

SOMACH, SIMMONS & DUNN

A PROFESSIONAL CORPORATION  
ATTORNEYS AT LAW

513 SIXTH STREET  
THIRD FLOOR  
SACRAMENTO, CA 95814-2403  
916 446-7979  
FACSIMILE 916 446-8199

December 15, 2004

VIA FACSIMILE

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

Re: Delta-Mendota Canal Draft Environmental Assessment and Draft Finding of  
No Significant Impact

Dear Mr. Thompson:

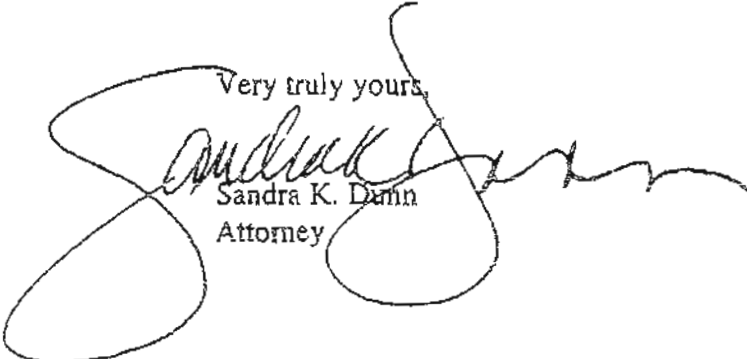
Byron-Bethany Irrigation District (formerly Plain View Water District) is submitting the attached comments to the Draft Environmental Assessment for the Delta-Mendota Canal. The comments pertain primarily to inaccuracies found in the document.

It should be noted, however, that Plain View Water District merged with Byron-Bethany Irrigation District. Consequently, Plain View Water District as a legal entity no longer exists. The proposed water service contract will be executed by Byron-Bethany Irrigation District for water service to the lands previously within Plain View. The Final Environmental Assessment should reflect the change in name.

Furthermore, I am also attaching the most recent information provided to Reclamation regarding the District's needs assessment to ensure it is accurately reflected in the final document.

Please contact me at (916) 446-7979 if you have any questions regarding these comments.

Very truly yours,

  
Sandra K. Dunn  
Attorney

SKD:sb  
Encl.  
cc: Rick Gilmore

The purpose of the federal action is to renew the DMC Unit long-term water service contracts, consistent with Reclamation authority and all applicable state and federal laws, including the CVPIA. The project alternatives include the terms and conditions of the long-term contracts and tiered water pricing. Long-term water service contract renewal is needed to:

- Continue the beneficial use of water, developed and managed as part of the CVP, with a reasonable balance among competing demands, including the needs of irrigation and domestic uses; fish and wildlife protection, restoration, and mitigation; fish and wildlife enhancement; power generation; recreation; and other water uses consistent with requirements imposed by the State Water Resources Control Board (State Board) and the CVPIA.
- Incorporate certain administrative conditions into the renewed contracts to ensure continued CVP compliance with current federal Reclamation law and other applicable statutes.
- Allow the continued reimbursement to the federal government for costs related to CVP construction and operation.

### BASIS OF CVP WATER SERVICE CONTRACT RENEWALS

Reclamation is responsible for operational control of the CVP, including securing payment for the cost of water and for operation and maintenance established in the water service contract with the federal government. In addition, as the Secretary's duly authorized representative, Reclamation administers all actions pertaining to the establishment of water service contracts on the Secretary's behalf. In 1998 (prior to the development of Alternative 2), Reclamation officially transferred operation and maintenance responsibility for the majority of the south-of-Delta project facilities to the San Luis and Delta-Mendota Water Authority.

The Reclamation Project Act of 1939 provided for the repayment of construction charges and authorized the sale of CVP water to municipalities and other public corporations and agencies, plant investment, and certain irrigation water deliveries to leased lands. ~~This act required the Secretary to comply with state laws relating to the control, appropriation, use, or distribution of water used in irrigation or vested rights acquired under those laws.~~

This act also provided that the Secretary include the provision for contract renewal, upon request of the other party, of any long-term contract for municipal, domestic, or industrial water supply. The contract renewal would be subject to the renegotiation of (1) the

This is Section 8 of the Reclamation Act of 1902 NOT the 1939 Act

The 1939 Act provides for Amendment of contract but not the Renewal. The Act of 1956 provides for Renewal

charges set forth in the contract in light of circumstances prevailing at the time of renewal and (2) any other matters with respect to which the right to renegotiate is reserved in the contract. This act also states that the Secretary shall, upon request, provide in any such long-term contract that during the term of the contract and of any renewal (subject to fulfillment of other obligations), the other party to the contract shall have a first right to a stated share or quantity of the CVP water supply that is available for municipal, domestic, industrial, or irrigation use.

