

APPENDIX B - OF 2001 IRL EA

Interim Contract Sample

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Irrigation and M&E
R.O. Draft 05/27/1994
Rev. R.O. 06/21/1994
Rev. R.O. 07/11/1994
Rev. R.O. 07/19/1994
Rev. R.O. 08/09/1994
Rev. R.O. 08/15/1994
Rev. R.O. 08/19/1994
Rev. R.O. 02/17/1995
Rev. R.O. 08/13/1997
Rev. R.O. 09/29/1999
Rev. R.O. 09/30/1999
Rev. R.O. 11/03/1999
Rev. R.O. 08/25/2000
Rev. R.O. 09/14/2000
Rev. R.O. 12/08/2000
R.O. 01/30/2001

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UNITED STATES
DEPARTMENT OF THE INTERIOR
BUREAU OF RECLAMATION
Central Valley Project, California

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INTERIM RENEWAL CONTRACT BETWEEN THE UNITED STATES
AND

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PROVIDING FOR PROJECT WATER SERVICE

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THIS CONTRACT, made this ___ day of _____, 2001, in
pursuance generally of the Act of June 17, 1902 (32 Stat. 388), and acts amendatory or
supplementary thereto, including, but not limited to, the acts of August 26, 1937 (50 Stat. 844),
as amended and supplemented, August 4, 1939 (53 Stat. 187), as amended and supplemented,
July 2, 1956 (70 Stat. 485), June 21, 1963 (77 Stat. 68), October 12, 1982 (96 Stat. 126), as

1 amended and Title XXXIV of the Act of October 30, 1952 (106 Stat. 4706), all collectively
2 hereinafter referred to as the Federal Reclamation law, between THE UNITED STATES OF
3 AMERICA, hereinafter referred to as the United States, and _____
4 hereinafter referred to as the Contractor, a public agency of the State of California, duly
5 organized, existing, and acting pursuant to the laws thereof, with its principal place of business in
6 _____, California;

7 WITNESSETH, That:

8 EXPLANATORY RECITALS

9 WHEREAS, the United States has constructed and is operating the Central Valley
10 Project, California for diversion, storage, carriage, distribution and beneficial use, for flood
11 control, irrigation, municipal, domestic, industrial, fish and wildlife mitigation, protection and
12 restoration, generation and distribution of electric energy, salinity control, navigation and other
13 beneficial uses, of waters of the Sacramento River, the American River, the Trinity River, and
14 the San Joaquin River and their tributaries; and

15 [DIVISIONAL ISSUE] WHEREAS, the United States constructed
16 _____, hereinafter collectively referred to as the _____ facilities, which
17 will be used in part for the furnishing of water to the Contractor pursuant to the terms of this
18 interim renewal contract; and

19 [DISTRICT ISSUE] WHEREAS, the Contractor and the United States entered
20 into Contract No. _____ as amended, which provided the Contractor, Central Valley

1 Project water from the _____ from _____ to
2 _____ and

3 WHEREAS, the Contractor and the United States entered into interim renewal
4 contract(s) identified as Contract No(s) _____, the latter of which is
5 hereinafter referred to as the Existing Interim Renewal Contract, which provided Project Water
6 to the Contractor from _____ through _____; and

7 WHEREAS, the Contractor has requested a subsequent interim renewal contract
8 pursuant to the Existing Interim Renewal Contract, Federal Reclamation law and the laws of the
9 State of California, for water service from the Central Valley Project; and

10 WHEREAS, the United States and the Contractor believe that either further
11 negotiations on a long-term renewal contract for the Contractor would be beneficial and mutually
12 commit to continue to negotiate to seek to reach agreement on the Contractor's proposed long-
13 term renewal contract's required environmental review necessary to execute a long-term renewal
14 contract has not been completed, and the Contractor has requested a subsequent interim renewal
15 contract pursuant to Article 2 (h)(1) of the existing Interim Renewal Contract; and

16 WHEREAS, the United States has determined that the Contractor has to date
17 fulfilled all of its obligations under the Existing Interim Renewal Contract; and

18 WHEREAS, The Contracting Officer has determined that the Contractor has the
19 capability to fully utilize for reasonable and beneficial use, or shown projected future reasonable
20 and beneficial use for, the quantity of Project Water to be made available to it pursuant to this
21 interim renewal contract; and

1 [DISTRICT ISSUE] WHEREAS, rights of renewal of Contract No.
2 _____ and to convert said contract to a contract as provided by subsection (d),
3 Section 9 of the Act of August 4, 1939 (53 Stat. 1187), are set forth in said contract; and

4 WHEREAS, Section 2404 of the CVPIA, precludes long-term renewal of water
5 service contracts until the completion of appropriate environmental documentation, including a
6 programmatic environmental impact statement ("PEIS") pursuant to the National Environmental
7 Policy Act analyzing the direct and indirect impacts and benefits of implementing the CVPIA
8 and the potential renewal of all existing contracts for Project Water; and

9 WHEREAS, in order to continue water service provided under Project water
10 service contracts that expire prior to the completion of the PEIS, the United States intends to
11 execute interim renewal contracts for a period not to exceed three (3) Years in length, and for
12 successive interim periods of not more than two (2) Years in length, until appropriate
13 environmental documentation, including the PEIS, is finally completed, at which time the
14 Secretary shall, pursuant to Federal Reclamation law, upon request of the Contractor, enter into a
15 long-term renewal contract for a period of twenty-five (25) Years; and may thereafter renew such
16 long-term renewal contracts for successive periods not to exceed twenty-five (25) Years each;
17 and

18 WHEREAS, the Secretary intends to assure uninterrupted water service and
19 continuity of contract through the process set forth in Article 2 hereof; and

1 (f) "Eligible Lands" shall mean all lands to which Irrigation Water may
2 be delivered in accordance with Section 204 of the Reclamation Reform Act of
3 October 12, 1982 (96 Stat. 1263), as amended, hereinafter referred to as RRA,

4 (g) "Excess Lands" shall mean all lands defined as excess in
5 Section 204 of the RRA, other than those lands exempt from acreage limitation under
6 Federal Reclamation law;

7 (h) "Full Cost Rate" shall mean that water rate described in Sections 205(a)(3)
8 or 202(3) of the RRA, whichever is applicable;

9 (i) "Ineligible Lands" shall mean all lands to which Irrigation Water may not
10 be delivered in accordance with Section 204 of the RRA,

11 (j) "Irrigation Water" shall mean Project Water which is used primarily
12 in the production of agricultural crops or livestock, including domestic use
13 incidental thereto, and watering of livestock;

14 (k) "Landholder" shall mean an individual or entity attributed with the total
15 irrigable acreage of one or more tracts of land situated in one or more districts owned
16 and/or operated under a lease which is served with Irrigation Water pursuant to a contract
17 with the United States;

18 (l) "M&I Water" shall mean water made available from the Project other than
19 Irrigation Water. M&I Water shall include water used for purposes such as the watering
20 of landscaping or pasture for animals (e.g., horses) which are kept for personal enjoyment
21 or water delivered to landholding operated in units of less than ___ acres unless the

1 Contractor establishes to the satisfaction of the Contracting Officer that the use of water
2 delivered to any such landholding is a use described in subdivision (j) of this Article.

3 (m) "O&M" shall mean normal and reasonable care, control, operation, repair,
4 replacement, and maintenance of Project facilities;

5 (n) "Operating Non-Federal Entity" shall mean a Non-Federal entity which
6 has the obligation to operate and maintain all or a portion of the [Division] facilities
7 pursuant to an agreement with the United States;

8 (o) "Project" shall mean the Central Valley Project owned by the
9 United States and operated by the Department of the Interior, Bureau of Reclamation;

10 (p) "Project Water" shall mean all water that is developed, diverted, stored, or
11 delivered by the United States in accordance with the statutes authorizing the Project and
12 in accordance with the terms and conditions of applicable water rights permits and
13 licenses acquired by and/or issued to the United States pursuant to California law;

14 (q) "Rates" shall mean the payments determined annually by the Contracting
15 Officer in accordance with the then current applicable water ratesetting policies for the
16 Project;

17 (r) "Secretary" or "Contracting Officer" shall mean the Secretary of the
18 United States Department of the Interior or his duly authorized representative;

19 (s) "Year" shall mean the period from and including March 1 of
20 each Calendar Year through the last day of February of the following Calendar Year;

21 TERM OF CONTRACT - RIGHT TO USE OF WATER

1 2. (a). This interim renewal contract shall be effective from March 1, 2001 and
2 shall remain in effect through February 28, 2002, and thereafter will be renewed as described in
3 this article. Except as provided in subdivision (b) of this Article, until completion of a,
4 appropriate environmental review, and provided that the Contractor has complied with all the
5 terms and conditions of the interim renewal contract in effect for the period immediately
6 preceding the requested successive interim renewal contract, this interim renewal contract will be
7 renewed, upon request of the Contractor, for successive interim periods each of which shall be no
8 more than two (2) Years in length. Also, except as provided in subdivision (b) of this Article, in
9 order to promote orderly and cost effective contract administration, the terms and conditions in
10 subsequent interim renewal contracts shall be identical to the terms and conditions in the interim
11 renewal contract immediately preceding the subsequent interim renewal contract: Provided,
12 however, That each party preserves the right to propose modification(s) in any interim renewal
13 contract other than those described in subdivision (b) of this Article, in which case the parties
14 shall negotiate in good faith appropriate modification(s) to be included in any successive interim
15 renewal contracts. Said modification(s) of each successive interim renewal contract shall be
16 agreed upon within a reasonable time prior to the expiration of the then existing interim renewal
17 contract. Nothing in this Article shall in any way alter the obligation that, upon final completion
18 of the PEIS and any necessary supplemental environmental documentation, the Secretary shall,
19 pursuant to Federal Reclamation law, upon request of the Contractor, enter into a long-term
20 renewal contract for a period of twenty-five (25) Years and may thereafter renew such long-term
21 renewal contracts for successive periods not to exceed twenty-five (25) Years each. The
22 Contractor asserts that Contract No. _____, and existing law go beyond the preceding

1 sentence to give it enforceable rights to successive long-term renewal contracts. The Contracting
2 Officer disagrees with that assertion. The parties agree that this interim renewal contract
3 preserves the rights and positions of the parties and that the omission of language in this interim
4 renewal contract setting out the rights asserted by the Contractor to successive renewals is not
5 intended to be, nor shall it be interpreted as, a waiver of any such rights to the extent any such
6 rights are later determined to exist by a court of competent jurisdiction or by mutual agreement
7 of the parties. If a court of competent jurisdiction or the parties by mutual agreement determine
8 that incorporation of such language in this interim renewal contract is necessary to preserve such
9 rights, this interim renewal contract shall be construed as incorporating such language as though
10 fully set forth herein as of the effective date hereof.

11 (b) The parties anticipate that they will engage in good faith negotiations
12 intended to permit the execution of a twenty-five (25) Year long-term renewal contract
13 contemplated by Section 2404 (c) of the CVPIA, hereinafter referred to as a "long-term renewal
14 contract", by the end of the term hereof. The parties recognize the possibility that this schedule
15 may not be met. Accordingly:

16 (i) In the event (i) the Contractor and Contracting Officer have
17 reached agreement on the terms of the Contractor's long-term renewal contract or (ii) the
18 Contractor and Contracting Officer have not completed the negotiations on the Contractor's
19 long-term renewal contract, believe that further negotiations on that contract would be beneficial,
20 and mutually commit to continue to negotiate to seek to reach agreement, but (iii) all
21 environmental documentation required to allow execution of the Contractor's long-term renewal

1 contract by both parties has not been completed in time to allow execution of the Contractor's
2 long-term renewal contract by November 30, 2001, then (iv) the parties will expeditiously
3 complete the environmental documentation required of each of them in order to execute the
4 Contractor's long-term renewal contract at the earliest practicable date. In addition, the
5 Contractor's then current interim renewal contract will be renewed without change upon the
6 request of either party through the agreed-upon effective date of the Contractor's long-term
7 renewal contract or, in the absence of agreement on the terms of the Contractor's long-term
8 renewal contract, through the succeeding February 28.

9 (2) Provided that this interim renewal contract is not subject to
10 renewal under the terms described in subdivision (1) of this Article, if a party determines that the
11 parties have reached an impasse which they have been unable to resolve and which precludes
12 agreement on the long-term renewal contract, that party may notify the other that it has
13 concluded that there is no reasonable likelihood of reaching agreement on the terms of a
14 long-term renewal contract prior to November 1, 2001. In the event of such notice, the parties
15 will immediately agree to a schedule and process for negotiating the terms (other than any terms
16 that would impair continuity of water supply or continuity of contract) of and executing an
17 interim renewal contract; provided that neither party will propose for inclusion in the interim
18 renewal contract any provision not previously included in an existing interim renewal contract
19 which it had previously proposed for inclusion in the long-term renewal contract and which was
20 the subject of an impasse in the long-term renewal contract negotiations. This schedule will
21 provide for completion of the negotiations of the terms of that contract by February 1, 2002, and

1 for execution of the contract on or about February 15, 2002. The parties each acknowledge the
2 right of either party to seek judicial relief in connection with any impasse reached in connection
3 with negotiation of the long-term renewal contract and/or an interim renewal contract that would
4 become effective on or after February 28, 2002.

5 (c) The parties acknowledge that the Contractor asserts that it is entitled as a
6 matter of law to an interim renewal contract of longer duration than twelve (12) months, and that
7 the Contracting Officer asserts that it is under no obligation to provide the Contractor with an
8 interim renewal contract of any particular duration. Accordingly, the parties further
9 acknowledge that (i) the foregoing process represents a mutual accommodation to facilitate their
10 joint desire to proceed with the development of a long-term renewal contract in an expeditious
11 and orderly manner, (ii) they each preserve their respective rights and positions relative to the
12 entitlement of the Contractor to subsequent interim renewal contracts should they become
13 necessary, and the terms thereof, and (iii) their agreement to the process and interim renewal
14 contract terms described above is in no way intended to be, nor will it be interpreted as, a waiver
15 of any such rights or positions, all of which are and will be expressly preserved.

16 (d) [DISTRICT ISSUE] The omission of language in this interim renewal
17 contract providing for conversion of this interim renewal contract or any subsequent renewals
18 thereof to a repayment contract, pursuant to the Act of July 2, 1956 (70 Stat. 487), shall not
19 prejudice the Contractor's right to assert a right to have such language included in subsequent
20 renewals of this interim renewal contract or to exercise such conversion, all as provided by law.

1 or to negotiate the language regarding such conversion to be included in subsequent renewal
2 contracts.

3 WATER TO BE MADE AVAILABLE AND DELIVERED TO THE CONTRACTOR

4 3. (a) Subject to the provisions set forth in Articles 11 and 12 hereof, and
5 consistent with applicable State water rights, permits and licenses, the Contractor is entitled to,
6 and the Contracting Officer shall be obligated to make available to the Contractor up to _____
7 acre-feet of Project Water for irrigation and/or municipal and industrial purposes during the term
8 of this interim renewal contract. The quantity of Project Water delivered to the Contractor in
9 accordance with this Article 3(a) in any Year shall be scheduled and paid for pursuant to the
10 provisions of Articles 4 and 7 hereof, and shall not exceed the quantity of Project Water the
11 Contractor intends to put to reasonable beneficial use within the Contractor's Service
12 Area/boundaries or sold, transferred, or exchanged pursuant to Article 9 during the term of this
13 interim renewal contract.

14 (b) The Contractor shall utilize the Project Water made available to it pursuant
15 to this interim renewal contract in accordance with all applicable requirements of any Biological
16 Opinion addressing the execution of this interim renewal contract developed pursuant to Section
17 7 of the Endangered Species Act of 1973 as amended, and in accordance with environmental
18 documentation as may be required for specific activities, including conversion of Irrigation
19 Water to M&I Water.

20 (c) The Contractor shall make reasonable and beneficial use of Project Water
21 or other water furnished pursuant to this interim renewal contract. Divisional Issue: In addition,

1 use of Project Water in a ground-water recharge program shall be permitted under this contract to
2 the extent that it is carried out in accordance with California law. Provided, however, that such
3 ground-water recharge program cannot be undertaken unless and until the Contractor submits a
4 ground-water management plan pursuant to California law that demonstrates that such ground-
5 water recharge program will result in a reasonable and beneficial use of such water.

6 (d) If the Contracting Officer determines that Project Water, or other water
7 available to the Project, can be made available to the Contractor in addition to the quantity of
8 Project Water made available to the Contractor pursuant to subdivision (a) of this Article, the
9 Contracting Officer shall so notify the Contractor. If the Contractor requests the delivery of any
10 quantity of such water, the Contracting Officer shall make such water available to the Contractor
11 in accordance with applicable statutes, regulations, guidelines, and policies.

12 (e) DIVISIONAL ISSUE If the Contractor requests permission to
13 reschedule for use during the subsequent Year some or all of the Project Water made available to
14 the Contractor during the current Year or to use, during the current Year, that quantity of Project
15 Water the United States has agreed to make available to the Contractor during the subsequent
16 Year, the Contracting Officer may permit such uses in accordance with applicable statutes,
17 regulations, guidelines, and policies.

