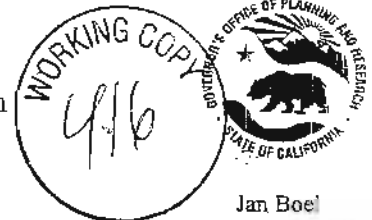




Arnold Schwarzenegger
Governor

STATE OF CALIFORNIA
Governor's Office of Planning and Research
State Clearinghouse and Planning Unit

RECEIVED
DIVISION OF RECLAMATION
FRESNO CA



Jan Boel
Acting Director

October 18, 2004 2004 OCT 20 P 12:55

Lynne Silva
U.S. Bureau of Reclamation
1243 N Street
Fresno, CA 93721

Subject: City of Lindsay Long-Term Contract Renewal
SCH#: 2004094003

Dear Lynne Silva:

The State Clearinghouse submitted the above named Joint Document to selected state agencies for review. The review period closed on October 15, 2004, and no state agencies submitted comments by that date. This letter acknowledges that you have complied with the State Clearinghouse review requirements for draft environmental documents, pursuant to the California Environmental Quality Act.

Please call the State Clearinghouse at (916) 445-0613 if you have any questions regarding the environmental review process. If you have a question about the above-named project, please refer to the ten-digit State Clearinghouse number when contacting this office.

Sincerely,

Terry Roberts

Terry Roberts
Director, State Clearinghouse

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FRIANT DIVISION
FILE CODE
ENV-6.00

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Document Details Report
State Clearinghouse Data Base

SCH# 2004094003
Project Title City of Lindsay Long-Term Contract Renewal
Lead Agency U.S. Bureau of Reclamation

Type JD Joint Document
Description The Supplemental EA is for the long-term contract renewal of Central Valley Project water supplies to the City of Lindsay for 40 years. Reclamation completed a Final EA and FONSI in 2001 for the long-term contract renewal for 25 years. This Supplemental EA analyzes the impacts of continued water deliveries for an additional 15 years.

Lead Agency Contact

Name Lynne Silva
Agency U.S. Bureau of Reclamation
Phone (559) 487-5807 **Fax**
email
Address 1243 N Street
City Fresno **State** CA **Zip** 93721

Project Location

County Tulare
City Lindsay
Region
Cross Streets
Parcel No.
Township

Range **Section** **Base**

Proximity to:

Highways
Airports
Railways
Waterways
Schools
Land Use

Project Issues Agricultural Land; Air Quality; Archaeologic-Historic; Cumulative Effects; Economics/Jobs; Flood Plain/Flooding; Growth Inducing; Landuse; Population/Housing Balance; Water Quality; Water Supply

Reviewing Agencies Resources Agency; Regional Water Quality Control Bd., Region 5 (Fresno); Department of Parks and Recreation; Native American Heritage Commission; Department of Health Services; Office of Historic Preservation; Department of Fish and Game, Region 4; Department of Water Resources; Caltrans, District 6; State Water Resources Control Board, Division of Water Rights

Date Received 09/16/2004 **Start of Review** 09/16/2004 **End of Review** 10/15/2004

Document Details Report
State Clearinghouse Data Base

SCH# 2004094004
Project Title City of Fresno Long-Term Contract Renewal Supplemental EA
Lead Agency U.S. Bureau of Reclamation

Type EA Environmental Assessment
Description The Supplemental EA is the long-term contract renewal of water supplies to the City of Fresno for 40 years. Reclamation prepared a Final EA and FONSI in 2001 for the long-term contract renewal for 25 years. The Supplemental EA examines the impacts of water deliveries for an additional 15 years.

Lead Agency Contact

Name Lynne Silva
Agency U.S. Bureau of Reclamation
Phone (559) 487-5807 *Fax*
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Address 1243 N Street
City Fresno *State* CA *Zip* 93721

Project Location

County Fresno
City Fresno
Region
Cross Streets
Parcel No.

