

**KRONICK
MOSKOVITZ
TIEDEMANN
& GIRARD**
A PROFESSIONAL CORPORATION

ANGELA T. MONASTERIGARAI
ATTORNEY AT LAW

December 8, 2000

**VIA FACSIMILE: (916) 978-5094
AND U.S. MAIL**

**Mr. Al Candlish
Bureau of Reclamation, Mid-Pacific Region
2800 Cottage Way
Sacramento, California 95825-1898**

**Re: Comments of Westlands Water District on the Draft Environmental
Assessment for Long-term Contract Renewal for the Cross Valley Canal
Contractors**

Dear Mr. Candlish:

Westlands Water District ("Westlands"), on behalf of its landowners and water users, submits these comments on the Draft Environmental Assessment for Long-term Contract Renewal for the Cross Valley Canal ("CVC") Contractors, dated October 16, 2000 ("Draft EA"). Westlands is a California water district with a contractual right to receive up to 1,150,000 acre-foot of Central Valley Project ("CVP") water from the Bureau of Reclamation ("Reclamation"). Westlands provides water for the irrigation of approximately 600,000 acres on the west side of the San Joaquin Valley in Fresno and Kings counties and maintains the authority to protect, on behalf of its landowners and water users, rights that may be of common benefit to lands within Westlands. Because the proposed project involves the renewal of long-term water service contracts for delivery of CVP water, Westlands has a vital interest in the project analyzed by the Draft EA.

LEGAL STANDARD

Pursuant to the National Environmental Policy Act ("NEPA"), environmental assessments are to be used to determine whether the federal action is "significant" enough to require an environmental impact statement. (See, e.g., *Sierra Club v. United States Forest Service* (9th Cir. 1988) 843 F.2d 1190, 1193.) While environmental assessments are intended to be "concise public documents" providing "sufficient evidence and analysis for determining whether to prepare an environmental impact statement or a finding of no significant impact," (40 C.F.R. §1508.9(a)(1)), the document must include a discussion of the need for the proposal, alternatives to the project as proposed and the environmental impacts of the proposed action and

ATTORNEYS AT LAW

400 CAPITOL MALL, 27TH FLOOR SACRAMENTO, CALIFORNIA 95814-4416 TELEPHONE (916) 321-4500 FAX (916) 321-4555
1800 30TH STREET, SUITE 320 BAKERSFIELD, CALIFORNIA 93301 TELEPHONE (661) 844-3800 FAX (661) 864-3810

Mr. Al Candlish
Bureau of Reclamation, Mid-Pacific Region
December 8, 2000
Page 2

alternatives. (40 C.F.R. §1508.9(b).) This information should foster both informed decision making and informed public participation. (See, e.g., *Idaho Conservation League v. Mumma* (9th Cir. 1992) 956 F.2d 1508, 1519 (quoting *California v. Block* (9th Cir. 1982) 690 F.2d 753, 761).)

SPECIFIC COMMENTS

Page 1-1: Average annual CVP deliveries for CVC contractors and Friant Division agricultural contractors has decreased 18% from pre-CVPLA conditions. This statement is incorrect. In fact, Friant agricultural contractors have not lost any water as a result of CVPLA. CVC users have had reductions totaling approximately 30% since CVPLA, which is a reduction of approximately 38,000 acre-feet. In addition, the statement that CVP deliveries have decreased from 2,270,000 acre-feet to 1,933,000 acre-feet is not applicable to the Friant Division or the CVC. 1

Page 1-6: Related Activities and Table PN-2. The Draft EA does not include Trinity River operations in the description of related activities currently being implemented or planned by Reclamation and other agencies related to the use and availability of CVP water. The Trinity River Restoration Program proposes to increase flows in the Trinity River, thereby decreasing the amount of water diverted to the Sacramento River system and flows to the Delta. Changes in Trinity River flows could also affect overall water supply reliability and carryover storage in Shasta Reservoir and water quality and temperature in the Sacramento River. These changes will affect the amount of water available for delivery to CVC contractors and should be included in the assumptions of the Draft EA. 2

Page 1-7, 1-8: San Joaquin River Riparian Flow Pilot Program. The Draft EA should include a description of the Pilot Program's future actions and water supply sources. If CVC supplies are to be exchanged and utilized to support the Pilot Program, the Draft EA should identify this as a potential water supply source and the environmental impacts must be analyzed. 3

Page 3-9: No Action Alternative. Friant Division CVP supplies and local river and stream supplies should be included as CVC sources in addition to CVP surface water and groundwater supplies. The fact that CVC water has been transferred to other CVP users and not used within the CVC service area assumes that the CVC users have other supplies available. Those supplies should be identified. 4

Page 3-10: Table WS-2. Unmet demand by 2026 for the CVC contractors is 158,158 acre-feet. However, this water needs analysis fails to identify other sources available to the CVC contractors including safe groundwater yield, local stream supplies, and Friant Division sources. 5

Mr. Al Candlish
Bureau of Reclamation, Mid-Pacific Region
December 8, 2000
Page 3

Westlands requests supplemental information on the water needs assessments for CVC contractors showing any available. | 5 cont'd

Page 3-25: Fisheries Resources. This section's focus on how CVC Delta supplies can be utilized through exchanges to affect the fish species in the San Joaquin River is inappropriate. Rather, the Draft EA should focus on the fishery resources that will be impacted by the CVP surface supply at the Delta. | 6

Page 3-36: Land Use Resources. This section incorrectly describes the land use resources at a county and subregion level, not specifically for the CVC service area. It is inappropriate to assume that environmental impacts at a subregion level are identical to those for the CVC service area level. For example, Table LU-2 lists the agricultural production for Fresno, Tulare and Kern Counties totaling \$8.276 billion with the CVC service area having crop revenue of \$118 million, 1.5% of the total. To identify the actual impacts to land resources, the county and subregion impacts must be localized within the actual CVC contractor service areas. | 7

Page 3-56: The Draft EA states that "[i]n 1987, total farm deliveries of water amounted to over 273,000 acre-feet. Ground water contributed 82% [223,860 acre-feet] of the service area supply. Over 64,000 acre-feet were delivered from the CVP, accounting for 23% of Cross Valley's total water supply." If groundwater pumping provided 82% of the service area supply and CVP surface water deliveries provided 23%, the total farm deliveries were 105%. Additionally, this delivery accounting excludes any local water supplies available to the CVC contractors and any Friant CVP supplies delivered into the CVC service area. These discrepancies need to be resolved. | 8

Page 3-57: Fresno Irrigation District is not a CVC contractor and should be excluded from crop reporting related to the CVC service area. | 9

Page 3-58: The CVC unit on farm irrigation efficiency averages 79% with groundwater replenishment averaging approximately 73,000 acre-feet per year. If the total CVC contract amount of 128,300 acre-feet is available and assuming that groundwater replenishment is obtained through deep percolation, the actual efficiency is 43%. For the CVC service area to be 79% efficient based on the water needs assessment of 286,458 acre-feet, there should be 362,605 acre-feet delivered on average. The Draft EA must identify any other sources of water. | 10

Mr. Al Candlish
Bureau of Reclamation, Mid-Pacific Region
December 8, 2000
Page 4

Page 3-61: Environmental Consequences. This section focuses on the impacts at a subregion level and not the CVC service area level. To define the actual economic impacts, the subregion impacts must be localized to the actual CVC service areas. ||

Your consideration of these comments is appreciated.

Very truly yours,

KRONICK, MOSKOVITZ, TIEDEMANN & GIRARD
A Professional Corporation

Amelia T. Minaberrigarai
Amelia T. Minaberrigarai

ATM/gr

cc: Thomas W. Birmingham

636101.1

KRONICK
MOSKOVITZ
TIEDEMANN
& GIRARD
1400 10TH STREET,
SUITE 120
RACKERFIELD, CA
94601
TEL: (925) 939-2000
FAX: (925) 939-3810

Comment #	Response
KMTG-1	<p>The PEIS evaluated the impacts of implementing CVPIA alternatives on CVP water deliveries. The PEIS analysis assumed that delivery of CVP water to Cross Valley Canal was limited by both hydrology and conveyance limitations. The hydrology limitations were equal to the hydrology limitations used for CVP water service contractors in the San Luis Unit, San Felipe Division, and Delta Mendota Canal Unit. The conveyance limitations were equal to the conveyance limitations used for SWP water service contractors located South of the Delta. Therefore, CVP water deliveries to Cross Valley Contractors were reduced in the PEIS water supply analyses with respect to the No Action Alternative as compared to Pre-CVPIA conditions and with respect to the PEIS alternatives as compared to the No Action Alternative.</p> <p>The PEIS analysis did not affect CVP water deliveries to the Friant Division. Therefore, the references to the Friant Division in this subsection have been deleted. The corrections are presented in the errata in Section II of this Final EA.</p>
KMTG-2	<p>The Trinity River facility operations and Trinity River Restoration Program are addressed in the PEIS. Several projects and programs are implemented by Reclamation throughout the CVP. Reclamation has historically issued and will continue to address these projects under separate environmental analysis.</p>
KMTG-3	<p>Comment noted. The terms of the 1999 Pilot Program agreement and exchange arrangement to replace the water donated by the FWUA users are presented on p. 1-7 and 1-8, Table PN-2. Any future water supply sources for the pilot will come from an exchange agreement or willing sellers. No new water will be allocated from the CVP. It is speculative that CVC supplies would be exchanged and utilized to support the pilot program. There is no change to the Draft EA.</p>
KMTG-4	<p>The sources of water available to contractors include ground water, CVP surface water, and local surface water supplies. The local supplies include water rights held on eastside streams such as the Kern and Lower Tule rivers. These local supplies are quantified in the water needs assessments.</p>
KMTG-5	<p>In preparation for long-term renewals, the water districts provided Reclamation with available water supplies and sources. The water needs assessments were prepared by Reclamation and considered local surface water and ground water supplies in the determination of unmet need.</p>

