatened or endangered species, because no impacts have been identified. See Chapter 3 of the Draft EIS for a discussion of impacts to the Biological Environment. Because no impacts have been identified in the Draft EIS, any RPMs outlined in subsequent BOs would be the result of other aspects of CVP operation, not from renewal of the Settlement Contracts.
- 16-19
- The M&I Shortage Policy relates to Water Service Contracts, not Settlement Contracts as described here.

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16-20 Comment noted. At this time Reclamation considers the Draft EIS to be a legally sufficient document under NEPA, and will not re-circulate a revised version.

D. Conclusion

The Tribe urges Reclamation to revise and recirculate the DEIS to address the myriad legal deficiencies noted above and to account for the need for operation of CVP to protect the Tribe's federally reserved fishing rights. Thank you for the opportunity to comment on the DEIS. We trust that our comments will be appropriately considered and addressed in any final NEPA documentation for this proposed action.

} 16-20

Sincerely yours,

MORISSET, SCHLOSSER, JOZWIAK & McGAW



Thomas P. Schlosser
Rob Roy Smith
Attorneys for the Hoopa Valley Tribe

cc: Kirk Rodgers
Steve Thompson

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No. 17

**The Bay Institute
Natural Resources Defense Council**

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Via Federal Express
November 11, 2004

Mr. Buford Holt
U.S. Bureau of Reclamation, Northern California Area Office
16349 Shasta Dam Blvd.
Shasta Lake, CA 96019

Re: Comments on Draft Sacramento River Settlement Contractors Environmental Impact Statement

Dear Mr. Holt,

This letter provides comments of The Bay Institute and the Natural Resources Defense Council (NRDC) on the Draft Sacramento River Settlement Contractors Environmental Impact Statement (U.S. Bureau of Reclamation, Mid-Pacific Region, Sacramento, CA; October 2004). Additional supplemental comments from our organizations are also being submitted by NRDC under separate cover.

The EIS has been prepared to determine whether and to evaluate the types and relative magnitude of any significant ongoing, new, and cumulative impacts to the natural and human environment that will result from renewal of long-term water service contracts under each of several alternatives. In its current form, the document provides an incomplete and inadequate environmental impacts analysis that appears to be inconsistent with findings reported by the U.S. Bureau of Reclamation (Reclamation) in its Operation Criteria and Plan Biological Assessment (OCAP BA).¹ Despite overwhelming evidence to the contrary, including multiple Endangered Species Act (ESA) listings of fish species dependent on environmental conditions in Sacramento basin and the apparent extirpation of spring-run Chinook salmon from the Sacramento River in the Settlement Contract area in just the last two decades of the previous long-term contract, the EIS contends that renewal of long-term water contracts will have no significant or cumulative negative effects. The conclusions of "no impact" and

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Christina Swanson, Ph.D.,
Dated November 11, 2004

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See Thematic Response No. 5, Summary of Incremental Impacts, for a description of alternative development, including development of the No Action Alternative. It is important to consider the incremental impact of alternatives relative to the no action condition. Also see the October 2004 Biological Opinion on the Long-Term Central Valley Project and State Water Project Operations Criteria and Plan (CVP-OCAP), with regard to impacts to threatened and endangered species from operation of the CVP and State Water Project. The commentor refers to "planned Reclamation operations" that should be added to the Cumulative Section; however, no specific operations are mentioned. At this time, there is no consensus regarding the potential impact of global warming on agricultural demand or climate in the Sacramento Valley. It is possible that an increase in ambient temperatures would increase water demand. It is also possible that a shift in weather patterns could increase or change precipitation patterns, thereby decreasing demand for irrigation. Therefore, it is considered speculative to base future water demand on the effects of global warming. Furthermore, any change would occur regardless of the alternative selected. See Thematic Response No. 2 for a discussion regarding the length of the contracts in the context of the Central Valley Project Improvement Act.

¹ The EIS states that renewal of Sacramento River Settlement Contract water service contracts is related to the current update of the Operations Criteria and Plan (OCAP) (EIS, pg. 1-10; 11). The project description for Sacramento River operations contained in the OCAP and accompanying Biological Assessment is essentially the same as that described in the five alternatives in the EIS. The OCAP BA identified numerous instances in which Reclamation operations to deliver contract water would result in new and ongoing negative impacts to the natural environment and valuable biological resources.

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Letter from The Bay Institute Natural Resources Defense Council,
Christina Swanson, Ph.D., Continued

"potential benefit" to aquatic biological resources (EIS, pg. 3-4) are wholly unsupported by both the readily available scientific evidence and analytical results reported by Reclamation in OCAP BA and a number of other documents and reports. The Cumulative Impacts analysis (EIS, pg. 4-1) is particularly flawed as it appears to evaluate only recently implemented (or planned) habitat and water management reforms, most intended to mitigate some of the adverse impacts of Reclamation operations during the previous contract period, but not the well-documented, continuing and, in some cases, increased serious negative impacts of past and planned Reclamation operations for water supply and delivery. In addition, neither the EIS nor the OCAP project description and analyses, upon which future long-term water management and contract renewal are based, have considered the effects of global climate change, which are certain to manifest during the proposed 40-year contract period.

17-1,
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Negative Impacts on Aquatic Biological Resources

Water project operations on the Sacramento River and associated management of surface and groundwater water resources in the basin affect many terrestrial and aquatic plant and animals species that inhabit the river corridor, its tributary streams, the Sacramento-San Joaquin Delta, and the San Francisco Bay. Our comments focus on the effects of Reclamation operations and renewal of long-term water contracts on native anadromous fish species that rely on the Sacramento River and its tributaries. Several of these species, including winter-run and spring-run Chinook salmon and Central Valley steelhead, have declined to such low levels that they are now listed under both state and federal Endangered Species Acts. For each of these species, dams and water management operations on the Sacramento River and its tributaries are identified as key factors for the species' declines.

At least four components of Reclamation's proposed Sacramento River Settlement Contractor water service delivery operations have substantial continuing and new negative impacts on the environment and pose significant threats to native anadromous fish species that rely on the Sacramento River and its tributaries. Only one of these impacts is even identified in the EIS, despite other Reclamation analyses that have previously identified the others. These four sets of impacts include but are not limited to the following:

1. Increased drawdown of groundwater basins and reduction in tributary stream flows. According to the EIS, reduced surface water deliveries during dry years will result in increased groundwater pumping activities and reduced flows in streams tributary to the Sacramento River. Reduced stream flows, particularly during dry years will negatively impact spring-run Chinook salmon and, given the tenuous condition of this run (see below), could ultimately jeopardize the recovery, viability and/or continued existence of the Sacramento basin spring-run Chinook salmon evolutionarily significant unit (ESU).

17-2

Historically, the spring run of Central Valley Chinook salmon was the second largest run in the watershed and supported the bulk of the commercial fishery (Yoshiyama et al., 1998; copy enclosed). Based on population declines during the past several decades (and extirpation of spring-run Chinook salmon in the San Joaquin basin), Sacramento basin spring-run Chinook salmon are now listed as threatened under both state and federal ESAs. During the past decade, the run has been the target of a number of protection and recovery efforts, most

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The commentor is correct in noting that reduced surface water deliveries under Alternatives 4 and 5 would increase pumping relative to no action. However, the relative reduction in deliveries, relative to no action, could result in additional streamflows for fish, resulting in a potential benefit. As shown in Tables 3-11 and 3-14, peak depletion rates are generally very small, especially compared to measured streamflow. For example, Table 3-11 estimates a peak stream depletion rate of 240.7 cubic feet per second (cfs) in the Sacramento River as a result of groundwater pumping, compared to a modeled streamflow of 8,718 cfs. This would be a peak reduction of less than 3 percent. For Butte Creek, the peak depletion rate is 7.6 cfs against a streamflow of 114 cfs, a peak reduction of less than 7 percent. It is important to note that these potential impacts from pumping are the result of a hypothetical drought scenario based on 4 consecutive water years similar to the extreme drought of 1976-1977. Any potential impacts to fish species would be *de minimus* and could potentially be offset by in-stream releases of water if necessary. As noted in Chapter 3 of the Draft EIS, no impacts to fishery resources would be caused by operations under the Preferred Alternative relative to no action.

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Christina Swanson, Ph.D., Continued

focused on tributary streams within the Settlement Contractor area upstream and downstream of Red Bluff Diversion Dam (RBDD) on the Sacramento River.

Until fifteen to twenty years ago, the majority of the run (average: >10,000 fish/year) spawned in the upper mainstem Sacramento River above RBDD (Figure 1, data from California Department of Fish and Game [CDFG]). In recent years (~1987-2003), progressively fewer fish have been able to return to the upper mainstem river, the combined result of Sacramento River water management operations that cause intolerable water temperature conditions and migration blockage and delays at RBDD (see below). As of 2003, when no spring-run Chinook salmon were reported to have returned, the Sacramento River population may have been extirpated. Presently, independent natural populations of spring-run Chinook salmon are restricted to just three Sacramento River tributaries: Mill, Deer and Butte Creeks. Given the current restricted geographic distribution and only two remaining independent natural populations (one in Mill and Deer Creeks and the other in Butte Creek), the species is "perilously close to extirpation" in the Sacramento basin (McElhany et al., 2000; Lindley et al., 2004; copies enclosed).

A major focus of protection and recovery efforts is to protect spring-run Chinook salmon populations in Mill, Deer, and Butte Creeks and to reestablish the run in other suitable streams. However, for the three main tributaries that presently support the run as well as for virtually all other potentially suitable tributary streams, inadequate stream flows have already been identified as a limiting factor for the fish (USFWS, 1995). Further reductions in stream flows, as are predicted by the EIS for at least Butte, Cottonwood, and Big Chico Creeks (EIS, pgs. 3-48, 3-51, 3-54, and 3-56), would have negative impacts on spring-run Chinook salmon, threaten recovery of this listed species, and prevent achievement of the anadromous fish doubling requirement of the Central Valley Project Improvement Act (CVPIA). In addition, the EIS fails to analyze the likely effects of reduced stream flows on water temperature, water depth, or fish passage, other limiting factors for spring-run Chinook salmon in these streams. The EIS also fails to adequately address alternatives that could reduce such impacts, fails to adequately identify appropriate mitigation measures for projected impacts, and fails to adequately evaluate its assumptions regarding water use and water demand in both dry and normal years.

