

**DELTA-MENDOTA CANAL UNIT**

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**ENVIRONMENTAL ASSESSMENT  
LONG-TERM CONTRACT RENEWAL**

**Chapter 4  
Other Considerations**

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February 2005

# CHAPTER 4

## OTHER CONSIDERATIONS

This section discusses other analyses typically required by or included in NEPA documents. It includes a review of potential environmental justice impacts, irreversible and irretrievable commitments of resources, and Indian trust assets.

### ENVIRONMENTAL JUSTICE

As mandated by Executive Order 12898, *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations*, this EA addresses potential environmental justice concerns. The Executive Order requires federal agencies to identify and address disproportionately high and adverse human health or environmental effects of their programs, policies, and activities on minority populations and low-income populations.<sup>1</sup> In August 1994, the Secretary of the Interior issued an environmental justice policy statement directing departmental action resulting in the Department of the Interior's Strategic Plan for Environmental Justice ([http://www.doi.gov/oepe/ej\\_goal1.html](http://www.doi.gov/oepe/ej_goal1.html)).

Renewal of the long-term water service contracts between Reclamation and the water contractors within the DMC Unit will not involve the construction of new facilities, result in any known health hazards, cause the generation of any hazardous wastes, or result in any property takings. Moreover, renewal of these DMC Unit contracts will not directly or indirectly cause disproportionately high and direct or indirect adverse human health or environmental effects. In examining impacts to the study area as a whole, it could be determined that renewal of the long-term water service contracts would not disproportionately affect the human health or physical environment of minority or low-income populations. To the extent that long-term renewal of DMC Unit contracts for CVP water have the potential to disproportionately affect the economic conditions of certain communities within or affected by CVP water deliveries, such agricultural and socioeconomic effects are discussed in Section 3.2 and 3.3 of this EA.

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<sup>1</sup> Executive Order 12898 specifically states that “[t]o the greatest extent practicable and permitted by law, and consistent with the principles set forth in the report on the National Performance Review, each Federal agency shall make achieving environmental justice part of its mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of its programs, policies, and activities on minority populations and low-income populations in the United States and its territories and possessions, the District of Columbia, the Commonwealth of Puerto Rico, and the Commonwealth of the Mariana Islands.”

## **IRREVERSIBLE AND IRRETRIEVABLE COMMITMENTS OF RESOURCES**

As discussed further in Section 3.11, Cultural Resources, compliance with Section 106 of the National Historic Preservation Act and other federal rules and regulations could be required for new undertakings (for example, if substantial new lands are to be incorporated within district boundaries [inclusions] or land use changes are proposed involving use of federally contracted water). Section 106 and the other relevant federal rules and regulations are designed to ensure that all eligible and potentially eligible archaeological or historical sites are adequately inventoried. “Inventory” includes the identification, evaluation in relation to NRHP eligibility criteria, and assessment of effects in relation to proposed project impacts. As a consequence, implementation of treatments recommended in the Section 106 consultation and the related process results in reducing to less-than-adverse levels the impacts that a project might have on eligible or potentially eligible archaeological or historical sites. By definition, reducing impacts to less-than-adverse levels implies that there would be no irreversible or irretrievable commitments of cultural resources. No other irreversible or irretrievable commitments of resources resulting from the renewal of long-term contracts were identified for any of the other resources analyzed in this EA.

## **INDIAN TRUST ASSETS**

### **DEFINITION OF INDIAN TRUST ASSETS**

The United States has a trust responsibility to protect and maintain rights reserved by or granted to federally recognized tribes and individual Indians, by treaties, statutes, and executive orders. These rights are sometimes further interpreted through court decisions and regulations. The trust responsibility requires that all federal agencies, including Reclamation, take all actions reasonably necessary to protect Indian Trust Assets (Reclamation 1994).

Indian Trust Assets are legal interests in property held in trust by the federal government for federally recognized Indian tribes or individual Indians. “Assets” are anything owned that has monetary value. “Legal interest” means there is a property interest for which there is a legal remedy, such as compensation or injunction, if there is improper interference. Indian Trust Assets do not include things in which a tribe or individual Indians have no legal interest (Reclamation 1994).