- KMTG-6** The discussion of the San Joaquin River is appropriate because the water is under an exchange agreement and is physically from the San Joaquin River. Since there is no anticipated change in the amount or timing of surface water supplied at the Delta, a discussion of impacts to Delta fishery resources was not warranted.
- KMTG-7** The references to production figures in this section are only to help describe the land use and its importance of agriculture in the San Joaquin Valley. The alternative and impact analysis in the Land Use Resources section deals only with the effects on the amount of land that is in production and that is projected to be in production under the various alternatives. The analysis of the impacts of the various alternatives on production values is included in the Socioeconomic Resources section. Consequently, no changes were made to the EA (p. 3-36) to address this comment.
- KMTG-8** The section in question has been revised to read: "In 1987, total farm deliveries of water amounted to 273,631 af. On farm ground water contributed 82% (224,309 af) of the contractors total farm deliveries. Surface water supplied from the CVP totaled 64,320 af, but combined with non-project surface water (2,048 af) and taking losses of 17,046 af into consideration, the net water delivered to the contractors would be 49,322 af." The revised text is included as errata in Section II of the Final EA.
- KMTG-9** Comment acknowledged. The reference to the Fresno Irrigation District will be deleted and replaced with the "Hills Valley Irrigation District". The corrections are presented as errata in Section II of this Final EA.
- KMTG-10** The sources of water available to contractors include ground water, CVP surface water, and local surface water supplies. The local supplies include water rights held on eastside streams such as the Kern and Lower Tule rivers. These local supplies are quantified in the water needs assessments.
- KMTG-11** Impact assessments are based upon the level of detail available from modeling studies. The county and subregion impacts cannot be localized any further due to the characteristics of the models used.

1600 Broadway, Suite 300
Oakland, CA 94612-2100

t. 510.452.9261
f. 510.452.9266

www.savesfbay.org

BUREAU OF RECLAMATION OFFICIAL FILE COPY RECEIVED		
DEC 12 2000		
DATE	OFFICE	INITIALS & DATE
7/28		

December 8, 2000

Al Candlish
Bureau of Reclamation
2800 Cottage Way
Sacramento, CA 95825

RE: Environmental Assessment for CVP Water Service Contract Renewals

Dear Mr. Candlish:

I write on behalf of Save San Francisco Bay Association's thousands of members to inform you of our objections to the draft environmental assessments (EAs) on long-term renewal of Central Valley Project water service contracts prepared by the Bureau of Reclamation. The draft EAs are inadequate and violate NEPA on various grounds. At the most basic level, the contracts are virtually certain to significantly effect the environment. Taken together, they would result in the diversion of millions of acre-feet of water each year from the natural environment. The Bureau's truncated review fails to adequately review a reasonable range of alternatives, and fails further to analyze and disclose to the public and decision makers the environmental impacts - direct and cumulative - of the proposed actions.

We incorporate here by reference the extensive comments prepared by our colleagues with the Natural Resources Defense Council and filed with your office yesterday.

Thank you for your consideration of our views on this important matter.

Sincerely,

Cynthia Koehler
Legal Director

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

SAVE THE BAY

Comment #	Response
Save the Bay-1	See response to NRDC-1 to -6 and -10.

/
v

The Bay Institute of San Francisco

"Restoring the Bay's ecosystem... from the Sierra to the sea."

BUREAU OF RECLAMATION OFFICE OF THE ASSISTANT DIRECTOR FOR ENVIRONMENT RECEIVED		
DEC 12 2000		
CODE	PC	FILE #
100		

December 8, 2000

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

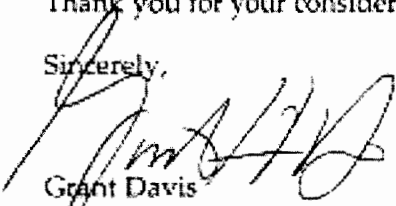
Dear Mr. Candlish:

On the behalf of the Board and staff of The Bay Institute (TBI), I am hereby filing our brief comments on the draft environmental assessments ("EAs") on long-term renewal of Central Valley Project water service contracts prepared by the Bureau of Reclamation.

We are quite disappointed by the Bureau's inadequate attempts to comply with the National Environmental Policy Act (NEPA), 42 U.S.C. § 4321 *et seq.*, in the proposed long-term renewal of CVP contracts. We are also very concerned about the Bureau's failure to prepare an environmental impact statement on proposed agency actions that would have significant, far-reaching and fundamental effects. We believe the contract renewal EAs prepared by the Bureau fall well short of NEPA's established requirements and would urge the Bureau to prepare NEPA documentation on the proposed contracting actions that comply with all requirements of the law.

Thank you for your consideration of TBI's comments.

Sincerely,


Grant Davis
Executive Director

BOARD OF DIRECTORS

Robert J. Erickson
Chair

Arthur Braunwiler

Hualin C. Che

Martha Davis

Harrison C. Downing

Nancy A. Pitzer

John C. Raskin

Felix E. Smith

C. John Swan

Nancy L. Swadish

EXECUTIVE DIRECTOR

Grant Davis

FOUNDERS

Bill Davoren

1

WRITE US
38
1546
39367

Comment #	Response
Bay Institute-1	See responses to NRDC-1 to -6 and -10.



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION IX

Cross Media Division (CMD-2)
Federal Activities Office - 75 Hawthorne St., San Francisco, CA 94105

FACSIMILE
TRANSMITTAL



TO: Al Candlish

Organization: Central California Area Office, BOR

Subject: EPA Comments on Long-Term Contract Renewals

Ph #: _____

Fax #: 916-978-5094

FROM: Laura Fujii

Ph #: 415-744-1601

Fax #: _____

E-Mail Address: _____

Date Sent: December 8, 2000

Number of pages including cover sheet: 22

Comments:



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION IX
75 Hawthorne Street
San Francisco, CA 94105

Al Candlish
Bureau of Reclamation
2800 Cottage Way
Sacramento, California 95825

December 8, 2000

Bill Luce
Bureau of Reclamation
South-Central California Area Office
1243 N. Street
Fresno, CA. 93721

RE: Proposed Long Term Contracts and Associated Environmental Assessments

Gentlemen:

This letter responds to your concurrent requests for comments on several draft long term Central Valley Project water contracts and the associated Environmental Assessments that analyze the environmental effects of those draft contracts as part of the Bureau's compliance with the National Environmental Policy Act (NEPA).

As you know, EPA has had a long institutional interest in these renewal contracts. In 1989, EPA made a rare formal referral of these contracts to the Council on Environmental Quality when the Department of the Interior proposed signing long term renewals without any environmental review. After passage of the Central Valley Project Improvement Act (CVPIA) in 1992, our office has worked closely with Interior as it has implemented the many complicated provisions of that Act, including those calling for the CVPIA Programmatic Environmental Impact Statement (PEIS). The PEIS has been a massive undertaking, and it serves as the foundation of NEPA compliance for these contracts as well as other provisions of the CVPIA.

EPA filed detailed formal scoping comments when Interior began the process of negotiating the long term renewal contracts. In that many of our earlier comments are still relevant to the proposed contracts and Environmental Assessments, we are attaching a copy of our scoping comments to this letter. In this comment letter, we will only briefly discuss the following issues:

NEPA Issues

Interior proposes to rely on Environmental Assessments for most of its environmental review at the CVP "unit" level. As indicated in our scoping letter, EPA is concerned that unit-level Environmental Impact Statements (EISs) should be prepared, tiering off of the PEIS, rather than relying on Environmental Assessments. We appreciate that the Environmental Assessments are substantial, but believe that the complicated nature of the issues raised in the contracts would benefit from the full public disclosure and full public comment provisions that are part of the Environmental Impact Statement process. We are also concerned that the Environmental Assessments do not articulate a clear rationale or standard for differentiating between those units that will prepare EISs (American River and San Luis) and those relying on only Environmental Assessments.