2. Elevated water temperature in the Sacramento River below Keswick Dam

According to the OCAP Project Description, Reclamation proposes to change Sacramento River temperature control objectives, relocating the temperature compliance point upstream in the river (OCAP BA, pg. 2-36).² Compared to current operations, this will increase mortality of incubating eggs and emergent fry of endangered winter-run Chinook salmon and substantially reduce the area of habitat for all salmonid species that use the upper mainstem Sacramento River. The proposed action violates protections required by the State Water Resources Control Board (Water Rights Orders 90-05 and 91-01) and represents a rollback of

² The temperature compliance point is the location at which specific cool water temperature conditions must be maintained for the protection of winter-run Chinook salmon by Reclamation using reservoir releases and the Shasta Temperature Control Device.

17-3

Project operations under the Preferred Alternative would be very similar to those under the No Action. Therefore, relative to no action, no impacts to temperature would occur under the Preferred Alternative. See Thematic Response No. 7 Relationship between OCAP BO and the Settlement Contracts. Also see the October 2004 Biological Opinion on the CVP-OCAP with regard to impacts to threatened and endangered species from operation of the CVP and State Water Project.

17-2,
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17-3

No. 17

Letter from The Bay Institute Natural Resources Defense Council,
Christina Swanson, Ph.D., Continued

an important fish protection measure that has been in place for the past decade. This impact is not discussed in the EIS, nor has it been addressed in any NEPA document analyzing Reclamation's new OCAP.

} 17-3,
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3. Eliminate minimum carryover storage requirements in Shasta Reservoir.

According to the OCAP BA (pg. 2-36), Reclamation proposes to no longer operate to maintain a minimum carryover storage in Shasta Reservoir of 1.9 million acre-feet (MAF). This requirement, contained in the original winter-run Chinook salmon BO (NOAA Fisheries, 1993), was intended to maintain an adequate cold-water pool in the reservoir to provide for releases of cold water to the river for protection of winter-run Chinook salmon during multi-year dry periods. This impact, as well as related impacts of any weakening of the carryover requirement to a mere "target," are not discussed in the EIS, nor have they been addressed in any NEPA document analyzing Reclamation's new OCAP.

In the OCAP BA, effects of these two planned changes in Reclamation operations relating to temperature control in the upper mainstem Sacramento River were analyzed together, making it difficult to quantify the relative impacts of either change individually. An Environmental Assessment (EA) for renewal of other Sacramento River long-term water contracts (e.g., Revised Draft EA on Sacramento River Division Renewal Contracts, pg. 3-75) stated that, in some years, water temperatures "may reach levels that are detrimental to survivorship" for winter-run Chinook salmon. However, this obvious negative impact as well as the reduced summer flow predicted by the OCAP BA analyses and resultant reduction in winter-run Chinook salmon critical habitat area are neither identified nor described in the Settlement Contractors EIS or included in the summary table of potential impacts (EIS Table 3-1, pg. 3-4, 5).

} 17-4

It's clear that these two changes to Reclamation water management operations in the Sacramento River Settlement Contract area will have their greatest negative impacts on endangered winter-run Chinook salmon. Winter-run Chinook salmon historically spawned in several Sacramento River tributaries located far upstream of Shasta Dam (Moyle, 2002). Closure of Shasta and Keswick Dams restricted this unique run to a single location, the Sacramento River below Keswick Dam.³ Environmental conditions (largely water temperature) in the river further restrict the fish, which return to the river as immature adults during the winter and hold during the spring and summer before spawning in the late summer, to the short reach of the river from immediately below Keswick Dam to approximately Red Bluff Diversion Dam (depending on water temperature and flow conditions). In the mid-1970s, drought and extreme water management operations on the Sacramento River nearly wiped out the run, killing most adult fish holding in the river and most incubating eggs during two consecutive years and resulting in extremely low returns of adult fish three years later (i.e., in 1979 and 1980, Figure 2, data from CDFG). By 1989, after the species had remained at critically low levels for a decade, it was listed by both the state and federal ESAs as threatened. In 1994, the federal ESA listing was changed to endangered.

17-4

As noted previously, project operations under the Preferred Alternative would be very similar to those under the No Action Alternative. This would result in carryover storage management that is also almost identical in both the No Action and Preferred Alternatives. Therefore, relative to no action, no impacts to temperature would result from decreased carryover storage under the Preferred Alternative. See Thematic Response No. 7 Relationship between OCAP BO and the Settlement Contracts. Also see the October 2004 Biological Opinion on the CVP-OCAP with regard to impacts to threatened and endangered species from operation of the CVP and State Water Project.

³ The Sacramento River basin is the only watershed that supports a winter run of Chinook salmon (Moyle, 2002).

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Letter from The Bay Institute Natural Resources Defense Council,
Christina Swanson, Ph.D., Continued

Given the current extremely restricted geographic distribution of winter-run Chinook salmon and the concentration of the entire ESU into a single population, this species is also highly vulnerable to extinction (Lindley et al., 2004).⁴ A major focus of protection and recovery efforts is to protect remaining habitat below Keswick Dam by using the Shasta Temperature Control Device⁵ and controlled reservoir releases to maintain suitably cool temperatures for adult holding, spawning, egg incubation and early rearing, improve passage of immigrating adults to the upper Sacramento River by opening RBDD gates during September 15-May 15 period, improve survival of emigrating juveniles, and reestablish the run in other suitable streams, with the greatest emphasis on Battle Creek. As existing state bond funding for CALFED restoration activity dries up and federal funding for CALFED is far below anticipated amounts, it is at best uncertain whether, let alone when, winter-run Chinook salmon will be successfully restored to Battle Creek.

- Reclamation's plan to shift the temperature compliance point to a location 18 miles upstream of that presently required under the winter-run Chinook salmon BO (NOAA Fisheries, 1993) is likely to undo some or all of the progress towards recovery of the species made during the past decade (see Figure 2). Even during the past decade Reclamation has failed to meet current temperature compliance requirements, with the largest exceedences occurring during the past four to seven years (OCAP BA, pg. 9-29). These exceedences are the likely explanation of Reclamation's observation in the OCAP BA that winter-run Chinook salmon now spawn in areas closer to Keswick Dam than in the past and, rather than justifying a harmful change in the temperature compliance point proposed by Reclamation, may in fact be contributing to the slowed rate of population increase observed in the past three to four years. In addition, Reclamation predicts that Sacramento River flows during the critical late summer and early fall period will be lower, exacerbating water temperature problems (OCAP BA, pg. 9-27).
- Results of analyses reported in the OCAP BA (pg. 9-32, Figure 9-32) indicate that future operations will increase egg mortality (above current levels) by an average of 5-10% and by as much as 20-25% in critically dry years.
- The upstream shift in the temperature compliance point reduces winter-run Chinook salmon habitat by 40% (as linear river miles), effectively eliminating access to 18 miles of river channel in many years.
- Maintenance of a minimum of 1.9 MAF is intended to preserve enough water in Shasta Reservoir's cold-water pool to support flow releases for temperature control in

17-4,
cont'd

⁴ An independent assessment of the extinction risk for winter-run Chinook salmon, conducted by NMFS's Pacific Salmonid Biological Review Team (an expert panel of scientists from several federal agencies including NMFS, USFWS, and U. S. Geological Survey), found that the ESU was at "extremely high risk" for each of NMFS's four viability criteria (McElhany et al., 2000) and concluded that the run was "in danger of extinction" (69 FR 33102, June 14, 2004, pg. 33124).

⁵ Before the Temperature Control Device was completed, cool water from deep in Shasta Reservoir was released from lower outlets by bypassing the power generation turbines.

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Letter from The Bay Institute Natural Resources Defense Council,
Christina Swanson, Ph.D., Continued

the upper Sacramento River in years following dry and critically dry years. Failure to maintain sufficient reserves threatens the survival of entire cohorts of the winter-run Chinook salmon ESU.

- Based on this proposed less conservative storage management plan, Reclamation's OCAP BA (pg. 9-28-32) predicted that, on average during dry and critically dry years, 45% of incubating eggs would be killed each year. This mortality rate is approximately two to ten times higher than that predicted for wetter years.

4. Operation of Red Bluff Diversion Dam (RBDD).

Operation of RBDD is not directly related to delivery of Settlement Contractor water supplies but it is an integral component of Reclamation water management operations on the Sacramento River and/or in the Settlement Contractor area. According to the Project Description in the OCAP BA, Reclamation proposes to continue closing the RBDD during the May 15-September 15 period. RBDD blocks and/or delays migration of adult anadromous fishes, harms emigrating juvenile anadromous fishes, and degrades habitat and water quality in the Sacramento River upstream and downstream of the facility. Compared to the alternatives analyzed in the Draft EIS/EIR for the Fish Passage Improvement Project at Red Bluff Diversion Dam (August 2002), an effort led by Reclamation and one of its major Sacramento River Division water contractors (Tehama-Colusa Canal Authority), the RBDD operation planned for future operations (including those to support Sacramento River Settlement contracts), the No Action "4-month gates in" alternative, was determined to have the greatest negative impacts on fishery resources in the Sacramento River. Reclamation's selection of this operational protocol for RBDD as the preferred alternative conflicts with the preferred alternative identified in the Draft EIS/EIR and, in fact, appears to abrogate the EIS/EIR process for the Fish Passage Improvement Project, the finalization of which was "delayed" pending completion of the OCAP process.⁶ This impact is not discussed in the EIS, nor has it been addressed in any NEPA document analyzing Reclamation's new OCAP.

Past and current RBDD operations have had significant negative impacts on spring-run Chinook salmon.

