

RECLAMATION

Managing Water in the West

FINDING OF NO SIGNIFICANT IMPACT

Central Valley Project Interim Renewal Contracts for Westlands Water District and Santa Clara Valley Water District 2020-2022

FONSI-19-043



— BUREAU OF —
RECLAMATION

Interior Region 10 California-Great Basin
California*, Nevada*, Oregon*

*Partial

South-Central California Area Office

February 2020

Mission Statements

The mission of the Department of the Interior is to conserve and manage the Nation's natural resources and cultural heritage for the benefit and enjoyment of the American people, provide scientific and other information about natural resources and natural hazards to address societal challenges and create opportunities for the American people, and honor the Nation's trust responsibilities or special commitments to American Indians, Alaska Natives, and affiliated island communities to help them prosper.

The mission of the Bureau of Reclamation is to manage, develop, and protect water and related resources in an environmentally and economically sound manner in the interest of the American public.

BUREAU OF RECLAMATION
South-Central California Area Office, Fresno, California

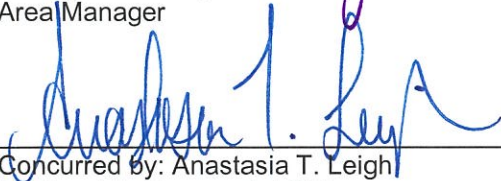
FONSI-19-043

**Central Valley Project Interim Renewal
Contracts for Westlands Water District
and Santa Clara Valley Water District
2020-2022**



Recommended by: Michael P. Jackson, P.E.
Area Manager

2/14/2020
Date



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2/19/2020
Date



Approved by: Ernest Conant
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2/24/2020
Date

Introduction

In accordance with Section 3404(c) of the Central Valley Project Improvement Act (CVPIA), the Bureau of Reclamation (Reclamation) proposes to execute six interim renewal contracts beginning March 1, 2020 (Table 1). These six interim renewal contracts would be renewed for a two-year period from March 1, 2020 through February 28, 2022. In the event a new long-term renewal contract for water service is executed, the interim renewal contract then-in-effect would be superseded by the long-term renewal contract.

Table 1 Contractors, Current Contracts, and Existing Contract Amounts

| Contractor | Existing Contract Number | Contract Quantity (acre-feet per year) | Expiration of Existing Interim Renewal Contract |
|--|--------------------------|--|---|
| Pajaro Valley Water Management Agency, Santa Clara Valley Water District, and Westlands Water District Distribution District # 1 (3-way assignment from Mercy Springs Water District)* | 14-06-200-3365A-IR16-B | 6,260 | 2/29/2020 |
| Westlands Water District | 14-06-200-495A-IR6 | 1,150,000 | 2/29/2020 |
| Westlands Water District Distribution District #1 (full assignment from Broadview Water District) | 14-06-200-8092-IR16 | 27,000 | 2/29/2020 |
| Westlands Water District Distribution District #1 (full assignment from Centinella Water District) | 7-07-20-W0055-IR16-B | 2,500 | 2/29/2020 |
| Westlands Water District Distribution District #2 (partial assignment from Mercy Springs Water District) | 14-06-200-3365A-IR16-C | 4,198 | 2/29/2020 |
| Westlands Water District Distribution District #1 (full assignment from Widren Water District) | 14-06-200-8018-IR16-B | 2,990 | 2/29/2020 |

*Note: Pajaro Valley Water Management Agency no longer has an interest in the 3-way contract assignment and will no longer be a potential recipient of CVP water pursuant to the May 1999 agreement and subsequent contract assignment.

Reclamation prepared Environmental Assessment (EA)-19-043, *Central Valley Project Interim Renewal Contracts for Westlands Water District and Santa Clara Valley Water District 2020-2022*, in accordance with the National Environmental Policy Act (NEPA) of 1969, as amended, to consider potential impacts of issuing a two-year renewal contract. The EA is tiered to the Central Valley Project Improvement Act (CVPIA) Programmatic Environmental Impact Statement (PEIS), October 1999. This FONSI is supported by EA-19-043, which is incorporated by reference.

Background

Interim renewal contracts have been and continue to be executed pursuant to the CVPIA to provide a bridge between the expiration of the original long-term water service contracts and the

execution of new long-term water service contracts. The interim renewal contracts reflect current Reclamation law, including modifications resulting from the Reclamation Reform Act and applicable CVPIA requirements. The initial interim renewal contracts were negotiated beginning in 1994 for contractors whose long-term renewal contracts were expiring, with an initial interim period not to exceed three years in length, and for subsequent renewals for periods of two years or less to provide continued water service. Many of the provisions from the interim renewal contracts were assumed to be part of the contract renewal provisions in the description of the PEIS Preferred Alternative.