18 (f) The Contractor's right pursuant to Federal Reclamation law and applicable
19 State law to the beneficial use of water furnished pursuant to this interim renewal contract, any
20 subsequent interim renewal contract and, as described in Article 2(h), any long-term renewal
21 contract, shall not be disturbed so long as the Contractor shall fulfill all of its obligations under

1 this interim renewal contract and any such renewal thereof. Nothing in the preceding sentence
2 shall affect the Contracting Officer's ability to impose shortages under subdivision (b) of Article
3 12 of this interim renewal contract and the applicable provisions of any such renewal thereof.

4 (g) Notwithstanding subdivisions (j) and (k) of Article 1, Project Water
5 furnished to the Contractor pursuant to this interim renewal contract may be delivered for
6 purposes other than those described in subdivisions (j) and (k) of Article 1 upon written approval
7 by the Contracting Officer in accordance with the terms and conditions of such approval.

8 TIME FOR DELIVERY OF WATER

9 (a) On or about February 15, of each Calendar Year, the Contracting Officer
10 shall declare the amount of Project Water estimated to be made available to the Contractor
11 pursuant to this interim renewal contract for the upcoming Year. The declaration will be updated
12 monthly, as necessary, based on current hydrologic conditions. The Contracting Officer shall
13 make available the forecast of Project operations, with relevant supporting information, upon the
14 written request of the Contractor or its representatives. Upon written request of the Contractor,
15 the Contracting Officer shall provide the basis of the estimate which shall include, but not be
16 limited to, a monthly pumping forecast for the O'Neill Pumping Plant, the projected carryover of
17 Project reservoirs, projected CVP/A impacts, projected Endangered Species Act, and all other
18 regulatory impacts.

19 (b) On or before each March 1, the Contractor shall submit to the Contracting
20 Officer and at such other times as necessary, a written schedule, satisfactory to the Contracting
21 Officer, showing the times, and quantities of Project Water to be delivered by the United States

1 to the Contractor during the upcoming Year pursuant to this interim renewal contract, and,
2 consistent with subdivision (a) of Article 3 herein.

3 (c) Subject to the conditions set forth in subdivision (a) of Article 3, the
4 United States shall deliver Project Water to the Contractor in accordance with the initial schedule
5 submitted by the Contractor pursuant to subdivision (b) of this Article, or any revision(s) thereto
6 submitted within a reasonable time prior to the date(s) on which the requested change(s) is/are to
7 be implemented.

8 POINT OF DIVERSION AND RESPONSIBILITY FOR DISTRIBUTION OF WATER

9 5. (a) The Project Water to be furnished to the Contractor pursuant to this
10 interim renewal contract shall be made available to the Contractor at _____ and
11 any additional point or points of delivery either on Project facilities or another location or
12 locations mutually agreed to in writing by the Contracting Officer and the Contractor.

13 (b) DISTRICT ISSUE: The Contracting Officer shall make all reasonable
14 efforts to maintain sufficient flows and levels of water in the _____ Canal to
15 furnish Project Water to the Contractor at the turnout(s) established as a delivery point(s)
16 pursuant to (a) of this Article.

17 (c) Irrigation Water furnished to the Contractor pursuant to this interim
18 renewal contract shall be delivered by the Contractor in accordance with any applicable land
19 classification provisions of Federal Reclamation law and the associated regulations. Project
20 Water shall not be delivered to land outside the Contractor's Service Area/boundaries unless
21 approved in advance by the Contracting Officer.

1 (d) All Project Water delivered to the Contractor pursuant to this interim
2 renewal contract shall be measured and recorded with equipment furnished, installed, operated,
3 and maintained by the United States or the responsible Operating Non-Federal Entity at the point
4 or points of delivery established pursuant to subdivision (a) of this Article. Upon the request of
5 either party to this interim renewal contract, the Contracting Officer shall investigate the
6 accuracy of such measurements and shall take any necessary steps to adjust any errors appearing
7 therein. The Contractor shall advise the Contracting Officer on or before the 10th calendar day
8 of each month of the quantity of M&I Water taken during the preceding month.

9 (e) Neither the United States nor any Operating Non-Federal Entity shall be
10 responsible for the control, carriage, handling, use, disposal, or distribution of Project Water
11 made available to the Contractor pursuant to this interim renewal contract beyond the delivery
12 points specified in subdivision (a) of this Article. The Contractor shall indemnify the United
13 States its officers, employees, agents, and assigns on account of damage or claim of damage of
14 any nature whatsoever for which there is legal responsibility, including property damage,
15 personal injury, or death arising out of or connected with the control, carriage, handling, use,
16 disposal, or distribution of such Project Water beyond such delivery points, except for any
17 damage or claim arising out of (i) acts performed by the United States or any of its officers,
18 employees, agents, or assigns, including any responsible Operating Non-Federal Entity, with the
19 intent of creating the situation resulting in any damage or claim, (ii) willful misconduct of the
20 United States or any of its officers, employees, agents, or assigns, including any responsible

1 Operating Non-Federal Entity, or (iii) negligence of the United States or any of its officers,
2 employees, agents, or assigns including any responsible Operating Non-Federal Entity.

3 MEASUREMENT OF WATER WITHIN THE DISTRICT

4 6. (a) [Contract Unique Issue] The Contractor shall ensure that, unless the
5 Contractor has established an alternative measurement program satisfactory to the Contracting
6 Officer, all surface water delivered for irrigation purposes within the Contractor's Service
7 Area boundaries is measured at each agricultural turnout and such water delivered for municipal
8 and industrial purposes is measured at each municipal and industrial service connection. All
9 water measuring devices or water measuring methods of comparable effectiveness must be
10 acceptable to the Contracting Officer. The Contractor shall be responsible for installing,
11 operating, and maintaining and repairing all such measuring devices and implementing all such
12 water measuring methods at no cost to the United States. The Contractor shall use the
13 information obtained from such water measuring devices or water measuring methods to ensure
14 proper management of the water; to bill water users for water delivered by the Contractor; and, if
15 applicable, to record water delivered for municipal and industrial purposes by customer class as
16 defined in its water conservation plan. Nothing herein contained, however, shall preclude the
17 Contractor from establishing and collecting any charges, assessments, or other revenues
18 authorized by California law. The Contractor shall include a summary of its annual surface
19 water deliveries in the annual report described in subdivision (d) of Article 25.

20 (b) [Contract Unique Issue] To the extent the information has not otherwise
21 been provided, upon execution of this interim renewal contract, the Contractor shall provide to

1 the Contracting Officer a written report describing the measurement devices or water measuring
2 methods used or to be used to implement subdivision (a) of this Article and identifying the
3 agricultural turnouts and the municipal and industrial service connections or alternative
4 measurement programs approved by the Contracting Officer, at which such measurement devices
5 or water measuring methods are being used, and, if applicable, identifying the locations at which
6 such devices and/or methods are not yet being used including a time schedule for implementation
7 at such locations. The Contracting Officer shall advise the Contractor in writing within ninety
8 (90) days as to the adequacy of, and necessary modifications, if any, of the measuring devices or
9 water measuring methods identified in the Contractor's report and if the Contracting Officer does
10 not respond in such time, they shall be deemed adequate. Within six (6) months following the
11 Contracting Officer's response, the parties shall negotiate in good faith the earliest practicable
12 date by which the Contractor shall modify said measuring devices and/or measuring methods as
13 required by the Contracting Officer to ensure compliance with subdivision (a) of this Article.

14 (c) All new surface water delivery systems installed within the Contractor's
15 Service Area/boundaries after the effective date of this interim renewal contract shall also
16 comply with the measurement provisions described in subdivision (a) of this Article.

17 (d) The Contractor shall inform the Contracting Officer and the State of
18 California in writing by April 30 of each Year of the monthly volume of surface water delivered
19 within the Contractor's Service Area/boundaries during the previous Year.

20 RATES AND METHOD OF PAYMENT FOR WATER

1 7. (a) The Contractor shall pay the United States in monthly payments as
2 provided in this Article for the quantities of Delivered Water furnished to the Contractor pursuant
3 to this interim renewal contract. Such payments shall consist of the applicable Rates and
4 Charges determined annually in accordance with applicable Federal law and associated
5 regulations. The Rates and Charges applicable upon execution of this interim renewal contract
6 are set forth in Exhibit "A."

7 (b) The Contracting Officer shall notify the Contractor of the Rates and
8 Charges as follows:

9 (1) Prior to July 1, of each Calendar Year, the Contracting Officer
10 shall provide the Contractor the preliminary calculation of the Charges that will be applied for
11 the period October 1 of the current Calendar Year, through September 30, of the following
12 Calendar Year, and identify the statutes, regulations and guidelines used as the basis for such
13 calculations. On or before September 15 of each Calendar Year, the Contracting Officer shall
14 notify the Contractor in writing of the Charges to be in effect during the period October 1 of the
15 current Calendar Year, through September 30 of the following Calendar Year, and such
16 notification shall revise Exhibit "A."

17 (2) Prior to October 1 of each Calendar Year, the Contracting Officer
18 shall make available to the Contractor an estimate of the Rates of payment for the following Year
19 and the computations and cost allocations upon which those Rates are based. The Contractor
20 shall be allowed not less than two months to review and comment on such computations and cost
21 allocations. By December 31 of each Calendar Year, the Contracting Officer shall provide the

1 Contractor with the final Rates to be in effect for the upcoming Year, and such notification shall
2 revise Exhibit "A."

3 (c) At the time the Contractor submits the initial schedule for the delivery of
4 Project Water for each Year pursuant to subdivision (b) of Article 4 of this interim renewal
5 contract, the Contractor shall pay the United States the total amount payable pursuant to the
6 applicable Rate(s) for all Project Water scheduled to be delivered pursuant to this interim
7 renewal contract during the first two (2) calendar months of the Year. Before the end of the first
8 month or part thereof of the Year, and before the end of each calendar month thereafter, the
9 Contractor shall pay pursuant to the applicable Rate(s) for all Project Water scheduled to be
10 delivered pursuant to this interim renewal contract during the second month immediately
11 following. Adjustments between the payments for the scheduled amount of Project Water and
12 the appropriate payments for quantities of Delivered Water furnished pursuant to this interim
13 renewal contract each month shall be made before the end of the following month: Provided,
14 That any revised schedule submitted by the Contractor pursuant to Article 4 which increases the
15 amount of Project Water to be delivered pursuant to this interim renewal contract during any
16 month shall be accompanied with appropriate payment for Rates to assure that Project Water is
17 not furnished to the Contractor in advance of such payment. In any month in which the quantity
18 of Delivered Water furnished to the Contractor pursuant to this interim renewal contract equals
19 the quantity of Project Water scheduled and paid for by the Contractor, no additional Project
20 Water shall be made available to the Contractor unless and until payment of Rates for such
21 additional Project Water is made. Final adjustment between the payments of Rates for the

1 Project Water scheduled and the quantity of Delivered Water furnished during each Year
2 pursuant to its contract shall be made as soon as possible but no later than April 30th of the
3 following Year

4 (d) The Contractor shall pay all Charges owing for Delivered Water before the
5 end of the month following the month of delivery. Such amounts shall be consistent with the
6 quantities of Irrigation Water and M&I Water shown in the United States' water delivery report
7 for the subject month. The water delivery report shall be regarded by the Contractor as a bill for
8 the payment of appropriate Charges. Any monthly adjustment for overpayment or underpayment
9 of Charges shall be accomplished through the adjustment of Charges due to the United States in
10 the next month. By March 31 of each Year, the Contractor shall make any additional payment
11 of Charges it is obligated to make for Delivered Water furnished to the Contractor pursuant to its
12 contract for the previous Year. The amount to be paid for past due payment of Charges shall be
13 computed pursuant to Article 19 of this interim renewal contract.

14 (e) The Contractor shall pay for any Project Water provided under subdivision
15 (d) or (e) of Article 3 as determined by the Contracting Officer pursuant to applicable statutes,
16 regulations, guidelines, and policies.

17 (f) Payments to be made by the Contractor to the United States under this
18 interim renewal contract may be paid from any revenues available to the Contractor.

19 (g) Revenues received by the United States pursuant to this interim renewal
20 contract shall be allocated and applied in accordance with Federal Reclamation law, including
21 but not limited to, subsection 2 of Section 1 of the Act of July 2, 1956 (70 Stat. 483), and

1 subsection (f) of Section 3-405, subsection (c)(1) of Section 3-406 and subsection (d)(2)(A) of
2 Section 3-407 of the CVPIA, and the associated regulations, including but not limited to, the
3 Project Irrigation Water ratesetting policy and the Project M&I ratesetting policy promulgated
4 pursuant to the Administrative Procedures Act.

5 (h) At the Contractor's request, the Contracting Officer shall provide to the
6 Contractor an accounting of all of the expenses allocated and the disposition of all revenues
7 received pursuant to this interim renewal contract in sufficient detail to allow the Contractor to
8 determine that the allocation of expenses and disposition of all revenues received was
9 accomplished in conformance with Federal Reclamation law and the associated regulations. The
10 Contracting Officer and the Contractor shall enter into good faith negotiations to resolve any
11 discrepancies or disputes arising out of said accounting or the Contractor's review thereof.

12 (i) The parties acknowledge and agree that the efficient administration of this
13 interim renewal contract is their mutual goal. Recognizing that experience has demonstrated that
14 mechanisms, policies, and procedures used for establishing Rates and Charges, and/or for
15 making and allocating payments, other than those set forth in this Article would be in the mutual
16 best interest of the parties, it is expressly agreed that the parties may enter into agreements for
17 alternative mechanisms, policies, and procedures for any of those purposes while this interim
18 renewal contract is in effect without amending this contract.

19 NON-INTEREST BEARING OPERATION AND MAINTENANCE DEFICITS

20 3. (Contract Unique Issue) The Contractor and the Contracting Officer have entered
21 into a written agreement specifying a mutually acceptable mechanism through which the

1 Contractor will retire its outstanding non-interest bearing operation and maintenance deficits.
2 [Alternative Language] The Contractor and the Contracting Officer concur that at the time of
3 execution of this interim renewal contract, the Contractor has no non-interest bearing operation
4 and maintenance deficits and shall have no further liability therefor.

5 TRANSFERS OR EXCHANGES OF WATER

6 9 The right to Project Water provided for in this interim renewal contract may be
7 sold, transferred, or exchanged to others for beneficial uses within the State of California if such
8 sale, transfer or exchange is authorized by applicable Federal laws, State laws, and applicable
9 guidelines or regulations then in effect. The right to sell, transfer, or exchange Project Water
10 shall include, and the Contracting Officer shall apply this Article in a manner that does not
11 impede or restrict, lawful short-term sales, transfers, or exchanges of the type the Contractor
12 historically carried out with approval of the Contracting Officer under Contract No.
13 _____ . No sale, transfer, or exchange of the right to Project Water under this
14 interim renewal contract may take place without the prior written approval of the Contracting
15 Officer.

16 APPLICATION OF PAYMENTS AND ADJUSTMENTS

17 19. (a) The amount of any overpayment by the Contractor shall be applied first to
18 any accrued indebtedness arising out of this interim renewal contract then due and payable by the
19 Contractor. Any amount of such overpayment then remaining shall, at the option of the
20 Contractor, be refunded to the Contractor or credited upon amounts to become due to the United
21 States from the Contractor under the provisions hereof in the following months. With respect to

1 overpayment, such adjustment shall constitute the sole remedy of the Contractor or anyone
2 having or claiming to have the right to the use of any of the water supply provided for herein.

3 (b) All advances for miscellaneous costs incurred for work requested by the
4 Contractor pursuant to Article 24 shall be adjusted to reflect the actual costs when the work has
5 been completed. If the advances exceed the actual costs incurred, the difference will be refunded
6 to the Contractor. If the actual costs exceed the Contractor's advances, the Contractor will be
7 billed for the additional costs pursuant to Article 24.

8 TEMPORARY REDUCTIONS--RETURN FLOWS

9 11. (a) Subject to: (i) the authorized purposes and priorities of the Project; and (ii)
10 the obligations of the United States under existing contracts, or renewals thereof, providing for
11 water deliveries from the Project, the Contracting Officer shall make all reasonable efforts to
12 optimize Project Water deliveries to the Contractor as provided in the contract.

13 (b) The United States may temporarily discontinue or reduce the quantity of
14 Project Water to be delivered to the Contractor as herein provided for the purposes of
15 investigation, inspection, maintenance, repair, or replacement of any of the Project facilities or
16 any part thereof necessary for the delivery of Project Water to the Contractor, but so far as
17 feasible the Contracting Officer will give the Contractor due notice in advance of such temporary
18 discontinuance or reduction, except in case of emergency, in which case no notice need be given;
19 Provided, That the United States shall use its best efforts to avoid any discontinuance or
20 reduction in such service. Upon resumption of service after such reduction or discontinuance,
21 and if requested by the Contractor, the United States will, if possible, deliver the quantity of

1 Project Water, which would have been delivered hereunder in the absence of such discontinuance
2 or reduction: Provided Further, That with respect to any quantity of Project Water not delivered
3 after a discontinuance or reduction the Contractor shall be relieved of its scheduling and payment
4 obligations for such quantity of Project Water.