- RBDD prevents or delays upstream migration of 70% of adult fish (OCAP BA, pg. 6-19; Draft EIS/EIR Fish Passage Improvement Project for RBDD, pg. B-6). Fish ladders incorporated into the dam are inefficient at passing spring-run Chinook salmon (CDFG, 1998; copy enclosed).
- Reduced flows and elevated temperatures below RBDD when the gates are closed reduce survival of fish restricted to areas below RBDD.

⁶ In response to questions from NOAA Fisheries, Reclamation stated that the preferred alternative for RBDD operations was the "No Action Alternative" described in the 2002 Draft EIS/EIR. Reclamation responses to NOAA Fisheries questions are available at www.usbr.gov/mp/cvo/ocapBA.html.

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17-5

Operation of the Red Bluff Diversion Dam (RBDD) is not affected by water deliveries to the SRSCs. The RBDD is operated primarily to deliver water to the member districts of the Tehama-Colusa Canal Authority that have water service contracts with Reclamation. See the Biological Opinion on the CVP-OCAP for a more thorough discussion of the operations and effects of the RBDD.

17-5

No. 17

Letter from The Bay Institute Natural Resources Defense Council,
Christina Swanson, Ph.D., Continued

- Migration delays at RBDD prevent fish that do pass the facility from successfully reaching suitable holding habitat in tributary streams before seasonal decreases in flow and increases in temperature in the lower reaches of these tributaries block their passage (TCCA and USBR, 2002).
- The biological consequences of blocked or delayed passage at RBDD include changes in spawning distribution (Hallock, 1987; copy enclosed), hybridization with fall-run Chinook salmon (CDFG, 1998), increased adult pre-spawning mortality (USBR, 1995), and decreased egg viability (Vogel et al., 1988), all of which contribute to reduced reproductive success.

Continuation of the current RBDD operations, the action assumed by the EIS and articulated in the OCAP, will likely result in (or may have already contributed to) the extirpation of the spring-run Chinook salmon run from the Sacramento River, failure to meet the CVPIA-mandated doubling goal for the run in the Sacramento River, and prevent the establishment of additional independent populations necessary to maintain viability of this threatened ESU. By blocking passage to the upper Sacramento and several key tributary streams (notably Clear and Battle Creeks), the planned Reclamation operations of RBDD also threaten and devalue several large-scale and costly habitat improvement projects that have been already initiated in the Sacramento River and its tributaries upstream of RBDD.⁷ Several of these efforts, including dam removal and stream flow enhancement using CVPIA "(b)(2)" water are explicitly aimed at reestablishment and restoration of spring-run Chinook salmon in these streams.

RBDD operations also negatively impact endangered winter-run Chinook salmon, Central Valley steelhead, and green sturgeon. While current operations of RBDD may improve passage for adult winter-run Chinook salmon, the RBDD gates remain closed during the period when large percentages of juvenile winter-run Chinook salmon, steelhead, and green sturgeon migrate downstream. These fish must pass under the gates or through the ladders and their auxiliary water systems, or they are entrained and impinged into the Tehama-Colusa Canal headworks or the Research Pumping Plant screens and bypasses. The well-documented negative impacts of RBDD on survival of emigrating juvenile salmon, which were likely part of the basis for the Draft EIS/EIR for the RBDD Fish Passage Improvement Project to recommend as a preferred alternative that RBDD gates be raised year-round (Executive Summary, pg. V), were not reported in the EIS.

- More than one third (39%) of emigrating juvenile winter-run try to pass RBDD when the gates are closed (TCCA and USBR, 2002, pg. B-8). Compared to fish that pass the RBDD when the gates are open, these fish are subjected to increased stress, physical injury and mortality.

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⁷ Habitat improvement actions upstream of RBDD include: Battle Creek Restoration Plan; Clear Creek Restoration Plan; ACID fish passage improvements; ongoing improvement of Iron Mountain Mine water quality discharges; and the Temperature Control Device at Shasta Dam.

No. 17

Letter from The Bay Institute Natural Resources Defense Council,
Christina Swanson, Ph.D., Continued

- Vondracek and Moyle (1983) reported that the predominant cause of mortality of juvenile salmonids passing through the RBDD was a dysfunctional predator-prey created by the RBDD. USFWS (1981) reported that greater than 50% of juvenile Chinook salmon passing through RBDD when the gates were down died.
- RBDD blocks passage of at least 17% of immigrating adult steelhead (TCCA and USBR, 2002).
- More than a third (36%) of juvenile emigrants are negatively affected by RBDD. Mortality rates of juvenile steelhead passing through the dam are 42% (TCCA and USBR, 2002).

Green sturgeon populations have been reduced throughout their range and today only three known spawning populations still exist, including one on the Sacramento River (Moyle et al., 1995). Among the causes for the species' decline are loss of access to spawning habitat by dam construction and degradation of spawning habitat quality (OCAP BA, pg. B-12).

- As much as 35% of the immigrating adult green sturgeon are blocked by RBDD. Green sturgeon do not readily ascend fish ladders designed for passage of salmonid fishes, therefore any green sturgeon that reach RBDD when the gates are closed are completely prevented from ascending the river beyond that point (OCAP BA, pg. B-16). Emigrating adult fish are also blocked by RBDD.
- During the May 15-September 15 period when the RBDD gates are closed, nearly 100% of emigrating larval and juvenile green sturgeon must pass under the gates, through the fish ladders, or become entrained at the two diversion facilities where, like juvenile salmonids they are subject to stress, injury, mortality, and high rates of predation

Failure to Consider Effects of Global Climate Change on Water Supply and Impacts on Aquatic Biological Resources

As required by NEPA, an EIS must assess the cumulative impacts of implementing the preferred alternative when combined with "other past, present, and reasonably foreseeable future actions" (EIS, pg. 4-1, emphasis added). However, neither this EIS nor the OCAP, in their assumptions and analyses for future operations regarding hydrology, water supply, and impacts of operations on aquatic biological resources, have considered the effects of global climate change.

For at least the past five to eight years, all credible analyses of the effects of global climate change, including those specific for California, have predicted reduced Sierra snowpack, earlier and accelerated snowmelt runoff, reduced water supplies, and elevated air and water temperatures (Hayhoe et al., 2004).⁸ Some of these changes, such as earlier onset of the

⁸ Additional information on the predicted effects of global climate change on California water resources is available at http://www.energy.ca.gov/global_climate_change/facts.html. A bibliography of reports and

17-6

At this time, there is no consensus regarding the potential impact of global warming on agricultural demand or climate in the Sacramento Valley. It is possible that an increase in ambient temperatures would increase water demand. It is also possible that a shift in weather patterns could increase or change precipitation patterns, thereby decreasing demand for irrigation. Basing future water demand on the effects of global warming is therefore considered speculative. Furthermore, any change would occur regardless of the alternative selected. See Thematic Response No. 2 for a discussion regarding the length of the contracts in the context of the CVPIA.

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17-6

No. 17

Letter from The Bay Institute Natural Resources Defense Council,
Christina Swanson, Ph.D., Continued

spring snowmelt period, are already measurable in California. Yet, in all quantitative and computer modeling analyses of planned future operations that are the basis for the proposed renewal of long-term water contracts and evaluation of the impacts of this action, Reclamation used only historic hydrology.⁹ This dataset cannot be assumed to accurately or even reasonably represent future conditions. Further, despite the mounting concerns regarding predicted effects of climate change on California hydrology, snowpack, and runoff, there is no evidence that Reclamation even explored the issue, using, for example, hypothetical future hydrological conditions similar to those predicted.¹⁰ As a consequence, Reclamation's analyses regarding its ability to meet proposed contract amounts and the impacts of its operations to implement that action are fatally flawed. Given predictions for future snowmelt runoff and current flood control requirements (unlikely to change absent major changes to either Shasta Dam or downstream development patterns), Reclamation's ability to meet its contracted water deliveries and/or to do so without significantly greater negative impacts on the environment (e.g., increased inability to provide cool water for winter-run Chinook salmon) for the proposed 40-year contract period is highly questionable.

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See Thematic Response No. 7 Relationship between OCAP BO and the Settlement Contracts. Also see the October 2004 Biological Opinion on the CVP-OCAP with regard to impacts to threatened and endangered species from operation of the CVP and State Water Project. The OCAP (Appendix C to this Final EIS) concluded that continued operation of the CVP and SWP is not likely to jeopardize the continued existence of threatened or endangered species. Because the Preferred Alternative will not change existing conditions, it could not have any adverse impact to the river, and mitigation is not required.

Conclusion

During the past few decades, the effects of water management operations on the Sacramento River, its environment, and its valuable biological resources have been observed, investigated and extensively documented. It is indisputable that Reclamation's facilities and water management operations on the Sacramento River, unless modified, will have large-scale, and steadily increasing, negative impacts on many species dependent on the Sacramento River and its tributaries. For many specific impacts, the mechanisms underlying their effects have been identified and alternative infrastructure design, operation, and/or management approaches that minimize their adverse impacts have been devised. In addition, the effects of global climate change, which are certain to manifest within the planned 40-year duration of the proposed action, cannot be ignored. The alternatives evaluated by Reclamation in the EIS to support renewal of long-term water service contracts for the Sacramento River Settlement Contractors fail to consider or implement any such improvements, despite compelling evidence that continued operations threaten the continued existence of several priority fish species and despite federal laws such as the CVPIA that mandate such reforms. Further, the impacts analysis reported in the EIS ignores a large body of evidence, much published by Reclamation itself, of adverse impacts of current and planned actions and draws a false and unsupported conclusion of no significant impact.

17-7

For all of the above reasons, and for the reasons set out in our supplemental comments being submitted under separate cover, as well as based on the materials attached with both sets of our comments and/or incorporated or referenced therein, the draft EIS is technically and legally inadequate and contrary to law. We strongly urge Reclamation to prepare new

publications describing these effects is available at
http://www.energy.ca.gov/global_climate_change/bibliography.html

⁹ Hydrological data used in OCAP and EIS analyses were from the 1921-1994 period.