Alternatives Considered

No Action

Under the No Action alternative, Reclamation would not renew the contracts listed in Table 1. Reclamation would continue to pursue execution of long-term renewal contracts, as mandated by Section 3404(c) of the CVPIA. However, until such time as the environmental documentation was completed for the long-term contracts, there would be no contractual mechanism for Reclamation to deliver up to 1,192,948 acre-feet (AF) per year of CVP water to Westlands Water District (Westlands) or up to 6,260 AF to Santa Clara Valley Water District (Santa Clara). Both Westlands and Santa Clara have other contracts or contract assignments for CVP water that would continue as described in Section 2.1 of EA-19-043.

Proposed Action

Under the Proposed Action, Westlands would continue to receive up to 1,192,948 AF per year and Santa Clara would continue to receive up to 6,260 AF per year of CVP water pursuant to the interim renewal contracts listed in Table 1.

Environmental Commitments

Reclamation and the contractors listed in Table 1 shall implement the environmental protection measures included in Table 2 of EA-19-043. Environmental consequences for resource areas assume the measures specified will be fully implemented.

Comments on the EA

Reclamation provided the public with an opportunity to comment on the Draft EA between November 14, 2019 and December 14, 2019. Reclamation received one comment letter from a public agency and two comment letters from private individuals/organizations. The comment letters are included as Appendix E of Final EA-19-043.

Many of the comments are conclusory position statements about the Central Valley Project or other actions outside the scope of the Proposed Action covered in EA-19-043 (e.g. Consolidated Place of Use mitigation, land retirement, 1999-2006 executed contract assignments, water transfers, exchanges, non-Project water deliveries, Grassland Bypass Project, etc.). None of these comments address the analysis of the Proposed Action in the EA, and as such, no response to these statements are necessary. Substantive comments related to Reclamation's Proposed Action and analysis are addressed below.

2016 Ninth Circuit Court Ruling Determined that Reclamation Abused its Discretion and Circumvented NEPA

Reclamation disagrees that the 2016 Ninth Circuit Court decision referenced in the comment letter rejected Reclamation's premise that the interim renewal contracts were a continuation of the status quo. Rather, the Ninth Circuit affirmed the lower courts determinations, including those regarding the status quo, except for those related to the No Action alternative and the elimination of a reduced contract alternative (see page 11 in Ninth Circuit's Amended Memorandum in *Pacific Coast Federation of Fishermen's Associations v. Bureau of Reclamation* ("PCFFA"), 655 Fed. Appx. 595 (9th Cir. 2016): <https://cdn.ca9.uscourts.gov/datastore/memoranda/2016/07/25/14-15514.pdf>).

In addition, as required in the 2016 Ninth Circuit's decision and noted in Section 1 of EA-19-043, Reclamation prepared the EA to include a non-contract renewal No Action Alternative and considered a reduced contract quantity alternative based on an updated water needs assessment. Further, the Ninth Circuit found that the Plaintiff's contention "that the EA's geographic scope was improperly limited to the delivery areas and should have considered the effects, including cumulative effects, of interim contract renewal on the California River Delta, the source of the water, and on the Delta's fish and other wildlife... **lacks merit** because the EA was tiered off of the PEIS, which addressed Central Valley Project-wide effects of long term contract renewal" and further "In light of Reclamation's obligation to conduct a more comprehensive analysis in the PEIS, it would be impractical to require the agency to trace the incremental effects of each two-year water service contract on the Delta and all Central Valley Project waters" (Case: 14-15514, 07/25/2016, pg 10, emphasis added).

As noted in Section 1, the EA tiers off the CVPIA PEIS to evaluate potential site-specific environmental impacts of renewing six interim water service contracts. The CVPIA PEIS provided a programmatic evaluation of the impacts of implementing the CVPIA. Four alternatives, 17 supplemental analyses, the Preferred Alternative, and a No Action Alternative were evaluated in the PEIS. In addition, the PEIS analyzed the region-wide and cumulative impacts of the CVPIA including the renewal of CVP water service contracts. The diversion of water for delivery under the interim contracts is an on-going action and the current conditions of that diversion are discussed in the PEIS.

Reclamation Does Not Have the Legal Authority to Contract for the Proposed Interim Water Service Because it Exceeds Acreage Limits Authorized by Congress

Reclamation disagrees with the various assertions under this comment. As described in Section 1.1 of EA-19-043, interim renewal contracts have been and continue to be undertaken under the authority of the CVPIA to provide a bridge between the expiration of the original long-term water service contracts and the execution of new long-term water service contracts as provided for in the CVPIA.

