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RE: Proposed Long Term Contracts and Associated Environmental Assessments

Gentlemen:

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

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

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

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NEPA Issues

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

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

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

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

Contract Issues

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

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

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receive all the water called for in the current contracts. However, 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. In other words, the current contracts "overcommit" the CVP. The analysis in the PEIS suggests that this problem will become more acute in the future, as senior water rights holders upstream develop their water supplies. See PEIS, Figures IV-79 and IV-80 and accompanying text.

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

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

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

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

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

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

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

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

Conclusion

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

Yours truly,

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Cross Media Division

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