¹⁰ In a public workshop on the OCAP (October 7, 2004, Sacramento, CA), Reclamation was asked whether they had considered the likely effects of global climate change on their planned future operations. Reclamation's response was that they had not considered the effects of climate change in their analyses.

No. 17

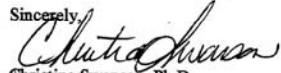
Letter from The Bay Institute Natural Resources Defense Council,
Christina Swanson, Ph.D., Continued

environmental documentation for the proposed action, including a revised EIS, that includes among other things a more robust range of alternatives, including at least one that, at a minimum, is designed to address the negative impacts discussed in these comments, and one that addresses the predicted effects of global climate change. Further, the revised EIS must provide a much more comprehensive and rigorous evaluation of negative impacts to the River's environment and biological resources.

} 17-8

17-8 Comment noted; no response necessary.

Sincerely,



Christina Swanson, Ph.D.
The Bay Institute
500 Palm Drive, Suite 200
Novato, CA 94949
(530) 756-9021

Hamilton Candee, Senior Attorney
Natural Resources Defense Council
111 Sutter Street, 20th Floor
San Francisco, CA 94104
(415) 875-6100

encl.

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Letter from The Bay Institute Natural Resources Defense Council,
Christina Swanson, Ph.D., ContinuedReferences

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Letter from The Bay Institute Natural Resources Defense Council,
Christina Swanson, Ph.D., Continued

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Letter from The Bay Institute Natural Resources Defense Council,
Christina Swanson, Ph.D., Continued

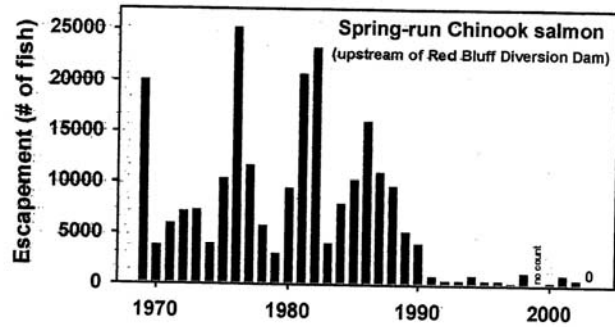


Figure 1. Escapement (number of adult fish) of spring-run Chinook salmon to the mainstem Sacramento River upstream of Red Bluff Diversion Dam. Data from CDFG.

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Letter from The Bay Institute Natural Resources Defense Council,
Christina Swanson, Ph.D., Continued

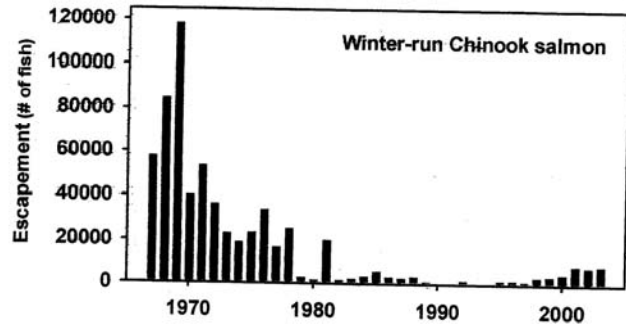


Figure 2. Escapement (number of adult fish) of winter-run Chinook salmon to the mainstem Sacramento River. Data from CDFG.

No. 18

E-mail from Kelley Breen, Dated November 11, 2004

KELLEY BREEN
 general delivery
 trinidad, CA 95570

November 11, 2004

Buford Holt
 16349 Shasta Dam Boulevard
 Shasta Lake, CA 96019

Dear Buford Holt:

The proposed water contracts for Sacramento Valley Settlement Contractors threaten the environment, economy, and communities. } 18-1

The proposed contracts grant more water than ever used at subsidized prices. } 18-2

The proposed contracts allow for massive water exports from the Sacramento Valley, which threaten working farms in the valley. } 18-3

Also, these proposed contracts threaten endangered salmon. For example, to fulfill these and other Central Valley Project water contracts, the Bureau is proposing to change the operation of Shasta dam and reservoir on the Sacramento River. The agency proposes to eliminate the cold water pool reserved behind the dam used to sustain the Sacramento River's endangered winter run chinook salmon. Loss of this cold water pool will eliminate nearly 20 miles of critical habitat for the winter run salmon in the Sacramento River. } 18-4

By locking in contracts for 40 years, these contracts deny resource managers flexibility in water management as we face climatic shifts, new trends in growth, or new farming practices. } 18-5

Please amend these contracts to address these serious concerns.

Sincerely,

KELLEY BREEN

- 18-1 See Response to Comment 1-1.
- 18-2 See Response to Comment 1-2.
- 18-3 See Response to Comment 1-3.
- 18-4 See Response to Comment 1-4.
- 18-5 See Response to Comment 1-5.

No. 19

E-mail from Elyce Judith, Dated November 11, 2004

Elyce Judith
 1840 Sonoma Ave
 Berkeley, CA 94707

November 11, 2004

Buford Holt
 16349 Shasta Dam Boulevard
 Shasta Lake, CA 96019

Dear Buford Holt:

The proposed water contracts for Sacramento Valley Settlement Contractors threaten the environment, economy, and communities.

} 19-1

The proposed contracts grant more water than ever used at subsidized prices.

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The proposed contracts allow for massive water exports from the Sacramento Valley, which threaten working farms in the valley.

} 19-3

Also, these proposed contracts threaten endangered salmon. For example, to fulfill these and other Central Valley Project water contracts, the Bureau is proposing to change the operation of Shasta dam and reservoir on the Sacramento River. The agency proposes to eliminate the cold water pool reserved behind the dam used to sustain the Sacramento River's endangered winter run chinook salmon. Loss of this cold water pool will eliminate nearly 20 miles of critical habitat for the winter run salmon in the Sacramento River.

} 19-4

By locking in contracts for 40 years, these contracts deny resource managers flexibility in water management as we face climatic shifts, new trends in growth, or new farming practices.

} 19-5

Please amend these contracts to address these serious concerns.

Sincerely,

Elyce Judith
 510 526 2989

- 19-1 See Response to Comment 1-1.
- 19-2 See Response to Comment 1-2.
- 19-3 See Response to Comment 1-3.
- 19-4 See Response to Comment 1-4.
- 19-5 See Response to Comment 1-5.

No. 20

E-mail from Mitchell Solovay, RN, Dated November 12, 2004

Mitchell Solovay
150 74th Street, #3J
Brooklyn, NY 11209

November 12, 2004

Buford Holt
16349 Shasta Dam Boulevard
Shasta Lake, CA 96019

Dear Buford Holt:

The proposed water contracts for Sacramento Valley Settlement Contractors threaten the environment, economy, and communities. } 20-1

The proposed contracts grant more water than ever used at subsidized prices. } 20-2

The proposed contracts allow for massive water exports from the Sacramento Valley, which threaten working farms in the valley. } 20-3

Also, these proposed contracts threaten endangered salmon. For example, to fulfill these and other Central Valley Project water contracts, the Bureau is proposing to change the operation of Shasta dam and reservoir on the Sacramento River. The agency proposes to eliminate the cold water pool reserved behind the dam used to sustain the Sacramento River's endangered winter run chinook salmon. Loss of this cold water pool will eliminate nearly 20 miles of critical habitat for the winter run salmon in the Sacramento River. } 20-4

By locking in contracts for 40 years, these contracts deny resource managers flexibility in water management as we face climatic shifts, new trends in growth, or new farming practices. } 20-5

Please amend these contracts to address these serious concerns.

Sincerely,

Mitchell Solovay, RN
9178569687

- 20-1 See Response to Comment 1-1.
- 20-2 See Response to Comment 1-2.
- 20-3 See Response to Comment 1-3.
- 20-4 See Response to Comment 1-4.
- 20-5 See Response to Comment 1-5.

No. 21

E-mail from Dan, Dated November 6, 2004

-----Original Message-----

From: Dan [mailto:Danimal@tco.net]

Sent: Saturday, November 06, 2004 6:12 PM

To: bholt@mp.usbr.gov

Subject: Public Comments on draft EIS for long term CVP water contracts

This is another special interest/government rip-off.

I wonder how many people realize that base supply water is free! Now, let me get this straight, you want to supply up to 145 Sacramento River settlement contractors with up to 1.8 million acre-feet of base supply water per year for forty years at no charge (free). Well, it's no wonder that you gave the public only 60 days to review these long-term contracts. If the general public knew that less than 3% of the farms in America are actually worked and run by families they would see this for what it is, another example of corporate welfare. The CVP should strive to reduce water contracts rather than perpetuate and increase them. This new contract needs to state emphatically that water for agriculture cannot be sold by settlement contractors period. The Sacramento River is not a canal, and fishermen should have just as much right to the water as farmers.

The Central Valley Water Project needs to be re-evaluated by an independent panel. It basically serves only one industry (agriculture), while it has decimated three others commercial fishing, recreational fishing, and river rafting and touring and the retail industry that serves them. All of the state and federal agencies agree, except the Bureau of Reclamation, that the gates on the Red Bluff Diversion dam should be kept out all the time to allow free passage of migratory fish. According to Buford Holt, environmental specialist with the BOR at Shasta Dam, quoted in the Red Bluff Daily News Thursday, June 12, 2003, "Why should we spend money to do more of the same, when what we've already done doesn't work. It isn't evident that any change is necessary at this time". The real truth is that the Red Bluff Diversion dam is killing the Sacramento River and either the Bureau of Reclamation, or the Tehama Colusa Canal Authority need to build a water pumping plant there. In August of this year a U.S. District Judge found, in effect, that the Bureau of Reclamation reduced the San Joaquin River to a pathetic remnant of its glorious past. The people of California deserve living rivers with flows that are not regulated by government or special interest. We need to stop trying to create more water sources and tell people to stop moving here. The Bureau of Reclamation needs start tearing down dams and get out of the water tending business.