Indian Trust Assets can be real property, physical assets, or intangible property rights, such as a lease or a right to use something. Indian Trust Assets cannot be sold, leased, or otherwise alienated without approval by the United States. While most Indian Trust Assets

are located on reservations, they can also be located off reservations. Examples of Indian Trust Assets are land, minerals, hunting and fishing rights, water rights, and instream flows. Off-reservation cultural resources located on non-trust land are usually not Indian Trust Assets (Reclamation 1994).

## **INDIAN TRUST ASSETS ANALYSIS**

Reclamation examined geographic information system coverage that depicts the distribution of trust land in the Mid-Pacific Region. No trust lands were found within the DMC Unit study area. The nearest trust lands to the DMC Unit study area are located 45 to 65 air miles east and south of the study area. These trust lands belong to the Big Sandy Rancheria, Buena Vista Rancheria, Chicken Ranch Rancheria, Cold Springs Rancheria, Northfork Rancheria, Picayune Rancheria, Santa Rosa Rancheria, Sheep Ranch Rancheria, Table Mountain Rancheria, and Tuolumne Rancheria . The Ione Rancheria and California Valley Mi-wok, although federally recognized, do not possess trust land.

Departmental Manual Part 512, Chapter 2, 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.” Reclamation can identify no causal link between the proposed execution of the DMC Unit long-term contract renewals and impacts to Indian trust assets.

The Hoopa Valley Tribe (located on the Trinity River) has informed Reclamation that the Tribe finds that other long-term contract renewal environmental documents inadequately address the potential effects on Indian Trust Assets caused by such renewals. In particular, the Tribe cites that such renewals will adversely affect Reclamation’s obligation in the Trinity River Restoration Record of Decision to maintain flows at levels mandated in the Record of Decision. Reclamation’s subject matter experts find no adverse causal link between the renewal of the DMC Unit long-term contracts and the Tribe’s ability to exercise its federally reserved fishing rights or Reclamation’s obligation under the Trinity River Restoration Record of Decision to maintain flows at the mandated levels. The rationale is that (1) flow requirements on the Trinity River are determined by hydrologic conditions in the Trinity Basin and are unrelated to water demands south of the Delta, (2) the system-wide effects of implementing fishery restoration on the Trinity River were the subjects of the environmental impact statement for the Trinity River Mainstem Fishery Restoration and the CVPIA PEIS and are assumed to be in place for all of the alternatives considered in this EA, and (3) Reclamation’s trust responsibility is documented in the consultations for the Trinity EIS/EIR and the CVP Operations Criteria and Plan biological assessment-biological opinion.

In conclusion, Reclamation believes there is no interrelationship or interdependency between the Trinity River Mainstem Fishery Restoration and the proposed DMC Unit long-term contract renewals. The exercise of the provisions in those contracts is not dependent on the Trinity River Mainstem Fishery Restoration activities, and the restoration activities are not dependent on the execution or non-execution of the DMC Unit long-term contracts renewals.

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**Chapter 5  
Consultation and Coordination/Public Involvement**

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## CHAPTER 5

# CONSULTATION AND COORDINATION/ PUBLIC INVOLVEMENT

Both prior to and during the preparation of this EA, input was solicited and incorporated from a broad range of cooperating and consulting agencies and the public. This chapter summarizes the public involvement program and key issues raised by the public and special interest groups. This chapter also addresses the manner in which federal statutes, implementing regulations, and executive orders potentially applicable to implementation of the CVPIA have been addressed. The conclusions of compliance are based on the environmental consequences presented in Chapter 3. The compliance summaries apply only to the alternatives discussed in this EA and not to the development of concurrent CVPIA implementation programs.

## PUBLIC INVOLVEMENT

Section 226 of the Reclamation Reform Act of 1982 amends Section 9 of the Reclamation Project Act of 1939 (43 USC 485h) by adding the following new subsection:

- (f) *No less than sixty days before entering into or amending any repayment contract or any contract for the delivery of irrigation water (except any contract for the delivery of surplus or interim irrigation water whose durations is for one year or less) the Secretary shall—*
  - (1) *publish notice of the proposed contract or amendment in newspapers of general circulation in the affected area and shall make reasonable efforts to otherwise notify interested parties which may be affected by such contract amendment, together with information indicating to whom comments or inquiries concerning the proposed actions can be addressed; and*
  - (2) *provide an opportunity for submission of written data, views and arguments so received (96 Stat. 1273; 43 USC 485h).*

Reclamation started the preparation of this EA with scoping meetings. Scoping served as a fact-finding process to identify public concerns and recommendations about the long-term water service contract renewal issues that would be addressed in this EA and the scope and

level of detail for analyses. Scoping activities began in October 1998 after a Notice of Intent to prepare environmental documentation for long-term contract renewals was filed in the Federal Register. The scoping period formally ended in January 1999. The Scoping Report was released in the summer of 1999.

