



NATURAL RESOURCES DEFENSE COUNCIL

Via Federal Express

December 16, 2004

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

RE: NRDC and Bay Institute Supplemental Comments on Draft EA/FONSI for  
DMC Unit Renewal Contracts

Dear Mr. Thompson:

These are Supplemental Comments of the Natural Resources Defense Council (NRDC) and The Bay Institute (TBI) 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. We have already submitted extensive comments on this EA/FONSI, dated December 14, 2004, which also represent the views of NRDC and TBI. We understand that packet, including the letter and many attachments, have already been received by your office.

Some of the materials cited in that first comment letter were not included in our first mailing to you, so we are attaching those herewith, along with our attempted transmittal email by which we attempted to submit them to you electronically. Also enclosed: the NRDC Brief on Ratesetting that was cited in our prior comment letter.

There are many additional materials about the drainage problems and related water quality and wildlife problems in the DMC/San Luis Unit service area that provide further evidence of why the Bureau must withdraw this inadequate draft EA/FONSI and prepare a more adequate analysis of both units, and their proposed long term contracts, in a new EIS. For example, we request that the Bureau consider the report by NAS: National Research Council (NRC). 1989. Irrigation-Induced Water Quality Problems. What can be learned from the San Joaquin Valley Experience. Available at <http://books.nap.edu/books/0309040361/html/index.html>. We also request that the Bureau review all of its files on the drainage issue from its current and past studies of San Joaquin Valley drainage problems and consider these implications before

finalizing any NEPA review of the proposed long term water contracts for the DMC Unit, including but not limited to the following documents that we attach herewith:

Memorandum from Field Supervisor, Sacramento Fish and Wildlife Office to Regional Director, U.S. Bureau of Reclamation, Sacramento, CA (October 2001); Regarding Revised Biological Assessment of Long-Term Contract Renewals for Portions of the Delta-Mendota Canal Unit, Central Valley Project, California.

Memorandum from Assistant Field Supervisor, Sacramento Fish and Wildlife Service, to Regional Environmental Officer, U.S. Bureau of Reclamation, Mid-Pacific Regional Office, Sacramento (June 19, 2002); Regarding Water Quality Monitoring Program for the Delta Mendota Canal.

Letter from Cay C. Goude, Acting Field Supervisor, U.S. Fish and Wildlife Service, to Kathleen M. Goforth, Life Scientist, U.S. EPA, Region IX, October 22, 2002.

"Draft Biological Opinion, Grasslands Bypass Project Operation, Madera, Merced and Fresno Counties, California", September 5, 2001. U.S. Fish and Wildlife Service, Sacramento Fish and Wildlife Office, Endangered Species Division.

Draft Biological Opinion – "Effects of the Proposed Action and Cumulative Effects, September 5, 2001.

Draft Biological Opinion – "Conclusion", "Incidental Take Statement" September 5, 2001.

Selenium Bibliography annotated.

There are also other materials that have been generated by the Bureau or submitted to the Bureau in connection with its plan to renew long term CVP contracts, some dating back to the late 1980's, which discuss both the environmental impacts of CVP contract renewal and/or the specific reasons why a full EIS is needed to properly analyze this major proposed action. These materials are relevant to the proposed DMC contracts and the draft EA/FONSI and are contained in the Bureau's files on the original Friant Unit renewal contracts or the CEQ referral process in 1989. We urge your consideration of all of these materials before finalizing any NEPA documents on the DMC contracts, including but not limited to the attached Letter from U.S. EPA to George W. Van Cleve, Deputy Assistant Attorney General, U.S. Department of Justice, Land and Natural Resources Division, October 30, 1989.

Also, the Bureau is partly relying on the completed ESA consultations on OCAP in going forward with the proposed renewal of these DMC contracts. As we indicated in

our earlier comment letter, NRDC has already submitted detailed comments on the Biological Assessment for OCAP, and the OCAP itself, which we believe demonstrate numerous problems with that consultation and the OCAP actions. In addition, we attach the following additional documents concerning the defective OCAP review process, including defects under NEPA, CEQA and ESA, and urge you to fully consider these before finalizing any NEPA process on the DMC renewal contracts:

Letter from California Senator Michael Machado to U.S. Department of Commerce, NMFS, October 6, 2004.