2

2a

2b

EPA is also concerned that the Environmental Assessments have been prepared in advance of the execution of the Record of Decision on the PEIS. As second-tier NEPA documents, the Environmental Assessments would benefit from the certainty of decisions being evaluated in the first-tier document (the PEIS), as those decisions directly affect the range of alternatives and range of potential effects that must be evaluated at the CVP unit level.

3

Finally, EPA is concerned that the analysis in the Environmental Assessments does not fully take into account the site-specific circumstances in the different CVP units. These Environmental Assessments differ primarily in the analysis of pricing alternatives, but do not evaluate different potential effects on, for example, groundwater overdraft or water quality impacts of contract alternatives.

4

EPA recommends that Interior reevaluate its overall NEPA compliance approach when it completes its Record of Decision on the PEIS, which we understand will be in the immediate future. At that time, Interior should reconsider its rationale for deciding between Environmental Assessments and Environmental Impact Statements at the unit level, and reconsider whether some or all of these Environmental Assessments should be revised and released as Environmental Impact Statements.

5

Contract Issues

EPA has reviewed representative proposed contracts, as well as the standard form of contract. We recognize that individual contracts are the result of multiple party negotiations, and that each contract can be and has been tailored somewhat to account for local conditions. Our comments are therefore limited to the major issues raised by long term contracts. In our view, those major issues are as follows:

1. **Contract quantities.** EPA has frequently expressed its concern that the contract quantities included in the current long term contracts do not accurately reflect the delivery capability of the CVP, especially after regulatory actions under the Clean Water Act, the C/P/LA and the Endangered Species Act are considered. In some years, virtually all CVP contractors receive all the water called for in the current contracts. However, in many years - and for some

6

districts, in most years - the CVP is unable to deliver the entire amount of water called for in the current contracts. In other words, the current contracts "overcommit" the CVP. The analysis in the PEIS suggests that this problem will become more acute in the future, as senior water rights holders upstream develop their water supplies. See PEIS, Figures IV-79 and IV-80 and accompanying text.

EPA recognizes that this contract quantity issue does not affect all CVP contractors uniformly, and that it is primarily a problem on the west side of the San Joaquin Valley. Calling this a "problem" is not intended to be any kind of value judgement on those particular districts and, in fact, EPA acknowledges that many of these water-short contractors are leaders both in water use efficiency and in addressing water quality issues. Nevertheless, the complex combination of California water rights, contracts, and plumbing creates a situation where certain CVP units and CVP contractors consistently bear the shortages in CVP delivery capabilities.

EPA is concerned that this "overcommitment" of CVP supplies has the potential to adversely affect Interior's ability to effectively assist in addressing California water needs and environmental needs. The Bureau and Interior will not be able to continue their strong leadership role in CALFED and other broad-based efforts if they are contractually biased by unrealistic water delivery targets.

In its contract negotiations with west side contractors, Interior has attempted to deal with this contract quantity issue directly by dividing contractual quantities into "base" amounts and "supplemental" amounts. See, for example, the draft Broadview Water District contract, at Section 3(a). We strongly support this approach to the contract renewals. We suggest that Interior develop a consistent process for determining, on a contract by contract basis, the proper allocations of "base" and "supplemental" quantities. We believe the "base" amount should reflect recent historical realities but also factor in the anticipated future limitations on CVP supplies noted and evaluated in the PEIS.

Although we are supportive of Interior's approach to the contract quantity issue, we are concerned about proposed contract language that arguably requires the Secretary to pursue additional water supply for these contracts. See Section 19(c). We appreciate that this is only a statement of intent, but it raises the same concerns noted above about maintaining Interior's objectivity in the broader debate over California water resources. Further, this language is premature under the CVPIA. The CVPIA required Interior to develop alternatives for least cost yield enhancement, but reserved for Congress the decision about whether to pursue those yield enhancement options and which options to pursue. See CVPIA Section 3408(j).

2. **Right to Renew.** Since our initial involvement in these contracts in 1989, EPA has argued that long term water service contracts are not and should not be permanent entitlements, but rather that they should be subject to review at the end of each contract period to reevaluate water supply and environmental conditions in a rapidly changing state. The CVPIA made a similar conclusion when it retained for the Secretary the discretion as to whether to renew these contracts at the end of the first long term renewal. See CVPIA Section 3404(c).

Given its historical position, EPA is generally supportive of the contract renewal provisions in proposed contract Section 2(b). In particular, we support the strong statement in Section 2(b)(3) requiring that any subsequent renewal must include a reevaluation of the contract in light of conditions at that time.

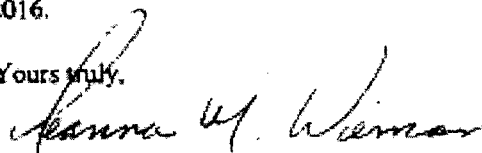
At the same time, however, we believe that the provisions of Section 2(b)(2) should be clarified or supplemented. Section 2(b)(2) enshrines a concept that first arose during the stakeholder discussions referred to as the Garamendi Process. The concept is that contractors can "earn" a second renewal by meeting certain requirements of water conservation, water measurement, etc. EPA supports this approach theoretically, but believes that the requirements described in proposed contract Section 2(b)(2) do not provide clear objectives or standards for "earning" a second renewal. In particular, we believe that the contract needs to define, either in Section 2 or in Section 26, the "definite water conservation objectives" that must be met. Deferring this definition to a later time is inappropriate given that the contractual agreement for renewal is being made now. In addition, we believe that renewal should be conditioned on compliance with water quality improvements required under the state and/or federal clean water acts.

3. **Tiered Pricing.** EPA has frequently expressed its support for the concept of tiered pricing as a mechanism for encouraging economically-efficient water uses in both the agricultural and urban sectors. The CVPIA requirements for tiered pricing were an expression of similar support for this idea. EPA appreciates that implementing tiered pricing in the real world is difficult, given the vastly different circumstances of different districts and the different approaches to managing water supplies in different hydrologies. Nevertheless, we are concerned that the new interpretation of tiered-pricing as applying to the combined "base" and "supplemental" contract amount has the net impact of eliminating the effect of tiered pricing in many districts. This is, once again, a problem caused primarily by unrealistic contract quantities, but it seriously limits the usefulness of the tiered-pricing tool. We recommend that Interior reconsider this issue, and perhaps develop more carefully tailored, district or unit level approaches to tiered pricing that can effectuate the intended purposes of the tiered pricing mechanism.

Conclusion

EPA wishes to acknowledge the significant efforts made by Interior staff over the past several years in developing an approach to long term CVP contracts that is fair to the districts involved and implements the reforms envisioned by the CVPLA. We stand ready to offer our support on working through issues raised in our comments or on other issues raised during the comment period. If you have any questions about these comments, please call Laura Fuji at (415)744-1601 or Carolyn Yale at (415)744-2016.

Yours truly,



Deanna Wieman
Deputy Director
Cross Media Division

cc: Lester Snow
David Nawi
Janice Schneider

PROJECT # 12



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION IX
75 Hawthorne Street
San Francisco, CA 94105

January 8, 1999

Mr. Alan R. Candlish
Bureau of Reclamation
2800 Cottage Way
Attn: MP-120
Sacramento, CA. 95825

Dear Mr. Candlish:

The Environmental Protection Agency (EPA) has reviewed the Notice of Intent for Long-term Contract Renewal, Central Valley Project, California. Our review is pursuant to the National Environmental Policy Act (NEPA), Council on Environmental Quality (CEQ) regulations (40 CFR Parts 1500-1508), and Section 309 of the Clean Air Act. We have also addressed the proposed water need methodologies which will be used in association with the contract renewals.

The Bureau of Reclamation (Bureau) proposes to prepare environmental documents for the purpose of renewing existing long-term and interim water supply contracts for the Central Valley Project (CVP) in California. Specific quantities of water to be in the renewal contracts will be subject to a needs assessment. At this time, the Bureau is proceeding as if the project impacts would require preparation of an EIS. Section 3404C of the Central Valley Project Improvement Act (CVPIA) authorizes renewal of existing long-term water service contracts for 25 years after appropriate environmental review including the completion of a Programmatic Environmental Impact Statement (PEIS) on the CVP required under Section 3409. The final PEIS is scheduled for release in June 1999. The additional environmental document(s) for contract renewal will tier off of the final PEIS. The long-term contract renewal environmental document(s) will be prepared on a regional basis. The specific regions will be determined following scoping. Furthermore, individual service areas may be combined together in one document if they have related issues.

Over the last 10 years, EPA has worked with the Bureau and other resource agencies on issues which should be addressed when considering long-term water supply contract renewals for the CVP. In fact, between February 1989 (EPA Referral of Friant Unit Contract Renewals to Council on Environmental Quality (CEQ)) and passage of CVPIA in October 1992, EPA and the Bureau worked extensively on defining the issues, scope, and alternatives for a proposed EIS on the Friant Water Service Contract Renewals (Friant EIS). The following materials are incorporated by reference: EPA Comments on Environmental Review Process for CVP Contract renewals, March 1992; Friant Contract Renewal EIS EPA/BOR Agreements, 1992; EPA Comments on Friant Contract Renewal EIS Scoping Report, May 1991; and EPA Scoping Comments, Friant Contract Renewal EIS, January 1991. Copies are enclosed.