<i>Township</i>	<i>Range</i>	<i>Section</i>	<i>Base</i>
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Proximity to:

Highways
Airports
Railways
Waterways
Schools
Land Use

Project Issues Air Quality; Cumulative Effects; Economics/Jobs; Growth Inducing; Landuse; Water Quality; Water Supply; Wildlife

Reviewing Agencies Resources Agency; Regional Water Quality Control Bd., Region 5 (Fresno); Department of Parks and Recreation; Native American Heritage Commission; Department of Health Services; Office of Historic Preservation; Department of Fish and Game, Region 4; Department of Water Resources; Caltrans, District 6; State Water Resources Control Board, Division of Water Rights

Date Received 09/16/2004 *Start of Review* 09/16/2004 *End of Review* 10/15/2004



NATURAL RESOURCES DEFENSE COUNCIL

October 1, 2004

Ms. Lynne Silva
U.S. Bureau of Reclamation
1243 N Street
Fresno, CA 93721

RE: Comments on Draft Supplemental EAs for Cities of Fresno & Lindsay Contracts

Dear Ms. Silva:

These are the comments of the Natural Resources Defense Council (NRDC) on the September 2004 Supplemental Environmental Assessments (EAs) and Draft Findings of No Significant Impact (FONSIs) for Renewals of the long-term Contracts for the City of Fresno and the City of Lindsay within the Friant Division of the CVP (proposed contracts). We are enclosing with these comments numerous materials that are relevant to the proposed renewal contracts and the supplemental EA/FONSIs. We request full consideration of these comments, along with all materials submitted with or incorporated or referenced herein.

2.1

1. Request for Extension of Comment Deadline

The Bureau has not provided adequate time for the public to review the EA and FONSI or the proposed contracts for these and other CVP contractors. For all of the reasons stated in the letters previously submitted to you by the Pacific Coast Federation of Fishermen's Associations (PCFFA), Taxpayers for Common Sense, Northern California/Nevada Council-Federation of Fly Fishers, Senator Dianne Feinstein, Senator Barbara Boxer, 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 the final Biological Opinion of NOAA Fishers (NMFS) on the new OCAP for the Central Valley Project (CVP) and the State Water Project (SWP).

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2. The Supplemental EAs and the proposed FONSIs are Legally Inadequate.

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

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Hoop 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 EPA's letters dated December 8, 2000, August 30, 2001, January 4, 2002, and January 23, 2004 that are contained in the Bureau's files on its CVP renewal contracts. 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 operations on the San Joaquin River, including but not limited to the operation of Friant Dam and the Friant-Kern Canal and the Bureau's new overall OCAP. Among other things, the Bureau's new EA/FONSI ignore the impacts of the Friant Division on downstream fisheries, and the obligations to protect those fisheries under state and federal law, as fully detailed by the federal courts in the ongoing *NRDC v. Patterson (Rodgers)* litigation, including the Court's recent liability ruling on August 27, 2004. In addition to the information provided in and referenced in the record of that case, 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.

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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.

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

These EA/FONSI are 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 continuing to rely on mere EA/FONSI for its Friant Division contracts. In sum, the approach is irrational and arbitrary and contrary to NEPA and its implementing regulations.

Thank you for considering our comments.

Sincerely,



Hamilton Candee
Senior Attorney

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2.7



December 7, 2000

Bureau of Reclamation
Attention: Mr. Al Candlish
2800 Cottage Way
Sacramento, CA 95825-1898

3.1

Dear Mr. Candlish:

On the behalf of its more than 400,000 members, the Natural Resources Defense Council ("NRDC") hereby files its comments on the draft environmental assessments ("EAs") on long-term renewal of Central Valley Project water service contracts prepared by the Bureau of Reclamation ("the Bureau").

We are deeply disappointed by the Bureau's inadequate attempts to comply with the National Environmental Policy Act ("NEPA"), 42 U.S.C. § 4321 et seq., in its proposed long-term renewal of CVP contracts. First, we strongly object to the Bureau's failure to prepare an environmental impact statement on these proposed agency actions that would have significant, far-reaching and fundamental effects. Second, the EAs themselves fail to meet the requirements of NEPA and cannot possibly support a finding of no significant impact by the Bureau. We urge the Bureau in the strongest possible terms to prepare NEPA documentation on long-term contract renewal which comports with the law, as these EAs emphatically do not.

