



NATURAL RESOURCES DEFENSE COUNCIL

Via Federal Express

December 14, 2004

Mr. Joe Thompson
US Bureau of Reclamation, South-Central California Area Office
1243 N Street
Fresno, CA 93721

RE: NRDC Comments on Draft EA/FONSI for DMC Unit Renewal Contracts

Dear Mr. Thompson:

These are comments of the Natural Resources Defense Council (NRDC) on the Draft Environmental Assessment (EA) and Draft Finding of No Significant Impact (FONSI) for the proposed long-term Central Valley Project (CVP) water service contracts between Reclamation and the 20 Delta-Mendota Canal (DMC) Unit Contractors (proposed contracts), as noticed by the U.S. Bureau of Reclamation, Mid-Pacific Region, Sacramento, CA on November 15, 2004.

The EA/FONSI is legally inadequate to support the proposed contract renewal action and should be withdrawn. As indicated by Friends of the Trinity River and other California conservation and fishing organizations in a comment letter submitted on this same EA/FONSI, the interconnected nature of the proposed San Luis Unit renewal contracts and the proposed DMC Unit renewal contracts, including their interconnected drainage issues and Delta export issues, requires that their long term renewal contracts be examined together, in a single EIS, that looks at their combined cumulative effects and an reasonable range of alternatives. Moreover, the analysis contained within the EA/FONSI, and the "finding" of no significant impact thereon, do not comply with the requirements of NEPA, CEQ regulations, and the Bureau's own NEPA Handbook and implementing guidelines. The EA/FONSI also fails to address the numerous issues identified in previous NRDC and EPA comments on CVP renewal contracts and draft EA's (including for the DMC Unit), including the prior NRDC comments and EPA letters attached hereto.

Finally, the Bureau has failed to adequately address the numerous issues raised by the proposed transfer/assignment/reallocation of DMC water to other contractors inside and outside the CVP, as well as the numerous issues raised by the unresolved drainage problems in the DMC and San Luis Unit service areas, including water quality impacts and impacts to migratory waterfowl and other birds. Also, the numerous water quality

and fishery impacts associated with long term Delta pumping by the CVP to DMC and San Luis contractors have not been adequately addressed in the EA/FONSI or the underlying OCAP process.

These and several other significant environmental impacts are addressed in the attached materials, which we submit for Bureau review and consideration before rewriting or finalizing the NEPA documents for these proposed contracts; the attached documents also make clear that a larger range of alternative terms and conditions must be analyzed before the Bureau completes its NEPA review for this important contract action.

The documents we request that the Bureau review and consider as part of this NEPA review process include, but are not limited to the following (most of which are attached hereto or are otherwise included on Interior Department web pages, in existing Bureau staff files for the CVP, or have been previously submitted by other commenters on other proposed CVP renewal contracts or associated NEPA documents within the past year):

April 30, 1995 Bureau of Reclamation Memorandum Re: Development of Critical Needs Analysis and Implementation for Contaminants, Central Valley Project Interim Renewal Contracts

"Nesting of the American Avocet in North Dakota," by John G. Sidle and Phillip M. Arnold, U.S. Fish and Wildlife Service

"Carbonate Deposition on Tail Feathers of Ruddy Ducks Using Evaporation Ponds," by Ned H. Euliss Jr. and Robert L. Jarvis, Dept. of Fisheries and Wildlife Oregon State University and David S. Gilmer, U.S. Fish and Wildlife Service

"Selenium Poisoning in Birds – Information from Laboratory Studies", U.S. Fish and Wildlife Service

"Reproduction in Mallards Fed Selenium," by Gary Heinz, David Hoffman, Alexander Krynitsky and Deborah Weller, Patuxent Wildlife Research Center, U.S. Fish and Wildlife Service; November 19, 1986.

"Impaired Reproduction of Mallards Fed an Organic Form of Selenium," by Gary Heinz, David Hoffman, and Lyn Gold, U.S. Fish and Wildlife Service.