Public input continued during long-term water service contract negotiations to define the contract language. Discussions also were held with the DMC Unit contractors during the preparation of this document.

At public scoping meetings, Reclamation provided information about the long-term water service contract renewal process and solicited public comments, questions, and concerns. At these meetings, participants had numerous comments and questions about how important issues would be considered both in the CVPIA PEIS and the long-term contract renewal process. The majority of the comments received during the scoping process addressed the Water Needs Assessment methodology to be used as part of the long-term contract renewal process. Contract renewal negotiation issues also were addressed. The least number of comments addressed environmental review issues.

Reclamation received numerous comments about issues to be considered in the CVPIA PEIS and methodologies for analyzing impacts. Comments regarding the development of alternatives were considered in the formation of the alternatives. However, it was determined to focus the description of alternatives on the contract proposals and address issues related to water supply improvements to be addressed by CALFED and the Least Cost Yield study. Consideration of comments on methods to address impacts was considered in the development of Chapter 3, Environmental Consequences of this EA.

Based upon the comments received and the determination to focus the alternatives on the language in the proposed contracts, the level of detail for this EA was determined. It was also determined that based upon the minimal number of differences between Alternatives 1 and 2, an environmental impact statement would not be necessary.

All contract negotiation sessions for the DMC Unit contractors have been open to the public, with the time and location posted on Reclamation's website. Draft versions of the contracts have been available on Reclamation's Mid-Pacific Region website since 2000. The final versions of the negotiated contracts will be made available on the same website for a 60-day public review and comment period.



## **COORDINATION WITH DELTA-MENDOTA CANAL UNIT CONTRACTORS**

This EA was prepared with the assistance of information collected from each of the 20 DMC Unit contractors. On June 1, 2000, Reclamation met with representatives of the San Luis and Delta-Mendota Water Authority and representatives of several member water service contractors. Reclamation, through its contractor, also committed to scheduling field visits and interviews with contractors to exchange information and to discuss special circumstances applicable to individual districts. Meetings with contractors or their representatives were held from July 2000 through June 2003. Site visits were not conducted for small or single-landowner districts. For these districts, information was obtained through phone interviews and a review of Reclamation project files. The 20 DMC Unit contractors are included as agencies contacted as part of the long-term water service contract renewal process.

## **AGENCY CONSULTATIONS**

This EA has been prepared in consultation with other federal, state, regional, and local agencies in a manner consistent with their objectives for administering applicable acts, policies, plans, and controls for the study area. Applicable laws, orders, regulations, and other policies and plans that have been considered in this EA include:

- National Environmental Policy Act
- Endangered Species Act
- Fish and Wildlife Coordination Act
- National Historic Preservation Act
- Indian Sacred Sites on Federal Land
- State, Area-Wide, and Local Plan and Program Consistency
- Floodplain Management
- Wetlands Protection
- Wild and Scenic Rivers Act
- Farmland Protection Policy Act and Farmland Preservation
- Clean Air Act

- Safe Drinking Water Act
- Clean Water Act

### **NATIONAL ENVIRONMENTAL POLICY ACT**

This EA was prepared pursuant to regulations implementing NEPA (42 USC 4321 *et seq.*). NEPA provides a commitment that federal agencies will consider the environmental effects of their actions. This EA provides information regarding the No-Action Alternative and alternatives, a discussion of the environmental impacts of the alternatives, and potential mitigation measures as appropriate. No unavoidable adverse environmental impacts were identified.