While we acknowledge the remarkable shifts in policy, management, and planning for water resources in California which have occurred, we believe that many of the issues and agreements made with the Bureau in 1992 are still relevant to the current contract renewal effort. Key points are highlighted below.

We have long supported tying contract renewals from a programmatic system-wide analysis of CVP operations and hydrologic effects, and, with some reservations, believe that the Programmatic CVPIA EIS (CVPIA PEIS) serves this function well. However, considering the many regional and localized concerns which are not covered in the CVPIA PEIS, we suggest that an EIS should be assumed the appropriate level of analysis for contract renewals unless a close screening of issues and potential impacts, conducted with ample public participation, supports a different conclusion. We note that the programmatic EIS for the CVPIA did not address or evaluate water quantity, water quality, or specific terms and conditions for contract renewals.

The Scoping Notice states that the long-term contract renewal environmental document(s) will be prepared on a regional basis and tiered to the final CVPIA PEIS. The CVPIA PEIS evaluated options for operational criteria, water management (for instance, pricing and transfers), and ecosystem restoration priorities for the CVP. The contract renewal EISs should clearly link proposed contract renewal actions with the management direction established by the CVPIA PEIS Record of Decision and to currently planned or reasonably foreseeable rulemaking and regulations.

Alternatives should examine ways in which renewed contracts can provide adequate supply reliability for contractors and flexibility to implement all CVPIA provisions. There must also be flexibility to accommodate future shifts in water policy which may affect the CVP. We urge the Bureau to structure the renewed contracts to fully reflect the redirection of the CVP, pursuant to CVPIA, to provide ecosystem restoration and a reliable water supply. EPA firmly believes that long-term water supply contract renewals should focus on determination of available supplies and bringing contract commitments into alignment with these supplies. The water needs analyses which support contract renewals should evaluate both the supply and demand side of water management in the contract areas. Reclamation should work with contractors to consider all available tools for enhancing water management flexibility and reliability. These tools could include water transfers, conservation, pricing, irrigation efficiencies, operational flexibilities, market-based incentives, water acquisition, conjunctive use, voluntary temporary or permanent land fallowing, and wastewater reclamation and recycling. Information on the needs methodologies and results of the assessments should be incorporated into the contract renewal environmental impact documents.

Our detailed comments (attached) discuss a number of issues which we believe must be addressed in contract renewals. Among the most important is resolving the gap between CVP supplies and current levels of CVP contract commitments. The CVPIA PEIS documents that under all implementation alternatives the amount of water which Reclamation could reliably deliver in average long-term and dry period conditions is less than the total contract quantities.

We appreciate the opportunity to review this NOI. Please send four copies of the Draft environmental impact statement to this office at the same time it is officially filed with our HQ Office of Federal Activities. If you have any questions, please call me at (415) 744-1566, or contact David J. Farrel, Chief, Federal Activities Office at 415-744-1584.

Sincerely,



Deanna Wieman, Deputy Director
Cross Media Division

Enclosures: Detailed comments
EPA Comments on CVPIA Draft PEIS, April 1998
EPA Comments on Environmental Review Process for CVP Contract
Renewals, March 1992
Friant Contract Renewal EIS EPA/BOR Agreements, 1992
EPA Comments on Friant Contract Renewal EIS Scoping Report, May
1991
EPA Scoping Comments, Friant Contract Renewal EIS, January 1991

MI003182

Filename: cvprenew.wpd

cc: Jim White, Department of Fish and Game
Nanette Engelbrite, Western Area Power Administration
Wayne White, US Fish and Wildlife Service
Victoria Whitney, State Water Resources Control Board
Mary Nichols, California Resources Agency
Gary Stern, National Marine Fisheries Service
US Corps of Engineers, San Francisco & Sacramento
Pat Port, Department of the Interior
Lester Snow, CALFED
Wendy Pulling, NRDC
Donna Tegelman, BOR, MP-400

DETAILED COMMENTS

Water Needs Assessment

EPA has concerns with both the assumptions and methods of the water needs analysis. The Bureau's "needs analysis" described at the Water Demands Workshop appeared to have the following steps: 1) calculating contractors' historical beneficial use of water; 2) projecting future beneficial use (for the 25 year contract horizon); 3) examining comprehensively the water sources available to the contractor; and 4) determining the quantity of CVP water to be entered in a renewal contract, using this supply/demand information. We urge the Bureau to clearly describe the assumptions underlying use of this methodology to project future beneficial use and to explain how this calculation will help determine contract quantity.

We are concerned that plant evapo-transpiration data used to compute crop water use (such as Bulletin 113) is open to dispute. Thus, the Bureau should take care in developing its historical documentation of beneficial use as well as any future projections. In addition to technical questions regarding water use, long-term projection (25 years) of future use by existing contractors is subject to many unforeseeable factors (technology, economics, potential water transfers, etc). This is especially true for agricultural use. For the purpose of establishing a determination of future beneficial use, we would strongly recommend a different approach. We suggest considering a less technically detailed "certification" of expected future beneficial use, backed up by terms in the contract that monitor compliance and continued beneficial use.

Step 3, examining comprehensively the water sources available to the contractor, is very important. In fact it appears to draw on information required in the Contractor's water conservation plans. Several potential sources such as water exchanges, transfers, and groundwater, may be difficult to document and/or project. The EIS should clearly document how this step is done, disclose assumptions made regarding groundwater use, transfers, and exchanges and discuss limitations in information which could affect conclusions regarding water supplies available to water contractors.

In regards to Step 4, we urge the Bureau to clearly state how it intends to use the water needs analysis in determining contract quantities. EPA does not regard the purpose of contract renewals as using CVP contract supplies to "fill a gap" between calculated needs and available supplies. Instead, we believe the Bureau has a number of tools to help improve water management and supply reliability and to help ensure a sustainable water balance between supply and demand. Available tools include water transfers, conservation, pricing, irrigation efficiencies, operational flexibilities, market-

based incentives, water acquisition, conjunctive use, voluntary temporary or permanent land fallowing, and wastewater reclamation and recycling. We urge the Bureau to use these tools to improve water management and supply reliability and to factor the use of these tools into its evaluation of contract quantities. In this step, one might incorporate assurances that water would not go to waste, go to environmentally harmful areas, and would support water quality objectives. We suggest that short-term integrated demand/supply management be the first focus with long-term integrated demand/supply management as a goal.

In conclusion, we suggest the Bureau document historical beneficial use of CVP water; certify expected future beneficial use; help users plan and implement supply reliability measures through other programs; and equitably allocate supplies expected to be available from the existing CVP.

Shortages

EPA is concerned with contract quantities which consistently exceed available water supply, thus creating "shortages". Contract supply commitments should be tailored to reflect supplies reasonably expected to be available under varying conditions (e.g., wet versus dry years). We fear that retaining contract quantities which exceed available supplies gives the impression of unreliable commitments and may imply a "need" to develop additional supplies. Often development of "new supplies" is only reallocation of scarce water from environmental in-stream beneficial uses to consumptive uses.

EPA advocates an approach which is focused on efficient use and management of existing scarce water supplies. The quantity of allocated water in the contracts should be based on existing, developed project supplies and not on contractors' needs, demands, or anticipated additional supplies. We strongly urge the Bureau to avoid contract quantity commitments exceeding expected supplies and to avoid allocating shortages relative to inflated supply commitments.

From the contractors' perspective, there may be times when shortages are unavoidable and will need to be addressed. As stated above, EPA advocates the use of multiple tools by the Bureau to help contractors plan and manage for supply reliability, including during shortage periods.

Environmental Needs

The needs assessment must include full consideration of environmental needs. EPA believes that it is inappropriate for the renewal contracts to account for environmental restrictions solely through the use of a "shortage provision." A shortage provision is an appropriate mechanism for providing flexibility in the event of future unanticipated environmental or other impositions on CVP water use. However, it should not be used to implement existing environmental obligations under the CWA or ESA. These existing obligations should be evaluated in the needs analysis and factored into the assessment of water quantities available for contracts.

Documentation of Beneficial Use

Beneficial use must be clearly defined. For instance, the needs assessment should state the dates between which the beneficial use measurement was taken, rationale for this measurement period, how beneficial use will be interpreted, and whether and how differences in seasons and type of water use will be considered.

Groundwater and water reuse is also of concern. CVP water replenishes groundwater in certain areas through a number of "paths," such as canal seepage, over-irrigation, and spreading of high flow (flood) waters. This use should be documented. We request the Bureau disclose whether this use is being counted as historical beneficial use, and if it would be counted in a contractor's future water "need." We note that there are areas, such as the San Joaquin, where this casual "conjunctive use" of surface/groundwater has not stabilized groundwater levels or acted as a beneficial use. In fact, irrigation may contribute to severe water quality problems.

