



# United States Department of the Interior



BUREAU OF RECLAMATION  
South-Central California Area Office  
1243 N Street  
Fresno, California 93721-1813

IN REPLY REFER TO:

SCC-420  
ENV-7.00 (San Luis)

MAY 19 2005

FEDERAL EXPRESS

## MEMORANDUM

To: Field Supervisor, Sacramento U.S. Fish & Wildlife Service Office  
Endangered Species Division, Sacramento, California  
Attn: Michael Welsh

From: Kathy Wood, Chief   
Resources Management Division

Subject: Response to Request for Additional Information to Initiate Formal Section 7  
Endangered Species Act Consultation on Execution of Long-Term Water Delivery  
Service Contract Renewals Between the United States and Eight Water Service  
Contractors of the Central Valley Project's San Luis Unit (1-1-04-I-2958)

This memorandum is in response to your November 22, 2004, memorandum, received in our office on November 24, 2004, requesting additional information for the consultation under section 7 of the Endangered Species Act (ESA) for renewal of the long-term water delivery service contracts between the U.S. Bureau of Reclamation and eight water service contractors in the San Luis Unit (SLU) of the Central Valley Project (CVP).

Your memorandum described 16 information needs, with supporting text, required to initiate formal consultation under the ESA, to supplement the information provided by Reclamation in the Biological Assessment (BA) of September 14, 2004. Reclamation, in cooperation with the SLU contractors, has prepared this memorandum to respond to each information need on a point-by-point basis.

*Response to Information Need (IN) 1:* The BA correctly states that the proposed action is renewal of the long-term water delivery contracts for the San Luis Unit contractors. The contracts provide for the continued delivery of CVP water; the contract amounts are not changing from the current contract amounts. The current and proposed contracts allow for full contract deliveries when available, which is consistent with Reclamation's request in their July 19, 2004, memorandum on CVP long-term contract consultation parameters. Reclamation's effects analysis in the Biological Assessment is based upon the full contract amounts as described in Table 1.

Also, as stated in the memorandum, Reclamation wishes the long term contract renewal consultations to address the effects of a range of deliveries comparable to those of the past 10

years with occasional deliveries of up to 100 percent of contract amount. It is expected that even when considering likely and foreseeable improvements to Reclamation's capacity to deliver CVP water to the water service providers south of the Delta, it is unlikely that such future deliveries could reasonably be expected to significantly increase amounts of deliveries and reliability to the point where the amounts of water available for delivery would exceed 100% on a regular basis, due to the hydrological constraints in the CVP system. Reclamation feels that given the value of water resources, it is incumbent upon the agency to maximize efficiencies in our operation and that there is a duty to provide as reliable a supply of water as possible to our CVP customers; however, short of massive changes to the CVP operation involving the construction of new facilities, increasing deliveries to the full-contract amounts at 100 percent reliability for a significant percentage of years is simply not feasible.

*Response to IN 2:* Table 1 in the BA reports only the acreages that can receive CVP water (i.e. the overlap between the Consolidated Place of Use (CPOU) and the service areas) while the Attachment C maps are intended to show the natural communities of the region. The Attachment C maps were not intended to define areas within Reclamation's water rights permits; Reclamation felt that it was important to include natural communities outside of the defined boundaries of Reclamation's water rights permits. The maps attached to the contracts for each contractor demonstrate the CPOU and therefore lands where Reclamation has authorized the application of CVP water. These were provided to the Fish & Wildlife Service (Service) on December 16, 2004. To the best of our knowledge, the contract maps are consistent with the legally defined boundaries of the State Water Resource Control Board (SWRCB) authorized place of use as described in Reclamation's permits for the San Luis Unit. The California Department of Fish & Game (CDFG) contract does not have a map attached to it, as the contract is for M&I water for five houses, a conference hall, and a workshop all located at one address, on less than one acre of land. Copies of the maps are also on the CD attached to this memorandum.

*Response to IN's 3 & 4:* The SWRCB Decision-1641 (D-1641) and associated Environmental Impact Report (EIR) relate to the issue of expansion and encroachment lands in the Central Valley Project. The SWRCB decision is a state action, and Reclamation is not consulting on actions taken relating to that document. Reclamation does not consider the mitigation reporting requirements of D-1641 to be part of the proposed action, and does not intend to include the decision and subsequent actions as part of the consultation process. The SWRCB did not require specific mitigation requirements as part of the D-1641 process, but did include an annual reporting requirement regarding Reclamation's actions to meet the goals stated in the EIR. Copies of these reports are provided to Service and SWRCB on an annual basis. Reclamation has also prepared, in compliance with D-1641, a Consolidated Place of Use Habitat Management Plan and Mitigation Reporting Program document, and has provided it to Service and SWRCB, as well as the annual monitoring reports.