"Immune Function and Disease Resistance of Waterfowl Using Evaporation Pond Systems in the Southern San Joaquin Valley, California, 1986-89. Cooperative Agreement No. 14-16-0009-1511. Final Report to the U.S. Fish and Wildlife Service.

Submitted by P.L. Whiteley BVSc MACVS, Department of Veterinary Science,
University of Wisconsin.

"Relationships Between Selenium Concentrations and Avian Reproduction," by Harry M. Ohlendorf, Roger Hothem, Christine M. Bunck, Thomas Aldrich, and John Moore, U.S. Fish and Wildlife Service.

"Bioaccumulation and Effects of Selenium in Wildlife," by Harry M. Ohlendorf, U.S. Fish and Wildlife Service.

Reporters Transcript of Proceedings, Tuesday September 20, 1994, Fresno, CA, CV-F-88-634 OWW.

Deposition of Joseph Skorupa, Friday, July 8, 1994, vol. 1. No. CV-F-88-634 OWW

Federal Defendants' Opposition to In Limine Motions of Westlands and Sumner Peck, CV-F-88-634 OWW, Filed July 11, 1994.

All other submittals of the federal defendants in the pre-trial and trial phases of the Sumner Peck litigation, cited above, including the Federal Defendants' Trial Brief (excerpts of which are attached hereto), and the Testimony of Joseph Skorupa (cited therein). In addition, the entire record of the ongoing Bureau study of a long term drainage plan, which grew out of the Sumner Peck litigation, is relevant to the drainage issues raised by the DMC and San Luis renewal contracts and should be considered by the Bureau as part of this NEPA review of the next 25 years of water service in this DMC Unit.

Finally, we are enclosing with these comments numerous other materials that are relevant to the proposed renewal contracts and the draft EA/FONSI which we or others have previously submitted to the Bureau on the subject of CVP contract renewals. We request full consideration of these comments, along with all materials attached to or submitted with each of our comment letters or incorporated or referenced therein.

1. Request for Extension of Comment Deadline

As we have indicated before, the Bureau has not provided adequate time for the public to review the EA and FONSI or the proposed contracts in the context of the full operating plan for the CVP, including any cumulative impact analysis of the OCAP and CVP contracts and the related development of a long term drainage plan. For these reasons and all of the reasons stated in the letters from Senator Feinstein and Senator Boxer, the Pacific Coast Federation of Fishermen's Associations (PCFFA), Taxpayers for Common Sense, Northern California/Nevada Council-Federation of Fly Fishers,

and Rep. George Miller and five other Members of Congress, we urge you to reopen or extend (or both) the public comment periods for the contracts and the EA/FONSI so that there will be at least 60 days of public comment allowed after the completion and public distribution of (a) the Bureau's proposed drainage plan and associated NEPA and ESA analysis of the drainage plan, and (b) a final EIR/EIS on the new OCAP for the Central Valley Project (CVP) and the State Water Project (SWP).

2. The Revised Draft EA and the proposed FONSI are Legally Inadequate.

As we indicated above, the Bureau has failed to correct the numerous deficiencies in its prior environmental review documents pertaining to CVP long-term renewal contracts and interim renewal contracts. Numerous comments criticizing these earlier documents have been submitted to the Bureau and are contained in the administrative records on those contracts and their associated NEPA review processes, including NRDC's own extensive comments dated December 7, 2000, which are attached and incorporated herein, and the comments of the Hoopa Valley Tribe (letter of Thomas Schlosser to Frank Michny), which are also attached. Among other things, the Bureau has failed to meet its legal obligation to prepare a full Environmental Impact Statement (EIS) on these proposed contracts, failed to consider a reasonable range of alternatives, and failed to disclose and analyze adequately the environmental impacts of the proposed action, including cumulative impacts. Associated CEQA review is likewise insufficient. Some of these defects are more fully addressed below.

3. The Bureau has failed to address the concerns previously identified by EPA and failed to comply with the Findings of the Council on Environmental Quality.