The CVPIA PEIS states that the right to reuse seepage and return flows has been covered in all alternatives and would not need to be revisited in subsequent NEPA documents (Ch VI-8). EPA questions whether any real impact analysis associated with reuse has been done. There is the question of actually documenting water balance within a basin, including amounts of seepage and return flows, and amounts of on-farm and downstream reuse. We note that this detailed information appears not to be available in many cases and that this issue has been raised in CALFED, as well. Changes in on-farm and within-district efficiency may well affect other uses within a basin by altering the quantity, timing, and quality of water available. On another page (VI-10) the CVPIA PEIS admits that implementation of water conservation measures was not handled at a site specific level, and suggests possibly including this topic in the contract renewal EISs. This is an analysis which is best done at a site and case-specific level. We urge the Bureau to follow-up on the suggestion in the CVPIA PEIS to

evaluate implementation of reuse and water conservation measures and their potential effect on quantity, timing, and quality of water available.

Reservation of Rights

EPA understands that there have been ongoing discussions about a "right to renew", and/or about the meaning of and continued applicability of language in the "1956 Act." EPA's view of the 1956 Act was presented in full at the time of the CEO referral in 1989. See Letter from Gerald Yamada to Chairman A. Alan Hill dated April 13, 1989. EPA believes the 1956 Act discussion of renewals was largely superseded by the explicit provisions in the CVPIA addressing contract renewals. See CVPIA, Section 3404. Under the CVPIA, after the first 25 year contract, additional renewals or extensions are clearly at the Secretary's discretion. While recognizing the legitimate desire of all parties to reserve possible legal arguments, EPA believes it would be inappropriate for the Bureau to grant a right to renew or other legal advantage to contractors in the renewal contract greater than they are entitled to receive under the explicit language of the CVPIA.

Water Supply and Demand

We strongly believe the Bureau should utilize tools such as pricing, conservation, conjunctive use, and monitoring and accounting to help improve supply reliability and ensure a more balance between water supply and demand.

Pricing

It has been demonstrated over the last decade that variable pricing of water can significantly influence water demand and supply. Pricing which accurately reflects the economic and environmental costs of water increases the ability to ensure scarce supplies are used efficiently. The contract renewal EISs should include an in-depth discussion of pricing and how it will be utilized by the Bureau and within water districts. We urge the Bureau to reevaluate the tiered pricing structure which is based upon contract quantities. Although there are price incentives to avoid excessive water use at the high end, these price incentives are rarely triggered in some areas due to the infrequent use or inability to provide these large contract quantities.

The EISs should also fully evaluate the Ability-to-pay policy and the Bureau's ability to ensure project repayment. We urge the Bureau not to utilize the ability to pay subsidy, especially given the need to repay project costs.

Conservation

Conservation can play a critical role in managing water demand and supply. We note that the Reclamation Reform Act states the Secretary of the Interior shall use all legal existing authorities to encourage conservation and that CVPIA Section 304(i) encourages use of variable pricing and conservation. We urge the Bureau to consider conservation as a project goal and to describe ways to encourage conservation. The EISs should include a discussion of National Energy Policy Act requirements, how conservation affects water markets, demonstration of compliance with water conservation plans, reclamation methods and efforts, and improved irrigation technologies. Consistency with CALFED goals should be clearly demonstrated. Water use efficiency is a major component of the CALFED Program, thus close coordination with CALFED will be necessary to ensure consistency, where appropriate, in methodologies for computing efficiencies and benefits, and to ensure complementary objectives. We advocate use of conservation performance requirements in the contracts and strong assurances that certain levels of conservation will be attained.

As promised in the Reclamation Water Conservation Criteria - 1999, prospective renewal contractors should be required to have an adequate water management plan in place and to have demonstrated good progress in implementing that plan. Contract terms should make clear that future CVP supplies are conditioned on continuing conservation efforts, including, in the context of the conservation plans, shortage management. In particular, EPA advocates full implementation of the documentation and coordinated planning of use of supplies available to the contractor, including ground water, and the water measurement elements. We also urge incorporation of a shortage management element. Conservation and shortage management issues will vary from area to area.

Per CVPIA, water measurement devices are required for contract renewal [3405(b)]. We understand this requirement can be addressed in an approved, adequate conservation plan. We also note that there is a lot of debate regarding the sort of measurement or metering requirements which are appropriate. The EIS should describe the debate and clearly state which measurement devices or metering requirements are considered by the Bureau to be appropriate for contract renewals.

Groundwater

Groundwater is a critical element in water supply and demand. Not only is it an alternative source to surface water supply, if used prudently, groundwater can provide significant flexibility in meeting demand at different times and from a number of different water sources. The EIS should fully document groundwater sources - how, when, and

by whom groundwater is used. Identify information gaps and where there are no direct groundwater measurements. The EIS should document the historical and anticipated (in alternatives) relationship between CVP surface supplies and groundwater. There should also be documentation of long-term groundwater trends within basins. We note that portions of the Sacramento, around urbanizing areas, are over drafted, and that major areas in the San Joaquin and Tulare basins are seriously over drafted. EPA is concerned with potential tradeoffs between surface water and groundwater use. We urge the Bureau to carefully evaluate the long-term implications of providing CVP surface water to avoid groundwater overdraft.

EPA supports the creation of groundwater management basins and institutional mechanisms to collect information, manage, and monitor groundwater use throughout California. The scoping materials from the Bureau suggest that one of the renewal-related actions under consideration is "conversion to conjunctive use." If the Bureau may propose "conversion to conjunctive use" in some areas, which we consider a promising concept, then the EIS should address the need for measurement and management of the combined resources of surface and groundwater supplies to stabilize supplies over the long term. Note that the appropriate management unit might not be the contracting district, unless the district is quite large (e.g., Westlands).

The conjunctive use issues flagged in the scoping materials lead us to suspect that developing an effective conjunctive use program and offering this as an implementable contract option could take longer than the contract renewal time frame. Perhaps the Bureau should consider making "managed conjunctive use" a separate program. For the purpose of the contract renewals, sufficient information should be disclosed about the objectives, requirements, and suitable locations for conjunctive use so that it can be included as an option within the contracts.

Monitoring and Accounting

Effective and sustainable management of CVP water supplies depends on an accurate knowledge of water supply availability and water use. This knowledge can only be obtained through monitoring and accounting of water supply and demand. We urge the Bureau to make a firm commitment to timely and accurate monitoring and accounting. This commitment should include dedicated funding for this effort.

NEPA Issues

EIS versus EA

The Bureau should clearly describe the criteria for determining whether an EA or EIS is the appropriate level of NEPA analysis. These criteria should consider cumulative effects, how the Service areas or Districts are bundled, whether the potential impacts are bounded by existing environmental or programmatic analyses, and whether prior environmental analyses have provided information at a sufficient level of detail to meaningfully assess alternatives, impacts, and mitigation measures. We recommend the Bureau clearly state which contract renewals will be considered for EIS level analysis. EPA believes an EIS should be presumed the correct level for analysis of the long-term contract renewals, especially for areas with known or suspected irrigation caused water quality problems, groundwater overdraft, and incomplete information on ecosystem needs. An EIS level of evaluation is especially appropriate given the complex and controversial issues surrounding the needs assessment, reallocation of water to all CVP purposes, and management of California's scarce water supply in the context of high demand. Clearly describe whether unit wide evaluations will be made and whether there will be contract by contract evaluations.

Purpose and Need

It is EPA's view that the central federal action is water service contract renewals and that the purpose of this action should be to set out terms- through these contracts- through which existing CVP supplies will be distributed for beneficial use in the future. The project purpose should also embrace managing CVP supplies, by both the Bureau and contractors, in ways which will improve supply reliability and promote ecosystem protection and water quality. The concept of distribution should include allocation through contracts to specific parties and contract terms permitting exchanges and transfers in order to ensure the contracts allow use of the water for all beneficial uses recognized in State law. For example, distribution should consider avoidance of areas, such as selenium-loaded areas, where the use would likely result in environmental harm or waste of the water. Supply reliability can be addressed in part by the quantities made available, scheduling and rescheduling flexibility, wheeling options, conservation practices, and other management strategies. We note that reliability of stated contract supplies would be undermined by a significant discrepancy between the contract quantity and supplies which the Bureau can reasonably expect to make available. Good management of the resource should be assured through terms requiring conservation planning, implementation, and monitoring.

In summary, the purpose and need statement should reflect the intent to use renewal of existing contracts to provide contractors with assurance of reliable, long-term water supply; support the Bureau's environmental protection and restoration responsibilities pursuant to CVPIA and other applicable laws; promote water conservation; support appropriate water transfers; and to promote balanced, sustainable use of ground and surface water supplies.