Letter from Senator Barbara Boxer to Donald L. Evans, Secretary, U.S. Department of Commerce, October 7, 2004.

Letter from members of California's Congressional Delegation to Earl Devaney, Inspector General, U.S. Department of Interior and Johnnie E. Frazier, Inspector General, U.S. Department of Commerce, October 2004.

Letter from Rodney McInnis, Regional Administrator, NMFS to Thomas Stokely, Trinity County Planning Department, July 23, 2004.

Letter from Antonio Rossmann to Kirk Rodgers, Regional Director, Bureau of Reclamation, November 30, 2004.

Letter from Antonio Rossman to Lester Snow, Director, CA Department of Water Resources, November 30, 2004.

Similarly, we submit two additional comment letters on the CVP renewal contracts themselves, including the letter submitted this week by Environmental Defense on the DMC draft EA/FONSI and the Letter from Rep. George Miller to Donald Bultema, U.S. Bureau of Reclamation, regarding Comments on Proposed Central Valley Project Long-Term Water Contracts, September 7, 2004. These letters document numerous defects in the proposed contracts and the draft EA/FONSI.

Finally, we offer these additional comments as to the defects in the draft EA/FONSI for the DMC contracts:

*Proposed action is not legal.* The proposed action is to enter into contracts that do not comply with the intent and provisions of state and federal law, including the CVPIA and the Reclamation Reform Act of 1982 (RRA). Reclamation also has failed to ensure that the water contracted for is being legally provided and used under the Reclamation Act of 1902 and the Reclamation Reform Act of 1982. Similarly, under

CVPIA, the contracts must not exceed a 25 year term. No provision that allows for essentially automatic renewal can lawfully be included.

*Document fails to disclose and analyze outstanding commitments.* The DMC EA purports to be a site-specific NEPA document "tiered" from the CVP Programmatic EIS, yet it fails to address and update the status of the conservation and mitigation commitments and requirements relevant to DMC made in the PEIS and its corresponding biological opinion. Neither does this DMC document adequately address the extent to which other commitments and requirements, such as from subsequent biological opinions including interim water service contract biological opinions, or other sources such as State Water Resources Control Board rulings, have been met. The document must review the status of these prior commitments and requirements.

*Reclamation must disclose water needs analyses.* Past and proposed land retirement and contract assignments in particular indicate that the water needs of DMC contractors have declined. Reclamation has failed to disclose what the present and probable future needs of the DMC Unit are (incorporating advances in best available cost-effective practices for water conservation), and to provide reasonable project alternatives including reduced contract amounts.

*Effects on fish at the pumps.* The document should include an analysis of the effects of the project alternatives on fish entrainment at the south Delta federal and state pumping facilities, including a no-contract case and reduced contract quantities. To the extent the Bureau is relying on "no jeopardy" OCAP biological opinions, those opinions are themselves defective and cannot support the FONSI for the DMC contracts.

*Selenium impacts.* The DEA is inadequate in failing to adequately disclose and analyze the environmental effects of selenium contamination that will result from the proposed contracts. Selenium contamination by irrigation and drainage of selenium-laden soils in the DMC Unit project area and nearby lands has been extensively documented, for example in the so-called "Rainbow" Report (1990). CVP contract water has been a principle source of water used to irrigate the problem lands. The biological effects of this contamination have been the subject of at least two recent USFWS biological opinions for effects on threatened species: on Reclamation's Grasslands Bypass Project, and on the EPA's Grasslands Water Quality Amendments. There also is strong evidence that this selenium contamination reaches the Suisun Bay, and causes high levels of contamination of benthic clams there. This contamination is the probable cause of toxic levels of selenium in benthic-feeding wildlife in the area, such as the Sacramento splittail and white sturgeon (USGS Open-File Report 00-416 (2000), Linville et al. 2002, Stewart et al 2004.) A recent study by Teh et al. (2004)

demonstrated selenium-induced deformities in juvenile splittail reared on a diet containing selenium at levels well within those found in Suisun Bay clams.<sup>1</sup>

In addition, as discussed further below, Reclamation's operation of the Delta Mendota Canal transports substantial quantities of selenium to Mendota Pool, home to threatened giant garter snakes. Much of this "upstream" selenium ultimately ends up downstream in the Grasslands wetlands channels or in the San Joaquin River, Delta, and Suisun Bay, where it contributes cumulatively to selenium contamination from contract water drainage, and adds to the environmental effects. These effects are inextricably tied to the DMC water service contracts, since the contracts' major purpose is to supply irrigation, and irrigation drainage waters move downstream. The NEPA document must be revised to fully disclose and evaluate these effects.