21-1

The commentor's concern regarding increased water contracts is addressed in the Thematic Response No. 1, History of Settlement Contracts, and Thematic Response No. 3, Water Needs Assessments, which discusses water conservation requirements. The commentor's concerns for the affected environment were addressed in Chapter 3 of the Draft EIS. Also see Appendix C of this Final EIS - the BO on the CVP-OCAP, of the Draft EIS, for an assessment of risk to fish in the Sacramento River. See Thematic Response No. 6 regarding the commentor's concern for the transfer of water between agriculture and Settlement Contractors.

21-1

21-2

The commentor notes a concern regarding RBDD adversely affecting the Sacramento River. Compared to the No Action Alternative, the Preferred Alternative would not impact the resources noted by the commentor. See Thematic Response No. 3 for a discussion of Reclamations's needs analysis and its relationship to the quantities of water contained in the contracts.

21-2

No. 22

E-mail from Jean Hegland, Dated November 12, 2004

-----Original Message-----

From: Jean Hegland [mailto:jhegland@sonic.net]
 Sent: Friday, November 12, 2004 1:55 PM
 To: Buford Holt
 Subject: Sac Valley Settlement Contracts Flawed

Jean Hegland
 5450 Mill Creek Road
 Healdsburg, CA 95448

November 12, 2004

Buford Holt
 16349 Shasta Dam Boulevard
 Shasta Lake, CA 96019

Dear Buford Holt:

The proposed water contracts for Sacramento Valley Settlement Contractors threaten the environment, economy, and communities. } 22-1

The proposed contracts grant more water than ever used at subsidized prices. } 22-2

The proposed contracts allow for massive water exports from the Sacramento Valley, which threaten working farms in the valley. } 22-3

Also, these proposed contracts threaten endangered salmon. For example, to fulfill these and other Central Valley Project water contracts, the Bureau is proposing to change the operation of Shasta dam and reservoir on the Sacramento River. The agency proposes to eliminate the cold water pool reserved behind the dam used to sustain the Sacramento River's endangered winter run chinook salmon. Loss of this cold water pool will eliminate nearly 20 miles of critical habitat for the winter run salmon in the Sacramento River. } 22-4

By locking in contracts for 40 years, these contracts deny resource managers flexibility in water management as we face climatic shifts, new trends in growth, or new farming practices. } 22-5

Please amend these contracts to address these serious concerns.

Sincerely,

Jean Hegland

- 22-1 See Response to Comment 1-1.
- 22-2 See Response to Comment 1-2.
- 22-3 See Response to Comment 1-3.
- 22-4 See Response to Comment 1-4.
- 22-5 See Response to Comment 1-5.

From: Kirk Lumpkin [kirk@twinberry.net]
Sent: Sunday, November 14, 2004 10:32 AM
To: Buford Holt
Subject: Sac Valley Settlement Contracts Flawed

Kirk Lumpkin
5505 Macdonald Ave.
El Cerrito, California 94530

November 14, 2004

Buford Holt
16349 Shasta Dam Boulevard
Shasta Lake, CA 96019

Dear Buford Holt:

The proposed water contracts for Sacramento Valley Settlement Contractors threaten the environment, economy, and communities.

The proposed contracts grant more water than ever used at subsidized prices.

The proposed contracts allow for massive water exports from the Sacramento Valley, which threaten working farms in the valley.

Also, these proposed contracts threaten endangered salmon. For example, to fulfill these and other Central Valley Project water contracts, the Bureau is proposing to change the operation of Shasta dam and reservoir on the Sacramento River. The agency proposes to eliminate the cold water pool reserved behind the dam used to sustain the Sacramento River's endangered winter run chinook salmon. Loss of this cold water pool will eliminate nearly 20 miles of critical habitat for the winter run salmon in the Sacramento River.

By locking in contracts for 40 years, these contracts deny resource managers flexibility in water management as we face climatic shifts, new trends in growth, or new farming practices.

Please amend these contracts to address these serious concerns.

Sincerely,

Kirk Lumpkin

No. 23

E-mail from Kirk Lumpkin, Dated November 14, 2004

- 23-1 See Response to Comment 1-1.
- 23-2 See Response to Comment 1-2.
- 23-3 See Response to Comment 1-3.
- 23-4 See Response to Comment 1-4.
- 23-5 See Response to Comment 1-5.

- } 23-1
- } 23-2
- } 23-3
- } 23-4
- } 23-5

No. 24

From: Bsmith1236@aol.com
Sent: Monday, November 15, 2004 7:28 AM
To: bholt@mp.usbr.gov.
Cc: staff@becnet.org; jmerz@sacrivertrust.org; colefarm@shocking.com; Bsmith1236@aol.com
Subject: Comments EIS (Sacramento River)

Mr. Buford Holt

November 15, 2004

The following are comments on the "Sacramento River Settlement Contractors Environmental Impact Statement". The comments are made by Bruce Smith.

Chapter 3 Affected Environment and Environmental Consequences

Written on page 3-1

The descriptions of the affected environment are first organized by issue and, then, further discussed by county, city, irrigation district, or province. The analyses for these areas include summaries of evaluations completed by cities, counties, irrigation districts, and federal and state agencies.

Comment

Where would these descriptions be located and do they include problems in the area?

} 24-1

Written on page 3-45

A no flow boundary was assumed along the margins of the model domain to simulate the lateral extent of freshwater bearing sediments in the Sacramento Valley Groundwater Basin.

Comment

Does this no flow boundary condition imply that there is no groundwater migration at the boundary?

} 24-2

Written on page 3-47

However, predicted drawdown in all other areas of the Sacramento Valley Groundwater Basin would generally be less than 10-15 feet.

Comment

In 1994 groundwater levels along the eastern side of the Sacramento Valley Groundwater Basin south of Chico dropped 80-90 feet. Was this fact included in the analyses resulting in the above drawdown? This information would be necessary to calculate impacts on the relationship between streams and groundwater.

} 24-3

Thank you for receiving my comments.
 Bruce Smith
 1334 Arbutus Avenue
 Chico, California
 Bsmith1236@aol.com

E-mail from Bruce Smith, Dated November 15, 2004

24-1

Resources are categorized into these divisions as appropriate. See, for example, Draft EIS at page 3-88 for descriptions organized by county. Environmental concerns were identified as appropriate.

24-2

The commentor is correct; modelers assumed no groundwater migration at the boundaries. This is an appropriate assumption for several reasons. The contrast in hydraulic conductivity between the bedrock and the alluvium is extremely large (several orders of magnitude) and, therefore, the quantity of subsurface inflow into the alluvial aquifer is small. Secondly, this is a superposition model and, therefore, only the change in subsurface inflow due to SRSC pumping needs to be captured by the model. Because much of the SRSC pumping is located in the central portions of the valley, assuming that bedrock inflow is insignificant to the overall water budget is reasonable. Finally, this assumption is conservative in that ignoring bedrock inflow will result in larger simulated drawdown forecast by the model than would otherwise be the case. It should be noted that this assumption in no way limits surface water flows into the modeled areas from the surrounding drainage basin.

24-3

The analysis presented in this document is based on a superposition model. By definition, this type of model calculates the change in water levels that will result from an increase in groundwater pumping in the valley, not the total drawdown that will occur because of all the hydraulic stresses on the aquifer occurring over a particular period. The cited drawdown that occurred south of Chico in 1994 occurred because of pumping stresses other than those evaluated in this analysis and, thus, was not considered. However, the model fully considers the hydraulic connection between the surface water and groundwater systems in the valley and estimates stream impacts as a result of increased groundwater production.

No. 25

E-mail from Kevin Wolf, Dated November 15, 2004

From: Kevin Wolf [kevin@wolfandassociates.com]
Sent: Monday, November 15, 2004 8:16 AM
To: Buford Holt
Subject: Sac Valley Settlement Contracts Flawed

Kevin Wolf
724 N Street
Davis, CA 95616

November 15, 2004

Buford Holt
16349 Shasta Dam Boulevard
Shasta Lake, CA 96019

Dear Buford Holt:

The proposed water contracts for Sacramento Valley Settlement Contractors threaten the environment, economy, and communities. } 25-1

The proposed contracts grant more water than ever used at subsidized prices. } 25-2

The proposed contracts allow for massive water exports from the Sacramento Valley, which threaten working farms in the valley. } 25-3

Also, these proposed contracts threaten endangered salmon. For example, to fulfill these and other Central Valley Project water contracts, the Bureau is proposing to change the operation of Shasta dam and reservoir on the Sacramento River. The agency proposes to eliminate the cold water pool reserved behind the dam used to sustain the Sacramento River's endangered winter run chinook salmon. Loss of this cold water pool will eliminate nearly 20 miles of critical habitat for the winter run salmon in the Sacramento River. } 25-4

By locking in contracts for 40 years, these contracts deny resource managers flexibility in water management as we face climatic shifts, new trends in growth, or new farming practices. } 25-5

Please amend these contracts to address these serious concerns.

Sincerely,

Kevin Wolf

- 25-1 See Response to Comment 1-1.
- 25-2 See Response to Comment 1-2.
- 25-3 See Response to Comment 1-3.
- 25-4 See Response to Comment 1-4.
- 25-5 See Response to Comment 1-5.

From: Wanda Mathews-Woods [MathContr@aol.com]
Sent: Monday, November 15, 2004 9:05 AM
To: Buford Holt
Subject: Sac Valley Settlement Contracts Flawed

No. 26

E-mail from Wanda Mathews-Woods, Dated November 15, 2004

Wanda Mathews-Woods
 3230 Prairie Creek Dr.
 Chico, CA 95973

November 15, 2004

Buford Holt
 16349 Shasta Dam Boulevard
 Shasta Lake, CA 96019

Dear Buford Holt:

The proposed water contracts for Sacramento Valley Settlement Contractors threaten the environment, economy, and communities.

} 26-1

The proposed contracts grant more water than ever used at subsidized prices.

} 26-2

The proposed contracts allow for massive water exports from the Sacramento Valley, which threaten working farms in the valley.