5 (c) The United States reserves the right to all seepage and return flow water
6 derived from water delivered to the Contractor hereunder which escapes or is discharged beyond
7 the Contractor's Service Area/boundaries: Provided, That this shall not be construed as claiming
8 for the United States any right to seepage or return flow being put to reasonable and beneficial
9 use pursuant to this interim renewal contract within the Contractor's Service Area/boundaries by
10 the Contractor or those claiming by, through, or under the Contractor.

11 WATER SHORTAGE AND APPORTIONMENT

12 12. (a) In its operation of the Project, the Contracting Officer will use all
13 reasonable means to guard against a condition of shortage in the quantity of water to be made
14 available to the Contractor pursuant to this contract. Insofar as determined by the Contracting
15 Officer to be practicable, the Contracting Officer will, in the event a shortage appears probable,
16 notify the Contractor of such determinations as soon as possible.

17 (b) If there is a reduction in the total water supply available to the Contractor
18 during any Year because of errors in physical operations of the Project, drought, other physical
19 causes beyond the control of the Contracting Officer or actions taken by the Contracting Officer
20 to meet legal obligations, no liability shall accrue against the United States or any of its officers,
21 agents, or employees for any damage, direct or indirect, arising therefrom, so long as actions

1 based upon the opinions or determinations of the Contracting Officer are consistent with the
2 standards in Article 18.

3 (c) In any Year in which there may occur a shortage for any of the reasons
4 specified in subdivision (b) above, the Contracting Officer shall apportion the available Project
5 Water supply among the Contractor and others entitled, under existing contracts and future
6 contracts (to the extent such future contracts are permitted under subsections (a) and (b) of
7 Section 3404 of the CVPIA) and renewals thereof, to receive Project Water consistent with the
8 contractual obligations of the United States.

9 (d) [Divisional Issue].

10 UNAVOIDABLE GROUND-WATER PERCOLATION

11 13. The Contractor shall not be deemed to have furnished Irrigation Water to Excess
12 Lands or Ineligible Lands within the meaning of this interim renewal contract if such lands are
13 irrigated with ground water that reaches the underground strata as an unavoidable result of the
14 furnishing of Irrigation Water by the Contractor to Eligible Lands.

15 COMPLIANCE WITH FEDERAL RECLAMATION LAW

16 14. This interim renewal contract shall be implemented in accordance with all
17 applicable provisions of Federal Reclamation law, as amended and supplemented.

18 WATER AND AIR POLLUTION CONTROL

19 15. The Contractor, in carrying out this contract, shall comply with all applicable
20 water and air pollution laws and regulations of the United States and the State of California, and
21 shall obtain all required permits or licenses from the appropriate Federal, State, or local
22 authorities.

1 damages, for any such arbitrary, capricious, or unreasonable opinion or determination. Each
2 opinion or determination by either party shall be provided in a timely manner.

3 (c) The Contracting Officer shall have the right to make determinations
4 necessary to administer this interim renewal contract that are consistent with the expressed and
5 implied provisions of this contract, the laws of the United States and the State of California, and
6 the rules and regulations promulgated by the Secretary of the Interior. Such determinations shall
7 be made in consultation with the Contractor to the extent reasonably practicable.

8 CHARGES FOR DELINQUENT PAYMENTS

9 19. (a) The Contractor shall be subject to interest, administrative, and penalty
10 charges on delinquent installments or payments. When a payment is not received by the due
11 date, the Contractor shall pay an interest charge for each day the payment is delinquent beyond
12 the due date. When a payment becomes 60 days delinquent, the Contractor shall pay an
13 administrative charge to cover additional costs of billing and processing the delinquent payment.
14 When a payment is delinquent 90 days or more, the Contractor shall pay an additional penalty
15 charge of 6 percent per year for each day the payment is delinquent beyond the due date.
16 Further, the Contractor shall pay any fees incurred for debt collection services associated with a
17 delinquent payment.

18 (b) The interest charge rate shall be the greater of the rate prescribed quarterly
19 in the Federal Register by the Department of the Treasury for application to overdue payments,
20 or the interest rate of 0.5 percent per month prescribed by Section 6 of the Reclamation Project
21 Act of 1959 (Public Law 76-260). The interest charge rate shall be determined as of the due date
22 and remain fixed for the duration of the delinquent period.

23 (c) When a partial payment on a delinquent account is received, the amount
24 shall be applied, first to the penalty, second to the administrative charges, third to the accrued
25 interest, and finally to the overdue payment.

26 EQUAL OPPORTUNITY

27 20. During the performance of this contract, the Contractor agrees as follows:

1 (1) The Contractor will not discriminate against any employee or applicant for
2 employment because of race, color, religion, sex, or national origin. The Contractor will
3 take affirmative action to ensure that applicants are employed, and that employees are
4 treated during employment, without regard to their race, color, religion, sex, or national
5 origin. Such action shall include, but not be limited to, the following: Employment,
6 upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or
7 termination; rates of payment or other forms of compensation; and selection for training,
8 including apprenticeship. The Contractor agrees to post in conspicuous places, available
9 to employees and applicants for employment, notices to be provided by the Contracting
10 Officer setting forth the provisions of this nondiscrimination clause.

11 (2) The Contractor will, in all solicitations or advertisements for employees
12 placed by or on behalf of the Contractor, state that all qualified applicants will receive
13 consideration for employment without discrimination because of race, color, religion, sex,
14 or national origin.

15 (3) The Contractor will send to each labor union or representative of workers
16 with which it has a collective bargaining agreement or other contract or understanding, a
17 notice, to be provided by the Contracting Officer, advising the said labor union or
18 workers' representative of the Contractor's commitments under Section 202 of Executive
19 Order 11246 of September 24, 1965, and shall post copies of the notice in conspicuous
20 places available to employees and applicants for employment.

21 (4) The Contractor will comply with all provisions of Executive Order
22 No. 11246 of September 24, 1965, as amended, and of the rules, regulations, and
23 relevant orders of the Secretary of Labor.

24 (5) The Contractor will furnish all information and reports required by said
25 amended Executive Order and by the rules, regulations, and orders of the Secretary of
26 Labor, or pursuant thereto, and will permit access to its books, records, and accounts by
27 the Contracting Officer and the Secretary of Labor for purposes of investigation to
28 ascertain compliance with such rules, regulations, and orders.

29 (6) In the event of the Contractor's noncompliance with the nondiscrimination
30 clauses of this contract or with any of the said rules, regulations, or orders, this contract
31 may be canceled, terminated, or suspended, in whole or in part, and the Contractor may
32 be declared ineligible for further Government contracts in accordance with procedures
33 authorized in said amended Executive Order, and such other sanctions may be imposed
34 and remedies invoked as provided in said Executive Order, or by rule, regulation, or order
35 of the Secretary of Labor, or as otherwise provided by law.

1 (c) The Contractor makes this agreement in consideration of and for the
2 purpose of obtaining any and all Federal grants, loans, contracts, property discounts, or other
3 Federal financial assistance extended after the date hereof to the Contractor by the Bureau of
4 Reclamation, including installment payments after such date on account of arrangements for
5 Federal financial assistance which were approved before such date. The Contractor recognizes
6 and agrees that such Federal assistance will be extended in reliance on the representations and
7 agreements made in this Article, and that the United States reserves the right to seek judicial
8 enforcement thereof.

9 PRIVACY ACT COMPLIANCE

10 23. (a) The Contractor shall comply with the Privacy Act of 1974 (5 U.S.C. 552a)
11 (the Act) and the Department of the Interior rules and regulations under the Act (43 CFR 2.45 et
12 seq.) in maintaining landholder acreage certification and reporting records, required to be
13 submitted to the Contractor for compliance with Sections 206 and 218 of the Reclamation
14 Reform Act of 1982 (96 Stat. 1266), and pursuant to 43 CFR 426.10.

15 (b) With respect to the application and administration of the criminal penalty
16 provisions of the Act (5 U.S.C. 552a(f)), the Contractor and the Contractor's employees
17 responsible for maintaining the certification and reporting records referenced in (a) above are
18 considered to be employees of the Department of the Interior. See 5 U.S.C. 552a(m).

19 (c) The Contracting Officer or a designated representative shall provide the
20 Contractor with current copies of the Interior Department Privacy Act regulations and the Bureau
21 of Reclamation Federal Register Privacy Act System of Records Notice (Acreage Limitation--
22 Interior, Reclamation-31) which govern the maintenance, safeguarding, and disclosure of
23 information contained in the landholder's certification and reporting records.

24 (d) The Contracting Officer shall designate a full-time employee of the
25 Bureau of Reclamation to be the System Manager who shall be responsible for making decisions
26 on denials pursuant to 43 CFR 2.61 and 2.64 amendment requests pursuant to 43 CFR 2.72. The
27 Contractor is authorized to grant requests by individuals for access to their own records.

28 (e) The Contractor shall forward promptly to the System Manager each
29 proposed denial of access under 43 CFR 2.64; and each request for amendment of records filed
30 under 43 CFR 2.71; notify the requester accordingly of such referral; and provide the System
31 Manager with information and records necessary to prepare an appropriate response to the
32 requester. These requirements do not apply to individuals seeking access to their own
33 certification and reporting forms filed with the Contractor pursuant to 43 CFR 426.10, unless the
34 requester elects to cite the Privacy Act as a basis for the request.

35 CONTRACTOR TO PAY CERTAIN MISCELLANEOUS COSTS

1 (c) As part of the water conservation program, the Contractor shall develop
2 and be implementing a tiered block water pricing program that promotes conservation and the
3 efficient management of Project Water during the term of this contract. Such pricing program
4 for Project Water shall take into account all relevant circumstances, including without limitation,
5 water shortages imposed under this interim renewal contract and the availability and cost of the
6 Contractor's and individual water user's non-Project alternative sources of supply, including
7 ground water and other non-Project water supplies, so that the Contractor's pricing structure
8 provides incentives for conservation and the efficient management of overall water supply
9 available to water users served by the Contractor. Provided, That no such tiered block water
10 pricing program need be implemented by the Contractor if the Contracting Officer determines,
11 based on information provided by the Contractor, that (i) such a pricing structure will not result
12 in significant conservation of water available for use within the Contractor's service area,
13 including ground water or (ii) other pricing program, conservation or management measures are
14 more appropriate and/or will result in comparable or better conservation of the water supplies
15 available within the Contractor's boundaries. Provided further, If the Contractor fails to, or elects
16 not to, comply with this subdivision of Article 25, then any subsequent interim renewal contract
17 shall contain a tiered pricing contractual provision pursuant to subsection (d) of Section 3405 of
18 the CVPLA.

19 (d) The Contractor shall submit to the Contracting Officer by
20 December 31, of each Calendar Year, an annual report on the status of its implementation of the
21 water conservation program.

22 EXISTING OR ACQUIRED WATER OR WATER RIGHTS

1 26. Except as specifically provided in Article 17 of this contract, the provisions of this
2 interim renewal contract shall not be applicable to or affect water or water rights now owned or
3 hereafter acquired by the Contractor or any user of such water within the Contractor's Service
4 Area boundaries from other than the United States by the Contractor. Any such water shall not
5 be considered Project Water under this contract. In addition, this interim renewal contract shall
6 not be construed as limiting or curtailing any rights which the Contractor or any water user
7 within the Contractor's Service Area/boundaries acquires or has available under any other
8 contract pursuant to the Federal Reclamation Law.

9 OPERATION AND MAINTENANCE BY NON-FEDERAL ENTITY

10 27. DIVISIONAL ISSUE (a) The responsibility for performing and, in some cases
11 funding the operation and/or maintenance (O&M) of all or any portion or portions of the
12 [division] facilities may be transferred to an Operating-Non-Federal Entity by one or more
13 separate agreements between the United States and the Operating Non-Federal Entity. Any such
14 agreements shall require the Operating Non-Federal Entity to perform the O&M in compliance
15 with the provisions of this Contract and shall not interfere with the rights and obligations of the
16 Contractor or the United States hereunder.

17 (b) If so notified in writing by the Contracting Officer, the Contractor shall
18 pay directly to such Operating Non-Federal Entity in accordance with such notice, (1) that
19 portion of the Rate (s) to be paid the United States pursuant to this Contract which the
20 Contracting Officer determines is the Contractor's appropriate share of the costs of the O&M of
21 the [division] facilities transferred to the Operating Non-Federal Entity for O&M; and (2) all
22 appropriate additional amounts charged or assessed by the Operating Non-Federal Entity for the
23 O&M of the [division] facilities. Such direct payments to such Operating Non-Federal Entity

1 shall not relieve the Contractor of its obligation to pay directly to the United States its allocated
2 share of the remaining costs for the O&M of the Project.

3 CONTINGENT ON APPROPRIATION OR ALLOTMENT OF FUNDS

4 28. The expenditure or advance of any money or the performance of any obligation of
5 the United States under this contract shall be contingent upon appropriation or allotment of
6 funds. Absence of appropriation or allotment of funds shall not relieve the Contractor from any
7 obligations under this contract. No liability shall accrue to the United States in case funds are
8 not appropriated or allotted.

9 BOOKS, RECORDS, AND REPORTS

10 29. The Contractor shall establish and maintain accounts and other books and records
11 pertaining to administration of the terms and conditions of this contract, including: the
12 Contractor's financial transactions, water supply data, and Project land and right-of-way
13 agreements; the water users' land-use (crop census), landownership, land-leasing and water use
14 data; and other matters that the Contracting Officer may require. Reports thereon shall be
15 furnished to the Contracting Officer in such form and on such date or dates as the Contracting
16 Officer may require. Subject to applicable Federal laws and regulations, each party to this
17 contract shall have the right during office hours to examine and make copies of the other party's
18 books and records relating to matters covered by this contract.

19 ASSIGNMENT LIMITED--SUCCESSORS AND ASSIGNS OBLIGATED

20 30. (a) The provisions of this contract shall apply to and bind the successors and
21 assigns of the parties hereto, but no assignment or transfer of this contract or any right or interest
22 therein shall be valid until approved in writing by the Contracting Officer.

23 (b) The assignment of any right or interest in this interim renewal contract by
24 either party shall not interfere with the rights or obligations of the other party to this interim
25 renewal contract absent the written concurrence of said other party.

26 SEVERABILITY

27 31. In the event that a person or entity who is neither (i) a party to a Project interim
28 renewal contract, nor (ii) a person or entity that receives Project Water from a party to a Project
29 interim renewal contract, nor (iii) an association or other form of organization whose primary
30 function is to represent parties to Project interim renewal contracts, brings an action in a court of

1 competent jurisdiction challenging the legality or enforceability of a provision included in this
2 interim renewal contract and said person, entity, association, or organization obtains a final court
3 decision holding that such provision is legally invalid or unenforceable and the Contractor has
4 not intervened in that lawsuit in support of the plaintiff(s), the parties to this interim renewal
5 contract shall use their best efforts to (i) within thirty (30) days of the date of such final court
6 decision identify by mutual agreement the provisions in this interim renewal contract which must
7 be revised, and (ii) within three (3) months thereafter promptly agree on the appropriate
8 revision(s). The time periods specified above may be extended by mutual agreement of the
9 parties. Pending the completion of the actions designated above, to the extent it can do so
10 without violating any applicable provisions of law, the United States shall continue to make the
11 quantities of Project Water specified in this interim renewal contract available to the Contractor
12 pursuant to the provisions of this interim renewal contract, which were not found to be legally
13 invalid or unenforceable in the final court decision.

14 OFFICIALS NOT TO BENEFIT

15 32. No Member of or Delegate to Congress, Resident Commissioner, or official of the
16 Contractor shall benefit from this contract other than as a water user or landowner in the same
17 manner as other water users or landowners.

18 CHANGES IN CONTRACTOR'S BOUNDARIES

19 33. While this contract is in effect, no change may be made in the Contractor's
20 boundaries, by inclusion or exclusion of lands, dissolution, consolidation, merger or otherwise,
21 except upon the Contracting Officer's written consent.

22 NOTICES

23 34. Any notice, demand, or request authorized or required by this contract shall be
24 deemed to have been given, on behalf of the Contractor, when mailed, postage prepaid, or
25 delivered to the Area Manager _____, and on
26 behalf of the United States, when mailed, postage prepaid, or delivered to the Board of Directors
27 of the _____. The designation of the addressee or the address may
28 be changed by notice given in the same manner as provided in this Article for other notices.

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IN WITNESS WHEREOF, the parties hereto have executed this interim renewal contract as of the day and year first above written.

THE UNITED STATES OF AMERICA

By: _____
Regional Director, Mid-Pacific Region
Bureau of Reclamation

(SEAL)

NAME OF DISTRICT ENTITY

By: _____
President

Attest:

Secretary

APPENDIX C - of 2001 IRC EA

INTERIM CONTRACTS RENEWAL
2000 BIOLOGICAL OPINION - 3rd QUARTER STATUS REPORTS

JAN 25 2000

MP-50
ENV-116

MEMORANDUM

To: Cay Coude, Assistant Field Supervisor, Sacramento Fish and Wildlife Office, U.S. Fish and Wildlife Service, Sacramento CA

From: Laura Allen **sgd Laura Allen**
Deputy Regional Environmental Officer

Subject: 1st Progress Report for Reclamation's Commitments in the Interim Contract Renewal Biological Opinion

Enclosed is a table outlining proposed actions, conservation measures, or reasonable and prudent measures contained in the February 29, 2000, Section 7 Consultation Biological Opinion (BO) on U.S. Bureau of Reclamation Renewal of 54 Interim and 14 Final Contracts (Interim Contract Renewal BO). We submit this table to comply with a Reporting Requirement on page 5-8 of the Interim Contract Renewal BO, which asks for quarterly progress reports on the commitments contained within this BO and any other BO that addresses service area effects of the Central Valley Project (CVP). This report is for the quarter that ended December 31, 2000.