#### Expansion Lands

Reclamation is not delivering, or authorizing the delivery of, CVP water to the expansion lands. As described above in response 2, the maps shown in Attachment C, which are large enough in scale to show the expansion lands, do not reflect the specific areas where CVP water will be applied. Application of water to the expansion lands is therefore not part of the federal action and is not part of the consultation. In the event that a contractor wishes to deliver CVP water to

expansion lands, that would be a separate action requiring approval by the State Water Resources Control Board as well as separate environmental review by Reclamation.

#### Encroachment Lands

Delivery of CVP water to the encroachment lands is permitted under D-1641, subject to the reporting requirements described above. As stated previously, Reclamation is not consulting on the SWRCB's action. Delivery of CVP water to encroachment lands is part of the proposed action. Descriptions of all actions related to habitat restoration that Reclamation has taken throughout the South-Central California Area Office's area of responsibility are provided in Attachment E of the BA, or in the report documents.

The SWRCB's EIR was used to define the baseline and existing conditions in the BA, among other resources comprising the best available information. Actions in the baseline are provided in the BA, which includes mitigation activities that satisfy the SWRCB's requirements, and which are reported to Service annually.

*Response to IN 5:* The proposed action of contract renewal does not require the inclusion of a drainage solution, but states that drainage will be provided when "drainage service becomes available." As the Service is aware, Reclamation is preparing a draft environmental impact statement for the San Luis Drain Feature Re-Evaluation Program, which analyzes drainage service actions for the San Luis Unit, including a No Action Alternative. Any federal action with respect to drainage will occur later, dependent upon the availability of future federal funding, and is not a part of the current action and will be subject to its own ESA compliance requirements.

Reclamation intends to consult under section 7 of the Endangered Species Act on the drainage solution determined through the NEPA process, once a preferred alternative has been identified. Such consultation will be distinct from the renewal of the San Luis Unit contracts; Reclamation will not be re-initiating consultation on the contracts as a result of the drainage solution, in order to avoid the inefficiency of redundant consultations.

Reclamation disagrees with the Service's statement that "effects of drainage service are a direct effect of" the proposed action. The potential effects of drainage service are a direct effect of the drainage service action implemented. As the Service correctly points out, drainage service may include a suite of options some of which may affect listed species. We agree with the Service's statement that for purposes of consultation on the proposed action "that the status quo would exist through the term of the contract." The status quo is that there is a need for drainage service on certain lands within the SLU, and those needs are currently being met or partially met through a variety of actions. Unless and until such time as a federal action, following NEPA and ESA compliance, is taken to implement a comprehensive drainage solution, we further anticipate that a variety of site-specific non-federal projects may occur to address drainage concerns. Each of those projects has been and will continue to be subject to separate compliance with applicable environmental requirements. As stated above, any measures taken to manage or dispose of drainage water involving federal action will be subject to appropriate NEPA and ESA review and compliance.

*Response to IN 6:* Forms of contract for all districts for long-term contracts are available at <http://www.usbr.gov/mp/cvpia/3404c/index.html>. Copies of the forms of contract are provided on the CD attached to this memorandum.

*Response to IN 7:* Absent federal drainage service, farmers and districts will only be able to discharge water where such discharges are currently permitted (e.g., the Grassland Bypass Project). This restriction means that districts and/or farmers with responsibility or control over the 379,000 acres projected to need drainage service (Feature Re-evaluation, Reclamation 2005) will have no options other than to pursue individual actions related to (1) drainage control and reuse and (2) cropping practices. Water districts and landowners will continue to address drainage problems within institutional, regulatory, and financial constraints that are currently in effect and are reasonably foreseeable. Land retirement, land fallowing, and on-farm/on-district activities are the primary options available.

Selenium is a naturally occurring element in soils in the area that is deposited through erosion and storm/flood flows from creeks and streams originating in the Coastal range and flowing into and through the SLU. This process continues today and absent renewal of these CVP contracts, selenium will continue to occur in the SLU and at times to be discharged into streams reaching the San Joaquin River. The selenium in soil becomes dissolved in shallow groundwater through leaching; a process that has been accelerated by the application of irrigation water beginning over a hundred years ago. While there are localized instances of discontinuous layers of transmissive soils, the overall predominant flow of groundwater in the SLU area is vertical. There may be instances where the Service is correct that seleniferous agricultural drainage leaves a SLU district by means of subsurface flow. However, such instances of lateral flows are localized and, overall, are negligible. In any event, potential effects of any such flows occur at the point where the flows discharge to the surface. All identified discharges of seleniferous agricultural drainage water are subject to monitoring and regulation and have been and will continue to be subject to NEPA and ESA review and compliance, as appropriate.