I. The Bureau Must Prepare an Environmental Impact Statement on the Proposed Long-Term Contract Renewals.

NEPA requires federal agencies to prepare a detailed environmental impact statement ("EIS") on all "major Federal actions significantly affecting the quality of the human environment." 42 U.S.C. § 4332(2)(C). The purpose of this mandatory requirement is to ensure that detailed information concerning potential environmental impacts is made available to agency decisionmakers and the public before the agency makes a decision. Robertson v. Methow Valley Citizens Council, 490 U.S. 332, 349 (1989).

Under NEPA's procedures, an agency may prepare an EA in order to decide whether the environmental impacts of a proposed agency action are significant

enough to warrant preparation of an EIS. 40 C.F.R. § 1501.4(b), (c). An EA must “provide sufficient evidence and analysis for determining whether to prepare an [EIS] ...” 40 C.F.R. § 1508.9(a)(1). The U.S. Court of Appeals for the Ninth Circuit has specifically cautioned that “[i]f an agency decides not to prepare an EIS, it must supply a convincing statement of reasons to explain why a project’s impacts are insignificant.” Blue Mountains Biodiversity Project v. Blackwood, 161 F.3d 1208, 1212 (9th Cir. 1998) (internal quotation marks omitted), cert. denied, 527 U.S. 1003 (1999). To successfully challenge an agency decision not to prepare an EIS, a plaintiff need not show that significant effects will in fact occur. So long as the plaintiff raises “substantial questions whether a project may have a significant effect on the environment,” an EIS must be prepared. Id. (emphasis added, internal quotation marks omitted).

The long-term renewal contracts proposed by the Bureau are virtually certain to have a significant effect on the environment if they are executed. Collectively they cause the diversion of millions of acre-feet of water each year from the natural environment to (primarily) agricultural water users in the Central Valley, for use (primarily) in irrigated agriculture that itself has significant environmental impacts. The Bureau simply cannot, consistent with NEPA, allow these environmental impacts to escape full analysis in an EIS on long-term contract renewals.

A. There is Ample Evidence That Long-Term Renewal Contracts Would Have Significant Environmental Effects.

The Bureau has failed to meet its duty under governing Ninth Circuit precedent to supply a convincing statement of reasons why the execution of long-term renewal contracts would have insignificant environmental effects. By contrast, there is ample reason to believe that executing contracts for delivery of millions of acre-feet of water annually for an effective duration of 50 years would have a significant impact on the environment.

The U.S. Fish and Wildlife Service has recently completed a biological opinion on, among other things, the continued operation and maintenance of the Central Valley Project (“CVP”). U.S. Fish and Wildlife Service, Biological Opinion on Implementation of the CVPIA and Continued Operation of the CVP (November 2000).¹ This biological opinion describes in some detail the adverse environmental consequences that have been caused by the Central Valley Project, consequences that include harm to fish and wildlife from actions such

¹ We incorporate by reference this biological opinion in these comments. We also incorporate the documents referenced in that biological opinion, including the prior biological opinions on the Central Valley Project listed in section 1 of the November 2000 biological opinion.

as water diversion, impoundment, pumping and conveyance; from habitat conversion; from the effects of agricultural drainwater; and from urbanization. All of these effects constitute effects of CVP water service contracts, since they are the consequences of the provision of water under these contracts. See 40 C.F.R. § 1508.8 (defining effects required to be analyzed under NEPA to include indirect as well as direct effects). Because these effects on the environment are significant, they and other effects of signing long-term renewal contracts for the provision of CVP water must be analyzed in an EIS.