In 1992 EPA and the Bureau had extensive discussions regarding the purpose and need for the proposed Friant contract renewal EIS (Friant Contract Renewal EIS EPA/BOR Agreements, February 1992). We believe many of the issues discussed are still applicable and incorporate these discussions by reference.

Baseline

The selection of the No Action alternative is a critical step in the environmental analysis since it provides the baseline for comparison with other action alternatives. It is EPA's position that the "no action" alternative is not a no impact baseline. EPA believes strongly that to interpret the "no action" alternative as having "no impacts" is inconsistent with NEPA regulations. Continuation of the existing management situation would constitute a discretionary commitment of resources that is, effectively, an action affecting the environment. The alternatives analysis of the EIS should portray the environmental consequences of every alternative...." in comparative form, thus sharply defining the issues and providing a clear basis for choice among options for the decisionmaker and the public." (40 CFR Part 1502.14).

The EIS should document existing conditions; explain the changes which have occurred (e.g., pre-project and past impacts); and describe the ecosystem restoration objectives of the CVPIA and CALFED. Furthermore, the EIS should adequately document cumulative impacts, including past, present and reasonably foreseeable actions. Past cumulative effects greatly influenced the "existing conditions" which should be documented in the EIS and represent deficiencies (adverse impacts) which may be perpetuated under the action and no action alternatives. Furthermore, we do not believe it is sufficient to establish compliance with certain environmental protection laws (such as the Endangered Species Act and Clean Water Act), where the status quo may reflect unacceptable conditions and trends resulting from on-going activities, including water diversions. Nor will "current conditions" provide adequate guidelines for gauging desired levels of environmental restoration and enhancement. Information in the EIS should assist in establishing the possible deficiencies in current conditions and defining restoration and enhancement goals (EPA Scoping Comments, Friant Contract Renewal EIS, January 1991). In addition, it is our position that mitigation measures (defined in 40 CFR 1508.20) should be addressed for adverse effects of alternatives

measured relative to current conditions, rather than relative to the expected future conditions under "no action" (Friant Contract Renewal EIS EPA/BOR Agreement, February 1992).

Consistent with the CVPIA PEIS, the contract renewal action and EIS should also be premised on the supplies which may be available in the future given the existing storage and conveyance system. This configuration should be retained in all alternatives. EPA does not consider adding onto or changing the configuration of this storage and conveyance system as within the scope of the contract renewal action.

Alternatives

Geographic Scope

Given the potential divergent supply options, we urge the Bureau to carefully consider the geographic scope for the environmental analysis. We recommend development of criteria to help determine the appropriate scale for analysis. For example, if conversion to conjunctive use is considered, the analysis might require a basin-wide view versus a district-wide view. Regardless of the water supply option, the EIS should evaluate the potential environmental impacts wherever they may occur. If significant adverse impacts are documented, the EIS should consider ways of mitigating these impacts.

Development of Alternatives

The CVPIA PEIS did not describe or evaluate specific contract alternatives or strategies. Thus, we believe it is critical that the EIS on contract renewals fulfill this need by evaluating different contract strategies and alternatives. We urge the Bureau to develop alternative contract terms and conditions which provide strong incentives for water conservation, tiered pricing, conservation goals and performance requirements, water transfers, reopeners clauses, flexibility, restoration goals, project repayment, and monitoring. We also recommend consideration of elements common to all alternatives.

All reasonable alternatives should be considered including those which may be beyond the Bureau's current statutory authorities or those contrary to the initial priorities for the CVP established by Congress in 1937. For example, the Bureau should consider alternatives which provide water for other CVP purposes such as fisheries. We advocate evaluation of an alternative which provides a set dedicated yield with a mechanism to provide flexibility to adapt to changes in water supply and demand. Variations could include tiered contract quantities or guaranteed lifeline amounts.

Again, we urge an approach which focuses on demand management and effective, efficient use of existing supplies.

Cumulative Impacts

Full disclosure of indirect and cumulative impacts is of specific concern. NEPA requires evaluation of indirect and cumulative effects which are caused by the action (40 CFR 1506.8(b) and 1506.7). Indirect effects may include growth-inducing effects related to induced changes in the pattern of land use, population density or growth rate, and related effects on air and water and other natural systems, including ecosystems." (40 CFR 1506.9(b)). CEQ regulations also state that the EIS should include the "means to mitigate adverse environmental effects." (40 CFR 1502.16(h)). This provision applies to indirect effects as well as direct effects. Changes in water quality or downstream effects which may be indirectly caused by Contract terms and conditions, constitute indirect effects and should be evaluated in the EISs. These indirect effects and appropriate mitigation measures for adverse impacts should be fully disclosed in the EISs.

We recommend the long-term contract renewal EISs include a full evaluation of cumulative impacts at different landscape scales, e. g. Unit-wide, District-wide. The EISs should also include a summary of the CVP-wide cumulative impact analysis provided by the CVPIA PEIS.

Fish and Wildlife Issues

We recognize the significant progress made through the CVPIA in addressing region-wide past adverse cumulative impacts to fish and wildlife from historical operations of the CVP. However, the CVPIA and its PEIS has not addressed all local or district specific impacts. For example, fish and wildlife issues within the Upper San Joaquin River (i.e., Friant Unit) were not adequately addressed in the CVPIA. Thus additional evaluation may be appropriate when considering direct, indirect, and cumulative impacts to fish and wildlife in the context of specific contract renewals. The contract renewal EISs should evaluate the ability to restore or enhance fish and wildlife habitat and wetlands which have been affected by water diversions and by changes in flows, timing, and water quality as a result of CVP water supplies. This evaluation should "follow the impacts" and examine the impacts that may extend beyond the contract boundary.

EPA advocates evaluating Endangered Species Act and Clean Water Act compliance, requirements, and possible reallocation of water for environmental compliance as part of the contract renewal process. To do otherwise, may result in lost

opportunities and the inability to reallocate water for environmental requirements without extensive "takings" litigation. The evaluation of environmental requirements should consider flows, temperature needs, seasonality, and other water quality components and factors of critical importance to threatened and endangered species.

Water Quality Issues

We suggest the Bureau consider the water quality standards discussions and agreements made in 1992 in regards to the Friant Contract Renewal EIS (Friant Contract Renewal EIS EPA/BOR Agreements, February 1992) which are incorporated by reference. EPA continues to believe that water requirements to meet water quality standards and protect beneficial uses established by either the EPA or the State of California (State), pursuant to the federal Clean Water Act, must be satisfied before calculating water available for contract renewals. Due to the need to meet water quality standards, we wish to highlight the need for flexibility in the contracts' terms to ensure adaptability to potential changes in water policy and water quality standards.

General Water Quality Comments

1. Potential impacts to surface and ground water quality should be fully evaluated in the contract renewal EISs. The evaluation should include discussions on drainage and return flow quality; the role of agricultural chemicals (e.g., pesticides, fertilizers); management of discharges; and the impacts of water quality on crops, aquatic resources, and wildlife.
2. The EISs should discuss the proposed contract renewals compliance with State and local water quality management plans and State-adopted, EPA-approved water quality standards. EPA recommends that the project be fully coordinated with the appropriate Regional Water Quality Control Board to ensure protection of water quality and maintenance of beneficial uses.
3. Evaluate the potential of proposed contract renewals to cause adverse aquatic impacts such as increased siltation and turbidity in surface water sources; changes in water quality and quantity; changes in dissolved oxygen, and temperature; and habitat deterioration. Include a discussion on in-stream flow impacts of water diversions and return flows.
4. Identify sensitive aquatic sites such as wetlands which are currently present. Outline past and potential beneficial uses of these areas, and disclose potential impacts from the proposed project.

5. Discuss specific monitoring programs that are in place or will be implemented to determine potential impacts on surface and drinking water quality and beneficial uses. Evaluate whether maintenance and protection of water quality can be guaranteed.

General Comments

Environmental Justice

In keeping with Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations (EO 12898), the EIS should describe the measures taken by the Bureau to: 1) fully analyze the environmental effects of the proposed Federal action on minority communities, e.g. Indian Tribes, and low-income populations, and 2) present opportunities for affected communities to provide input into the NEPA process. The intent and requirements of EO 12898 are clearly illustrated in the President's February 11, 1994 Memorandum for the Heads of all Departments and Agencies.

Comments on Water Demands Workshop Handouts

These comments are based upon a review of only the Handouts. The commentator was unable to attend the Workshop. Thus, we recognize the comments below may have been addressed during the Workshop and verbal presentations.

1. Demands overhead chart. The development of estimates for future use should include estimates for environmental needs. In addition, future use estimates must consider the potential effects of different pricing structures, efficiency measures and methodologies (e.g., improved irrigation methods, cropping patterns), land retirement, groundwater management (e.g., conjunctive use), water reclamation and recycling, and water transfers.
2. Why? overhead chart. Beneficial use should be clearly described, including the period used to measure beneficial use and criteria for determining what is beneficial use.
3. Process overhead chart. In addition to the principles to be considered, the process should consider modernization (e.g., improved agricultural practices), beneficial uses beyond historical agricultural use (e.g., fish and wildlife, water quality), and conservation. We urge the Bureau to take an approach which encourages a trend towards low water use, high value crops.
4. Residential Demand overhead chart. The description of residential demand should describe the underlying assumptions regarding type of appliances, water efficiency,

requirements, and type of landscaping. For instance, the requirements of the National Energy Policy Act should be described and fully integrated into the determination of residential demand.