} 26-3

Also, these proposed contracts threaten endangered salmon. For example, to fulfill these and other Central Valley Project water contracts, the Bureau is proposing to change the operation of Shasta dam and reservoir on the Sacramento River. The agency proposes to eliminate the cold water pool reserved behind the dam used to sustain the Sacramento River's endangered winter run chinook salmon. Loss of this cold water pool will eliminate nearly 20 miles of critical habitat for the winter run salmon in the Sacramento River.

} 26-4

By locking in contracts for 40 years, these contracts deny resource managers flexibility in water management as we face climatic shifts, new trends in growth, or new farming practices.

} 26-5

Please amend these contracts to address these serious concerns.

Sincerely,

Wanda Mathews-Woods

- 26-1 See Response to Comment 1-1.
- 26-2 See Response to Comment 1-2.
- 26-3 See Response to Comment 1-3.
- 26-4 See Response to Comment 1-4.
- 26-5 See Response to Comment 1-5.

From: Jeanette Alosi [jalosi@csuchico.edu]
Sent: Monday, November 15, 2004 9:26 AM
To: Buford Holt
Subject: Sac Valley Settlement Contracts Flawed

No. 27

E-mail from Jeanette Alosi, Dated November 15, 2004

Jeanette Alosi
 1922 Oak Park Ave.
 Chico, CA 95928

November 15, 2004

Buford Holt
 16349 Shasta Dam Boulevard
 Shasta Lake, CA 96019

Dear Buford Holt:

The proposed water contracts for Sacramento Valley Settlement Contractors threaten the environment, economy, and communities. } 27-1

The proposed contracts grant more water than ever used at subsidized prices. } 27-2

The proposed contracts allow for massive water exports from the Sacramento Valley, which threaten working farms in the valley. } 27-3

Also, these proposed contracts threaten endangered salmon. For example, to fulfill these and other Central Valley Project water contracts, the Bureau is proposing to change the operation of Shasta dam and reservoir on the Sacramento River. The agency proposes to eliminate the cold water pool reserved behind the dam used to sustain the Sacramento River's endangered winter run chinook salmon. Loss of this cold water pool will eliminate nearly 20 miles of critical habitat for the winter run salmon in the Sacramento River. } 27-4

By locking in contracts for 40 years, these contracts deny resource managers flexibility in water management as we face climatic shifts, new trends in growth, or new farming practices. } 27-5

Please amend these contracts to address these serious concerns.

Sincerely,

Jeanette Alosi

- 27-1 See Response to Comment 1-1.
- 27-2 See Response to Comment 1-2.
- 27-3 See Response to Comment 1-3.
- 27-4 See Response to Comment 1-4.
- 27-5 See Response to Comment 1-5.

No. 28

E-mail from Doug Perske, Dated November 15, 2004

From: Doug Perske [dperske@paradise.k12.ca.us]
Sent: Monday, November 15, 2004 9:57 AM
To: Buford Holt
Subject: Sac Valley Settlement Contracts Flawed

Doug Perske
 2732 Silver Oak Dr
 Chico, CA 95973

November 15, 2004

Buford Holt
 16349 Shasta Dam Boulevard
 Shasta Lake, CA 96019

Dear Buford Holt:

The proposed water contracts for Sacramento Valley Settlement Contractors threaten the environment, economy, and communities. } 28-1

The proposed contracts grant more water than ever used at subsidized prices. } 28-2

The proposed contracts allow for massive water exports from the Sacramento Valley, which threaten working farms in the valley. } 28-3

Also, these proposed contracts threaten endangered salmon. For example, to fulfill these and other Central Valley Project water contracts, the Bureau is proposing to change the operation of Shasta dam and reservoir on the Sacramento River. The agency proposes to eliminate the cold water pool reserved behind the dam used to sustain the Sacramento River's endangered winter run chinook salmon. Loss of this cold water pool will eliminate nearly 20 miles of critical habitat for the winter run salmon in the Sacramento River. } 28-4

By locking in contracts for 40 years, these contracts deny resource managers flexibility in water management as we face climatic shifts, new trends in growth, or new farming practices. } 28-5

Please amend these contracts to address these serious concerns.

Sincerely,

Doug Perske

- 28-1 See Response to Comment 1-1.
- 28-2 See Response to Comment 1-2.
- 28-3 See Response to Comment 1-3.
- 28-4 See Response to Comment 1-4.
- 28-5 See Response to Comment 1-5.

From: David Enevoldsen [david.enevoldsen@kla-tencor.com]
Sent: Monday, November 15, 2004 10:30 AM
To: Buford Holt
Subject: Sac Valley Settlement Contracts Flawed

No. 29

E-mail from David Enevoldsen, Dated November 15, 2004

David Enevoldsen
 2285 Royaltree Circle
 San Jose, CA 95131

November 15, 2004

Buford Holt
 16349 Shasta Dam Boulevard
 Shasta Lake, CA 96019

Dear Buford Holt:

The proposed water contracts for Sacramento Valley Settlement Contractors threaten the environment, economy, and communities.

} 29-1

The proposed contracts grant more water than ever used at subsidized prices.

} 29-2

The proposed contracts allow for massive water exports from the Sacramento Valley, which threaten working farms in the valley.

} 29-3

Also, these proposed contracts threaten endangered salmon. For example, to fulfill these and other Central Valley Project water contracts, the Bureau is proposing to change the operation of Shasta dam and reservoir on the Sacramento River. The agency proposes to eliminate the cold water pool reserved behind the dam used to sustain the Sacramento River's endangered winter run chinook salmon. Loss of this cold water pool will eliminate nearly 20 miles of critical habitat for the winter run salmon in the Sacramento River. This alone is reason enough to stop this ill conceived proposal from proceeding, and most would probably consider this the least important reason!

} 29-4

By locking in contracts for 40 years, these contracts deny resource managers flexibility in water management as we face climatic shifts, new trends in growth, or new farming practices.

} 29-5

Please amend or eliminate these contracts to address these serious concerns.

Sincerely,

David Enevoldsen
 408-875-2135

- 29-1 See Response to Comment 1-1.
- 29-2 See Response to Comment 1-2.
- 29-3 See Response to Comment 1-3.
- 29-4 See Response to Comment 1-4.
- 29-5 See Response to Comment 1-5.

No. 30

E-mail from Scott Chamberlain, Dated November 15, 2004

From: Scott Chamberlain [scottcha777@yahoo.com]
Sent: Monday, November 15, 2004 11:50 AM
To: Buford Holt
Subject: Sac Valley Settlement Contracts Flawed

Scott Chamberlain
 1724 Normal Avenue
 Chico, CA 95928

November 15, 2004

Buford Holt
 16349 Shasta Dam Boulevard
 Shasta Lake, CA 96019

Dear Buford Holt:

The proposed water contracts for Sacramento Valley Settlement Contractors threaten the environment, economy, and communities. } 30-1

The proposed contracts grant more water than ever used at subsidized prices. } 30-2

The proposed contracts allow for massive water exports from the Sacramento Valley, which threaten working farms in the valley. } 30-3

Also, these proposed contracts threaten endangered salmon. For example, to fulfill these and other Central Valley Project water contracts, the Bureau is proposing to change the operation of Shasta dam and reservoir on the Sacramento River. The agency proposes to eliminate the cold water pool reserved behind the dam used to sustain the Sacramento River's endangered winter run chinook salmon. Loss of this cold water pool will eliminate nearly 20 miles of critical habitat for the winter run salmon in the Sacramento River. } 30-4

By locking in contracts for 40 years, these contracts deny resource managers flexibility in water management as we face climatic shifts, new trends in growth, or new farming practices. } 30-5

Please amend these contracts to address these serious concerns.

Sincerely,

Scott Chamberlain

- 30-1 See Response to Comment 1-1.
- 30-2 See Response to Comment 1-2.
- 30-3 See Response to Comment 1-3.
- 30-4 See Response to Comment 1-4.
- 30-5 See Response to Comment 1-5.

No. 31

E-mail from William Divens, Dated November 15, 2004

From: William Divens [bill@salmonkinglodge.com]
Sent: Monday, November 15, 2004 12:57 PM
To: Buford Holt
Subject: Sac Valley Settlement Contracts Flawed

William Divens
 19095 Bonita Road
 Red Bluff, CA 96080

November 15, 2004

Buford Holt
 16349 Shasta Dam Boulevard
 Shasta Lake, CA 96019

Dear Buford Holt:

The proposed water contracts for Sacramento Valley Settlement Contractors threaten the environment, economy, and communities.

} 31-1

The proposed contracts grant more water than ever used at subsidized prices.

} 31-2

The proposed contracts allow for massive water exports from the Sacramento Valley, which threaten working farms in the valley.

} 31-3

Also, these proposed contracts threaten endangered salmon. For example, to fulfill these and other Central Valley Project water contracts, the Bureau is proposing to change the operation of Shasta dam and reservoir on the Sacramento River. The agency proposes to eliminate the cold water pool reserved behind the dam used to sustain the Sacramento River's endangered winter run chinook salmon. Loss of this cold water pool will eliminate nearly 20 miles of critical habitat for the winter run salmon in the Sacramento River. As a fishing lodge owner and river guide, I see the impact of the mismanagement of Sacramento River flows on a daily basis. Further diminishing flows will only further hurt our salmon and trout populations that generate significant tourist income to Tehama and Shasta counties.

} 31-4

By locking in contracts for 40 years, these contracts deny resource managers flexibility in water management as we face climatic shifts, new trends in growth, or new farming practices.

} 31-5

Please amend these contracts to address these serious concerns.

Sincerely,

William Divens
 530-528-8727

- 31-1 See Response to Comment 1-1.
- 31-2 See Response to Comment 1-2.
- 31-3 See Response to Comment 1-3.
- 31-4 See Response to Comment 1-4.
- 31-5 See Response to Comment 1-5.