~~Water service contracts of 1944 provided for the delivery of specific quantities of irrigation and M&I water to contractors.~~ The Reclamation Project Act of 1956 provided the right of renewal of long-term repayment or water service contracts for agricultural contractors for a term not to exceed 40 years. The Reclamation Project Act of 1963 provided the right of renewal of long-term repayment or water service contracts for M&I contractors.

I could find no 1944 Act

### BASIS OF DELTA-MENDOTA CANAL UNIT WATER SERVICE CONTRACT RENEWALS

The Central Valley Project Authorization Act of 1937 authorized the construction of the initial CVP project features for navigation, flood control, and water storage; construction of distribution systems; and hydropower generation. The Rivers and Harbors Act of 1940 further authorized the construction of CVP facilities and mandated that dams and reservoirs be used first for river regulation, improvement of navigation, and flood control; second for irrigation and domestic uses; and third for power. This authorization was reauthorized and supplemented by the American River Division Authorization Act of 1949, the Trinity River Act of 1955, the San Luis Authorizing Act of 1960, the Rivers and Harbors Act of 1962, the Auburn-Folsom South Unit Authorization Act of 1967, and the San Felipe Division Authorization Act of 1967 (Reclamation and Service 1999). The CVP facilities include reservoirs on the Trinity, Sacramento, American, Stanislaus, and San Joaquin Rivers and conveyance facilities throughout northern and central California.

The initial CVP authorization was in the 1935 Rivers & Harbors Act

Verify?

The DMC Unit is part of the Delta Division of the CVP. The Delta Division provides for the transport of water through the central portion of the Central Valley, including the Delta. It acts as a hub around which the CVP revolves. The Delta Division is complex in its operations, and all features do not operate in conjunction with one another. The Delta Division facilities provide for the conveyance of water through both the Bay-Delta and the Sacramento-San Joaquin River Delta (Delta) and provide for the delivery of water to CVP contractors in both eastern Contra Costa County and the San Joaquin Valley. The Contra Costa Canal transports water to Contra Costa County. The Delta Cross Channel moves water from the Sacramento River through an excavated channel and natural channels to the Tracy Pumping Plant, which then pumps water into the Delta-Mendota Canal. The Delta-

Correspondingly, division-specific and contractor-specific contract provisions are being negotiated as part of the renewal of long-term water service contracts for the DMC Unit. Negotiations between Reclamation and the DMC Unit contractors have been completed. Table 2-1 provides a summary and comparison of the contract provisions for the DMC Unit contractors that is current as of the time of the writing of this EA.

**TERMS OF EXPIRING CONTRACTS**

All of the DMC Unit contractors have water service and repayment contracts with Reclamation. The long-term contracts were entered into between the early 1950s and the late 1960s. Temporary project service had often been provided before the first long-term water service contracts were signed. The first group of long-term water service contracts in the DMC Unit expired February 28, 1994, with the other contracts remaining in effect until December 31, 2003. Expired long-term contracts in the DMC Unit have been extended through a series of interim renewal contracts. Information on the quantity and use of the CVP supply is included in Table 2-2.

**ISSUES CONSIDERED AS PART OF LONG-TERM CONTRACT RENEWALS**

The long-term water service contract renewal process addresses several other issues in addition to the contract provisions as described in this section.

**WATER NEEDS ASSESSMENTS**

The water rights granted to the CVP by the State Board require the federal government to determine whether CVP water is being applied to beneficial use. To this end, a needs assessment methodology was developed, specifically for long-term contract renewal analysis, to determine if the contractors could use their full contract amount reasonably and beneficially. This assessment was computed for certain contractors within the Delta-Mendota Canal Unit using a multiple-step approach. First, the existing water demand for the contractor was calculated, based on historic water uses. Crop acreages, cropping patterns, crop water needs, effective precipitation, and conveyance loss information provided by each contractor were reviewed for agricultural water use. Residential, commercial, industrial, institutional, recreational, and environmental uses, along with landscape coefficients, system losses, and landscape seepage information provided by each contractor, were reviewed for M&I water use. Second, future changes in water demands based upon crops, M&I expansion, and anticipated changes in efficiencies were reviewed. Third, current and future water supplies, including groundwater and other surface water supplies, were identified for each contractor. The initial calculation of CVP water needs

Reclamation Act of 1902 states that beneficial use is the measure of the right to water. Thus, state law is not the only law that requires beneficial use of water.