We have also enclosed additional information regarding all Reclamation funded selenium monitoring in the San Joaquin Valley, as you have requested.

If you have any questions about this status report, please call Bob Baxter at 978-5051 or Laura Allen at 978-5047.

Attachment

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February 2000 Interim Commitments or Conservation Measures pg 1

Proposed Action/Conservation Measures	Responsibility	Due	Status/Remarks
<p>2. Reclamation will develop and implement programs with the 25 water districts of basins 4 to 10 to tie that land use changes associated with the water with the authorized program in 2001.</p>	FWS/USBR	April 28, 2000	is completed. Reclamation week of July 3, 2000
<p>3. Study Districts regarding ESA requirements at the Laramie National Monument.</p>	FWS/USBR	Sept 16, 2000	1. Completed. Core perative GIS teams from both agencies working on Central Valley Habitat Monitoring Workshop. This timeline in this plan has been revised since the last status report. Please refer to report. If expedite is not possible after Phase II but no expected date has been determined.
<p>4. Map the J-cove and adjacent habitat and joint land acquisition of critical, proposed, and candidate species, and provide information to the Districts, the Service and the County regarding the project.</p>	FWS/USBR	Sept 16, 2000	Both agencies are working together to synthesize the data and integrate habitat maps.
<p>5. Monitor land use changes at long-term studies in the J-cove area to evaluate the project as it is used as a water quality study site. Report prepared and candidate species listed.</p>	FWS/USBR	Sept 30, 2000	is due ASAP
<p>6. Reclamation will ensure that its operations and maintenance activities as well as activities of other associated with the use of the project will not impact the project.</p>	FWS/USBR	March 31, 2000	2. Completed. Memo to Service about implementing the previously mentioned is related to schedule of dates that Reclamation contributed to CWRP.
<p>7. Work with the California Department of Pesticide Regulation to develop guidelines and implementation addressing the priority of the project and its ability to track, propose, and coordinate activities.</p>	FWS/USBR	February 28, 2001	3. Pending but delay. Draft of CCAO Field Operations Manual was reviewed by the USBR on Feb 24, 2000. CCAO is incorporating comments received from FWS on the manual. Draft USBR manual was developed by the USBR and distributed to candidates. CCAO is just starting to draft their annual permit after the SUCMA and CCAO manuals. Drafts may be available by Feb 24th, 2001.
<p>8. Review and coordinate plans for the Districts prior to implementation to ensure they do not adversely affect listed, proposed, or candidate species.</p>	USBR	Within 3 months of contract renewal	2. Ag District Plans were provided in July; priority report. Printed copies of the indicated Districts annual reports are available at each Area Office.
<p>9. Review and coordinate plans for the Districts prior to implementation to ensure they do not adversely affect listed, proposed, or candidate species.</p>	USBR	August 31, 2001	24. The criteria for water conservation plans is amended every 3 years, most recent with the CWRP. The criteria was amended in 1997, so will not be amended again until 2002. With this amendment was effective by February 2000, the opportunity for amending the 1998 criteria had already passed. Reclamation will inform by contract with the Service by forming an interagency team that will ensure that the 2002 criteria is in compliance with the CWRP. Reclamation will send a memo to the Service and USBR regarding their participation in the team.

February 20th Interim Contract Renewal Biological Opinion Commitments or Conservation Measures pg 4

Responsible and Project Measures	Agency/Entity	USBR	USBR	USBR	USBR	USBR
<p>E. Informal consultation for inclinations or associations involving the Interior and Private landowners in their opinion that may affect listed species. Formally consult for these inclinations will direct or indirect effects that are likely to adversely affect listed species or result in take. Habitat acquisition will determine if the inclinations or associations will affect listed species per the signing of the HANSL or 401.</p>	<p>E. Will occur when applicable.</p>	<p>USBR</p>	<p>USBR</p>	<p>USBR</p>	<p>USBR</p>	<p>USBR</p>
<p>F. Apply specific criteria to all transfers involving water to ensure transfers comply with the following:</p>	<p>F. Will occur when applicable. Note: the correct language for this provision is on page 2-10, not this language.</p>	<p>USBR</p>	<p>USBR</p>	<p>USBR</p>	<p>USBR</p>	<p>USBR</p>
<p>G. Develop and implement a program to compensate for losses of listed species that that occur as a result of delivery of CWR water to the Interior. Finding the Contract, service and</p>	<p>G. In Development. Mitigation plan for impacts directly related to discretionary. Ready to implement action.</p>	<p>USBR</p>	<p>USBR</p>	<p>USBR</p>	<p>USBR</p>	<p>USBR</p>
<p>H. Ensure implementation of the contingency plan to address impacts to species or their habitats within the interim and final delivery contract service area that occur as a result of delivery of CWR water to the Interior.</p>	<p>H. Once the contingency plans are finalized, steps will be made to ensure they are implemented at each of the Area Offices and that all contractors are made aware of their responsibilities under the plans.</p>	<p>USBR</p>	<p>USBR</p>	<p>USBR</p>	<p>USBR</p>	<p>USBR</p>
<p>I. The contingency plan for impacts to listed species or their habitats will be reviewed in a separate 30-day consultation with the IWS and will incorporate compensation for temporal and other habitat losses. Losses of listed species habitat within the interim and final delivery contract service area will be compensated in a manner consistent with the recovery needs for those listed species.</p>	<p>I. The contingency plans will be coordinated with the IWS and the appropriate Bureau of Reclamation/Section 7 consultation will occur after finalization.</p>	<p>USBR</p>	<p>USBR</p>	<p>USBR</p>	<p>USBR</p>	<p>USBR</p>

Attachment 1:

Selected monitoring programs associated or requested with the Grasslands Bypass Project are as follows:

Grasslands Bypass Project Monitoring Program: This program is a joint effort between the US Bureau of Reclamation, the San Luis & Delta-Mendota Water Authority, the US Fish & Wildlife Service, the US Environmental Protection Agency, the US Geological Survey, the Central Valley Regional Water Quality Control Board and the California Department of Fish & Game. Monitoring data is reviewed monthly by the Data Collection and Reporting Team and distributed monthly to the public in hard copy format and at the project website <http://www.mpr.usbr.gov/mpr/50/grassland/index.html>. Quarterly narrative and graphical data summary reports are prepared to provide an overview of the data collected in the most recent quarter of the Grassland Bypass Project. These reports are distributed to the public and on the website. An annual summary report is prepared and distributed to the public and on the website. This annual report consists of technical chapters prepared by the agency staff responsible for each portion of the Grassland Bypass monitoring program. The chapters are:

- Summary
- Drainage Control Activities by Grassland Area Farmers
- Flow and Salinity Monitoring
- Water Quality Monitoring
- Flow, Salt and Sediment Mass Balances in the San Luis Drain
- Project Impacts on the San Joaquin River
- Biological Effects
- Biomonitoring Program
- Sediment Monitoring
- Sediment Quantity in the San Luis Drain
- Quality Control

All reports are compiled by the San Francisco Estuary Institute under contract to the US Bureau of Reclamation. Components of the monitoring program include:

1. Continuous Monitoring
 - a. Station A (inflow to the San Luis Drain)
 - b. Station B (discharge from the San Luis Drain)
 - c. Station D (Mud Slough North downstream of drainage discharge)
 - d. Station F (Salt Slough at Highway 160)
 - e. Station N (San Joaquin River at Brown's Landing)

Daily sediment loads are measured at the compliance point, Site B.

2. Weekly Monitoring
 - a. Station A (inflow to the San Luis Drain), taken from grab samples
 - b. Station A (inflow to the San Luis Drain), taken from composite samples
 - c. Station B (discharge from the San Luis Drain)

- d. Station C (Mud Slough North upstream of drainage discharge)
 - e. Station D (Mud Slough North downstream of drainage discharge)
 - f. Station E (Salt Slough at Highway 140)
 - g. Station G (San Joaquin River at Fremont Ford)
 - h. Station H (San Joaquin River at Hills Ferry)
 - i. Station I (Mud 13 Ditch), water supply to south grasslands
 - j. Station K (Agatha Canal), water supply to south grasslands
 - k. Station LL (San Luis Canal at splits), water supply within grasslands
 - l. Station MC (Santa Fe Canal at weir), water supply within grasslands
 - m. Station N (San Joaquin River at Crows Landing)
3. Monthly Monitoring
 - a. Fathead minnow (*Pimephales promelas*) larval survival in 7-day tests using water samples collected from Sites B, C, D, F and control.
 - b. Fathead minnow (*Pimephales promelas*) larval growth in 7-day tests using water samples collected from Sites B, C, D, F and control.
 - c. *Daphnia Magna* survival in 7-day tests using water samples collected from Sites B, C, D, F and control.
 - d. *Daphnia Magna* reproduction in 7-day tests using water samples collected from Sites B, C, D, F and control.
 - e. *Selenastrum capricornutum* growth in 4-day tests using water samples collected from Sites B, C, D, F and control.
 - f. Selenium concentrations in grab water samples collected at study stations for use in laboratory toxicity tests.
 - g. Sulfate concentrations in grab water samples collected at study stations for use in laboratory toxicity tests.
 - h. Total suspended solids concentrations in grab water samples collected at study stations for use in laboratory toxicity tests.
 4. Quarterly Monitoring
 - a. Biological monitoring of fish tissue, invertebrates, fish eggs and bird eggs at Stations C, D, E (Mud Slough North at Highway 140), F, G, H and I (Mud Slough North backwater site below the Drain discharge)
 - b. Sediment quality monitoring at Stations A, B, C, D, E and F. Stations I as well as locations within the San Luis Drain are sampled annually.
 5. Annual Monitoring
 - a. Sediment quantity within the San Luis Drain.

Grassland Area Farmers Monitoring Program: The Grassland Area Farmers have their own internal monitoring program. Selenium load allocations have been assigned to each member. These load allocations are used for members to keep track of their discharge and to be used as part of the selenium trading program that has been developed. The location of the internal sites are upstream of the discharge into the San Luis Drain (Site 1), and are located at the main regional discharge points. At these regional locations there is daily flow and quality

measurements. At Lander Discharge points there is continuous flow and weekly quality measurements. In addition drainage sumps within each District are monitored for flow and quality. The Districts tabulate this information for use in managing drainage within their boundaries.

Of the four districts that are the subject of the proposed contract renewal action reviewed in the biological assessment, Broadview Water District monitors its sumps and district discharge. Eagle Field, Oro Loma and Mercy Springs Water Districts are within the Panoche Drainage District. Flows from sumps are monitored by Panoche but are tabulated so discharges from these districts can be determined. The allocated load identified in paragraph 2 above has been calculated for the districts in the same manner that it was calculated for Panoche Drainage District.

Sumps that are not in districts are monitored by the regional drainage entity. This monitoring program allows for quantification of selenium in drainage reaching Grassland Bypass Channel that does not come from Grassland Area Farmers.

Regional Board Reports: Separate from the Grasslands Bypass monitoring program the Regional Board publishes monitoring data. This data is published in annual reports. The most recent reports are titled "Agricultural Drainage Contribution to the Water Quality in the Grassland Watershed of western Merced County, California: October 1997 - September 1998 (Water Year 1998)" and dated May 2000 and "Water Quality of the Lower San Joaquin River: Lander Avenue to Vermais, October 1997 - September 1998 (Water Year 1998)" and dated May 2000. These reports are available beginning in May of 1985. These reports are available beginning in May of 1985. They are available on the Regional Board web page at <http://www.rwrcb.ca.gov/rwrcb/Spindex.html>.

USBR Monitoring of Water Quality in the DMC: The USBR monitors flow and water quality within the Delta-Mendota Canal as it passes through the Grassland Area. Included in this monitoring is the discharge from drainage sumps that discharge into the DMC. At times the concentration of DMC water exceeds the 2 ppb selenium standard for delivery into the refuges.

Sources of Selenium Study: As a result of high rainfall events in water years 1997 and 1998 the

Overnight Committee for the Grassland Bypass Project commissioned a "Sources of Selenium" study to identify the sources of the drainage discharge through the Grassland Bypass Project. The scope was limited to discharge from the Grasslands Drainage Area and upstream impacts. There are three Tasks to the study: I. Data Compilation and Interpretation, II. Development of a District Level Water Balance and Selenium Load Model for the Grasslands Area of the Western San Joaquin Valley and III. Development of a Transient, Three-Dimensional, Groundwater Flow Model for the Grasslands and Adjacent Areas of the Western San Joaquin Valley. Task I was completed in January 2000 and the remaining Tasks II and III are set to be completed by October 2001.

APPENDIX D - of 2001 IRC EA

RESPONSES TO COMMENTS ON
THE DRAFT 2001 SUPPLEMENTAL EA

Introduction

The draft supplemental EA for the renewal of 2001 interim contracts for one year, between March 1, 2001 through February 28, 2002, was circulated for public and agency review for 18 days from February 2, 2001 to February 20, 2001. The final supplemental EA provides response to comments received on the draft supplemental 2001 EA. This appendix includes a list of the comment letters, the comment letters, and responses to the substantive environmental issues raised in the comments.

No new impacts were identified, nor was there an increase in the severity of previously identified impacts.

List of Comment Letters

Letter Reference	Commentor
A	Jon D. Rubin, Duane, Morris & Heckscher L.L.P., Attorney for Santa Clara Valley Water District, Pajaro Valley Water District Management Agency, and Widren Water District.
B	Diane V. Rathmann, Linneman, Burgess, Telles, Van Atta & Vierra, for San Luis 7 Delta-Mendota Water Authority.
C	Jeanne M. Zolezzi, Attorney-at-Law, Herum Crabtree, Brown, Dyer, Zolezzi, Terpstra.

DUANE MORRIS
ATTORNEYS AT LAW

- PHILADELPHIA
- NEW YORK
- LOS ANGELES
- CHICAGO
- WASHINGTON DC
- SAN FRANCISCO
- SACRAMENTO
- ATLANTA
- MIAMI
- MINNEAPOLIS
- HOUSTON
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- PHOENIX
- PORTLAND
- SEATTLE
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- SEATTLE
- SALT LAKE CITY
- ST. LOUIS
- TAMPA

JOHN J. RUBIN
DIRECT DIAL 415 371 2262
E-MAIL: JDRubin@duanemorris.com

www.duanemorris.com

February 20, 2001

VIA FACSIMILE

Mr. Frank Michny
1200 Cottage Way
Sacramento, CA 95825-1898

Re: Draft Supplemental Environmental Assessment and Draft Finding of No Significant Impact

Dear Mr. Michny:

Pursuant to the February 2, 2001 News Release, Santa Clara Valley Water District ("SCVWD"), Majero Valley Water Management Agency ("PVWMA") and Widren Water District ("Widren") hereby propose two revisions to the Draft Supplemental Environmental Assessment and Draft Finding of No Significant Impact prepared for Central Valley Project Interim Renewal Contracts. The proposed changes are intended to allow for a more accurate reflection of existing circumstances.

First, Widren requests that page 1-10 be revised as follows (additions indicated in bold, deletions indicated by strikeout):

Widren Water District Assignment: Assignment of water from the Widren Water District to the ~~area~~ City of Tracy has been considered in the past and a proposal was developed. In April 2000, however, the Widren Water District withdrew its request for the assignment, and all work regarding this assignment permanently ceased. ~~As a result of ongoing litigation between local, non-federal interests regarding this assignment, no final action has been taken by Reclamation. This action has been suspended until the dispute has been resolved. No action is expected in the immediate future. Should the issues under question be resolved and Widren Water District seek another assignment of its contract, another proposal for assignment would be presented to Reclamation, and Reclamation would initiate consultation with USFWS to address concerns about potential impacts to listed~~

A-1

Mr. Frank Michny
 February 20, 2001
 Page 2

~~species. Evaluation of this action and consultation with USFWS would be required to conducted as part of a separate environmental review process.~~

Underline and italics in original).

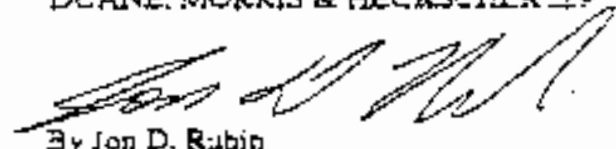
Second, SCVWD and PVWMA request that the following revision be made to page 3-1 (additions indicated in bold, deletions indicated by strikethrough):

~~Potential impacts arising from the future assignments of water, such as those by the Merced Springs or Widren water districts, as previously described, would be subject to separate environmental review processes must comply with the requirements of the National Environmental Policy Act and/or California Environmental Quality Act, and therefore, are not addressed in this document.~~

A-2

Thank you for your consideration of these comments.