No. 32

E-mail from Elizabeth Berteaux, Dated November 15, 2004

From: Elizabeth Berteaux [birdtrax@dcn.org]
Sent: Monday, November 15, 2004 1:55 PM
To: Buford Holt
Subject: Sac Valley Settlement Contracts Flawed

Elizabeth Berteaux
2208 Alameda Ave.
Davis, Ca 95616

November 15, 2004

Buford Holt
16349 Shasta Dam Boulevard
Shasta Lake, CA 96019

Dear Buford Holt:

The proposed water contracts for Sacramento Valley Settlement Contractors threaten the environment, economy, and communities. } 32-1

The proposed contracts grant more water than ever used at subsidized prices. } 32-2

The proposed contracts allow for massive water exports from the Sacramento Valley, which threaten working farms in the valley. } 32-3

Also, these proposed contracts threaten endangered salmon. For example, to fulfill these and other Central Valley Project water contracts, the Bureau is proposing to change the operation of Shasta dam and reservoir on the Sacramento River. The agency proposes to eliminate the cold water pool reserved behind the dam used to sustain the Sacramento River's endangered winter run chinook salmon. Loss of this cold water pool will eliminate nearly 20 miles of critical habitat for the winter run salmon in the Sacramento River. } 32-4

By locking in contracts for 40 years, these contracts deny resource managers flexibility in water management as we face climatic shifts, new trends in growth, or new farming practices. } 32-5

Please amend these contracts to address these serious concerns.

Sincerely,

Elizabeth Berteaux

- 32-1 See Response to Comment 1-1.
- 32-2 See Response to Comment 1-2.
- 32-3 See Response to Comment 1-3.
- 32-4 See Response to Comment 1-4.
- 32-5 See Response to Comment 1-5.

No. 33

E-mail from Barbara Williams, Dated November 15, 2004

From: Barbara Williams [barbwill@comcast.net]
Sent: Monday, November 15, 2004 4:43 PM
To: Buford Holt
Subject: Sac Valley Settlement Contracts Flawed

Barbara Williams
885 Halidon Way #112
Folsom, CA 95630

November 15, 2004

Buford Holt
16349 Shasta Dam Boulevard
Shasta Lake, CA 96019

Dear Buford Holt:

The proposed water contracts for Sacramento Valley Settlement Contractors threaten the environment, economy, and communities.

} 33-1

The proposed contracts grant more water than ever used at subsidized prices.

} 33-2

The proposed contracts allow for massive water exports from the Sacramento Valley, which threaten working farms in the valley.

} 33-3

Also, these proposed contracts threaten endangered salmon. For example, to fulfill these and other Central Valley Project water contracts, the Bureau is proposing to change the operation of Shasta dam and reservoir on the Sacramento River. The agency proposes to eliminate the cold water pool reserved behind the dam used to sustain the Sacramento River's endangered winter run chinook salmon. Loss of this cold water pool will eliminate nearly 20 miles of critical habitat for the winter run salmon in the Sacramento River.

} 33-4

By locking in contracts for 40 years, these contracts deny resource managers flexibility in water management as we face climatic shifts, new trends in growth, or new farming practices.

} 33-5

Please amend these contracts to address these serious concerns.

Sincerely,

Barbara Williams
916-983-2015

- 33-1 See Response to Comment 1-1.
- 33-2 See Response to Comment 1-2.
- 33-3 See Response to Comment 1-3.
- 33-4 See Response to Comment 1-4.
- 33-5 See Response to Comment 1-5.

No. 34

E-mail from Gordon Becker, Dated November 15, 2004

From: Gordon Becker [becker@cemar.org]
Sent: Monday, November 15, 2004 3:46 PM
To: Buford Holt
Subject: Sac Valley Settlement Contracts Flawed

Gordon Becker
 4179 Piedmont Ave
 Oakland, CA 94611

November 15, 2004

Buford Holt
 16349 Shasta Dam Boulevard
 Shasta Lake, CA 96019

Dear Buford Holt:

The proposed water contracts for Sacramento Valley Settlement Contractors threaten the environment, economy, and communities.

The proposed contracts grant more water than ever used at subsidized prices.

The proposed contracts allow for massive water exports from the Sacramento Valley, which threaten working farms in the valley.

Also, these proposed contracts threaten endangered salmon. For example, to fulfill these and other Central Valley Project water contracts, the Bureau is proposing to change the operation of Shasta dam and reservoir on the Sacramento River. The agency proposes to eliminate the cold water pool reserved behind the dam used to sustain the Sacramento River's endangered winter run chinook salmon. Loss of this cold water pool will eliminate nearly 20 miles of critical habitat for the winter run salmon in the Sacramento River.

By locking in contracts for 40 years, these contracts deny resource managers flexibility in water management as we face climatic shifts, new trends in growth, or new farming practices.

Please amend these contracts to address these serious concerns.

Sincerely,

Gordon Becker
 510 4204565

- 34-1 See Response to Comment 1-1.
- 34-2 See Response to Comment 1-2.
- 34-3 See Response to Comment 1-3.
- 34-4 See Response to Comment 1-4.
- 34-5 See Response to Comment 1-5.

- } 34-1
- } 34-2
- } 34-3
- } 34-4
- } 34-5

No. 35

E-mail from Lamar Pittman, Dated November 15, 2004

From: Lamar Pittman [jinxandme@yahoo.com]
Sent: Monday, November 15, 2004 7:19 PM
To: Buford Holt
Subject: Sac Valley Settlement Contracts Flawed

Lamar Pittman
2011 West 84th Place
Los Angeles, California 90047

November 15, 2004

Buford Holt
16349 Shasta Dam Boulevard
Shasta Lake, CA 96019

Dear Buford Holt:

This is obviously a poorly thought out proposal to make a long term gift to Northern California water contractors at the expense of the taxpayers. Already there is not enough water flowing in its natural channels to Southern California and Mexico. This plan would only make bad matters worse for the benefit of the water districts.

The proposed water contracts for Sacramento Valley Settlement Contractors threaten the environment, economy, and communities.

} 35-1

The proposed contracts grant more water than ever used at subsidized prices.

} 35-2

The proposed contracts allow for massive water exports from the Sacramento Valley, which threaten working farms in the valley.

} 35-3

Also, these proposed contracts threaten endangered salmon. For example, to fulfill these and other Central Valley Project water contracts, the Bureau is proposing to change the operation of Shasta dam and reservoir on the Sacramento River. The agency proposes to eliminate the cold water pool reserved behind the dam used to sustain the Sacramento River's endangered winter run chinook salmon. Loss of this cold water pool will eliminate nearly 20 miles of critical habitat for the winter run salmon in the Sacramento River.

} 35-4

By locking in contracts for 40 years, these contracts deny resource managers flexibility in water management as we face climatic shifts, new trends in growth, or new farming practices.

} 35-5

Please amend these contracts to address these serious concerns.

Thank you.

Sincerely,

Lamar Pittman

- 35-1 See Response to Comment 1-1.
- 35-2 See Response to Comment 1-2.
- 35-3 See Response to Comment 1-3.
- 35-4 See Response to Comment 1-4.
- 35-5 See Response to Comment 1-5.

No. 36

E-mail from Milan Cole, Dated November 15, 2004

From: Milan Cole [mc@ekani.com]
Sent: Monday, November 15, 2004 7:42 PM
To: Buford Holt
Subject: Sac Valley Settlement Contracts Flawed

Milan Cole
129 Los Angeles Ave
Oxnard, CA 93035

November 15, 2004

Buford Holt
16349 Shasta Dam Boulevard
Shasta Lake, CA 96019

Dear Buford Holt:

The proposed water contracts for Sacramento Valley Settlement Contractors threaten the environment, economy, and communities.

} 36-1

The proposed contracts grant more water than ever used at subsidized prices.

} 36-2

The proposed contracts allow for massive water exports from the Sacramento Valley, which threaten working farms in the valley.

} 36-3

Also, these proposed contracts threaten endangered salmon. For example, to fulfill these and other Central Valley Project water contracts, the Bureau is proposing to change the operation of Shasta dam and reservoir on the Sacramento River. The agency proposes to eliminate the cold water pool reserved behind the dam used to sustain the Sacramento River's endangered winter run chinook salmon. Loss of this cold water pool will eliminate nearly 20 miles of critical habitat for the winter run salmon in the Sacramento River.

} 36-4

By locking in contracts for 40 years, these contracts deny resource managers flexibility in water management as we face climatic shifts, new trends in growth, or new farming practices.

} 36-5

Please amend these contracts to address these serious concerns.

Sincerely,

Milan Cole

- 36-1 See Response to Comment 1-1.
- 36-2 See Response to Comment 1-2.
- 36-3 See Response to Comment 1-3.
- 36-4 See Response to Comment 1-4.
- 36-5 See Response to Comment 1-5.

No. 37

E-mail from Tammy Mebane, Dated November 10, 2004

>>> "Megan Ahlstrom" <skater314159@yahoo.co.uk> 11/8/2004 11:12:44 AM
 >>>
 Megan Ahlstrom
 149 Oak
 Lake Jackson, TX 77566

November 8, 2004

Buford Holt

16349 Shasta Dam Boulevard
 Shasta Lake, CA 96019

Dear Buford Holt:

The proposed water contracts for Sacramento Valley Settlement Contractors threaten the environment, economy, and communities.

} 37-1

The proposed contracts grant more water than ever used at subsidized prices.

} 37-2

The proposed contracts allow for massive water exports from the Sacramento Valley, which threaten working farms in the valley.

} 37-3

Also, these proposed contracts threaten endangered salmon. For example, to fulfill these and other Central Valley Project water contracts, the Bureau is proposing to change the operation of Shasta dam and reservoir on the

Sacramento River. The agency proposes to eliminate the cold water pool reserved behind the dam used to sustain the Sacramento River's endangered winter run chinook salmon. Loss of this cold water pool will eliminate nearly 20 miles of critical habitat for the winter run salmon in the Sacramento River.

} 37-4

By locking in contracts for 40 years, these contracts deny resource managers flexibility in water management as we face climatic shifts, new trends in growth, or new farming practices.

} 37-5

Please amend these contracts to address these serious concerns.