Other evidence of significant environmental effects from long-term water service contracts include the evidence submitted by the plaintiffs in NRDC v. Patterson, No. Civ. S-88-1658 LKK (E.D. Cal.), which we also incorporate in these comments by reference. The main point here is an obvious one: Through the proposed contracts, the Bureau is proposing to commit to the diversion of millions of acre-feet of water from the natural environment and to the delivery of that water to farms and cities for a nominal period of 25 years and an effective period of 50 years (given the right of renewal contained in the contracts). Activities of this scale and type cannot help but have significant environmental impacts, particularly in light of the significant impacts that have occurred to date under the current and previous CVP water service contracts. Moreover, the scale and duration of the activities that would be committed to under the proposed contracts threaten to cause a deterioration in the current state of the environment, as the environmental effects of the activities mandated under the proposed contracts are added to the environmental harm that has been caused to date under the current and previous contracts. For all these reasons, the Bureau must prepare an EIS on long-term contract renewal.

B. NEPA's Regulations Make Clear That an EIS Must Be Prepared Here.

NEPA's implementing regulations list a variety of factors that federal agencies are required to consider in determining whether a proposed action may significantly affect the environment and hence must be the subject of an EIS. 40 C.F.R. § 1508.27. While the Bureau has failed to undertake an adequate evaluation of these factors here, nearly all of the factors (any one of which is sufficient to require preparation of an EIS) are satisfied in the case of the proposed long-term contracts. For example:

- Water pollution from agricultural drainwater, which is triggered and would be made possible by the delivery of water under the proposed contracts, "affects public health" in a substantial way. See 40 C.F.R. § 1508.27(b)(2).

- The area to be served under the proposed contracts is in “proximity” to “prime farmlands,” “wetlands” (including riparian wetlands), and “ecologically critical areas” (such as the Sacramento-San Joaquin Delta). See id. at 1508.27(b)(3).
- The effects of the water diversions, impoundments and deliveries required under the proposed contracts, and the consequences of the irrigated agriculture made possible by deliveries pursuant to the contracts, “are likely to be highly controversial.” See id. at 1508.27(b)(4).
- The “possible effects” of the activities and actions made possible by the proposed contracts “are highly uncertain or involve unique or unknown risks,” especially in light of the lengthy duration of the contracts. See id. at § 1508.27(b)(5).
- Since numerous CVP contractors are not prepared to sign long-term renewal contracts at the present time and will negotiate such contracts in the future, executing the proposed contracts would “establish a precedent for future actions with significant effects or represents a decision in principle about a future consideration.” See id. at § 1508.27(b)(6).
- In light of the environmental effects that have occurred from CVP operations to date, and in light of the long duration of the proposed contracts (during which many additional actions will necessarily be taken), the proposed contracts are related to other actions with “cumulatively significant impacts.” See id. at § 1508.27(b)(7).
- In light of the well-established adverse effects of CVP activities on threatened and endangered species and their habitat, as shown by the biological opinions cited previously in this letter, the proposed contracts “may adversely affect an endangered or threatened species or its habitat that has been determined to be critical under the Endangered Species Act of 1973.” See id. at § 1508.27(b)(8).

The evidence in favor of an EIS being required here is overwhelming – particularly since “the threshold for requiring an EIS is quite low.” NRDC v. Duvall, 777 F. Supp. 1533, 1538 (E.D. Cal. 1991). In that same case, Chief Judge Emeritus Karlton further held that:

only in those obvious circumstances where no effect on the environment is possible, will an EA be sufficient for the environmental review required by NEPA. Under such circumstances, the conclusion reached must be close to self-evident ...

Id. We urge the Bureau in the strongest terms to prepare the required EIS on the proposed long-term contract renewals, in order to comply with the requirements of NEPA.

II. The Environmental Assessments Fail to Meet the Requirements of NEPA.

Even if an EIS were not clearly required here, the EAs prepared by the Bureau are so inadequate as to violate NEPA on their own. They fall far short of the analysis that is necessary to meet NEPA's requirements and to support a finding of no significant impact.

A. The EAs Fail to Consider a Reasonable Range of Alternatives.

NEPA's implementing regulations call analysis of alternatives "the heart of the environmental impact statement," 40 C.F.R. § 1502.14, and they specifically require an alternatives analysis within an EA, id. at § 1508.9. The statute itself specifically requires federal agencies to:

study, develop, and describe appropriate alternatives to recommended courses of action in any proposal which involves unresolved conflicts concerning available uses of resources.