Table 2-3  
Contractors' Water Supply Sources and Quantities for 1999  
(In acre-feet and based on a normal hydrologic year)

Contractor	Total Delivery	Surface Water Supply	Groundwater <sup>1</sup>	Transfers/ Exchange In	Transfers/ Exchange Out	Total Supply	Agricultural Demand	M&I Demand	Total Demand <sup>2</sup>	Unmet Demand <sup>3</sup>
Banta-Carbones Irrigation District	21,028	28,248 <sup>4</sup>	0	0	7,100	43,121	50,385	0	60,385	7,264
Broadview Water District	32,875	0	0	0	8,104	24,771	26,741	0	26,741	1,870
City of Tracy <sup>5</sup>	0	0	5,000	0	0	6,000	0	12,487	12,487	7,487
Coarso Family Trust <sup>11</sup>	2,080	1,336 <sup>4</sup>	1,336	0	0	4,752	8,780	0	8,780	4,008
Del Puerto Water District	128,395	0	0	0	0	128,395	144,281	0	144,281	15,886
James Irrigation District <sup>7</sup>	36,407	9,700 <sup>2</sup>	0	35,498	12,000	71,805	71,941	0	71,641	-84
Mercy Springs Water District <sup>8</sup>	13,850	0	0	550	4,084	10,318	10,084	0	10,084	-322
Peterson Irrigation District	20,428	25,483	536	4,000	7,400	43,048	47,032	0	47,062	4,016
Plain View Water District <sup>6</sup>	18,351	0	0	0	1,636	18,715	18,113	0	19,113	2,398
The West Side Irrigation District	7,500	10,823 <sup>2</sup>	0	600	0	27,923	30,605	0	30,605	2,682
Tranquility Irrigation District	7,825	20,200	547	0	5,875	22,987	32,765	300	35,065	10,488
West Stanislaus Water District	50,000	91,610 <sup>4</sup>	3,692	5,454	30,490	80,260	80,203	0	80,203	8,037

Sources: Reclamation 2004d.

Note: Needs assessments were not completed for Centinella Water District, Eagle Field Water District, Fresno Slough Water District, Laguna Water District, Marcellus Hughes property, Oro Loma Water District, Reclamation District #1609, and Winton Water District. Data for these districts are unavailable, but Reclamation has confirmed both past beneficial use and continuing needs through 2026 of the current maximum annual CVP supply.

<sup>1</sup>The amount of groundwater recharge is subtracted from the groundwater pumped. Negative numbers represent scenarios where recharge is greater than the amount pumped.

<sup>2</sup>Agricultural demand plus M&I demand

<sup>3</sup>Total demand less total supply.

<sup>4</sup>Local source is the amount of any settlement contract for district's claims to San Joaquin or Kings River water, and/or water diversions pursuant to state water rights

<sup>5</sup>City of Tracy data are for 1995.

<sup>6</sup>State Water Project supply.

<sup>7</sup>James Irrigation District data are for 1996.

<sup>8</sup>Kings River riparian water.

<sup>9</sup>The contract supply was reduced in 2025 because of contract reassignments.

<sup>10</sup>Plain View Water District has entered into Memoranda of Understanding with the City of Tracy for Tracy to treat approximately 2,635 acre-foot of the district's CVP supply and deliver the same quantity of treated water for M&I purposes within Plain View Water District's boundaries.

<sup>11</sup>Coarso Family Trust data is for 1989

This footnote is incorrect. Plain View has agreements with the City to make available for treatment and delivery to certain specified lands within the Plain View Service area totaling 1087 acre-feet

Table 2-4  
Contractors' Water Supply Sources and Quantities for 2025  
(In acre-feet and based on a normal hydrologic year)