Sincerely,

Sr. Megan Ahlstrom

- 37-1 See Response to Comment 1-1.
- 37-2 See Response to Comment 1-2.
- 37-3 See Response to Comment 1-3.
- 37-4 See Response to Comment 1-4.
- 37-5 See Response to Comment 1-5.

No. 38

Letter from Congressman George Miller, Dated November 15, 2004

GEORGE MILLER
7TH DISTRICT, CALIFORNIA
2205 RAYBURN HOUSE OFFICE BUILDING
WASHINGTON, DC 20515-0507
(202) 225-2095
www.house.gov/georgemiller
DANIEL WEISS
CHIEF OF STAFF
COMMITTEE ON EDUCATION
AND THE WORKFORCE
SENIOR DEMOCRAT
COMMITTEE ON RESOURCES
DEMOCRATIC POLICY COMMITTEE
CHAIRMAN

Congress of the United States
House of Representatives
Washington, DC 20515-0507

CAROL HATCH
DISTRICT DIRECTOR
1333 WILLOW PASS ROAD
SUITE 203
CONCORD, CA 94520
(925) 602-1880
3220 BLUME DRIVE
SUITE 281
RICHMOND, CA 94805
(510) 262-6500
375 G STREET
SUITE #1
VALLEJO, CA 94592
(707) 645-1888
TTY (202) 225-1904

Via Fax, US Mail, and e-mail

November 15, 2004

Mr. Buford Holt
Bureau of Reclamation, Northern California Area Office
16349 Shasta Dam Boulevard
Shasta Lake CA 96019

RE: Comments on Draft Environmental Impact Statement

Dear Mr. Holt:

As the chief sponsor of both the 1982 Reclamation Reform Act and the Central Valley Project Improvement Act of 1992 (CVPIA), and the chairman of the House Natural Resources Committee at the time of the latter's enactment, I am submitting the following comments on the Draft Environmental Impact Statement (EIS) for the proposed Central Valley Project (CVP) renewal contracts with the Sacramento River Settlement contractors pursuant to the Bureau of Reclamation's October 04, 2004 Notice.

My primary concerns with the impacts of the terms of these contracts have been communicated to the Bureau in previous correspondence. Therefore, I am attaching several relevant letters for inclusion in the official record, and I urge you to consider each of the points incorporated therein. } 38-1

I wish to note specifically my disappointment in the Bureau's decision to close the public comment period on proposed CVP contracts before the release of this draft EIS and the release by NOAA Fisheries of the biological opinion on the proposed Operations, Criteria, and Plan. The Bureau's continuing refusal to allow informed public input on these water contracts – representing more than two million acre-feet of water – is counter to Commissioner Keys' stated commitment to a full and open process. I urge the Bureau of Reclamation to re-open the public comment period on all relevant CVP contracts. } 38-2

38-1 Attachments to commentor's letter cover a wide range of important topics relating to CVP operations, contract renewal, ecology, and water policy in general. Not every submittal relates to the Draft EIS. Attachments that are included here are specific to the sufficiency of the Draft EIS. The following attachments were not considered as part of this Final EIS because they did not address the EIS or the NEPA process:

George Miller letter to John Keys, Reclamation, dated August 20, 2004, Re: Renewal of Central Valley Project long-term water contracts

George Miller letter to Donald Bultema, Reclamation, dated September 7, 2004, Re: Comments on Proposed Central Valley Project long-term water contracts

Joel Kaplan, OMB letter to George Miller dated September 13, 2004, Re: Renewal of Central Valley Project water contracts

George Miller letter to John Keys, Reclamation, dated September 30, 2004, Re: Renewal of Central Valley Project water contracts

Earl Deveany, DOI letter to George Miller dated October 15, 2004, Re: NOAA-Fisheries review process

38-2 See Thematic Response No. 4, Administrative Process, for a discussion of the length of the comment period.

No. 38

Attachment to Letter from Ben Miller, Office of Congressman
George Miller, Continued

Mr. Buford Holt
November 15, 2004
Page 2

38-3 See Thematic Response No. 5, Summary of Incremental Impacts, for a discussion of the impacts of the Preferred Alternative relative to the No Action Alternative.

It remains my view that these water contracts will have a significant and detrimental impact, and that they fall far short of ensuring that water is available for California's diverse stakeholders in accordance with the letter and spirit of federal law. I strongly urge the Bureau of Reclamation and the Department of the Interior to reconsider the terms of these contracts. } 38-3

Sincerely,

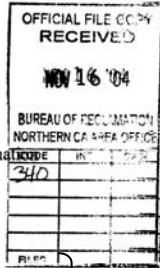

GEORGE MILLER
Member of Congress

CC: Hon. Gale Norton, Secretary of the Interior
Hon. John Keys, Commissioner, Bureau of Reclamation
Mr. Kirk Rogers, Regional Director, Mid-Pacific Region

Attachments:

- August 20, 2004 letter to Commissioner John Keys
- September 7, 2004 letter to Mr. Donald Bultema
- September 13, 2004 letter from Joel Kaplan, Deputy Director, Office of Management and Budget
- September 30, 2004 letter to Commissioner Keys
- October 15, 2004 letter from Earl Deveany, Inspector General, Department of the Interior

No. 39



On the behalf of Environmental Advocates of the Community Legal Information Center at California State University, Chico I would like to express the following concerns with the renewal of contracts between the Sacramento River Settlement Contractors and the U.S. Bureau of Reclamation. We feel that it would be in the best interest of the public if the contracts were to be shortened from the former forty years to at most fifteen years. This way the contracts can take into account unexpected environmental issues that are likely to arise. We also would like to express concerns pertaining to the base supply contracts. The Sacramento River Settlement Contractors (SRSC) are receiving 77% of their water free of charge leaving only 23% being purchased at subsidized rates. The rates are roughly \$25.00 per acre-foot, which is not nearly sufficient to pay off the public debt incurred from the Central Valley Project. We feel that taxpayers are getting the short end of the stick with preexisting base supply contracts. We would like to see less water allocated under the base supply and have the prices rise for the portion that contractors are paying for. We feel that these recommendations are in the best interest for the residents in the Sacramento Valley.

39-1
39-2

Letter from Associated Students/Community Legal Information Center, Corey Hall, Dated November 16, 2004

- 39-1 See Thematic Response No 1 for a discussion of the history of the Settlement Contracts and Thematic Response No. 2 for a discussion of the length of contracts with relation to CVPIA.
- 39-2 See Thematic Response No. 1.

Sincerely,

Corey Hall

| |
|----------------|
| Classification |
| Project |
| Control No. |
| Folder No. |

Community Legal Information Center, California State University, Chico, Building 25, Chico, CA 95929-0190
 www.csuchico.edu/as/clic • P: 530-898-4354 • F: 530-898-4911
 Sponsored in part by the City of Chico

No. 40

Public Meeting Transcript, Dated October 27, 2002

0001

1 PUBLIC HEARING SCHEDULED ON SACRAMENTO RIVER SETTLEMENT

2 CONTRACTORS DRAFT ENVIRONMENTAL DOCUMENT

3

4

5

6

7 Place held: Monday Afternoon Club
120 North Lassen Street

8 Willows, CA

9 Date Held: Wednesday, October 27, 2004

10 Time Held: 3:00 p.m. to 6:00 p.m.

11 Appearances of Bureau of Reclamation Officials:

12 Donna Tegelman, Regional Resources Manager
Mid-Pacific Region

13 Sacramento, CA

14 Don Bultema, Bureau of Reclamation Specialist

15

16

17

18

19

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21

22

23

24

25

26

No. 40

Public Meeting Transcript, Continued

0002

1 WILLOWS, CALIFORNIA, WEDNESDAY, OCTOBER 27, 2004

2 MS. TEGELMAN: Good afternoon. Thank you for

3 coming. My name is Donna Tegelman. And I'm your regional

4 resources manager for the Mid-Pacific region of the Bureau

5 of Reclamation of Sacramento. I'd like to welcome you to

6 the public hearing today on the Sacramento River settlement

7 contractors draft environmental impact statement.

8 There are copies -- additional copies of the

9 statement on the side table, and also there are a number of

10 CDs, it appears, in case you would like to have one and

11 don't have access. At this table alongside of me is Don

12 Bultema, a specialist here in Willows and works with a

13 number of the entities north of the Delta.

14 This hearing will be held in accordance with the

15 requirements of the National Environmental Policy Act. We

16 do have a court reporter to take down everything that is

17 said today, and the court reporter today is Jacque Frink.

18 I want you to know that we welcome both spoken and

19 also written comments on the draft document. What is

20 important to do -- if you wish to provide verbal comments,

21 you must complete one of these forms today. And this form

22 may be something you may want to take with you because it

23 also does have our e-mail address, our tax address, and you

24 can use it even, I guess, as an envelope if you want to

25 send comments. So it's multi-purpose.

26 If you do want to make verbal comments today, it's

No. 40

Public Meeting Transcript, Continued

0003

1 important that you stop by the registration desk back there
2 and see Mr. Lou Moore, and he will help you sign up to
3 speak today. But if you want to speak, you must have a
4 speaker card filled out.

5 As stated, you can also submit comments on the
6 comment sheet even if you don't want to speak today. It's
7 discretionary. If you're speaking from your comments and
8 you want to use them during your presentation, bring them
9 up with you and use them as you need to. And then when
10 you're finished with the -- with your comments, you can
11 give me the comment form. I'll make sure that Lou adds it
12 to the others that we might receive today.

13 And, again, you can send in written comments to us.
14 Our e-mail address is on here. The bureau's written
15 address is on here and also our fax number. And we're
16 happy to take comments in any form.

17 This document, I believe, was released on October 1st
18 of this year. There is a 45-day comment period. It was
19 noticed in the Federal Register as we are required to do.
20 We also sent out a press release which a number of you may
21 have received. The deadline for getting your comments in,
22 whether you want to use one of our forms or you wish to
23 write a thesis on your own stationery, is November 15th.
24 And so we do ask that you try to be cognitive of that.

25 There is one thing that I -- one other thing of
26 housekeeping that I've forgotten to mention. There is a