42 U.S.C. § 4332(2)(E). Because the Bureau's EAs on long-term contract renewals look only at a narrow range of alternatives and fail to evaluate numerous reasonable alternatives, the EAs violate NEPA.

The caselaw makes clear that an adequate alternatives analysis is an essential element of an EA, in order to allow the decisionmaker and the public to compare the environmental consequences of the proposed action with the environmental effects of other options for accomplishing the agency's purpose. In a leading NEPA case in which it overturned an EA for failure to consider alternatives adequately, the Ninth Circuit pointedly held that "[i]nformed and meaningful consideration of alternatives ... is ... an integral part of the statutory scheme." Bob Marshall Alliance v. Hodel, 852 F.2d 1223, 1228 (9th Cir. 1988), cert. denied, 489 U.S. 1066 (1989). To meet NEPA's requirements an EA must consider a reasonable range of alternatives, and courts have not hesitated to overturn EAs that omit consideration of a reasonable and feasible alternative. See People ex rel. Van de Kamp v. Marsh, 687 F. Supp. 495, 499 (N.D. Cal. 1988); Sierra Club v. Watkins, 808 F. Supp. 852, 870-75 (D.D.C. 1991).

Each of the contract-renewal EAs considers only two alternatives, in addition to the no-action alternative. Given the scope and importance of the proposed agency action under review, this small number of alternatives is by itself a violation of NEPA's requirement to consider a reasonable range of alternatives. What makes matters worse is the similarity

between the alternatives that the EAs do consider. For example, each of the alternatives, the two action alternatives and the no-action alternative, specify exactly the same quantities of water under contract. The similarities between the alternatives, though, do not stop with water quantity. The summary tables that compare the alternatives repeatedly use the phrases "Same as NAA [No Action Alternative]," "Similar to NAA" and "minor changes" to describe the components of the alternatives. See, e.g., Draft Friant Division Long-Term Contract Renewal Environmental Assessment ("Friant EA"), at Table DA-1.² See also id. at 3-57 ("The impacts of EA Alternative 1 are assumed to be identical to the impacts to [sic] the NAA because the water supply and pricing scenarios are identical in both alternatives. The only differences in the alternatives are administrative."), 3-58 ("the NAA and Alternative 1 are assumed to have the same environmental consequences because of their similarities and the fact that the only differences are contractual arrangements among the parties to the contracts").

In addition to considering too few alternatives that are too similar to each other, the EAs reject or ignore several obvious and reasonable alternatives. These unexamined or rejected reasonable alternatives include:

- Alternatives that decrease the water quantities under contract. Each of the alternatives in the EAs contains the exact same water quantities that are currently under contract. It plainly is reasonable for the Bureau to consider and evaluate the option of changing those quantities. The Bureau should consider changing the contract quantities to (a) a level that matches the actual level of deliveries in recent, normal water years, and (b) a level that would leave a meaningfully larger amount of water in the environment compared with current use, so that the EAs can illustrate the choices and consequences between consumptive and nonconsumptive uses of water. The EAs' rejection of the alternative of reducing water quantities, see, e.g., Delta-Mendota Canal Unit Environmental Assessment, Long-Term Contract Renewal, at 2-9, ignores the fact that such an alternative is reasonable and accords with the purpose and need for the agency action under evaluation. See also 40 C.F.R. § 1502.14(a) (agencies must "[r]igorously explore and objectively evaluate all reasonable alternatives").
- An alternative that increases the cost of water to full market rates. Each of the action alternatives in the EAs charges the minimum price for water under the contract. The Bureau should evaluate at least one alternative that prices water at the level the water

² The EAs are all very similar. Thus, each of the comments contained in this letter applies equally to each of the EAs. Each citation to a specific EA is intended as an illustration and in no way suggests that the comment is restricted to that particular EA.

would receive on the open market.³ At a minimum, the Bureau must consider price increases that would “encourage the full consideration and incorporation of prudent and responsible water conservation measures.” Reclamation Reform Act of 1982, Sec. 210(a), 43 U.S.C. 390jj(a).