In a series of letters, the US EPA has expressed repeated concern over the adequacy of the Bureau's environmental review process for its contract renewal program, including but not limited to the attached letters dated December 8, 2000, August 30, 2001, January 4, 2002, and January 23, 2004. Yet the Bureau has failed to adequately address those concerns in its new EA/FONSI. Similarly, back in 1989, EPA challenged the Bureau's failure to complete a full EIS on each group of CVP renewal contracts and the Council on Environmental Quality (CEQ) upheld EPA's critique. See 54 Fed. Reg. 28477 (July 6, 1989). The Bureau has numerous copies of the complete record of that proceeding, including in its copies of the court record in *NRDC v. Patterson*, Civ. No. S-88-1658-LKK, and should review and reconsider that record, including EPA's numerous submissions, and the CEQ findings.

4. The Bureau has failed to adequately consider the effects of its operations and proposed contracts.

Among many other defects, the Bureau has failed to adequately consider the impacts to fish species and fish habitat from its various CVP operations, the integrated operations with the SWP, and the Bureau's new overall OCAP. In addition to the information provided in and referenced above, we also attach and direct your attention to the following relevant documents, and incorporate each of them by reference:

- a. July 11, 2003 letter from NRDC and The Bay Institute to Ms. Ann Lubas-Williams on the Draft OCAP and Draft OCAP Biological Assessment.
- b. July 28, 2004 letter from NRDC to Mr. Wayne White of US FWS re ESA Consultation on OCAP.

Similarly, the EA/FONSI disregards the concerns, findings and analysis previously provided on these contract and operational issues by the Bureau itself or other federal agencies, including but not limited to the attached letter of July 23, 2004 from NMFS to Mr. Thomas Stokely and the USGS report on selenium impacts to the Bay-Delta estuary, available on Interior's USGS website at:

<http://pubs.er.usgs.gov/pubs/ofr/ofr00416>

5. The Bureau fails to analyze meaningful alternatives on the key terms of the contracts including price and water quantity.

Numerous members of the public have written to the Bureau in past years urging the Bureau to evaluate a broader range of alternatives to its current policy of rolling over most water quantity terms in its long term renewal contracts and keeping water prices significantly below cost and below market without any adjustment for conservation incentives or environmental repayment. The EA/FONSI has utterly failed to evaluate such alternatives, including those discussed in the attached May 3, 2004 letter of National Taxpayers Union & Taxpayers for Common Sense, the attached letter of January 9, 2001 of NRDC, and the attached March 2, 1994 brief on ratesetting filed by plaintiffs in *NRDC v. Patterson*, Civ. No. S-88-1658-LKK.

6. The Bureau is acting in an arbitrary and capricious manner in its NEPA process on contract renewals.

This EA/FONSI is part of a larger pattern of arbitrary NEPA compliance by the CVP in addressing its OCAP and contract-renewal program. For example, the Bureau is proposing significant changes in its operations in its OCAP, yet failing to do any NEPA or CEQA review. The Bureau is conducting an EIS on the Sacramento River Settlement Contracts, the American River Division renewal contracts and the San Luis Unit renewal contracts, yet relying on a mere EA/FONSI for the DMC contracts. The current proposed FONSI refers to a project description in OCAP, yet the 3 different versions of the OCAP BA, the final OCAP itself, the final FWS Biological Opinion on

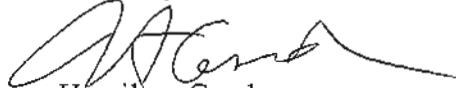
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OCAP, and the ESA consultation with NMFS on OCAP involve different project descriptions. In sum, the approach is irrational and arbitrary and contrary to NEPA and its implementing regulations. We urge you to withdraw the revised draft EA and FONSI and proceed with a more adequate analysis in a full draft EIS.

Sincerely,

A handwritten signature in black ink, appearing to read "Hamilton Candee", with a long horizontal flourish extending to the right.

Hamilton Candee
Senior Attorney

Enclosures