Sincerely,
 DUANE MORRIS & HECKSCHER LLP



By Jon D. Rabin
 Attorneys for Santa Clara Valley Water District, Pajaro Water Valley Water Management Agency, and Widren Water District

cc: Joan Maher, SCVWD
 Charles McNish, PVWMA
 Douglas A. Unruh, Widren
 Thomas M. Berliner
 Nicole A. Tutt

Response to Comment Letter A

Response to Comment A-1:

Suggested changes incorporated in section 1.5.3 of the Final 2001 Supplemental EA.

Response to Comment A-2:

Suggested changes to the second paragraph of the 2000 Supplemental EA incorporated in the 2001 Supplemental EA at the beginning of Chapter 3.

February 20, 2001

**General Comments of the
San Luis & Delta-Mendota Water Authority (SLDMWA)**

Page 2-5 The members of the SLDMWA point out that Alternative 2 has been rejected on policy grounds as an appropriate mechanism for implementation of the tiered pricing provisions of CVPLA in the recently-executed Friant Division Long-Term Renewal Contracts, in the CVP-wide form of Long-Term Renewal Contract, and in the 11/17-2000 draft negotiated for Delta-Mendota Unit Long-Term Renewal Contracts (collectively, the Long-Term Renewal Contracts). In addition, the alternative concerning water quantity was rejected by CVP contractors and has not been adopted in any of these same negotiated long-term contracts. It is therefore could not be viewed as a preferred alternative.

B-2

Page 2-6 "G. Water Conservation" is confusing, where it states: "unless exempted, contractors shall use incentive pricing, according to the contractors' water conservation plans, rather than an internal tiered pricing program." Under existing interim renewal contracts (IRC's), contractors are required to implement incentive pricing under their water conservation plans, but not CVPLA tiered pricing, which applies only to contracts longer than 3 years. In the Long-Term Renewal Contracts, tiered pricing mandated by CVPLA has replaced any contract requirement for incentive pricing under water conservation plans. The reference to "an internal tiered pricing program" is not clear.

B-3

Page 3-3 The discussion of water supply in 3.1.2 is not accurate. Even considering averaged deliveries over the past 5 years, contractors south of the Delta have received an average 82% CVP water supply. If the text is relying on long-term projections contained in the Programmatic Environmental Impact Statement (PEIS), it needs to identify that document and qualify the broad statement. Furthermore, the discussion about shifting sources of supply is applicable in areas of available ground water; in other areas, in particular given the competition for available south-of-Delta supplies created by the Environmental Water Account currently established under the CalFed Program, together with purchases for Level 4 refuge supplies, increased pricing incentives for CVP water would very possibly mean that there could be no shift from CVP supplies, but that economic impacts would be greater.

B-4

Page 3-4 In the second paragraph under 3.3.1, the listing of measures to address biological concerns omits the annual dedication of 800,000 acre feet of CVP yield under Section 3406(b)(2) of the CVPLA—a huge commitment that comes directly at the expense of south-of-Delta contractors. The fifth paragraph under 3.3.1 speaks of a Biological Opinion to address potential CVP-wide impacts as evaluated in the PEIS. If this means the November, 2000, Biological Opinion on Implementation of the CVPLA, the text should be updated to identify that document, if it means some other BO, what is that?

B-5

Page 3-8 In section 3.8.2, the assessment of economic impacts from implementing Alternative 2 should go farther to look at cumulative impacts of conditions facing contractors and their water

Mr. Frank Michny
Re: DSI/A for the Renewal of Interim Water Service Contracts
Page 3

February 20, 2001

users during the one-year period of the proposed interim renewals. Given projected water shortages, projected power rate increases and current crop prices, increased incentive pricing during this year could produce permanent impacts by forcing farm operations to go out of business. The analysis correctly notes that ability to pay relief could not be forthcoming, unless it were enacted on some emergency basis.

B-6

Response to Comment Letter B

Response to comment B-1:

Our determination and conclusions are provided in the Finding of No Significant Impact (FONSI). We have used the Supplemental EA to present the information and impact analysis to support the conclusion(s) in the FONSI.

Response to comments B-2, B-3, B-4, B-6:

Comment noted. In the 2001 Supplemental EA, the alternative considered was continuation of existing interim contracts. In section 2.1.2 of this EA, a statement was added to clarify that alternative 2 from the 2000 supplemental EA was not evaluated in the 2001 Supplemental EA.

Response to comment B-5:

Text of the 2001 Supplemental EA was updated to reflect these suggestions. See section 3.3.1.

HERUM CRASTREE

BROWN DYER

ZOLEZZI TERPSTRA

Jeanne M. Zolezzi
jzolezzi@herumcrastree.com

February 21, 2001

VIA FACSIMILEMr. Frank Michney
Bureau of Reclamation
2800 Cottage Way
Sacramento CA, 95825-1898.Re: Comments on Supplemental 2001
Environmental Assessment for Interim Water Service Contracts

Dear Frank:

I have reviewed the Supplemental 2001 Environmental Assessment for Interim Water Service Contracts on behalf of The West Side Irrigation District and have the following comments:

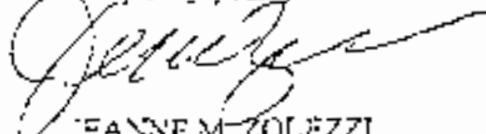
Section 1.5.2. of the "Issues Related to CVP Water Use Under the Proposed Interim Contracts" states that:

"No changes to district boundaries are part of the proposed action and the boundaries in place, as of the date of this document, will remain the same through February 28, 2002."

C-1

This is not necessarily the case. WSID is aware of pending detachment requests made by landowners in the district to the San Joaquin County Local Agency Formation Commission. WSID has no say in the detachment, and is ordinarily notified of the detachment once it has taken place. WSID notifies the Bureau of Reclamation as soon as it is informed of such actions.

Very truly yours,

JEANNE M. ZOLEZZI
Attorney-at-Law

JMZ:d

cc: Ms. Barbara Kleinert, The West Side Irrigation District

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Response to Comment Letter C

Response to comment C-1:

In section 1.5.2 of the 2001 final Supplemental EA, clarifying language was incorporated for potential changes to district boundaries. Refer to changes in section 1.5.2 of the final Supplemental EA.

APPENDIX E

US FISH AND WILDLIFE SERVICE
CONCURRENCE MEMORANDUM



IN REPLY REFER TO
1-1-01-1277

United States Department of the Interior

FISH AND WILDLIFE SERVICE

Sacramento Fish and Wildlife Office
2804 Cottage Way, Room W-2605
Sacramento, California 95825

February 28, 2001

Memorandum

To: Regional Director, Mid Pacific Region, Bureau of Reclamation

From: Field Supervisor, Sacramento Fish and Wildlife Office, Sacramento, California

Subject: Section 7 Compliance Under the Endangered Species Act for the Interim Renewal of Specific CVP Water Service Contracts from March 2001 to February 2002

This memorandum is in response to your January 2001 request for formal consultation with the Sacramento Fish and Wildlife Office (SFWO) on renewal of interim Central Valley Project (CVP) water contracts for specific CVP contractors (provided in Attachment 1) for the period March 1, 2001 to February 28, 2002. We have decided to extend the existing Interim Renewal Contract biological opinion (2000 Interim Opinion), dated February 29, 2000 (Service File No. 1-1-00-F-0056), for the period March 1, 2001 to February 28, 2002. The 2000 Interim opinion covered some CVP contracts which are now covered in the formal consultations for the Friant Division and Cross Valley Units dated January 20, 2001 (Service File No. 1-1-01-F-0027) and Hidden and Buchanan Unit dated February 14, 2001 (Service File No. 1-1-01-F-0048). The districts which have completed section 7 consultation and have signed 25-year long term water contracts will not need interim contracts and are excluded from this extension. Some of the districts, identified by asterisks in Appendix 1, which were included in the 25-year long term water contract biological opinions mentioned above do not as yet have signed water contracts and will require interim contracts and ESA coverage through this consultation. The Service based the decision to extend the existing the 2000 Interim Renewal Contract biological opinion on the following:


- careful consideration of the proposed action identified in your Draft Supplemental Environmental Assessment, dated February 2001, and additional information provided by Reclamation,
- the single year period for the proposed action,
- no new federally listed species or designated critical habitat have been added to the project area since completion of the 2000 Interim Renewal Contract biological opinion.

- except for CVP interim contracts converted to long-term 25-year contracts, the Service has completed an internal analysis of the proposed action and determined that it remains consistent with that found in the 2000 Interim Renewal Contract biological opinion.
- These water contracts will be renewed for long-term or additional interim periods that will include consultation under Section 7 of the Endangered Species Act.
- Reclamation's continued commitment to, and accomplishment of, *Conservation Measures and Terms and Conditions* provided in the 2000 Interim Renewal Contract biological opinion and those found in other recent associated biological opinions.
- Reclamation's commitment to provide a level of funding and effort consistent with levels identified in the biological opinion for *Implementation of the CVPLA and Continued Operation and Maintenance of the CVP* (Service No. 1-1-98-F-0124) as follows:
 - Reclamation will provide an additional \$450,000 from their portion of the fiscal year 2001 CVPLA budget to fund efforts associated with the Habitat Restoration Program, established under section 3406(b)(1) of the Central Valley Project Improvement Act. This action, when added to the existing budget of the Habitat Restoration Program (\$600,000), will provide for a total of \$1,050,000. This additional funding will be provided after joint approval by both Reclamation and the Service.
 - Reclamation assumes it will be able to make the CVP Conservation Program whole for fiscal year 2001, which was \$2.26 million in fiscal year 1999 and \$2.40 million in fiscal year 2000. If this is not achieved, Reclamation may need to reinstate consultation under ESA.
- The Service's commitment to provide a level of funding and effort consistent with levels identified in the biological opinion for *Implementation of the CVPLA and Continued Operation and Maintenance of the CVP* (Service No. 1-1-98-F-0124) as follows:
 - The Service will provide an additional, \$450,000 from our portion of the fiscal year 2001 CVPLA budget to fund efforts under the Habitat Restoration Program, established under section 3406(b)(1) of the Central Valley Project Improvement Act. This action, when added to the budget of the Habitat Restoration Program identified above (\$1,050,000), will provide for an overall total of \$1,500,000. This additional funding will be provided after joint approval by both Reclamation and the Service.

In addition, the Service concurs with Reclamation's conclusion, in a memorandum dated February 28, 2001, that execution of the partial assignment of CVP contract water supply to the Mersey Springs Water District, an interim CVP water contractor, to the Santa Clara Valley Water District and Westlands Water District for use of up to 9,260 acre-feet of CVP for 1 year from March 1, 2001 to February 23, 2002, is not likely to adversely affect federally listed species. The Service reached this conclusion based on the bulleted items above, and Reclamation's commitment to include the section 7 review and analysis of the Mersey Springs partial assignment during the section 7 consultation on long-term renewal of the Delta Mendota Canal Unit or an additional interim contract period, whichever comes first.

We find this year long extension of the CVP Interim Renewal Contract biological opinion to be appropriate. This extension will provide a reasonable addition of time to meet the existing commitments related to *Conservation Measures and Terms and Conditions* and is based on the assumption Reclamation and the Service will immediately convene the Coordination Team consistent with the biological opinion on *Implementation of the CVP IA and Continued Operation and Maintenance of the CVP* (Service File No. 1-1-98-F-2124), dated November 21, 2000 to further the purposes of FESA. This Team will, among other duties, provide guidance on the continued implementation of all associated *Conservation Measures and Terms and Conditions*, associated with Interim Renewal of CVP contracts.

As provided in 50 CFR §402.16, reinitiation of formal consultation is required where discretionary Federal agency involvement or control over the action has been determined (or is authorized by law) and if: (1) new information reveals effects of the agency action that may affect listed species or critical habitat in a manner or to an extent not considered in this opinion; (2) the agency action is subsequently modified in a manner that causes an effect to the listed species or critical habitat that was not considered in this opinion; or (3) a new species is listed or critical habitat designated that may be affected by the action. If you have any questions, please contact Gay Gould, Assistant Field Supervisor for the Endangered Species Division, at (916) 474-6648.



Wayne S. White

Attachment

APPENDIX F

NATIONAL MARINE FISHERIES SERVICE
CONCURRENCE LETTER



UNITED STATES DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration
NATIONAL MARINE FISHERIES SERVICE

Southwest Region
501 West Ocean Boulevard, Suite 4200
Long Beach, California 90807-4213

February 27, 2001

In Response Refer To:
SWR-01-SA-0023:MEA

Mr. Frank Michay
Regional Environmental Offices
U.S. Bureau of Reclamation
Mid-Pacific Regional Office
2800 Cottage Way
Sacramento, California 95825-1898

Dear Mr. Michay:

This is in response to your letter of January 25, 2001 initiating informal consultation under the Endangered Species Act for execution of 44 interim Central Valley Project (CVP) water service contracts for the period of February 2001 to February 2002. A draft Environmental Assessment (EA) and draft Finding of No Significant Impact (FONSI) for the renewal of these interim water service contracts through February 28, 2002 was subsequently submitted to the National Marine Fisheries Service (NMFS) via letter dated February 6, 2001 (received February 7, 2001). Enclosed with the draft EA and draft FONSI was the Bureau of Reclamation's (Reclamation) Water Supply Outlook for Water Year 2001.

Species, under the jurisdiction of the NMFS, which may be affected by Reclamation's proposed action are: 1) endangered Winter-run chinook salmon (*Oncorhynchus tshawytscha*); 2) threatened Central Valley Spring-run chinook salmon (*O. tshawytscha*); 3) threatened Central Valley Steelhead (*O. mykiss*); and, 4) threatened Southern Oregon/Northern California Coast coho salmon (*O. kisutch*). In addition, designated critical habitat for these species may be affected by the proposed action.

Reclamation has determined that executing these interim contracts, in and of themselves, will likely have no adverse effect on winter-run chinook salmon, spring run chinook salmon, coho salmon, or steelhead. Reclamation's determination is based on the following:

- (1) Contract amounts are limited to established needs or existing contract amounts, whichever is less. There will be no increase in total deliveries.
- (2) Contracts will be for 1 year in duration, February 2001 to February 2002.



- (3) The interim contracts contain shortage provisions that allow for reduction of deliveries for various reasons, including the need for CVP operations to be modified to meet requirements of listed species. Biological Opinions addressing the effects of the hydrologic operation of the CVP on Winter-run chinook salmon already exist. In addition, Reclamation is presently in consultation with NMFS on the effects of the CVP/State Water Project(SWP) on spring-run chinook and steelhead and has committed to complete a consultation on these species for the period of March 2001 to March 2002, and initiating consultation on long-term operations of the CVP and SWP. Reclamation has also consulted on the effects of operations of the Trinity River Division on coho salmon.
- (4) The hydrologic operations of the CVP are, and will continue to be, operated in compliance with existing and any new Biological Opinions that address the effects of the operation of the CVP on any listed species. A letter dated October 29, 1999, was provided to NMFS to confirm this commitment.
- (5) Reclamation is committed to engaging NMFS in the (b)(2) interagency team to provide recommendations on how to best dedicate and manage 800,000 acre-feet of CVP yield.
- (6) The proposed action is tiered from the CVPLA PEIS and was considered within and is consistent with the programmatic biological opinion (dated November 14, 2000) NMFS prepared on the implementation of the CVPLA.

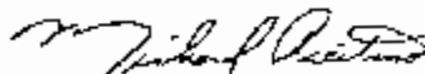
NMFS' interpretation of the letter of October 29, 1999, mentioned in item (4) above, is that Reclamation will continue to operate the CVP in compliance with existing or soon to be completed long-term biological opinions and will not commit additional resources (e.g. water withdrawals) which would affect the environmental baseline, absent this action.

Based on the best available information, NMFS concurs with Reclamation's determination that the 1 year interim contracts, identified in the list enclosed with your letter of January 31, 2001, will not likely adversely affect winter-run chinook salmon, spring-run chinook salmon, coho salmon, or steelhead, or their designated critical habitat. By letter dated December 22, 1997, we responded, in essence, that we did not object to the proposed renewal of interim water service contracts so long as Reclamation retained the flexibility to reduce actual water deliveries as may be necessary for a variety of environmental needs. The contracts shortage provisions should allow Reclamation adequate flexibility to continue to comply with the existing Biological Opinion for Winter-run chinook salmon and the new opinions currently under development that address the effects of CVP operations on listed species. In addition, based on our interpretation of your October 29, 1999 letter, Reclamation, through this action, will not commit resources which will affect the environmental baseline for the long-term. Reclamation should be prepared to exercise its flexibility within these contracts as our agencies proceed with Endangered Species Act Section 7 consultations on CVP operations.

This concludes Section 7 consultation for Reclamation's proposed execution of 1 year water service contracts. However, if any new information becomes available indicating that listed or proposed species may be adversely affected, further consultation and/or conferencing will be necessary.

If you have any questions concerning these comments, please contact Mr. Michael Acitino in our Sacramento Area Office, 650 Capitol Mall, Suite 8-306, Sacramento, California 95814. He can be reached by telephone at (916) 930-3600 or Fax at (916)930-3629.