- An alternative that does not give the contractor a specific right to renew the contract. (While it is possible that there is no right of renewal contained in Alternative 2, the EAs do not make this clear and do not analyze the environmental consequences of this difference, if it does exist in the alternative.)
- Alternatives that affirmatively mandate or encourage increased water conservation by water users, through (a) aggressive, prescriptive requirements for water conservation and (b) through financial incentives for water conservation.

Each of the above reasonable alternatives can and should be analyzed and considered for contracts in each of the CVP divisions. In addition, for contracts in each individual division the Bureau should consider at least one strongly environmentally protective alternative that is tailored to the leading environmental problem relating to the operation of that division. So, for example, the Bureau’s NEPA analysis for long-term renewal contracts for the Friant Division should consider at least one alternative that conditions the provision of water service on effective restoration of the San Joaquin River and/or creates specific incentives in the contract for restoration of the river.⁴ As a further example, the NEPA analysis for the Delta-Mendota Canal Unit should consider at least one alternative that conditions the provision of water service on discrete improvements in protection and restoration of the Sacramento-San Joaquin Delta and/or creates specific incentives in the contract for such increased environmental protection and restoration of the Delta.

The EAs prepared by the Bureau fail to evaluate a reasonable range of alternatives and hence violate NEPA. We urge the Bureau to prepare NEPA documentation for long-term contract renewals that meets NEPA’s requirements for alternatives analysis and that, at a minimum, fully analyzes the alternatives described above.

³ The Bureau clearly has discretion to consider higher prices. See, e.g., Reclamation Project Act of 1939, sec. 9(e), 43 U.S.C. 495h(e) (rates shall be “at least sufficient to cover an appropriate share of the annual operation and maintenance cost...”); Reclamation Reform Act of 1982, sec. 208(a), 43 U.S.C. 390hh(a) (“the price...shall be at least sufficient to recover all operation and maintenance charges...”); see also *NRDC v. Houston*, 146 F.3d 1118, 1125-26 (9th Cir. 1998) (Bureau has discretion over terms of renewal contracts, including price and quantity).

⁴ The Friant EA fails to conduct an adequate analysis of the effect of the proposed contracts on the San Joaquin River and on restoration of the river.

B. The EAs Fail to Disclose and Analyze Adequately the Environmental Impacts of the Proposed Action.

NEPA's implementing regulations require that an EA "provide sufficient evidence and analysis for determining whether to prepare an [EIS]." 40 C.F.R. § 1508.9(a). For the reasons discussed above, the EAs fail to discuss and analyze adequately the environmental effects of long-term contract renewals. Courts have not hesitated to overturn EAs that fail to contain an adequate discussion of the environmental consequences of a proposed agency action, e.g., Foundation on Economic Trends v. Heckler, 756 F.2d 143 (D.C. Cir. 1985), and the EAs prepared by the Bureau here deserve that same fate.

The discussion and analysis of environmental impact contained in the EAs is cursory and inadequate, and it falls far short of NEPA's requirements. As an example, the discussion of water-quality impacts contained in the Friant EA shows the cursory and conclusory "analysis" contained in all of the EAs. First, the analysis is breathtakingly brief, occupying a single page with considerable space between the short paragraphs – a plainly inadequate treatment in light of the great importance of water quality to public health and the environment. Friant EA at 3-34. Second, the analysis essentially says that there will be no change in water quality impacts under the No Action Alternative and Alternative 1 – without describing in any meaningful way what the qualitative impacts of existing water quality is on human health and the environment and why those impacts will not change for better or for worse. Id. The six-sentence analysis of the effect of Alternative 2 appears to say that this alternative would cause some changes, but the EA fails to describe what those changes would mean for human health and environment. Id.