*Effects of Operations and Maintenance of CVP Facilities Serving DMC Unit.* The DMC EA/FONSI fails to adequately address the effects of ongoing operations and maintenance of certain CVP facilities used for DMC Unit water service. Reclamation operates and maintains a variety of facilities that serve to deliver DMC contract water, including dams, levees, canals, and pumps. The operation and maintenance of these facilities have effects on the environment, as evidenced by the fact that they are discussed in several federal biological opinions pursuant to section 7 of the ESA, including the recent OCAP opinions, and associated NEPA documents. The USFWS has had ongoing discussions with Reclamation and with other public agencies about the environmental impacts of Reclamation's operation and maintenance of the Delta-Mendota Canal itself (for example, Sacramento Fish and Wildlife Office memoranda to Reclamation, Mid-Pacific Region Environmental Officer dated December 12, 2000 (ref. 1-1-01-I-0417), December 19, 2001 (ref. 1-1-02-I-0455), and July 11, 2002 (ref. 1-1-02-I-1880) and Sacramento Fish and Wildlife Office letter to State Water Quality Control Board, Central Valley Region, dated November 8, 2002 (ref. FWS/EC-03-007)). These facilities are inextricably tied to the water service provided for in the proposed DMC contracts.

The DMC EA fails to adequately address the effects of continued operations and maintenance of these water facilities on the environment over the next 25 years or more. For example, the D-M Canal as now operated dumps substantial selenium load into Mendota Pool. Interior files indicate that one Reclamation sump in the Firebaugh

---

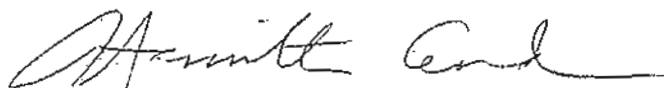
<sup>1</sup> See: Linville, R.G., S.N. Luoma, L. Cutter, G.A. Cutter. 2002. Increased selenium threat as a result of invasion of the exotic bivalve *Potamocorbula amurensis* into the San Francisco Bay-Delta. *Aquatic Toxicology* 57:51-64; and Teh, S.J., X. Deng, D.F. Deng, F.C. Teh, S.S.O. Hung, T.W.M. Fan, J. Liu, and R.M. Higashi. 2004. Chronic effects of dietary selenium on juvenile Sacramento splittail (*Pogonichthys macrolepidotus*). *Environmental Science and Technology* 38:6085-6093.

area, known as sump "K", periodically pumps concentrations of selenium into the D-M Canal, leading to Mendota Pool, that approach hazardous waste levels. Mendota Pool is both a source of diversion for DMC contractors and habitat for the federally threatened giant garter snake (*Thamnophis gigas*). Since selenium concentrates in food chains, and the giant garter snake is an aquatic predator, there is reason to believe the snake may be impacted by DMC operations. The DMC EA fails to adequately disclose or analyze these effects.

The D-M Canal also acts as both a barrier and a conduit to movement of the endangered San Joaquin kit fox (*Vulpes macrotis mutica*) and other wildlife - a barrier to movement across the canal, and a conduit to movement along it by providing less-developed habitat in otherwise intensively cropped areas. Reclamation's maintenance or lack thereof in areas of the canal allows encroachment of croplands onto the canal right-of-way, impeding the corridor function of the canal. Appropriate maintenance and simple improvements in the canal facilities could greatly enhance movement of kit fox and other wildlife across and along the canal. The DMC EA fails to address these effects, and they have not been addressed in any other NEPA document or biological opinion.

For all of the above reasons, as well as the reasons set out in our earlier comments and the materials attached thereto, the draft EA and draft FONSI are legally inadequate and must be withdrawn. Thank you for considering our comments.

Sincerely,

A handwritten signature in cursive script, appearing to read "Hamilton Candee".

Hamilton Candee  
Senior Attorney

Enclosures