### **ENVIRONMENTAL ASSESSMENT PUBLIC COMMENTS**

A draft EA was prepared in September 2000 and 250 copies delivered to Reclamation for distribution. Twenty-four separate comment “letters,” including internal e-mails, were received and separated into approximately 151 comments. The majority of the comments were provided by the San Luis and Delta-Mendota Water Authority, districts, and their legal representatives, Save the Bay, the Bay Institute of San Francisco, USEPA, National Resources Defense Council, the Golden Gate Audubon Society, the Trinity County Board of Supervisors, the Big Bar Community Development Group, the Friends of the Trinity River, the Pacific Coast Federation of Fisherman’s Associations, and the U.S. Department of the Interior, Office of the Secretary. Responses to those comments have been incorporated into this revised EA. Additional responses to comments received from meetings with the DMC Unit contractors have also been incorporated since the distribution of the September 2000 draft EA.

### **ENDANGERED SPECIES ACT**

Reclamation has prepared a biological assessment that examines whether the renewal of long-term water service contracts in the DMC Unit would have the potential to affect listed, threatened and endangered species. The biological assessment addresses listed species potentially affected by the CVP operation in the DMC Unit. The biological assessment was submitted to the Service in July 2003 as a request for formal consultation pursuant to the Endangered Species Act (Reclamation 2003). Preparation of a biological opinion by the Service is pending.

### **FISH AND WILDLIFE COORDINATION ACT**

The Fish and Wildlife Coordination Act requires that Reclamation consult with federal and state fish and wildlife agencies on all water development projects that could affect biological resources. The implementation of the CVPIA, of which this action is a part, has

been jointly analyzed by Reclamation and the Service and is being jointly implemented. This continuous consultation and consideration of the Service's views, its review of this document, and consideration of the Service's comments satisfy any applicable requirements of the Fish and Wildlife Coordination Act.

### **NATIONAL HISTORIC PRESERVATION ACT**

Section 106 of the National Historic Preservation Act requires that federal agencies evaluate the effects of federal undertakings on historical, archeological, and cultural resources and afford the Advisory Council on Historic Preservation opportunities to comment on the proposed undertaking. The first step in the process is to identify cultural resources eligible for inclusion on the NRHP that are located in or near the project area. The second step is to identify the possible effects of proposed federal actions. The lead agency must examine whether there are feasible alternatives that would avoid such effects. If an effect cannot reasonably be avoided, measures must be taken to minimize or mitigate potential adverse effects.

During preparation of this EA, cultural resources information was collected from cultural resources records maintained by the California Historical Information System, Central California Information Center (CSU–Stanislaus), and the Southern San Joaquin Valley Information Center (CSU–Bakersfield). The results of that information collection effort and the details of needed cultural resources activities are presented in Section 3.10 of this EA. It was determined by the State Historic Preservation Office that compliance with Section 106 should be coordinated on a project-specific basis.

### **INDIAN SACRED SITES ON FEDERAL LAND**

Executive Order 13007 provides that in managing federal lands, each federal agency with statutory or administrative responsibility for management of federal lands shall, to the extent practicable and as permitted by law, accommodate access to and ceremonial use of Indian sacred sites by Indian religious practitioners and avoid adversely affecting the physical integrity of such sacred sites. No sacred sites were identified during the scoping or planning process for this EA.

### **STATE, AREA-WIDE, AND LOCAL PLAN AND PROGRAM CONSISTENCY**

Agencies must consider the consistency of a proposed action with approved state and local plans and laws. This EA was prepared with extensive information from local planning agencies and the renewal of the long-term water service contracts is not inconsistent with their adopted plans or policies.

**FLOODPLAIN MANAGEMENT**

If a federal agency program will affect a floodplain, the agency must consider alternatives to avoid adverse effects in the floodplain or to minimize potential harm. Executive Order 11988 requires federal agencies to evaluate the potential effects of any actions they might take in a floodplain and to ensure that planning, programs, and budget requests reflect consideration of flood hazards and floodplain management. The alternatives would not affect floodplain management as compared to the No-Action Alternative.

**WETLANDS PROTECTION**

Executive Order 11990 authorizes federal agencies to take actions to minimize the destruction, loss, or degradation of wetlands and to preserve and enhance the natural and beneficial values of wetlands when undertaking federal activities and programs. Any agency considering a proposed action that might affect wetlands must evaluate factors affecting wetland quality and survival. These factors should include the proposed action's effects on the public health, safety, and welfare resulting from modifications in water supply and water quality; maintenance of natural ecosystems; conservation of flora and fauna; and other recreational, scientific, and cultural uses. The alternatives would not affect wetlands as compared to the No-Action Alternative.