Six sumps are operated which can deliver selenium to the Delta-Mendota Canal (DMC). However, when all 6 are operating at full capacity they deliver a total discharge of water of approximately 2 cubic-feet per second (cfs); the DMC typically operates at approximately 3,000 cfs. The flow and selenium content of the sumps, as well as the DMC upstream and downstream of the sumps is monitored, and monitoring results are provided on a monthly basis to the Service and others. These sumps were installed to address local shallow groundwater concerns at the time of construction of the DMC, almost 20 years before deliveries to the SLU began. The Service's assertion that these sumps discharge SLU drainage into the DMC based on unsupported allegations in a now dismissed legal complaint is unfounded.

The unregulated check drains referred to in the insufficiency memo are illegal under state water law. Reclamation has no authority to consult on their existence or effects, and can only report their existence to the appropriate state regulatory authorities when we become aware of them.

*Response to IN 8:* The study referred to, *Estimation of a Water Budget for 1972-2000, for the Grasslands Area, Central Part of the Western San Joaquin Valley, California*, by Charles Brush, Kenneth Belitz, and Steven Phillips, USGS Scientific Investigations Report 2004-5180, is

available on the internet at: <http://pubs.water.usgs.gov/sir2004-5180>. A copy has also been provided on the CD attached to this memorandum.

*Response to IN 9:* Due to reductions in CVP water supplies resulting from insufficient Delta pumping capability and hydrological constraints sufficient deliveries are not available to meet all water demands in every year. In some dry or drought years, water deliveries are limited because of insufficient northern CVP reservoir storage to meet all in-stream fishery objectives, including water temperatures, and to use the delivery capacity of Tracy Pumping Plant. The scheduling of water demands, together with the scheduling of releases of supplies from the northern CVP to meet those demands, is a CVP operational objective intertwined with the Trinity, Sacramento, and American River operations. This is consistent with OCAP and the projections made in the OCAP BA.

Assignments to San Luis Unit contractors that are included in the contracts are the Centinella and Widren assignments to Westlands Water District (WWD). The Broadview assignment to WWD will be included with the contract if it has been finalized by Reclamation before the WWD contract is signed; if the contract is signed before the assignment is finalized then it will consist of a separate process.

*Response to IN's 10 & 11:* Amounts of deliveries, when plotted over the term of the contract, are not likely to vary significantly from those of the most recent 10 years as a result of the contract and improvements to the CVP system. The projected future reliability of available water is anticipated to be subject to less variation than in previous years, due to the improvements made in pumping efficiency, as described in the OCAP BA.

Service has requested information on other sources of water and amounts (when available) for CVP Contractors in the San Luis Unit. These are provided below:

#### City of Avenal Use of Other Available Water Supplies

The City of Avenal's water supply source is CVP water from the San Luis Canal. Under a formal agreement, it supplies Avenal State Prison with 1,411 acre-feet of water annually. The City of Avenal also provides water service to the urbanized portions of Avenal and a limited number of connections in the northern portion of the community. Because this water is used for M&I purposes, the CVP water is treated before delivery at a City-owned plant and then delivered via a series of underground water pipelines throughout the service area.

Avenal does not pump any groundwater. The poor quality of the groundwater and its high concentrations of sulfate, nitrates, and sodium preclude its use for domestic purposes.

The City of Avenal has obtained water previously from the City of Huron. Although transfers have recently been discussed, none has been accomplished to date. The City has also considered a transfer of State Water Project (SWP) water from Kings County, which is in the SWP service area; however, the costs for these transfers, plus ongoing operation and maintenance costs, have made this option uneconomical.

#### City of Coalinga Use of Other Available Water Supplies

The City of Coalinga's sole water supply source is CVP water obtained at a single turnout from the Coalinga Canal, which is fed by the San Luis Canal. The current long-term contract required Coalinga to abandon its former source of water supply (i.e., pumping water from groundwater wells) and to depend on its CVP supply as its M&I water supply.

The City of Coalinga participates in transferring water but does not currently have a policy on water transfers. Potential water transfers are considered on a case-by-case basis. In 2001, Coalinga transferred 3,000 acre-feet of its CVP supply to Westlands Water District. No permanent water transfers are anticipated in the near future.