Sincerely,



²
~~for~~ Rebecca Lent, Ph.D.
Regional Administrator

cc: Jim Lecky, NMFS, Long Beach, CA
Wayne White, LSPWS, Sacramento, CA

Del Puerto WATER District

P.O. Box 1576 • Patterson, CA 95363-1576

Fax (209) 892-4469 • Phone (209) 892-4470

December 18, 2001

Bureau of Reclamation
Mid-Pacific Regional Office
ATTN: Mr. Frank Michny
2800 Cottage Way
Sacramento, CA 95825-1898

BUREAU OF RECLAMATION OFFICIAL COPY RECEIVED	
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Re: Request for Review and Comment on Draft Supplemental Environmental Assessment and Draft Finding of No Significant Impact for Interim Renewal Water Service Contracts - Central Valley Project, California

Dear Mr. Michny:

On behalf of the Del Puerto Water District, an Interim Renewal Contractor for Central Valley Project water service from the Delta-Mendota Canal, I am writing to comment on the Draft Supplemental Environmental Assessment (DSEA).

We have reviewed the DSEA and agree with the conclusion reached that interim renewal of the proposed water service contracts for up to two years, with only minor changes, will result in no significant impact to the quality of the human environment including Water Resources, Land Use, Biological Resources, Threatened or Endangered Species, Cultural Resources, Recreation Resources, Demographics and Environmental Justice, Indian Trust Assets, Economic Resources. Neither will this action result in significant cumulative impacts. A Finding of No Significant Impact for the proposed action is therefore appropriate.

DPW:
!

Thank you for the opportunity to review and comment on this document and finding.

Sincerely,



William D. Harrison, General Manager
DEL PUERTO WATER DISTRICT

cc: Board of Directors
Ernest Conant

Response to Comments by Del Puerto Water District (DPWD)

DPWD-3 Comment noted.



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

RECEIVED 1-6-02
FILED

January 4, 2002

Frank Michny
Regional Environmental Officer
Bureau of Reclamation
Mid-Pacific Regional Office
2800 Cottage Way
Sacramento, California 95825

Dear Mr. Michny:

The Environmental Protection Agency (EPA) has reviewed the **Draft Supplemental Environmental Assessment for the 2002 Renewal of Interim Water Service Contracts through February 29, 2004 - 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.

The Bureau of Reclamation (Bureau) proposes to execute 42 interim renewal water service contracts for up to two years between March 1, 2002 and February 29, 2004. Execution of interim contracts is needed to continue delivery of Central Valley Project (CVP) water until long-term contracts can be executed.

The renewal of interim water service contracts was first evaluated in a 1994 environmental assessment (EA) with supplemental EAs (SEAs) issued in 1998, 2000, and 2001 for subsequent interim renewals (i.e., "roll-overs"). The current SEA is tiered to these previous EAs and relies on the evaluation of environmental consequences provided in the 2000 and 2001 SEAs. The proposed interim contracts include the same terms as those executed in 1994, and renewed in 1998, 2000, and 2001. If long-term contracts are not executed by March 1, 2003, a one-year extension of these interim contracts (March 1, 2003 through February 29, 2004) may be executed. Prior to a second year extension, the Bureau will determine if additional NEPA analysis is necessary.

As you know, EPA has had a long institutional interest in the Bureau's renewal of interim and long-term contracts. We provided comments on the 1994 draft guidelines for interim renewal of long-term CVP contracts and on the 1994 EA for interim renewal of 67 CVP water service contracts. In that many of our earlier comments are still relevant to the proposed contracts and current SEA, these letters are hereby incorporated by reference. Copies are attached.

EPA continues to be concerned that the "roll-overs" of the interim contracts have compromised the Bureau's NEPA process for the following reasons:

- The present SEA is the fourth "roll-over" since 1994. In effect, many of these interim renewal contracts have been continued for 7 years. The current renewal would extend these interim renewal contracts to a period of 10 years. Therefore, the premise that the contracts are of a limited duration with minor environmental impacts, is no longer valid.

USEPA
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- The status quo perpetuates and aggravates environmental degradation and constitutes an irretrievable commitment of resources which should be fully evaluated pursuant to NEPA. We note that the Central Valley Project Improvement Act Programmatic Environmental Impact Statement did not evaluate water quality impacts at any level, nor did it evaluate other environmental impacts at the district level. We continue to believe there is a compelling need for detailed evaluation of long-term and cumulative impacts of district-level water quality, groundwater, and water supply reliability effects of the continuing action.

USEPA
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USEPA
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We urge the Bureau to stop continual "roll-overs" of the interim contracts and to pursue execution of long-term contracts based on a sound NEPA process which informs environmentally responsive contract design. To do so would be in the best interests of California, the public, and sound water supply management. We believe an adequate NEPA process for district-level contracts should include evaluation of the long-term and cumulative impacts of the status quo and continual roll-over of interim renewal contracts. We also urge the Bureau to create strong incentives to move contractors from interim renewal contracts to long-term contracts. We consider these NEPA compliance issues to be significant and we will work with you to resolve our concerns to avoid elevation of these issues.

USEPA
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USEPA
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EPA wishes to acknowledge the significant efforts made by Bureau staff over the past several years in developing an approach to CVP contracts that is fair to the districts involved and implements the reforms envisioned by the CVPLA. Our detailed comments (attached) discuss a number of issues which we believe should be considered in the environmental documentation for interim renewal of water service contracts. We stand ready to offer our support on working through the issues raised in our comments or on other issues raised during the comment period. If you have any questions about these comments, please call Lisa Hanf at (415) 972-3854 or Laura Fujii at (415) 972-3852.

Yours truly,



Joshua Baylson,
Acting Deputy Director
Cross Media Division

Attachments: Detailed comments (3 pages)
EPA Comments on 1994 Draft Guidelines for Interim Renewal of CVP
Contracts
EPA Comments on 1994 Interim Renewal EA

M002218

Filename: interimcypcontracts.wpd

cc: Donna Tegelman, BOR, MP-400
Gary Stern, National Marine Fisheries Service, Santa Rosa
Michael Aceituno, National Marine Fisheries Service, Sacramento
US Army Corps of Engineers, San Francisco & Sacramento
Pat Port, Department of the Interior
Wayne White and David Wright, US Fish and Wildlife Service
Jim White, Department of Fish and Game
Victoria Whitney, State Water Resources Control Board
Mary Nichols, California Resources Agency
Patrick Wright, CALFED

DETAILED COMMENTS**Impact of No Action (Status Quo)**

The 1994 Environmental Assessment (EA) and subsequent Supplemental Environmental Assessments (SEAs) measure impacts of the proposed action relative to the status quo scenario, or "no action." However, the Bureau has failed to place the status quo in the context of historical biological resource losses or actual on-the-ground environmental conditions associated with CVP water delivery (e.g., reduced flows in the San Joaquin River). Thus, the conclusion that there are no significant impacts since the proposed action represents a continuation of the existing action is flawed.

Recommendation:

We urge the Bureau to evaluate potential impacts of the continuing action in comparison to existing environmental conditions and trends. As we have stated before, "no action" does not equate with "no impact." Therefore, the Bureau should determine whether the continuation of the action will contribute to a declining, stable, or improving environmental condition.

USEPA
6**Environmental Consequences**

An underlying assumption of the SEA appears to be that there are no changes in land use, canal maintenance procedures, cropping patterns, or other agricultural and irrigation practices because the contracts are of a limited duration, represent a continuation of existing conditions, and will not provide for additional water supplies that could lead to shifts in agricultural practices or land use (draft Finding Of No Significant Impacts (FONSI), pg. 3). However, changes in existing conditions have occurred which could affect agricultural practices. These changes should be taken into account.

Recommendations:

We recommend the Bureau reevaluate the assumption of no change in agricultural or irrigation practices that occur with market and other economic shifts, regulatory reform, and environmental dynamics. In examining the incremental impacts of roll-overs, the Bureau should consider the cumulative impacts from changed agricultural conditions. Conditions to consider include changes in herbicide use for aquatic plant control in irrigation canals, the increased focus on invasive species control, new air quality standards (e.g., PM2.5), new water quality actions (e.g., California Regional Water Quality Control Board waste discharge requirements), and projected growth and development within the Central Valley.

USEPA
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The 2000 SEA (pg. 3-4) states that the Bureau has undertaken a number of commitments to monitor and address any impacts from the previous interim contracts. We urge the Bureau to include the most recent monitoring results in the final environmental documentation.

USEPA
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Alternatives

1. It appears that Alternative 2, as presented in the 2000 SEA, is no longer being evaluated as an alternative. Therefore, only Alternative 1, the No Action alternative, is considered in the 2001 and 2002 SEAs (2002 SEA, pg. 2-2).

USEPA
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Recommendation:

Given the fact that many of the interim contracts have been in place for 7 years and may be continued into the indefinite future, we strongly believe the Bureau should consider evaluation of other reasonable alternatives as required by NEPA [40 CFR Section 1502.14(a) and (c)].

2. As presented in the 2000 SEA, Alternative 2 would specify water quantities using two water supply categories. The first, more reliable water category, would be the quantity of water that would be reasonably likely to be available during a year for delivery and would be the "contract total." The second category of water would be any additional water that may be delivered to contractors in excess of the first category of water.

EPA has frequently expressed our concern that the contract quantities included in the current contracts do not accurately reflect the delivery capability of the CVP, especially after regulatory actions under the Clean Water Act, the CVPLA and the Endangered Species Act are considered. In many years -- and for some districts, in most years -- the CVP is unable to deliver the entire amount of water called for in the current contracts. EPA is concerned that this "over commitment" of CVP supplies has the potential to adversely affect the Bureau's ability to effectively assist in addressing California water and environmental needs.

USEPA
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Recommendation:

We urge the Bureau to consider including the dual water category approach in their interim contract renewals, especially since these contracts may continue into the indefinite future. We suggest that the Bureau 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 CVPLA Programmatic EIS.

3. Alternative 2 also included the concept of tiered water pricing for the first category of water (contract total) where the first 80 percent of the contract total would be priced at the contract rate. Subsequent 10 percent increments would be priced at higher rates. The second category of water would be priced at the full cost rate.

Recommendation:

EPA has often expressed our support for the concept of tiered pricing as a mechanism for encouraging economically efficient water uses in both the agricultural and urban sectors. EPA appreciates that implementing tiered pricing in the real world is difficult, given the vastly different circumstances of irrigation districts and the various approaches to managing water supplies in diverse hydrologies. Nevertheless, we urge the Bureau to reconsider including tiered water pricing in interim renewal contracts and to develop carefully tailored, district or unit level approaches to tiered pricing.

USEPA
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General Comments

1. We recommend the Bureau clearly state in the environmental documentation the most realistic schedule for execution of long-term contract renewals. We ask that the Bureau confirm that interim contract renewals will not be continued into the indefinite future. We also strongly urge the Bureau to include language in each interim contract stating a specific schedule and date for finalizing and executing the long-term contract.

USEPA
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2. We are concerned that NEPA review of the major environmental issues involved in water delivery under these contracts is being carried out in an increasingly fragmented way through different NEPA processes. We urge the Bureau to more explicitly articulate (a) how the various long-term contract EISs (e.g., American River Unit) will tier from the CVPIA PEIS, (b) how these interim contract SEAs will tier from the CVPIA PEIS (now that there is a final Record Of Decision on the PEIS), and (c) how the many local efforts, such as the San Luis Drain EIS and the Westside Integrated Resource Plan (WRP), will tier from the CVPIA PEIS and relate to the various contract renewal evaluations.

USEPA
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3. The final environmental documentation should include updated information on the status of current water transfers and assignments; implementation of CVPIA requirements of Section 3405, as already incorporated into the interim contract provisions (e.g., installation of water measurement devices, conservation plans, meeting water quality standards, payment provisions); US Fish and Wildlife and National Marine Fisheries Service concurrence letters on meeting Endangered Species Act requirements; and status of Interim Contracts Renewal Biological Opinion commitments.

USEPA
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UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION IX

75 Hawthorne Street
San Francisco, Ca. 94105-3901

April 22, 1994

APR 22 1994

John Davis
Repayments Branch Chief
Bureau of Reclamation, Mid-Pacific Region
2800 Cottage Way
Sacramento, CA 95825

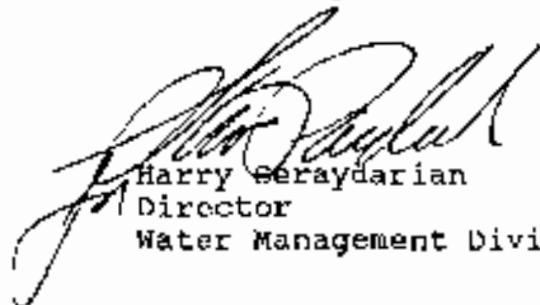
Dear Mr. Davis:

Enclosed are Environmental Protection Agency (EPA) comments on the March 10, 1994 draft Guidelines for interim renewal of long-term Central Valley Project contracts under P.L. 102-575.

The EPA has submitted comments on two previous drafts of the guidelines (letters to James Moore, dated March 5, 1993 and August 13, 1993). We appreciate the efforts which Reclamation has made to solicit and respond to public comments. The present draft of Interim Contract Renewal Guidelines is an improvement over earlier versions. However, we continue to have concerns with several sections.

If you would like to discuss these comments with us, please call Thomas Hagler, Office of Regional Counsel (415-744-1375) or Carolyn Yale, Office of Federal Activities, Environmental Review Section (415-744-1580).

Yours truly,


Harry Seraydarian
Director
Water Management Division

Enclosure

EPA Comments:

Interim Draft Guidelines: Implementation of the Interim Contract Renewal Provisions, P.L. 102-575

1. **Water shortage.** The current language states that shortages may be caused by "drought or other unavoidable causes." It is not clear how "unavoidable causes" might be interpreted, or whether compliance with state and federal environmental laws could somehow be construed as "avoidable." We strongly recommend that the section be revised to clearly state that shortages may occur when necessary to comply with legal obligations, including obligations under P.L. 102-575, the Federal Clean Water Act, and Endangered Species Act. The language of the July 14, 1993 draft of these guidelines is a clearer expression of these responsibilities.

2. **Water supply.** Draft guidelines section (V.B) on water supply states that the quantity of water under contract will be reviewed for "reasonable beneficial use." The procedures and standards used to determine reasonable beneficial use should be identified in more detail in the guidelines. We believe that determination of reasonable beneficial use should include an evaluation as to whether the water uses unreasonably interfere with the attainment of state and federal water quality standards and water conservation measures.

Additionally, the guidelines provide that evaluation of water supply may include projected needs, without identifying the time frame for this analysis of future conditions. We stated in our letter of August 13, 1993, that we believe the water supply determination should be based on the contractor's historical use, rather than projected use beyond the interim renewal period. Please refer to the August comment letter for more details on this subject.

3. **Water quality.** The currently proposed guidelines state that provisions contained in Section 3405(c) of P.L. 102-575 will be added to interim renewal contracts. However, the guidelines add the nuance that the requirement for compliance with all State and Federal water quality standards will apply to agricultural drainage discharges "generated through the use of Federal or Contractor facilities or CVP water provided by the Contractor within its boundaries." This language is more limited than Section 3405(c). As we noted in our March 5, 1993 letter, implementation of this section should impose on a district the responsibility for meeting applicable water quality standards with respect to "drainage discharges generated within its boundaries."

4. **Conservation.** As you know, P.L. 102-575 grants Reclamation discretionary authority to renew contracts for an interim period until completion of the programmatic EIS. Having an approved water conservation plan in place should be a clearly stated prerequisite for interim contract renewal; any subsequent interim

renewals should be contingent on satisfactory implementation of the plan. While there may be "extenuating circumstances" which prevent meeting these requirements, these should be defined narrowly in the guidelines.



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION IX

75 Hawthorne Street
San Francisco, Ca. 94105-3901

October 19, 1994

Rick Breitenbach
Office of Water Policy and Allocation, MP-180
Mid-Pacific Region
Bureau of Reclamation
2800 Cottage Way
Sacramento, CA 95825

Dear Mr. Breitenbach:

The Environmental Protection Agency (EPA) Office of Federal Activities would like to submit comments on the Draft Environmental Assessment (EA) for interim renewal of 67 Central Valley Project (CVP) repayment or water service contracts. These comments are provided in accordance with responsibilities under the National Environmental Policy Act (NEPA) and Section 309 of the Clean Air Act.

EA Approach and Findings

According to the EA, interim renewal of expired contracts is intended not only to provide continuing water deliveries to existing CVP contractors but to implement the Central Valley Project Improvement Act (CVPIA). The interim renewals cover a period of time until all necessary environmental documentation for long-term water contract renewals, including the programmatic environmental impact statement on implementation of the CVPIA (ES-1), is completed. In the two action alternatives considered in the EA, Reclamation proposes to renew 67 contracts, pursuant to the Central Valley Project Improvement Act, for a maximum of three years each. Alternative #1 (preferred alternative, p. II-9) tracks most closely, but not exactly, the Final Interim Guidelines for Implementation of Interim Renewal Contracts (May 20, 1994). The second action alternative is closer to pre-CVPIA contract provisions, and represents a version favored by CVP contractors (p. II-4). Finally, "no action" reflects "continuation of existing contract terms"-- a mixture of pre-CVPIA and CVPIA provisions. The EA analysis of effects of the three alternatives suggests that there would be no appreciable differences among them with respect to water deliveries or water use, or other impacts on the environment.