**WILD AND SCENIC RIVERS ACT**

The Wild and Scenic Rivers Act designates qualifying free-flowing river segments as wild, scenic, or recreational. The act establishes requirements applicable to water resource projects affecting wild, scenic, or recreational rivers within the National Wild and Scenic Rivers System, as well as rivers designated on the National Rivers Inventory. Under the act, a federal agency may not assist the construction of a water resources project that would have a direct and adverse effect on the free-flowing, scenic, and natural values of a wild or scenic river. If the project would affect the free-flowing characteristics of a designated river or unreasonably diminish the scenic, recreational, and fish and wildlife values present in the area, such activities should be undertaken in a manner that would minimize adverse impacts and should be developed in consultation with the National Park Service. None of the alternatives considered in this EA would affect flows in wild and scenic portions of rivers.

**FARMLAND PROTECTION POLICY ACT AND FARMLAND PRESERVATION**

Two policies require federal agencies to include assessments of the potential effects of a proposed project on prime and unique farmland: the Farmland Protection Policy Act of 1981 and the Memoranda on Farmland Preservation, dated August 30, 1976, and August 11, 1980, respectively, from the U.S. Council on Environmental Quality. Under

requirements set forth in these policies, federal agencies must determine these effects before taking any action that could result in converting designated prime or unique farmland for nonagricultural purposes. If implementing a project would adversely affect farmland preservation, the agencies must consider alternatives to lessen those effects. Federal agencies also must ensure that their programs, to the extent practicable, are compatible with state, local, and private programs to protect farmland. The Natural Resources Conservation Service is the federal agency responsible for ensuring that these laws and polices are followed. The alternatives would not affect agricultural or urban lands as compared to the No-Action Alternative.

### **CLEAN AIR ACT**

The federal Clean Air Act was enacted to protect and enhance the nation's air quality in order to promote public health and welfare and the productive capacity of the nation's population. The act requires an evaluation of any federal action to determine its potential impact on air quality in the project region. Coordination is required with the appropriate local air quality management district as well as with the USEPA. This coordination would determine whether the project conforms to the federal Implementation Plan and the State Implementation Plan.

Section 176 of the act (42 USC 7506(c)) prohibits federal agencies from engaging in or supporting in any way an action or activity that does not conform to an applicable State Implementation Plan. Actions and activities must conform to a State Implementation Plan's purpose of eliminating or reducing the severity and number of violations of the national ambient air quality standards and in attaining those standards expeditiously. The USEPA has promulgated conformity regulations (codified in 40 CFR 93.150, *et seq.*).

The alternatives assume that current practices to control dust and soil erosion on lands that are seasonally fallowed would continue and the land use agencies would continue to work with the air quality districts. Therefore, it assumed that no air quality impacts would occur as a result of the alternatives as compared to the No-Action Alternative.

### **SAFE DRINKING WATER ACT**

The Safe Drinking Water Act (PL 99-339) became law in 1974 and was reauthorized in 1986 and again in 1996. Through the act, Congress gave the USEPA the authority to set standards for contaminants in drinking water supplies. Amendments to the act provide more flexibility, more state responsibility, and more problem prevention approaches. The law changes the standard-setting procedure for drinking water and establishes a State Revolving Loan Fund to help public water systems improve their facilities, to ensure

compliance with drinking water regulations, and to support state drinking water program activities.

Under the provisions of the act, the California Department of Health Services has the primary enforcement responsibility. The California Health and Safety Code establishes this authority and stipulates drinking water quality and monitoring standards. To maintain primacy, a state's drinking water regulations cannot be less stringent than the federal standards. The analysis of the EA alternatives as compared to the act's requirements indicated that there would be no impacts to water quality from the action of renewing long-term contracts, and therefore there would be no changes in compliance as compared to the No-Action Alternative.

### **CLEAN WATER ACT**

The Clean Water Act gave the USEPA the authority to develop a program to make all waters of the United States "fishable and swimmable." This program has included identifying current and proposed beneficial uses and methods to protect and/or restore those beneficial uses. The act contains many provisions, including those that regulate the discharge of pollutants into water bodies. The discharges may be direct flows from point sources, such as an effluent from a wastewater treatment plant, or a non-point source, such as eroded soil particles from a construction site. The analysis of the EA alternatives as compared to the act's requirements indicates that there are no changes in compliance as compared to the No-Action Alternative.