#### City of Huron Use of Other Available Water Supplies

The City of Huron's only water supply is CVP water received from a lateral connection to the San Luis Canal. Huron does not pump groundwater. Groundwater in the area is very deep, of poor quality, and almost non-potable.

The City of Huron is not currently an active participant in transferring water into or out of the city. In the past, it has sold water to the City of Avenal.

#### San Luis Water District Use of Other Available Water Supplies

CVP water is the San Luis Water District's only long-term water supply. The district does not own any groundwater wells and has no other long-term contracts for surface or groundwater supplies. All of the groundwater wells in the area are privately owned and operated. About 20 private agricultural wells provide water to 6,000 acres in the District Service Area. There are no agricultural wells within the three improvement districts. The vast majority of the San Luis Water District's water users do not have meaningful access to groundwater that can be used for irrigation, and therefore, supplementation of the CVP supply is nominal.

Although water deliveries by the San Luis Water District historically have been almost exclusively used for agricultural use, substantial development in and around the cities of Los Banos and Santa Nella have resulted in a shift of some water supplies to M&I use.

The San Luis Water District currently supplies approximately 800 acre-feet per year to approximately 1,300 homes and businesses. The trend is expected to continue, and the San Luis Water District is expected to provide M&I water deliveries of approximately 20,300 acre-feet to serve a projected population of 63,400 by 2025 if current development trends continue.

#### Water Transfers in the San Luis Water District

Individual landowners within the district get the water they need by performing water transactions, including transfers, exchanges, and assignments to supplement CVP water. Even in a year of 100 percent CVP allocation, many landowners do not and will not have the full amount of water that they would need. The district implements the "free market" approach to water transfers and allows individual water users to maximize the efficient use of their supplies by transferring water both within and outside district boundaries on a "willing seller, willing buyer" basis. Very few restrictions are placed on such transfers. Water transfers are for a single year only and must be renewed annually; water transfers cannot be relied upon as a long-term supply.

It is also becoming a common practice in the San Luis Water District for farmers to fallow previously farmed land. Fallowing land allows farmers to transfer that parcel's water rights to another parcel of land that is hoped to be more profitable. Fallowing can occur for a number of reasons including the lack of water or the cost of water being too high to make farming of the land profitable.

#### Westlands Water District Use of Other Available Water Supplies

In addition to the CVP supply, approximately 200,000 acre-feet of water is pumped from the underground aquifers during wet years. Westlands Water District supplies groundwater to some district farmers and owns some groundwater wells, with the remaining wells privately owned by water users in the district. Other water supply sources in the district include flood flows from the Kings River, which are available periodically and diverted from the Mendota Pool.

#### Water Transfers in Westlands Water District

WWD often participates in water transfer arrangements with other water districts in order to supplement the CVP water supply. In past years, the district has actively transferred water from many contractors within as well as outside the CVP. Typically, in water-short years, the district would actively transfer water only into the district.

#### Pacheco Water District Use of Other Available Water Supplies

The CVP supply is Pacheco Water District's primary long-term water supply. The district also has a surface water supply from the Central California Irrigation District, under a Railroad Commission Order authorizing the service to the land within the district. The district owns one well, but does not pump groundwater because of the poor quality of the underlying groundwater.

#### Water Transfers in Pacheco Water District

Pacheco Water District's water transfer policies allow a water user to transfer its unneeded allocation to another user within the district. Some landowners in the district also own and farm land in neighboring districts. District policies also allow a landowner to transfer water to the same landowner in a different district, as long as the landowner pays all outstanding charges. The district also has the right to transfer water supplied under its water service contract outside the district to other CVP contractors, but it has no formal written policy regarding these transfers.

#### Panoche Water District Use of Other Available Water Supplies

The CVP supply is the Panoche Water District's only long-term water supply. The district does not own or operate any groundwater wells. However, there are 42 privately owned and operated groundwater wells in the district service area. Because of its poor quality, groundwater is only used as a drought contingency water supply source.

#### Water Transfers in Panoche Water District

Panoche Water District often participates in water transfer arrangements with other Delta-Mendota Canal Unit and San Luis Unit contractors to supplement its CVP supply under shortage conditions and as necessary to ensure complete utilization of the CVP supply. The district actively transfers water both into and out of the district. In recent years, primarily due to chronic shortages in contract allocations, the district has actively participated in water transfers

with other San Luis Unit and Delta-Mendota Canal Unit contractors including Oro Loma, Mercy Springs, Westlands, Widren, Banta-Carbona, and San Luis Water Districts, as well as in transfer and banking projects involving other types of contractors.