In addition, Reclamation has long viewed the language in the 1960 Act regarding the federal service area, not as a limitation on the Secretary's discretion on implementation of the 1960 Act, but as an overall purpose of the San Luis Unit, especially given the 1960 Act's authority to construct joint-use facilities with the State of California.

Issuing the Proposed Interim Water Service Contract would Violate Reclamation Law

Reclamation disagrees with the various assertions under this comment. As described in Section 1.1 of EA-19-043, interim renewal contracts have been and continue to be undertaken under the authority of the CVPIA to provide a bridge between the expiration of the original long-term water service contracts and the execution of new long-term water service contracts as provided for in the CVPIA. Reclamation is compliant with all the requirements of the CVPIA.

The Conclusions of the Draft EA for the Interim Contract Renewal Conflict with both Facts and Law and an EIS is Required

Reclamation disagrees with the various assertions under this comment. EA-19-043 and its scope of analysis were developed consistent with NEPA regulations, guidance from the Council on Environmental Quality (CEQ), and the Department of the Interior's NEPA regulations. In accordance with NEPA, an EA is initially prepared to determine if there are significant impacts on the human environment from carrying out the Proposed Action. Reclamation has followed applicable procedures in the preparation of this EA which includes the required components of an EA as described in the CEQ's NEPA regulations (40 CFR 1508.9): discussion of the need for the proposal, alternatives as required, environmental impacts of the proposed action and alternatives, and listing of agencies and persons consulted. An EA is defined by CEQ as a "concise public document" that "briefly provide[s] sufficient evidence and analysis for determining whether to prepare an environmental impact statement or a finding of no significant impact" (40 CFR 1508.9). Analysis of Reclamation's Proposed Action in the EA indicated that preparation of an EIS is not warranted.

Although NEPA does not require an EA to be released for public review, Reclamation did so in order to be open and transparent, gather public input, and to further inform decision making. Pursuant to 40 CFR 1506.6(b), Reclamation publicly noticed the availability of the Draft EA on November 14, 2019. There is no requirement for a "preliminary FONSI" to be released for public review. The citation listed in the comment letter regarding the release of a "preliminary FONSI" is specific to procedures developed by the Environmental Protection Agency regarding their implementation of NEPA and does not apply to Reclamation or any other federal agency NEPA procedures.

The Effects of Drainage from Westlands Caused by Irrigation Enabled by the Interim Contract Renewal are Significant and Must be Addressed in a Comprehensive EIS

Reclamation disagrees with the various assertions under this comment. As stated in Section 1.4.6 of EA-19-043, "the EA acknowledges ongoing trends associated with the continued application of irrigation water and production of drainage related to that water. It does not analyze the effects of Reclamation's providing agricultural drainage service to the San Luis Unit. The provision of drainage service is a separate federal action that has been considered in a separate environmental document, the San Luis Drainage Feature Re-Evaluation Final Environmental Impact Statement [SLDFR FEIS] (Reclamation 2005h). The SLDFR FEIS evaluated seven Action alternatives in addition to the No Action alternative for implementing drainage service within the San Luis Unit. The ROD for the SLDFR-FEIS was signed March 9, 2007 (2007 ROD). The actions considered in this EA would not alter or affect the analysis or conclusions in the SLDFR FEIS or 2007 ROD".

Further, the Ninth Circuit found that “Impacts on salmonids and green sturgeon, as well as cumulative impacts related to drainage and selenium, were more appropriately addressed in the PEIS and the San Luis Drainage Feature Re- Evaluation Final EIS, rather than the EA for interim contract renewal” (Case: 14-15514, 07/25/2016, pg 10).

Land Use Effects of the Interim Water Service Contract have not been Adequately Addressed in the Draft EA

Reclamation disagrees with the various assertions under this comment. Reclamation addresses direct, indirect, and cumulative land use changes within Section 3.5 of EA-19-043. In addition, potential impacts to biological species related to land use changes are included in Section 3.3. Reclamation’s South-Central California Area Office implements an environmental commitment program that tracks implementation of environmental commitments, including those included in previous EAs on interim renewal contracts. Commitments included in this EA will also be tracked under the environmental commitment program.

Cumulative Impacts have not been Adequately Addressed in Draft EA

Reclamation disagrees with the various assertions under this comment. As described in Section 1 of EA-19-043, the EA tiers off the CVPIA PEIS to evaluate potential site-specific environmental impacts of renewing these six interim water service contracts. The CVPIA PEIS analyzed the region-wide and cumulative impacts of implementing the CVPIA including the renewal of CVP water service contracts. The diversion of water for delivery under the interim contracts is an on-going action and the current conditions of that diversion were analyzed in the CVPIA PEIS.