Contractor	Total Delivery <sup>1</sup>	Surface Water Supply	Groundwater <sup>2</sup>	Transfer/ Exchanges In	Transfer/ Exchanges Out	Total Supply	Agricultural Demand	M&I Demand	Total Demand <sup>3</sup>	Unmet Demand <sup>4</sup>
Gamma-Carbene Irrigation District	25,000	30,000 <sup>5</sup>	230	0	8,480	48,750	45,920	0	45,920	-830
Broadview Water District	27,000	0	0	0	1,900	25,100	25,100	0	25,100	0
City of Tracy	10,000	0	5,000	32,500	0	47,500	0	16,000	46,000	-1,500
Coenig Family Trust	2,000	1,336 <sup>6</sup>	3,354	0	0	6,870	6,837	0	6,637	-33
Del Puente Water District	140,210	0	3,000	0	3,000	140,210	142,735	0	142,735	2,525
Jamos Irrigation District <sup>7</sup>	35,300	9,700 <sup>8</sup>	0	12,500	12,554	44,766	59,632	0	59,632	15,168
Mercy Springs Water District <sup>9</sup>	7,040	0	0	0	0	7,040	16,766	0	16,766	9,726
Pederson Irrigation District	16,500	23,000 <sup>10</sup>	535	2,000	6,000	36,035	53,242	0	53,242	17,207
Plain View Water District <sup>11</sup>	20,600	0	0	0	12,900	7,700	7,995	0	7,995	295
The West Side Irrigation District <sup>12</sup>	7,500	22,046 <sup>13</sup>	0	800	8,500	23,846	22,052	0	22,052	-1,794
Tranquility Irrigation District	13,800	20,200 <sup>14</sup>	0	2,600	3,800	33,000	28,229	324	29,553	-3,447
West Stanislaus Water District	50,000	45,000 <sup>15</sup>	3,892	5,000	18,993	84,699	84,699	0	84,699	0

Source: Reclamation 2004d.

Note: Needs assessments were not completed for Centinella Water District, Eagle Field Water District, Fresno Slough Water District, Laguna Water District, Marcella Hughes property, Oro Loma Water District, Reclamation District #1600, and Widren Water District. Data for this table are not available for these districts, but Reclamation has confirmed both past beneficial use and continuing needs through 2025 of the current maximum annual CVP supply.

<sup>1</sup>Also represents the maximum CVP contract amount.

<sup>2</sup>The amount of groundwater recharge is subtracted from the groundwater pumped. Negative numbers represent scenarios where recharge is greater than the amount pumped.

<sup>3</sup>Agricultural demand plus M&I demand.

<sup>4</sup>Total demand less total supply.

<sup>5</sup>Local source is the amount of any settlement contract for district's claim to San Joaquin or Kings River water, and/or water diversion pursuant to state water rights.

<sup>6</sup>State Water Project supply.

<sup>7</sup>Kings River riparian water.

<sup>8</sup>The contract supply was reduced in 2025 because of contract reassignments.

<sup>9</sup>Plain View Water District has entered into Memoranda of Understanding with the City of Tracy for Tracy to treat approximately 2,635 acre-feet of the district's CVP supply and deliver the same quantity of treated water for M&I purposes within Plain View Water District's boundaries.

<sup>10</sup>Transfers out for 2025 are based on historical average of 1,300 acre-feet plus an anticipated 5,000 acre-feet transfer to the City of Tracy.

See previous comment in Table 2-3

Patterson Irrigation District is active in water transfers both into and out of the district. In recent years, water has been transferred to West Stanislaus Irrigation District and Westlands Water District.

**PLAIN VIEW WATER DISTRICT'S FACILITIES AND WATER USE**

Plain View Water District was formed on January 15, 1951. The district is located in San Joaquin County primarily along the eastern side of Interstate 5 near the city of Tracy. The district was originally 6,000 acres in size with 5,316 irrigated acres and is currently 6,422 acres in size with 1,851 irrigated acres. Figures 3.1-30 and 3.1-31 show the current land use/land cover and boundary for the Plain View Water District service area.

Plain View Water District receives its CVP water directly from the Delta-Mendota Canal through 28 turnouts. The district's distribution system consists of 9.2 miles of pipeline. The system is an entirely enclosed pipeline system constructed of reinforced concrete pipe and polyvinyl chloride pipe that was installed to replace the original Tachite pipe. There are no open ditches or canals in the system. Propeller meters measure the flow volume to each point of delivery.

**Use of CVP Water**

On May 22, 1953, Plain View Water District entered into a long-term contract (Contract 14-06-200-785) with Reclamation for 17,250 acre-feet of CVP water. In 1974, the district annexed additional land and the contract was amended on July 25, 1975. Under the amendment, Reclamation provided 20,600 acre-feet of CVP water to the district. The long-term contract expired on February 28, 1994. Since then, a series of interim renewal contracts have been executed. The most recent interim renewal contract (Contract 14-06-200-785-IR10) was executed on February 27, 2004, and can remain in effect for two years.