5. Non-Residential Demand overhead chart. We urge the Bureau to consider a method of determining non-residential demand which is not based upon the historical amount of water used. Given the requirements of the National Energy Policy Act and significant advances in non-residential water use conservation, we believe a method based upon historical water use may result in an unrealistically high estimate of demand. As for residential demand, the underlying assumptions regarding appliances, water efficiency, and landscaping should be clearly described.

6. 1a. Interior Demand overhead chart. The Bureau should describe the assumptions used to determine good. Conservation and requirements of the National Energy Policy Act should be fully integrated into the determination of interior demand.

7. 1b. Landscape Demand overhead chart. Assumptions regarding the type of landscaping and irrigation methods should be provided. Again, the National Energy Policy Act and conservation requirements should be integrated into the demand calculations.

8. 3a. Unaccounted for beneficial uses overhead chart. Other beneficial uses which must be considered include environmental and in-stream beneficial uses. For instance, non-residential water use could supply incidental beneficial uses, e.g. settling ponds, discharges to wetlands.

Miscellaneous Comments

1. If references to previous documents are used, the DEIS should provide a summary of critical issues, assumptions, and decisions complete enough to stand alone without depending upon continued referencing of the other documents.

Comment #	Response
EPA-1	Comment noted.
EPA-2	Reclamation has analyzed the Proposed Action in accordance with NEPA. An EA tiered to the PEIS is the appropriate level of documentation. Because the proposed action will, in essence, maintain the status quo (i.e., the same amount of water will go to the same areas for the same uses, albeit under a different legal arrangement), we believe there are no significant impacts associated with the proposed action. The diversion of water is an on-going action and the current conditions of that diversion are discussed in the PEIS. The impacts of continuing the diversions through the implementation of CVPIA have been discussed in the CVPIA PEIS. Under the action of long-term contract renewal, the proposed action is to continue delivering the water under contract as described in the PEIS preferred alternative and ROD. Also see responses to National Resources Defense Council (NRDC) Comments 1, 2, 4, and 6.
EPA-2a	In Reclamation's preparation of the EAs, we have gone beyond the normal disclosure process for EAs. Responses to comments have been prepared as required for EISs and comment periods have been extended to periods approximating EIS review. Reclamation also believes a full disclosure has been accomplished.
EPA-2b	Rationale for selecting EAs and EISs is contained in the Long-Term Renewal Environmental Document Scoping Report released in April 1999. The Scoping Report was prepared after a 90-day scoping period that included seven scoping meetings throughout the Central Valley. Ultimately the final decision relative to preparation of an EIS (in those areas where EAs are being prepared) is dependent on the analysis contained in the area-specific EA.
EPA-3	Although the draft documents were prepared without a ROD for the PEIS, Reclamation was knowledgeable of the direction that the ROD was going, relative to implementation of the PEIS. This was reflected in the No Action Alternative. The ROD for the PEIS was signed prior to signing of any FONSI, and the analysis presented in the EAs is consistent with the ROD.
EPA-4	Reclamation disagrees. The EAs address specific issues related to contract issues within the division.
EPA-5	As stated in response to EPA-3, the EAs were prepared with some knowledge of the PEIS ROD and are consistent with that ROD. None of the evaluation of the Proposed Action indicates there are significant impacts to justify the preparation of an EIS. See also response to EPA-2b, above.

Comment # Response

EPA-6 Comment noted. The contract specific comment is not addressed in the EAs.

Pietro Patrino
President
David Sims
Vice-President
Barbara Snickel
Secretary
Robert Miller
Treasurer
In Memoriam:
Nathaniel S. Bingham
Harold C. Christensen



WEB: <http://www.pond.net/~pcffa>

W. R. "Zeke" Crider, Jr.
Executive Director
Glen H. Spain
Northwest Regional Director
Mitch Farris
Recreation/Reservoir Director
Vernon Bolan
Waterfowl Conservation Director
Duncan MacLean
Salmon Advisor

Please Respond to:

Southwest Office
P.O. Box 29910
San Francisco, CA 94129-0910
Tel: (415) 561-5080
Fax: (415) 561-5464

Office of the President
215 Spruce Street
Half Moon Bay, CA 94019
Tel: (650) 726-1607
Fax: (650) 726-1607

Northwest Office
P.O. Box 11170
Eugene, OR 97440-3370
Tel: (541) 689-2000
Fax: (541) 689-2500

BY FAX

7 December 2000

Bureau of Reclamation
Mid-Pacific Division
Att: Al Candlish
2800 Cottage Way
Sacramento, CA 95825-1898

Re: Comments on Draft Environmental Assessments [EAS] for Renewal of Existing Long-term Water Service Contracts for Central Valley Project [CVP]

Dear Mr. Candlish

The Pacific Coast Federation of Fishermen's Associations [PCFFA] represents the men and women of the West Coast's professional fishing fleet. Our members are engaged in fisheries that depend directly on the quality of CVP-impacted rivers, estuaries, and nearshore ocean environments.

We have reviewed the 6 December letter by Congressman George Miller to Secretary Babbitt on the subject of these proposed contract renewals, including the insufficiency of their environmental review, and that of the Trinity County Board of Supervisors of the same date on the subject. We concur and echo the concerns and recommendations Congressman Miller and Trinity County.

PCFFA has been engaged in this very CVP contract renewal issue for more than 15 years. Our testimony before the Council on Environmental Quality a dozen years ago contributed to the Administration's decision that CVP contract renewals would be the subject of comprehensive environmental review. We pressed for, and secured that same comprehensive environmental review policy when Congress deliberated the Central Valley Project Improvement Act [CVPIA] four years later.

The Bureau's current proposal to skirt the public policy developments of the past 15 years and to deliberately thwart the intent of the CVPIA by offering long-term, guaranteed-renewable water sales contracts without consideration of the effect they and their proposed successors may have on California's rivers, estuaries, and nearshore environments is inexplicable, unacceptable, and will certainly lead straight back to the political turmoil and litigation which surrounded the issue in the mid-1980s.

The livelihoods of California's professional fishermen depend upon and deserve the Bureau's responsible conduct of CVP management. We view the proposal to proceed with the proposed contract renewals without adequate National Environmental Policy Act review not only as irresponsible but as a clear violation of CVPIA policy.

2

Sincerely,

W. F. "Zeke" Grader
Executive Director

Comment #	Response
PCFFA-1	The CVPIA PEIS addressed the impacts of renewing contracts accompanied with the implementation of CVPIA. Documents evaluated the current renewal period. If contracts are renewed in the future, additional environmental documentation would be needed. See response to NRDC-1 to -6 and -10.
PCFFA-2	See response to NRDC-1 to -6.



STATE OF CALIFORNIA

Governor's Office of Planning and Research
State Clearinghouse



Gray Davis
GOVERNOR

December 4, 2000

Al Candlish
U.S. Bureau of Reclamation
2800 Cottage Way
Sacramento, CA 95825

Subject: Cross Valley Contractors Long-Term Contract Renewal
SCH#: 2000114008

Dear Al Candlish:

The State Clearinghouse submitted the above named Environmental Assessment to selected state agencies for review. The review period closed on December 1, 2000, 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
Senior Planner, State Clearinghouse

BUREAU OF RECLAMATION OFFICIAL FILE COPY RECEIVED			Steve Nissen ACTING DIRECTOR
DEC 07 2000			
CCF	AGENCY	SURNAME & DATE	
700		pld 12/7/00	

NOTICE IF NON-STATE
ENCLOSURE PLEASE INSERT
CODE NO. _____
INITIAL _____
DATE _____

Classification	
File No.	
Project No.	74903
Reference	38378

SCH# 2000114008
Project Title Cross Valley Contractors Long-Term Contract Renewal
Lead Agency U.S. Bureau of Reclamation

Type EA Environmental Assessment
Description Long term contract renewal for the Cross Valley Contractors.

Lead Agency Contact

Name Al Candlish
Agency U.S. Bureau of Reclamation
Phone 916-978-5062 **Fax**
email
Address 2800 Cottage Way
City Sacramento **State** CA **Zip** 95825

Project Location

County Fresno, Tulare, Kern, Kings, Madera
City
Region

Cross Streets

Parcel No.

Township

Range

Section

Base

Proximity to:

Highways

Airports

Railways

Waterways Central Valley Water Project

Schools

Land Use Central Valley Water Project.