California Department of Fish & Game Use of Other Available Water Supplies

CVP supply is the CDFG's only long-term water supply used at the Mendota Waterfowl Management Area headquarters.

A table showing the amount of water that has been transferred to the districts within the San Luis Unit is provided on the CD attached to this memorandum. Additional information requested by Service regarding CVP delivery amounts is currently not available due to technical limitations. The information will be provided once those issues are resolved.

*Response to IN 12:* Every CVP contract has a provision that allows for groundwater banking since this is considered a reasonable and beneficial use of CVP water. Rules for groundwater recharge programs are defined in Article 3(d) of the Form of Contract. While the contract allows for groundwater replenishment, such an action would be subject to separate environmental analysis, including CEQA, NEPA, and ESA consultation. Any groundwater recharge would also have to be in compliance with terms set forth in the Service's Biological Opinion for this project.

Deep percolation, as mentioned on page 13 of the BA, is a different term than recharge. Deep percolation refers to unintentional seepage of water into the ground as an unavoidable result of irrigation, while recharge is done intentionally. None of the San Luis Unit contractors has any groundwater recharge facilities, operations, or proposals currently ongoing.

Westlands Water District has undertaken a study to investigate groundwater recharge near Arroyo Pasajero Creek near Interstate 5. The project was located on existing agricultural land, would allow for recharge into the deep aquifer, and would not be affected by the Corcoran clay. This was a study only; implementation of the project would require separate environmental review. WWD is willing to provide information on the study upon request.

*Response to IN 13:* The State Water Resources Control Board requires the federal government to determine whether CVP water is being applied to beneficial use. To this end, Reclamation has formulated the methodology as to how water needs for the districts are determined. There is no statutory requirement for Reclamation to prepare a water needs analysis for any district. Reclamation views the water needs assessments as an Agency tool for determining the water district's CVP water needs and does not intend to bring them into the long-term contract renewal section 7 consultations. The water needs assessments are data that is used in part for information that is interpreted by Reclamation and refined in the BA. Some of the current water needs assessments will expire during period of the long-term contracts and are currently being updated; however, preliminary analysis indicates that all of the districts of the San Luis Unit are capable of utilizing their full-contract supply.

Reclamation is not aware of any lands that have been permanently retired in WWD. Reclamation's understanding is that some lands in the district have been fallowed, which is a temporary removal from agricultural production.

*Response to IN 14:* The proposal to purchase and retire 200,000 acres of WWD by the federal government is not one that Reclamation is proposing, or currently considering. The proposal is not part of the action that Reclamation is consulting on for the San Luis Unit long-term contract renewals, and inclusion of it in the BA was an error.

*Response to IN 15:* Reclamation has prepared a Draft Environmental Assessment for the M&I shortage policy. A full and complete response to *IN 15* will be provided under separate cover once the NEPA process on that M&I policy has been completed.

*Response to IN 16:* Maps of the areas where CVP water can be applied were not provided in the BA, as they were not available. The maps in Attachment C of the BA do not show the CPOU boundaries and are therefore only intended to show land uses and natural communities in the vicinity of the water districts.

Maps that show the CPOU, and therefore show where Reclamation has authorized the delivery of CVP water, have since been finalized and attached to the contracts. These maps were provided to the Service on December 16, 2004. Copies of these maps are also provided on the CD attached to this memo. CVP water is provided to the Cities of Avenal and Coalinga for M&I purposes, and is defined in the contracts as:

*“Municipal and Industrial (M&I) Water” shall mean Project Water, other than Irrigation Water, made available to the Contractor. M&I Water shall include water used for human use and purposes such as the watering of landscaping or pasture for animals (e.g., horses) which are kept for personal enjoyment or water delivered to landholdings operated in units of less than five acres ...*

There is, therefore, no inconsistency in the BA of where CVP water may be applied under applicable law.

Reclamation believes that this response memorandum has adequately addressed the questions raised in the insufficiency memorandum, and requests that Service begin the formal consultation process. Please feel free to contact Michael Kinsey, Senior Staff Biologist, at 559-487-5139, or Joe Thompson, Environmental Specialist, at 559-487-5179, if you have any questions.

Attachment - Compact Disk (CD)

cc: Brian Kinnear  
NOAA Fisheries  
650 Capitol Mall, Suite 8-300  
Sacramento, California 95814-4706  
w/attachment

MP-150 (F.Michney) (w/out attachment)  
SCCAO Files (w/out attachment)  
SCC-400, SCC-411, SCC-412, SCC-414, SCC-420 (w/out attachment)