**Use of Other Available Water Supplies**

Plain View Water District currently has no water supply source other than its CVP supply.

**Operating Rules and Regulations**

There is no subsurface drainage in Plain View Water District. The drainage is either recirculated on-farm or discharged to either the Delta-Mendota Canal or The West Side Irrigation District for reuse.

Plain View Water District is active in transferring water both to and from other contractors. ~~To date, however, the district has not allowed individual transfers.~~

This paragraph should be updated to reflect the merger of Plain View & Byron-Bathany Irrigation District. The service area has not changed but the name of the District has. Recitals in the proposed contract explain the merger.

### Oro Loma Water District

Oro Loma Water District is entirely an agricultural district with only one landowner. Because it is located in a rural area away from major development pressures, the conversion from agricultural to M&I uses is unlikely. The crops typically produced in the district include rice, and historically, some of the land has also been farmed with cotton. All administrative functions for Oro Loma Water District are currently being provided by Panoche Water District.

### Patterson Irrigation District

Patterson Irrigation District is entirely an agricultural district. The district provides no M&I water. It is anticipated that as Patterson and the Interstate 5 corridor continue to grow, any new proposed development requiring M&I water would be detached from the district. Patterson Irrigation District policy requires water users requesting M&I water to detach from the district. Therefore, despite neighboring growth pressures, Patterson Irrigation District is expected to remain entirely an agricultural district.

In the last 15 years, the primary crops have included apricots, beans, and alfalfa. Because the district is located in the heart of dairy country, crops like alfalfa will continue to be staple crops. However, there is a continued conversion from these row crops to higher valued permanent crops (almonds). Patterson Irrigation District does not currently maintain detailed records regarding irrigation methods. The best estimates show that the main irrigation methods used between 1986 and 1996 were primarily furrow/border followed by sprinklers and trickle irrigation.

### Plain View Water District

Plain View Water District is primarily an agricultural district. In 1990, a <sup>a</sup>small portion of the district's CVP supply was allocated for M&I use to service commercial and residential development. The water provided by the district was treated and delivered by the City of Tracy. The district also intends to continue to provide M&I water to increasing urban development within its boundaries. This water will also be treated and delivered by the City of Tracy. Since 1990, approximately 500 acres of land have been converted to M&I use. The water allocated for the converted land will continue to be used to serve the new land use through the City of Tracy water supply system. It is possible that as Tracy continues to grow, the amount of CVP water used for M&I purposes could increase. It is also possible that the growth could result in some areas currently within the district being detached and annexed to the City of Tracy.

Alternatively, the district  
of its CVP water supply to the  
City of Tracy



**Subject: Needs Assessment**

**Date:** Tuesday, November 16, 2004 11:58 AM

**From:** Rick Gilmore <r.gilmore@bbid.org>

**Reply-To:** <r.gilmore@bbid.org>

**To:** 'Tracy Slavin' TSLAVIN@mp.usbr.gov

**Cc:** 'Angela Slaughter' ASLAUGHTER@mp.usbr.gov, Sandra Dunn  
sdunn@lawssd.com

Tracy and Angela:

The needs assessment on file with Reclamation does not accurately reflect M&I demands within the District.

As an example, based on information received from Reclamation's Fresno office, M&I demands for the period 3/95 - 2/2000 are as follows:

- 1995 414 af
- 1996 572 af
- 1997 678 af
- 1998 673 af
- 1999 713 af

M&I demand during the 2003-04 water year was 973 af, 800 af with M&I reliability.

The above demonstrates that the district has developed a need over and above the 800 af that was identified in the contract.

Also, with respect to the 2025 forecast, it is conceivable that approximately 12,900 af could be transferred/assigned to the City of Tracy, however the District would continue to have M&I demands of a minimum of 800 af. (This M&I demand was not accounted for as well)

Angela, although I do not know Sandie's schedule, I am available most of the week for a call. (Wednesday-open, Thursday-after 11 am, Friday- after 11 am.)

Rick L. Gilmore  
General Manager  
Byron Bethany Irrigation District  
P.O. Box 160  
3944 Main Street  
Byron, CA 94514  
(Phone) 209-835-0375 or 925-634-3534  
(FAX) 209-835-2869 or 925-516-1239

NOTICE: The information contained in this e-mail may be privileged, confidential, and protected from disclosure. If you are not the intended recipient, any further disclosure, use, dissemination, distribution, copying of this message or any attachment is strictly prohibited. If you think you have received this message in error, please e-mail the sender at the above address and delete the e-mail. Thank You.