Further, the Ninth Circuit found that the Plaintiff’s contention “that the EA’s geographic scope was improperly limited to the delivery areas and should have considered the effects, **including cumulative effects**, of interim contract renewal on the California River Delta, the source of the water, and on the Delta’s fish and other wildlife...lacks merit because the EA was tiered off of the PEIS, which addressed Central Valley Project-wide effects of long term contract renewal” (Case: 14-15514, 07/25/2016, pg 10, emphasis added).

Pending Long-Term Permanent Water Contracts Impacts Are Not Disclosed

The “permanent” water contracts referenced by this comment is a separate action from the Proposed Action considered in this EA (i.e. two-year interim renewal contracts). The referenced permanent water contracts are being converted under the authority of the Water Infrastructure and Improvements for the Nation Act (P.L. 114-322, Section 4011) which directs that upon request of the contractor the Secretary shall convert the water service contract into a repayment contract.

Outdated Water Needs Assessment

As described in Section 2.3 of EA-19-043, Reclamation reviewed an earlier Water Needs Assessment completed for Westlands prior to 2017 and determined that updates to that assessment were warranted. A new updated Water Needs Assessment was prepared for Westlands in 2017 and included as Appendix D of the EA consistent with the Ninth Circuit Courts requirements.

Reliance on CVP Water for Conversion to Permanent Crops

Reclamation makes CVP water available to contractors for reasonable and beneficial uses, but this water supply varies widely from year to year and sometimes even within a given year, and is often insufficient to meet all of the irrigation water service contractors' water supply needs due to hydrologic conditions and/or regulatory constraints. As shown in Table 7 of EA-19-043, South-of-Delta CVP agricultural allocations ranged between 0% and 100% and averaged 44% between 2005 and 2018. For 8 out of the last 14 years, the South-of-Delta CVP agricultural allocation was less than 50% due to drought conditions and regulatory requirements.

Consequently, CVP contractors, including Westlands, consider the past and must make assumptions to adaptively manage water supplies based on current and projected hydrologic conditions (that are also dependent upon regulatory and environmental requirements) in order to proactively assess their risk in making business, economic, cropping, planting, and irrigation decisions. Reclamation is not obligated to provide a specific quantity of water, rather Reclamation has contracts that provide up to a stated quantity. Actual allocations are dependent on hydrologic conditions and regulatory requirements and can range from 0 to 100% of a specified contract quantity.

Reclamation has considered every comment in the comment letters. No additional information was provided that changed the analysis contained in EA-19-043.

Findings

In accordance with NEPA, Reclamation has determined that the approval of the Proposed Action is not a major federal action that will significantly affect the quality of the human environment; consequently, an environmental impact statement is not required.

The following reasons are why the impacts from the proposed action are not significant:

- The proposed action will not significantly affect public health or safety (40 CFR 1508.27(b)(2)).
- The proposed action will not significantly affect natural resources and unique geographical characteristics such as proximity to historic or cultural resources; parks, recreation, and refuge lands; wilderness areas; wild or scenic rivers; national natural landmarks; sole or principal drinking water aquifers; prime farmlands; wetlands (Executive Order (EO) 11990); flood plains (EO 11988); national monuments; migratory birds; and other ecologically significant or critical areas (40 CFR 1508.27(b)(3)).
- There is no potential for the effects to be considered highly controversial (40 CFR 1508.27(b)(4)).
- The proposed action will not have possible effects on the human environment that are highly uncertain or involve unique or unknown risks (40 CFR 1508.27(b)(5)).

- The proposed action will neither establish a precedent for future actions with significant effects nor represent a decision in principle about a future consideration (40 CFR 1508.27(b)(6)).
- The proposed action will not have cumulatively significant impacts (40 CFR 1508.27(b)(7)).
- The proposed action will not significantly affect historic properties (40 CFR 1508.27(b)(8)).
- The proposed action will not significantly affect listed or proposed threatened or endangered species, or its habitat that has been determined to be critical under the Endangered Species Act of 1973 (40 CFR 1508.27(b)(9)).
- The proposed action will not threaten a violation of Federal, State, tribal or local law or requirements imposed for the protection of the environment (40 CFR 1508.27(b)(10)).
- The proposed action will not affect any Indian Trust Assets (512 DM 2, Policy Memorandum dated December 15, 1993).
- Implementing the proposed action will not disproportionately affect minorities or low-income populations and communities (EO 12898).
- The proposed action will not limit access to, and ceremonial use of, Indian sacred sites on Federal lands by Indian religious practitioners or adversely affect the physical integrity of such sacred sites (EO 13007 and 512 DM 3).