EPA Comments

EPA is extremely interested in seeing that contract provisions designed to support CVPIA are faithfully negotiated in interim renewal contracts. To this end, we submitted comments on the Interim Guidelines on several occasions (letters to James Moore dated March 5, 1993 and August 13, 1993; letter to John Davis, April 22, 1994). The EA, the Interim Guidelines, and the proposed contracts are inextricably linked; EPA's detailed comments on these matters are enclosed. EPA's major concerns are as follows:

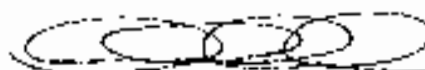
(1) While the final Interim Guidelines did not respond fully to certain issues we raised, they were formally endorsed by the Regional Director after a public process and should be represented in the EA. In some instances, the preferred alternative #1 contains proposed contract provisions which are weaker than the final Guidelines with respect to environmental protection. EPA believes that these changes need to be justified, and that the EA should include an alternative fully reflecting the Interim Guidelines as approved.

(2) EPA is concerned that the EA does not provide a range of alternatives satisfying 40 CFR Sec. 1508.9(b) [see also NEPA Sec. 102(2)(C), 42 USC Sec. 4332]. In the purpose and need statement (p. I-1) the first purpose of interim contract renewals cited is "protecting, restoring, and enhancing fish, wildlife and associated habitats" in affected areas. In large measure this depends on improving water supplies and, in certain areas, water quality for biological resources. However, all three of the alternatives (no action plus two action alternatives) propose contract renewals for approximately the same water quantities (equal or close to full existing contract quantity). Additionally, the alternatives do not evaluate contract provisions to address quality problems associated with Central Valley Project water use.

(3) Finally, EPA is concerned about the direction of Bureau policy implied by the EA and the proposed contract language. We are concerned that these documents do not explicitly state that water allocations will be made for fish and wildlife purposes (under the Endangered Species Act, under state and federal water quality standards, and to some extent under other provisions of the CVPIA), and that these allocations will reduce water available for contract deliveries. Absent reduced contract water quantities or a clear contractual provision recognizing and restating the Secretary's authority to meet these fish and wildlife objectives, the Bureau may be restricting its ability to implement fish and wildlife measures during the period covered by these interim contracts.

Details on recommended changes in the EA and proposed contract provisions are enclosed. If you would like to discuss these comments, please call Carolyn Yale (415-744-1580). We would appreciate receiving two copies of any subsequent documentation for this EA.

Yours truly,



David Farrel, Chief
Environmental Review Section

ID 002218

cc: Jim McKeivitt, U.S. Fish and Wildlife Service
Mike Hoover, U.S. Fish and Wildlife Service
Jim White, California Department of Fish and Game
Jim Bybee, National Marine Fisheries Service
Nanette Engelbrite, Western Area Power Administration
Robert Franklin, Hoopa Valley Tribe
Jeannine Jones, California Department of Water Resources
Wandy Pulling, Natural Resources Defense Council
Dave Yargas, Environmental Defense Fund

Interim renewals should clearly support CVPIA

Interim renewals should be designed to promote CVPIA purposes, such as environmental restoration and mitigation, and water conservation. Although interim renewals are for a short term only, they should support policies intended to make a difference over the longer run. While the EA identifies CVPIA goals in the purpose and need statement (see p. ES-1), it is not clear how the alternatives would achieve these objectives. For example, the analysis of water deliveries concludes there would be no difference among the three alternatives [that is, deliveries could be 1.694 million acre feet (maf), slightly below the current contract quantity, 1.735 maf]. These water contract and delivery quantities predate CVPIA and recent Bay/Delta protective measures. The analysis of contract water supply and impacts does not allow for environmental water allocations.

The EA also implies that water conservation has no potential effects on water quality or quantity used (p. III-15). There is no way of distinguishing between status quo conservation plans and Reclamation's new conservation plan criteria. The EA should provide comparative information regarding short and longer-term objectives, and potential longer-term effects, of these options.

In summary, the EA should analyze an alternative which promotes CVPIA objectives of protecting fish, wildlife, and habitat and improving water conservation. The relationship between these policies and implementing contract provisions should be stated clearly. As it is, the alternatives appear to be designed to narrow the differences from no action/status quo. There are no clear policies distinguishing the two action alternatives from each other, or from no action. This fact, combined with the EA analysis that there may be no significant impacts to distinguish one alternative from another, provides little guidance for selecting a course of action.

Provide water for environmental protection

The policy statements, contract provisions and water supply analysis in the EA do not unequivocally support Reclamation's legal obligations to operate the Central Valley Project to protect fish and wildlife, pursuant to such laws as the Endangered Species Act and Clean Water Act. EPA believes that the principle of operating the CVP to meet all legal requirements for environmental protection applies in all alternatives (including "no action"). Contract provisions should support this principle. Water requirements for environmental resources should be reflected in the discussion of water available for deliveries

to contractors.

Policy statements: The EA alternatives provide only limited compliance: For "no action" and alternative 2 contractors would be required to comply with D-1485 and the existing biological opinions for winter-run salmon and delta smelt; Alternative 1 would require contractor compliance with any biological opinions developed pursuant to Section 7 of the Endangered Species Act. Other measures, including "implementation of the CVPIA... and development of water quality standards for the Delta" are regarded by Reclamation as too speculative for inclusion in the EA (p. III-62). The EA should express a commitment to meet all legal requirements.

Contract provisions: The EA version of the shortage provision (which is the same for both action alternatives) would "allow water shortages to be caused by drought or other physical or legal causes that are beyond the control of the United States" (p. III-3). This is a significant departure from the final Interim Guidelines, which provide that shortages of water available to the contractor may occur with drought or "other causes including but not limited to, compliance with federal and state laws and regulations. The interim contracts will contain language that gives the United States the authority on how Project water is allocated within the CVP" (emphasis added). We believe very strongly that the EA should include a shortage provision which follows the Guidelines.

Water supply analysis: The EA water supply analysis should distinguish between stated contract quantity and amount of water which would be available to contractors after meeting legal environmental requirements. The EA bases the interim renewal water contract quantity on the highest historical "beneficial" use over a period of 1980-1993 (Alt. 1-- totalling 1.694 million acre feet) or the same amount as in the existing long-term contracts (no action, Alt. 2-- 1.735 million acre feet). (For most contractors, the interim renewal contract quantities are the same under both alternatives.) The analysis of water deliveries to contractors refers to these maximum quantities, without considering environmental needs which could reduce water availability to contractors (see for example, pp. III-16-17).

Improve water conservation and management

We support the provision in Alternative 1 which requires contractors to prepare and begin implementing water conservation plans conforming to Reclamation's Criteria for Evaluating Water Conservation Plans (April 30, 1993). To effectively implement conservation, and for Reclamation to evaluate the plans and

implementation efforts, adequate documentation of water supplies, use and quality of seepage and return flows is required. This includes adopting and enforcing water use measurement and reporting requirements.

Reclamation has repeatedly stated that in reviewing a contract for renewal, the Bureau evaluates whether water has been put to "reasonable beneficial use" (see pp. II-9 and II-16). In commenting on the Interim Renewal Guidelines we have asked what this determination entails in terms of documentation from the contractor and evaluation procedures and standards on Interior's part. The EA Technical Appendix D, "Descriptions of Affected CVP Contractors," indicates that in many instances information is missing on such topics as groundwater use and accurate water measurement. Under these circumstances, it is difficult to conclude that an exacting evaluation of reasonable beneficial use of Central Valley Project water has been conducted. Given limited documentation and regulation of ground water use, we are also concerned about the implications of including "groundwater recharge" as a beneficial use of irrigation water (discussed in Alt. 2).

We believe that determination of reasonable beneficial use should include an evaluation as to whether the water uses unreasonably interfere with the attainment of state and federal water quality standards and water conservation measures (see letter to John Davis from Harry Seraydarian, April 22, 1994). We strongly recommend that Reclamation develop effective methods and standards for evaluating reasonable beneficial use. Contract provisions should give Reclamation authority to reduce water supplies where water use has not been reasonable and beneficial.

Water pricing

The EA observes that for all alternatives "ability to pay" rate reductions will be available to irrigators. As a result, the irrigation water rates and Restoration Fund charges identified in the EA may not in fact be paid in full by irrigators, but shifted to power users. (See pp. I-7 and III-55.) In a previous letter we raised questions regarding the legal and policy basis for continued use of ability to pay rate reductions in the CVP (letter from Jacqueline Wyland to Kirk Rodgers, July 8, 1994). Further, we would like to know if ability to pay relief could be implemented for the action analyzed in this EA, given the short time frame for interim renewals and, as we understand it, the substantial documentation and review procedures for ability to pay. If ability to pay reductions could be implemented, the potential effects on water use should be discussed.

Impacts of no action (status quo)

The EA measures impacts of alternatives in terms of change from status quo (see, for example, pp. III-16-17). However, when using the status quo/no action alternative as a reference point for effects of alternatives, it is essential to place this in the context of historical biological resource losses. Failure to begin implementation of the CVPIA may result in additional impacts simply by supporting ongoing activities which continue to degrade the environment. Given the need-- and CVPIA requirement-- to correct for past and current Project impacts, the interim renewals should be evaluated in terms of likely contribution to longer-term environmental consequences.

Response to Comments by U.S. Environmental Protection Agency (USEPA)

- USEPA-1 Reclamation anticipates completing the environmental compliance and the execution of long-term water service contract within this interim period. The complexity of the analysis associated with the Programmatic Environmental Impact Statement (PEIS) extended its completion until October 1999 with the Record of Decision approved on January 9, 2001. The PEIS evaluated CVP-wide impacts of long-term contract renewal. Environmental compliance documents tiered from the PEIS are at various stages of completion. Friant Division, Hidden Unit, and Buchanan Unit long-term contract have been executed. Interim contracts are necessary until completion of the contract negotiation and environmental compliance processes. The interim renewal of these contracts essentially maintains the status quo.
- USEPA-2 Comment Noted. See section 1.1, second paragraph, of this environmental assessment which explains our environmental analysis approach. Reclamation believes the NEPA analysis is appropriate for the action at hand.
- USEPA-3 The final PEIS, partly based on comments on the draft PEIS, did evaluate impacts to Delta water quality in Technical Appendix Volume Ten, October 1999, and habitat and water quality conditions that affect fish in the Central Valley streams in Attachment B of the Fish Habitat Water Quality Technical Information, September 1997. Regional and district level water quality impacts as they may relate to the approval of long-term water service contracts have or will be evaluated in the long-term contract renewal NEPA documents tiered from the PEIS.
- USEPA-4 See USEPA-1 and 2. Reclamation and the contractors have made and will continue efforts to complete the appropriate environmental compliance process for long-term contracts.
- USEPA-5 Section 3404 (c)(3) of the CVPWA provides the incentives to renew interim and "encourage early renewal" of all CVP water service contracts. Reclamation intent is to aggressively pursue completion of long-term contract renewals.
- USEPA-6 See section 1.1, second paragraph, of this final EA. The EA and the scope of analysis were developed consistent with NEPA regulations and guidance for the Council on Environmental Quality. The proposed action is the continuation of the existing interim contracts with only minor, administrative changes to the contract provisions. Only minor change in actions, circumstances, or information has occurred. See response to comment USEPA-2.

Response to Comments by US Environmental Protection Agency (USEPA)

- USEPA-7 With interim contract renewal, the continuation of the same amount of water being provided to the same lands for the existing/ongoing purpose does not result in a significant new impact. Other activities may be affecting agricultural practices, but the renewal of existing interim water service contracts for up to 2 years will not shift agricultural practices or land use. For the renewal of interim contracts, we believe it would be a unproductive exercise to analyze impacts on natural resources from activities such as changes in herbicide use for aquatic plant control or increased focus on invasive species control which interim water service contracts have little if any relationship to the action at hand.
- USEPA-8 Monitoring results of previous interim contracts have shown no significant affects from Reclamation's discretionary actions related to interim contract renewals. Appendix C of this Supplemental EA provide the latest report on the interim contract renewal US Fish and Wildlife Service's biological opinion.
- USEPA-9 Other alternatives are being evaluated as part of the long-term contract renewal process. So far, twenty-seven long-term contracts have been renewed. Unless unforeseen complications arise, Reclamation and the interim contractors will execute long-term contracts, which will include completing all environmental compliance, within the next two years.
- USEPA-10 The Reclamation Project Act of 1956 and Reclamation Project Act of 1963 mandate renewal of existing contract amounts when beneficially used. Needs analysis have been completed to identify the amount of water that could be beneficially used by each water service contractor. The contract amounts were constrained to not exceed the beneficial use or the existing contract amount, whichever is less.
- CVPLA required CVP to institute environmental management as part of the CVP operations, such as allocation of 800,000 acre-feet for fish and wildlife purposes, refuge water supply, and acquisition of water from willing sellers. These requirements in addition to existing Federal and State requirements of CVP operations constrain the actual delivery amounts. These existing legal constraints provide regulatory/environmental use of CVP water.
- USEPA-11 Alternatives, including tiered pricing, are being developed through the negotiations process for long-term contracts. Appropriate alternatives will be evaluated as part of the environmental compliance process for long-term contract renewals.
- USEPA-12 See response USEPA-1 and 5. Various unforeseen circumstances have delayed the execution of long-term contracts for the interim contractors.

Response to Comments by U.S. Environmental Protection Agency (USEPA)

USEPA-13 With the completion the CVPIA PEIS and the ROD (1/9/01), Reclamation has continued with the process to complete the contract negotiations and tiered regional environmental documents necessary to executed long-term water service contracts, many of which are also interim contracts. The environmental process is complete for the 25 of the 28 Friant Division contracts, the Hidden Unit contract, and the Buchanan Unit contract and also near completion for the Cross Valley Canal Unit contracts.

USEPA-14 No water transfers or assignments of water are part of the proposed action. They are separate independent actions. Appropriate environmental compliance and documentation will be completed for any request from interim contractors for Reclamation approval of water transfers or water assignments.

This Supplemental EA provides the U.S Fish and Wildlife Service biological opinion (Appendix F), the National Marine Fisheries Service concurrence letter (Appendix E), and the interim contracts status report for U.S Fish and Wildlife Service's biological opinion (Appendix C).

LAW OFFICES OF
**LINNEMAN, BURGESS, TELLES, VAN ATTA, VIERRA,
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January 4, 2002

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Mr. Frank Michny
 Regional Environmental Officer
 Department of the Interior
 Bureau of Reclamation
 2800 Cottage Way
 Sacramento, CA 95825-1898

Re: December 7, 2001 Draft Supplemental Environmental Assessment
 and Draft Finding of No Significant Impact for Renewal of Interim Water Service
 Contracts - Central Valley Project

Dear Frank:

I am writing on behalf of the San Luis & Delta-Mendota Water Authority, which has 16 members with Interim Renewal Contracts for Central Valley Project water service from the Delta-Mendota Canal, or assigned interests in such contracts, to comment on the above Draft Supplemental Environmental Assessment (DSEA).

We agree with the conclusion reached in the DSEA that interim renewal of the proposed water service contracts for additional terms of up to two years, with any minor changes, will not have a significant impact on Water Resources, Land Use, Biological Resources, Cultural Resources, Recreation Resources, Demographics and Environmental Justice, Indian Trust Assets, Economic Resources, or Cumulative Impacts. Therefore, a Finding of No Significant Impact for the proposed action is appropriate.

SLDMW,
!

In addition, we offer for your consideration a few comments on portions of the DSEA, which we attach. Thank you for your opportunity to provide this input.

Very truly yours,

LINNEMAN, BURGESS, TELLES,
 VAN ATTA, VIERRA,
 RATHMANN, WHITEHURST & KEENE

By

Diane V. Rathmann
 Diane V. Rathmann

CLASSIFICATION	Project
Control No.	2002-01-05
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Specific Comments
of the
San Luis & Delta-Mendota Water Authority

Comments on the Draft FONSI:

Page 1: Paragraph 5, last sentence-should read, "interim contracts renewals,"

Page 1: Paragraph 6, second sentence-term should be plural, " The terms and conditions . "

Pages 2 and 3: In describing the support for the finding of no significant impact, the draft FONSI needs to more clearly explain that the new renewal contracts will not result in any significant incremental change over existing contracts, but that changes in water use within historical parameters will occur from year to year. As written, the FONSI could be interpreted too narrowly as meaning that no changes or increases in water use will occur or that there will be no changes in any policies or programs intended to benefit fish and wildlife under the IRC's from the last IRC. In fact, there may be a lesser or greater water allocation, and some changes in policies and programs will inevitably take place. The following changes are suggested:

1. Water resources - Renewal of the interim contracts will not result in a change in contract water quantities from the quantities in existing contracts and will therefore not cause any increased or use and therefore there will be no effect on surface water supplies or quality. For the same reason, renewal Renewal of interim contracts will not result in any growth-inducing impacts that will increase water demand during the up to two-year time frame of this renewal.