This plainly inadequate discussion of environmental impacts is, sadly, far from an isolated example. For example, the same document's discussion of fishery impacts occupies approximately a page and a half and concludes (with no analysis), for the no-action alternative and for Alternative 1, that there would be "no impacts to fishery resources" – a conclusion based apparently on the logic that no changes in environmental impacts from the current effects equals no environmental impacts at all. Id. at 3-48. On the next page, the EA presents the amazing, thoroughly unsupported statement that "Alternative 1 and 2 have little or no effect on surface water quantities and flows," id. at 3-49, despite the fact that both alternatives would result in the diversion and delivery to irrigated agriculture of more than a million acre-feet of water each year for 25 or 50 years. Elsewhere in the same document, the Bureau presents the astonishing and unsupported statement that "Alternative 1 is assumed to have similar effects to the NAA. Therefore, there are no impacts to biological resources under this alternative." Id. at 3-76.

In addition to failing to disclose or to analyze adequately the environmental effects of the proposed contracts, the EAs impermissibly restrict the timeframe of their analyses. None of the study periods extends forward more than 25 years, e.g., Friant EA at 1-4, despite the fact that each of the contracts contains an easily satisfied conditional right of renewal that means that the likely and effective duration of these contracts would be 50 years. By failing to analyze the environmental effects of the contracts in the likely event that they are renewed under the right of renewal contained in the contracts, the Bureau has violated NEPA.

We urge the Bureau to prepare NEPA documentation that adequately discloses and analyzes the environmental effects of the contracts over the full lifetime of the contracts, including the renewal period, as the draft EAs do not.

C. The EAs Fail to Analyze Cumulative Impacts Adequately.

These proposed long-term renewal contracts do not exist in a vacuum but instead add to more than half a century of environmental impacts from the construction, operation and maintenance of the CVP. The fact that these contracts would operate for at least a quarter century, and likely then would be renewed for another quarter century, means that their environmental effects will also be added to additional actions that will take place over the next 50 years. These facts make an adequate analysis of cumulative impacts especially important for these proposed contracts.

The Ninth Circuit has made clear that NEPA mandates “a useful analysis of the cumulative impacts of past, present and future projects.” Muckleshoot Indian Tribe v. U.S. Forest Service, 177 F.3d 800, 810 (9th Cir. 1999). That Court has further directed that “[d]etail is required in describing the cumulative effects of a proposed action with other proposed actions.” Id. The very cursory cumulative-effects discussions contained in the EAs plainly fail to meet these standards of adequacy.

The cumulative-effects discussions contained in the EAs are cursory, unanalytic, unenlightening, and often illogical. Here, in full, is the Friant EA’s cumulative effects “analysis” of the proposed contracts’ cumulative effects on surface water:

The cumulative effects of all foreseeable projects will be to place additional demands on the available water supply. Also, the restoration projects may result in additional flows in local rivers for habitat restoration. Implementation of Alternative 1 or 2 will not influence the cumulative effects of other projects to surface water resources.

Friant EA, at 3-12. In addition to being almost entirely uninformative, this three-sentence discussion asks more questions than it answers. What are the foreseeable projects, and what are their additional demands likely to be? What impact would the proposed contracts have on the opportunities to restore the San Joaquin River? What other cumulative impacts might occur over the life of the project? How is it possible to conclude that the diversion of more than a million acre-feet of water every year, for 25 or 50 years, "will not influence cumulative effects" on surface water?

The Ninth Circuit has not hesitated to reject cumulative-impact statements that are "too general and one-sided to meet the NEPA requirements" and that fail to provide the "useful analysis" mandated by the caselaw. Muckleshoot, 177 F.3d at 811. The inadequate cumulative effects discussions contained in the contract renewals EAs fail these tests and deserve rejection here.

III. Conclusion.

The contract-renewals EAs prepared by the Bureau fall well short of NEPA's established requirements. We urge the Bureau to prepare NEPA documentation on the proposed contracting actions which complies with all requirements of the law.

Sincerely,



Drew Caputo
Senior Attorney

Hamilton Candee
Senior Attorney

cc: Hon. David Hayes, Deputy Secretary of the Interior
Hon. John Leshy, Solicitor
Hon. George Frampton, Chairman, CEQ