Project Issues Water Supply

Reviewing Agencies Resources Agency; Department of Boating and Waterways; Department of Conservation; Department of Fish and Game, Region 4; Department of Fish and Game, Headquarters; Delta Protection Commission; Department of Parks and Recreation; Reclamation Board; Department of Water Resources; Caltrans, Division of Transportation Planning; State Water Resources Control Board, Division of Water Rights; Regional Water Quality Control Bd., Region 5 (Fresno); Native American Heritage Commission; State Lands Commission

Date Received 11/02/2000 **Start of Review** 11/02/2000 **End of Review** 12/01/2000

Comment #	Response
OPR-1	Comment noted.

12-8-00

Bureau of Reclamation
Mid-Pacific Division
Attn: Al Candlish
2800 Cottage Way
Sacramento, CA 95825-1898

Re: Draft Environmental Assessments (EAs) for Renewal of Existing
Long-term Water Service Contracts for Central Valley Project (CVP)

Dear Mr. Candlish:

As Chairman of the Big Bear Community Development Group (BBCDG), Resource Coordinator for the Downriver Resource Center, Director of the Trinity County Chamber of Commerce, and owners of Trinity River Rafting, we are concerned, and disappointed at last minute changes regarding the Long-term Water Service Contracts for CVP. What is most baffling, and disappointing is that changes were approved on a finding of No Significant Impact. A finding with this conclusion needs to be based on a comprehensive CVP-wide EIS for water contract renewals, which has not been prepared, and would not, we believe, lead to a conclusion of "No Significant Impact."

EAs for contracts that run for a 25-year period, with the promise of additional 25-year contract renewals, are inadequate as environmental documents, and fail to analyze a meaningful range of alternatives, including the most environmentally protective alternatives. A comprehensive Environmental Impact Statement (EIS) should be completed to comply with the law.

Renewal of contracts are an over commitment of water, and are projected to increase demands on Trinity and Shasta Lakes, pressing these resources beyond recommended carryover storage, with resulting impacts to Trinity River and Sacramento fisheries.

Renewal of contracts ignore CALFED's clear conclusion that deliveries to many CVP contractors will be less than old contract amounts, and the CVPIA's mandate to modify the new contracts to carry out CVPIA's environmental purposes.

Despite the huge change in CVPIA to provide only one 25 year renewal right, the Bureau is now proposing to amend CVPIA (in effect) by guaranteeing a second 25 year contract as part of this new contract. This automatic renewal right, limited by only very superficial conditions in the contract, takes away the government's single greatest leverage in negotiating new water allocations in 2025, essentially locking in current CVP contractors as in control of California's largest project for another half century. This provision makes a finding of "No Significant Impact" even more unfounded, and underscores the need for adequate public input, and a comprehensive EIS for water contract approvals.

Contracts should be renegotiated, not renewed, and should reflect the legal requirements of CVPIA. A CVP-wide contract renewal FIS should be prepared. The finding of "No Significant Impact" is unjustifiable, and should be set aside.

6

Sincerely,

David Steinhauser *Dana Hord*

David Steinhauser, and Dana Hord



TRINITY RIVER RAFTING
P.O. Box 572
Big Bar, CA 93010
(800) 30 RIVER

Comment #	Response
BBCDG-1	The analysis displayed in the Final EAs support FONSI's. Contract renewal was addressed in the CVPIA PEIS and thus the contract renewal EAs are tiered from the PEIS.
BBCDG-2	See responses to NRDC-1 to -6 and -10.
BBCDG-3	The CVPIA PEIS addressed the impacts of renewing contracts accompanied with the implementation of CVPIA.
BBCDG-4	The CVPIA PEIS addressed the impacts of renewing contracts accompanied with the implementation of CVPIA.
BBCDG-5	Documents evaluate current renewal period. If contracts are renewed in the future additional environmental documentation would be needed.
BBCDG-6	See responses to NRDC-1 to -6.



Department of Energy
 Western Area Power Administration
 Sierra Nevada Customer Service Region
 114 Parkshore Drive
 Folsom, California 95630-4710

BUREAU OF RECLAMATION OFFICIAL FILE COPY RECEIVED	
NOV 21 2000	
DATE	TIME
12/2	

Mr. Al Candlish
 U.S. Bureau of Reclamation
 2800 Cottage Way
 Sacramento, CA 95825

Dear Mr. Candlish:

Thank you for the opportunity to review the draft Environmental Assessments (EA) for the water contract renewal process for the Central Valley Project (CVP). As the agency charged with the responsibility for marketing the hydropower resources of the CVP, the Western Area Power Administration (Western) has an interest in participating in the U.S. Bureau of Reclamation's (Reclamation) water contract renewal process.

Based on our initial review of the EA's for West Sacramento Canals, Feather River, Delta Mendota Canal, Friant, and Cross Valley, we are concerned that the documents do not appear to adequately address impacts resulting from the proposed action in two critical areas. First, the environmental assessments do not adequately model and analyze the tiered water pricing policy and the subsequent implications on ability-to-pay policies. Secondly, CVP hydropower resource impacts associated with the proposed water delivery options where additional Project Use pumping is required are also not adequately addressed.

1
2

The purpose of the tiered water pricing policy under the Central Valley Project Improvement Act (CVPIA) is to encourage the most efficient use of Federal water resource. However, this policy is effective only in those instances where CVP water contractors are required to pay the "full cost" of the water. Under the "ability-to-pay" principle of Reclamation Law, CVP water contractors are only required to pay capital costs if they cannot meet all of their allocated repayment obligations. As a result, CVP water contractors may not respond, as expected, to pricing signals from the tiered water pricing policy. Consequently, the results of the agricultural production models used to evaluate impacts in each EA are deficient, since the true cost associated with the Federal water was misstated. Currently, CVP water contractors in the Corning and Tehama-Colusa Canal service areas, as well as in Bella Vista and in Clear Creek districts are operating under "ability-to-pay" processes approved by Reclamation. It is not appropriate to disregard current practices and policies from your EA modeling efforts.

3

Moreover, under current ability-to-pay policies, any excused capital costs are transferred to the CVP preference power customers for repayment. Again, the EA's do,

4

ENC 6 00
 1368
 38391

not address this cost shift and its impact on the CVP preference power customers. Since the EA's do not specifically address this impact and its potential magnitude and consequence, we again believe the EA's to be deficient.

4 cont.

Finally, when Federal water is delivered to CVP water contractors (both agricultural and M&I) through pumps, Project Use energy is required to move the water. To the extent that additional water deliveries (e.g., either through re-lift pumping or in-line canal pumping) are contemplated in each of the EA's, the dual impacts (financial impacts to CVP preference power customers and potential impact to the environment) must be discussed. Whenever additional Project Use pumping is required to move Federal water, CVP generation is reduced, thereby reducing the available generation for sale to CVP preference power customers. This increases the per-unit cost to the CVP preference power customers. To the extent that existing electrical loads must be met by other sources, the in-direct environmental impact of using that source must be documented. In this case, it is most likely that the alternative power source for the CVP hydropower generation is a thermal one. Consequently, air quality and all other attendant impacts associated with utilization of this thermal power source should be identified and documented in the EA's.

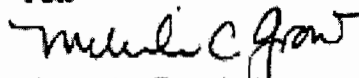
5

6

Thank you for allowing Western to furnish you with our comments. I look forward in continuing to work with you as your environmental process moves forward. Should you have any questions, please feel free to contact me at (916) 353-4534.

Sincerely,

FOR



Nannette Engelbride
Resource Planning Manager

cc:
Mr. Jeffrey Phipps
2021 Driftwood Circle
El Dorado Hills, CA 95762

Comment #	Response
WAPA-1	<p>The tiered water pricing policy evaluated in the EA assumed that ability-to-pay policy only applied to the capital component and the restoration fund component. The amount subject to ability-to-pay is equal under all of the alternatives.</p> <p>The amount of costs to be paid by others, such as the CVP Preference Power Customers, would be the same under all alternatives and in the PEIS Preferred Alternative. As described in the Final PEIS, CVPIA includes provisions and authorization to reduce impacts of CVP construction and operation on fish and wildlife resources and authorization to use ability-to-pay policies to reduce impacts to agricultural water service contractors. CVPIA does not include authorization to reduce impacts to preference power customers. Therefore, there was no reasonable mitigation measures available to reduce the impact of CVPIA implementation on preference power customers due to the reduced value of power generated, allocation of costs transferred from agricultural users to power customers under the ability-to-pay policies, and allocation of a portion of the Restoration Fund if CVP water sales do not meet the minimum Restoration Fund value.</p>
WAPA-2	<p>None of the alternatives increase water deliveries, therefore CVP Project Use power will not increase. Also, see response WAPA-6.</p>
WAPA-3	<p>Since the amount subject to ability-to-pay is equal under all alternatives, the model results adequately compare the responses based upon tiered pricing which is not subject to ability-to-pay.</p>
WAPA-4	<p>See response to WAPA-1.</p>
WAPA-5	<p>See response to WAPA-2.</p>
WAPA-6	<p>As discussed in response to WAPA-2, there will be no change in power production or Project Use.</p>