2. Land use - The renewal of contracts will not provide for additional water supplies that could act as an incentive for conversion of native habitat for increased acreage of agricultural production, conversion of land to municipal and industrial development use, or other activities, resulting in land use changes. The amount and types of crops will vary according to the annual water allocation and farming practices, and a small quantity of irrigation use may be changed to M&I purposes where the existing contract and governing laws and regulations allow. Given the two-year time frame of this renewal, there will be no net effect on land use.

3. Biological resources - The amount and timing of storage at CVP reservoirs and flows in rivers and streams that convey CVP water during the two-year contract renewal period are expected to be similar to the amount and timing of storage and flows under historic CVP operations conditions and will be in conformance with all biological opinions and with regulatory requirements. Renewal of the interim contracts will not cause changes in existing licensing programs to protect biological resources, and programs will continue to be implemented to ensure

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that no significant impacts to biological resources will occur. ~~(Strike rest of paragraph—item 4 covers threatened and endangered species specifically, and the same conclusion has already been reached as to biological resources in general.)~~

4. ~~[No suggested changes.]~~

5. Cultural resources - the proposed action will not ~~cause~~ ~~result in~~ activities that could affect cultural resources, such as ~~permanent~~ changes in reservoir elevations, ~~changes in land use,~~ ~~development of native habitat for agricultural or M&I use,~~ or the construction of any new facilities. No impacts to cultural resources are expected.

6. Recreation resources - ~~No changes in CVP reservoir storage or modifications to the amount or timing of water deliveries, which could affect recreational resources, will occur under the proposed action. The proposed action will not cause changes in historic CVP operations that determine reservoir storage or the amount or timing of water deliveries.~~ Therefore, no ~~No~~ impacts to recreational resources are anticipated.

7. Demographics and environmental justice - ~~The proposed action will not cause changes in historical water supplies or CVP operations and, as a result, no changes in population and the various indicators of social well being will result from the contract renewal. No changes in water supplies or CVP operations will occur under the proposed action and, as a result, no changes in population and the various indicators of social well being that will result are expected to occur. The proposed action will support continued agricultural production and therefore will not cause~~ ~~will not result in~~ changes to employment of minority and low-income populations. No disproportionate impacts to minority or low-income populations are expected to occur ~~as a result of renewing these contracts~~.

8. ~~[No suggested changes.]~~

9. Economic resources - ~~The renewal of interim CVP contracts will not cause changes from existing contracts in deliveries or pricing of CVP water, CVP facility operations, CVP power generation and use, or recreation use, and will therefore not cause economic impacts. Existing water deliveries and CVP facility operations will continue under the proposed action. No changes in power generation, recreational opportunities, or agricultural economics are expected and no economic impacts are anticipated to occur under the extended period of renewal.~~

10. ~~[No suggested changes.]~~

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January 4, 2002

Comments on Draft SEA:

Comments on Chapter 1:

Page 1-1, first paragraph, third sentence: "If negotiations and the required environmental review necessary to execute long-term renewals to replace interim contracts . . ."

Page 1-3, first sentence: ". . . renewal of the contracts is in essence a continuation of the 'status quo,' that is, they continue perpetuate the existing use and allocation, . . ."

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Comments on Chapter 2:

Page 2-2, second complete paragraph, third sentence: "The current contract provisions are those that are included in the existing interim renewal contracts and specified in the 2001 Supplemental EA. They contain only minor variations from the provisions described in the 1994 EA, the 1998 Supplemental EA, and the 2000 Supplemental EA."

Page 2-2: Second complete paragraph, last paragraph, last sentence should read "2002 Supplemental EA."

Page 2-3: Since the Friant interim contracts are no longer in the group to be renewed, the discussion of storage of water in wetter years is weaker. Suggested revision of entire paragraph 2.2.2 as follows:

"Reduction in contract amounts due to current delivery constraints on the CVP system identified in the PEIS was considered in certain cases, but rejected from analysis for several reasons. The reasons are twofold: First, water needs analysis have been completed for all contracts, and in almost all cases, the needs exceed or equal the total contract amount. Second, the shortage provision of the contract protects the Contracting Officer from liability from the shortages in water allocations that exist due to drought, other physical constraints, and actions taken to meet legal or regulatory requirements. Such actions include, for example, actions to implement the CVPLA, which has dedicated significant amounts of CVP water to environmental uses and which provides funding from the contractors to improve habitat and to acquire water for environmental purposes. Third, retaining the full historic water quantities under contract provides the contractors with assurance the water will be made available in wetter years and helps to support investments for local storage, water conservation improvements and capital repairs. Second, in order to implement good water management, the contractors need to be able to store or immediately use water available in wetter years when more water is available. By quantifying contract amounts in terms of the needs analysis and the CVP delivery capability, the contractors can make their own economic decisions. Allowing the contractors to retain the full water quantity gives them assurance that the water will be available to them for storage investments. In addition the

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5

Mr. Frank Michny

January 4, 2002

Re: DSEA for the Renewal of Interim Water Service Contracts

Page: 5

~~CVPA, in and of itself, achieves a balance, in part through its dedication of significant amounts of~~

~~CVP water and actions to acquire water for environmental purposes.~~

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Response to Comments by
San Luis and Delta-Mendota Water Authority (SLDMWA)

- SLDMWA-1 Comment noted.
- SLDMWA-2 Text revised.
- SLDMWA-3 The text of the draft Finding of No Significant Impact will be reviewed and revised to more clearly explain the identified issues when a finding is approved.
- SLDMWA-4 Text revised as suggested.
- SLDMWA-5 Text revised as suggested.



January 7, 2002

VIA FAX (916) 978-5055 AND REGULAR MAIL

Mr. Frank Michny
United States Bureau of Reclamation
2800 Cottage Way
Sacramento, CA 95825-1898

RE: Central Valley Project Interim Renewal Contracts

Dear Mr. Michny:

With this letter Taxpayers for Common Sense (TCS), a national non-profit dedicated to stopping wasteful government spending, submits our comments regarding Central Valley Project interim contract renewals.

TCS urges Bureau of Reclamation to conduct the most comprehensive study possible of these interim contracts renewals in order to fully evaluate the economic impacts related to renewals. The Central Valley Project Improvement Act (CVPIA) and CALFED signified a commitment by stakeholders to end the era of big subsidies and waste in California water policy. Bureau of Reclamation must stay true to the spirit of both the CVPIA and CALFED by renewing CVP contracts in a way that represents a responsible vision of future water needs in California. Central Valley Project contract promises should reflect realistic water delivery amounts at far less subsidized prices.

TCS is extremely concerned by Bureau of Reclamation's rejection of the possible alternative of Reduction in Interim Contract Amounts (Section 2.2.2) in its Draft Supplemental Environmental Assessment. We strongly urge Bureau of Reclamation to reconsider its decision regarding levels of water promised in its interim and long-term contracts. We believe a reduction in interim contract amounts is a feasible and an important alternative that should not have been rejected. Bureau of Reclamation must ensure that contracts do not continue to promise impossible levels of water that the CVP cannot deliver and lock the taxpayer into providing huge subsidies. Specifically, deeper analysis must be given as to how much water should actually be promised to contractors in renewing their contracts. While certain water levels were promised to these contractors in negotiations for their original contracts, the time has come for these promises to be reassessed based on current and future water needs in a rapidly changing water system. Water allocations must demonstrate an assessment of water actually

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Mr. Frank Michny
January 7, 2002

available in the system and how to distribute that water to best meet many competing water needs.

TCS
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If an additional one to two-year interim contract period is truly needed (something that should be fully studied prior to implementation), then the Bureau of Reclamation should use that interim period to do the difficult work of reassessing the entire Central Valley Project. Water in the Central Valley Project is vastly over allocated. The federal government cannot continue to make unrealistic promises of water to the expense of all federal taxpayers.

TCS
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Inflated promises of water and large subsidies will increase pressure for new dam projects and threaten the delicate balance negotiated in the CALFED Record of Decision (ROD). Such promises will continue a vicious cycle of the federal government promising unreachable amounts of water at cheap prices to CVP contractors and then federal taxpayers being forced to build and pay for massive new water projects to try to meet these assurances. Promising water at an incredibly subsidized rate will further remove market pressures to conserve water and lead to the building of massive water projects that water users cannot afford to fund.

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If CVP contract renewals promise inflated levels of water, the policy that was intended to encourage the wise use of water (i.e. tiered pricing as mandated by the CVPIA) will be rendered all but meaningless. Under CVPIA, CVP contracts should be written to initiate tiered water pricing when water consumption exceeds 80% of the annual contract maximum. However, Bureau of Reclamation rarely delivers annual contract maximums, as demonstrated by historical deliveries, thereby making tiered water pricing ineffective. As Bureau of Reclamation continues through the process of contract renewals, we ask that annual contract maximums be reduced to more realistic levels that the CVP will actually be able to achieve.

TCS
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Long-term CVP contracts are not permanent entitlements. Instead, CVP contracts must receive full review in order to consider the constantly evolving needs of California's diverse set of water users. Bureau of Reclamation should require CVP contracts to go through a rigorous public review process and include clear accountability provisions on the part of the water contractors before contracts are renewed. California's water needs are constantly in flux and full review of these contracts renewals is the only responsible policy.

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Mr. Frank Miciny
January 7, 2002

TCS strongly urges Bureau of Reclamation to draft Central Valley Project interim and future contract renewals to ensure that the Central Valley Project Improvement Act of 1992 is accurately and legally implemented. Continuing to issue interim contract renewals helps the Bureau of Reclamation avoid making the tough decisions necessary to follow CVPIA. The only way to achieve CVPIA compliance is to conduct a comprehensive and complete study of the full economic impacts of these renewals and renewals of future long-term contracts. TCS
7

Sincerely,



Aileen D. Roder
California Water Project Coordinator
Taxpayers for Common Sense
651 Pennsylvania Avenue SE
Washington, DC 20003
(202) 546-8500 x130

cc: Environmental Protection Agency
Office of Management and Budget
Fish and Wildlife Service
National Marine Fisheries Service
Council for Environmental Quality

Response to Comments by Taxpayers for Common Sense (TCS)

- TCS-1 NEPA regulations require Federal agencies to study the proposed action's effects on the human environment. NEPA defines human environment as the natural and physical environment and the relationship of people with that environment. Economic effects are not intended by themselves to require preparation of an EIS. An EA need not include an analysis of purely economic effects. Under NEPA, economic effects are discussed if these effects are interrelated with effect of the natural or physical environment.
- TCS-2 The use of Reclamation project water is subject to state and Federal laws requiring beneficial use. The Reclamation Project Act of 1956 and Reclamation Project Act of 1963 mandate renewal of existing contract amounts when beneficially used. Water needs analysis have been completed to identify the amount of water that could be beneficially used by each water service contractor. The contract amounts are constrained to not exceed the beneficial use or the existing contract amount, whichever is less.
- TCS-3 Reclamation is implementing Section 3405 of the CVPIA which addresses water pricing reform and water conservation standards.
- TCS-4 See response TCS-2 and USEPA-10. We believe the action of contract renewal comport with ongoing CALFED efforts.
- TCS-5 See responses TCS-2 and 3.
- TCS-6 Public participation requirements are established in Section 9(t) of the Reclamation Project Act of 1939, 43 U.S.C. 485h, and by RRA rules and regulations (43 CFR 426.22). Public participation procedures for water service, repayment, and other water-related contracts are composed of two basic elements: 1) publicize proposed contract actions, and 2) provide an opportunity for public comment. Generally Reclamation provides public notices of proposed contract actions at least 60 days prior to execution of contracts with a term of greater than 1 year.
- TCS-7 The Central Valley Project Improvement Act Final Programmatic Environmental Impact Statement (PEIS) completed in October of 1999 included programmatic evaluations of Wildlife & Recreation Economics, Agricultural Economics & Land Use, Municipal Water Costs, and Regional Economics. Provisions of the CVPIA covered in the PEIS included CVP water contract renewals.

Response to Comments by Santa Clara Valley Water District (SCVWD)

SCVWD-1 Comment noted.

SCVWD-2 Text revised as suggested.

APPENDIX E

**NATIONAL MARINE FISHERIES SERVICE
CONCURRENCE LETTER**



UNITED STATES DEPARTMENT OF COMMERCE
 National Oceanic and Atmospheric Administration
 NATIONAL MARINE FISHERIES SERVICE
 Southwest Region
 501 West Ocean Boulevard, Suite 4200
 Long Beach, California 90802-4213

February 22, 2002

In Response Refer To:
 SWR-00-SA-5851:MEA

Mr. Frank Michay
 Regional Environmental Officer
 U.S. Bureau of Reclamation
 Mid-Pacific Regional Office
 2800 Cottage Way
 Sacramento, California 95825-1898

Dear Mr. Michay:

This is in response to your letter dated November 19, 2001 initiating informal consultation under the Endangered Species Act (ESA) for the interim renewal of 42 Central Valley Project (CVP) water service contracts for the period from March 1, 2002 through February 29, 2004. These new interim contracts are similar to the one year interim contracts executed last year, and contain provisions described in current biological opinions addressing CVP operations, the Bay-Delta Accord, and conditions which allow for the reduction of deliveries for various reasons, including the need for CVP operations to be modified to meet the requirements of any amended or new biological opinions.

Species, under the jurisdiction of the NMFS, which may be affected by the Bureau of Reclamation's (Reclamation) proposed action are: 1) endangered Sacramento River winter-run chinook salmon (*Oncorhynchus tshawytscha*); 2) threatened Central Valley spring-run chinook salmon (*O. tshawytscha*); 3) threatened Central Valley steelhead (*O. mykiss*); and, 4) threatened Southern Oregon/Northern California Coast coho salmon (*O. kisutch*). In addition, designated critical habitat for these species may be affected by the proposed action.

Reclamation has determined that executing these interim contracts, in and of themselves, will likely have no adverse effect on winter-run chinook salmon, spring-run chinook salmon, coho salmon, or steelhead. Reclamation's determination is based on the following:

- (1) Contract amounts are limited to established needs or existing contract amounts, whichever is less. There will be no increase in total deliveries.
- (2) Contracts will be for a 2 year period, from March 1, 2002 through February 29, 2002.



- (3) The interim contracts contain shortage provisions that allow for reduction of deliveries for various reasons, including the need for CVP operations to be modified to meet requirements of listed species. Biological Opinions addressing the effects of the hydrologic operation of the CVP on Sacramento River winter-run chinook salmon, Central Valley spring-run chinook salmon and Central Valley steelhead exist. In addition, Reclamation has reinstated consultation with NMFS on the effects of the CVP Operations on Central Valley spring-run chinook salmon and Central Valley steelhead to cover the period through April 30, 2004 (expected to be completed by March 30, 2002), and has initiated consultation on long-term operations of the CVP. Reclamation has also consulted on the effects of operations of the Trinity River Division on coho salmon.
- (4) The hydrologic operations of the CVP are, and will continue to be, operated in compliance with existing, amended, or new biological opinions that address the effects of the operation of the CVP on any listed species. A letter dated October 29, 1999, was provided to NMFS to confirm this commitment.
- (5) Reclamation is committed to engaging NMFS in the (b)(2) interagency team to provide recommendations on how to best dedicate and manage 800,000 acre-feet of CVP yield.
- (6) The proposed action is tiered from the CVPLA PEIS and was considered within and is consistent with the programmatic biological opinion (dated November 14, 2000) NMFS prepared on the implementation of the CVPLA.

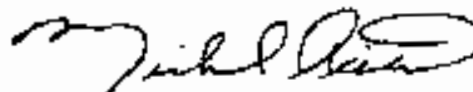
NMFS' interpretation of the letter of October 29, 1999, mentioned in item (4) above, is that Reclamation will continue to operate the CVP in compliance with existing, amended, or new long-term biological opinions and will not commit additional resources (e.g. water withdrawals) which would affect the environmental baseline, absent this action.

Based on the best available information, NMFS concurs with Reclamation's determination that the 2-year interim contracts, identified in the list enclosed with your letter of November 19, 2001, will not likely adversely effect Sacramento River winter-run chinook salmon, Central Valley spring-run chinook salmon, Southern Oregon/Northern California Coast coho salmon, or Central Valley steelhead, or their designated critical habitat. The contracts shortage provisions should allow Reclamation adequate flexibility to continue to comply with existing biological opinions or any amended or new opinions currently under development that address the effects of CVP operations on listed species. In addition, based on our interpretation of your October 29, 1999 letter, Reclamation, through this action, will not commit resources which will effect the environmental baseline for the long-term. Reclamation should be prepared to exercise its flexibility within these contracts as our agencies proceed with consultations on long-term CVP operations.

This concludes Section 7 consultation for Reclamation's proposed execution of 42 interim water service contract renewals for the period of March 1, 2002 through February 29, 2004. However, if any new information becomes available indicating that listed or proposed species may be adversely affected by this action, further consultation may be necessary.

If you have any questions concerning these comments, please contact Mr. Michael Accituro in our Sacramento Area Office, 650 Capitol Mall, Suite 8-300, Sacramento, California 95814. Mike may be reached by telephone at (916) 930-3600 or Fax at (916) 930-3629.

Sincerely,



R Rodney R. McLenis
Acting Regional Administrator

cc: Jim Lecky, NMFS, Long Beach, CA
Wayne White, USFWS, Sacramento, CA