

Final

Environmental Impact Report for the Consolidated and Conformed Place of Use

(State Clearinghouse Number 97122042)

Prepared for

**California State Water Resources Control Board
Division of Water Rights
P.O. Box 2000
Sacramento, California 95812-2000**

Petitioner:

**U.S. Department of the Interior
Bureau of Reclamation**

Prepared by:

CH2M HILL

November 1999

Response to Comments

SECTION 4

Comments Received on the Draft EIR and Responses to Comments

4.1 Comments Received on the Draft EIR

The State Water Resources Control Board, Division of Water Rights (SWRCB), distributed the Draft EIR on December 11, 1997, to the public and interested agencies, and provided a 45-day period for public and agency review of the document, which ended on January 30, 1998.

During that period, commentors submitted a total of 54 comment letters, containing 483 comments.

Table 4-1 provides a list of those who submitted written comments during the public and agency review period, the organization represented by the commentor, if applicable, the number assigned to each comment letter, and the comment numbers assigned to each comment within each letter.

In addition, the SWRCB conducted a public hearing on the Draft EIR as part of the Phase 7 of the Bay Delta Water Rights Hearing held in 1999, in Sacramento, California. No comments on the Draft EIR were received during the hearing.

4.2 Reproduced Comment Letters and Responses to Comments

This section presents copies of each of the comment letters received during the public and agency review period. Specific comments within the letters have been bracketed and numbered sequentially for easy identification. Each response is numbered to correspond to the comment, and is presented across from the comment, where possible, so that the reader can easily correlate the comment with its response.

TABLE 4-1
List of Persons Commenting on the Draft EIR

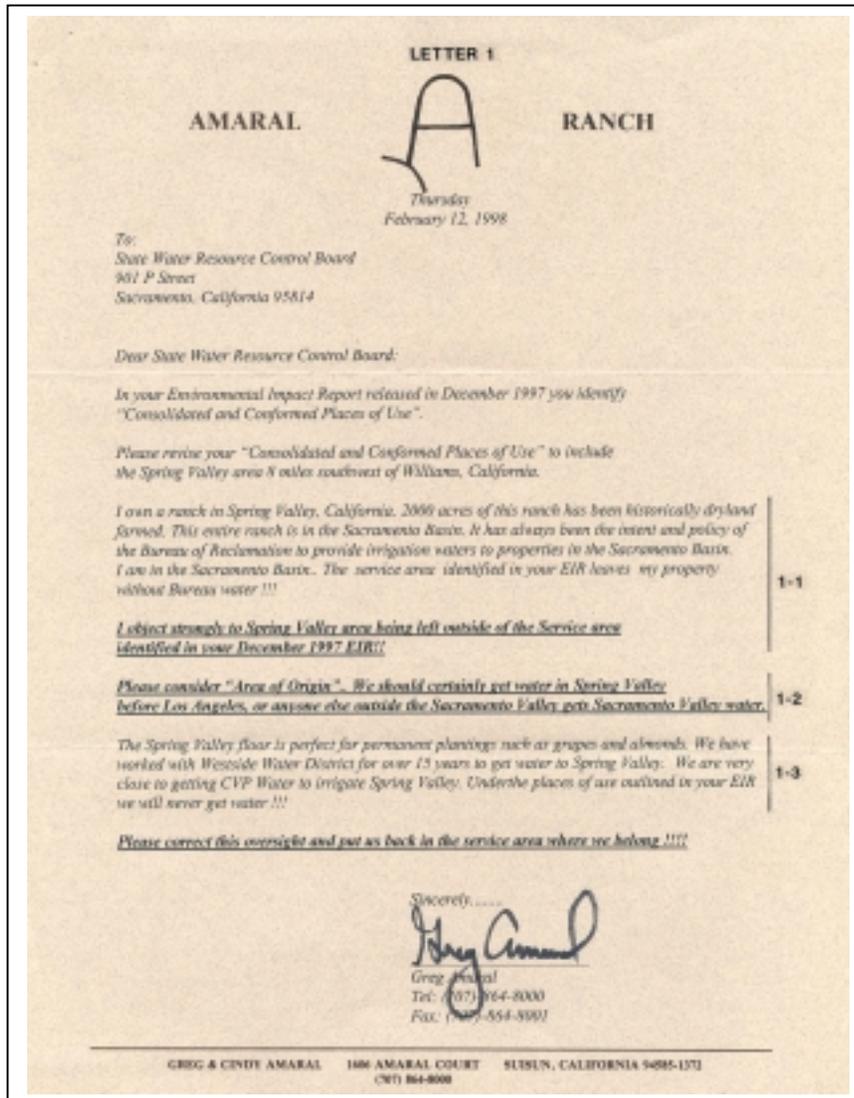
Commentor	Comment Letter Number	Comment Numbers	Commentor	Comment Letter Number	Comment Numbers
Greg Amaral Amaral Ranch	1	1-1 through 1-3	Joseph Marsh Myers-Marsh Ranch	29	29-1
Steven Lewis, Staff Engineer Arvin-Edison Water Storage District	2	2-1 through 2-5	Leslie Marsh Myers-Marsh Ranch	30	30-1
Steven Lewis, Staff Engineer Arvin-Edison Water Storage District	3	3-1 through 3-6	Annamarie Marsh Myers-Marsh Ranch	31	31-1
Steven Lewis, Staff Engineer Arvin-Edison Water Storage District	4	4-1 through 4-7	Bernadette Marsh-Borchard Myers-Marsh Ranch	32	32-1
J. Mark Atlas Frost, Krup & Atlas	5	5-1 through 5-13	Vernette Marsh Myers-Marsh Ranch	33	33-1
Melissa Whitten, City Manager City of Avenal	6	6-1 through 6-4	Antoinette Marsh-Lakritz Myers-Marsh Ranch	34	34-1
Christopher Campbell Baker, Manock & Jensen	7	7-1 through 7-39	Mark McWhinney and Margaret McWhinney	35	35-1
Leonard Bidart, President Bidart Bros.	8	8-1 through 8-2	R.L. Schafer Mid-Valley Water Authority	36	36-1 through 36-4
Robert Nash, President Bella Vista Water District	9	9-1 through 9-8	Hamilton Candee, Senior Attorney Natural Resources Defense Council	37	37-1
Raymond Carlson Attorney at Law	10	10-1 through 10-9	John Greiten, President and Agnes Moser, Secretary Proberta Water District	38	38-1
Dante John Nomellini, Manager and Co-Counsel Central Delta Water Agency	11	11-1 through 11-3	L.C. Turnquist, General Manager Redfern Ranches, Inc.	39	39-1
Renee Ramirez, Acting Interim City Manager City of Coalinga	12	12-1 through 12-5	John Gregg, District Manager/Engineer San Benito County Water District	40	40-1 through 40-9
Richard Denton, Water Resources Manager Contra Costa Water District	13	13-1 through 13-13	Anthony Bennetti, General Counsel Santa Clara Valley Water District	41	41-1 through 41-18
William Harrison, General Manager Del Puerto Water District	14	14-1 through 14-10	Daniel Nelson, Executive Director San Luis & Delta-Mendota Water Authority	42	42-1 through 42-21
Donald Burk, Environmental Services Manager ENPLAN	15	15-1 through 15-114	Patricia Clarke, Chairman of Board of Directors Shasta County Water Agency	43	43-1 through 43-59

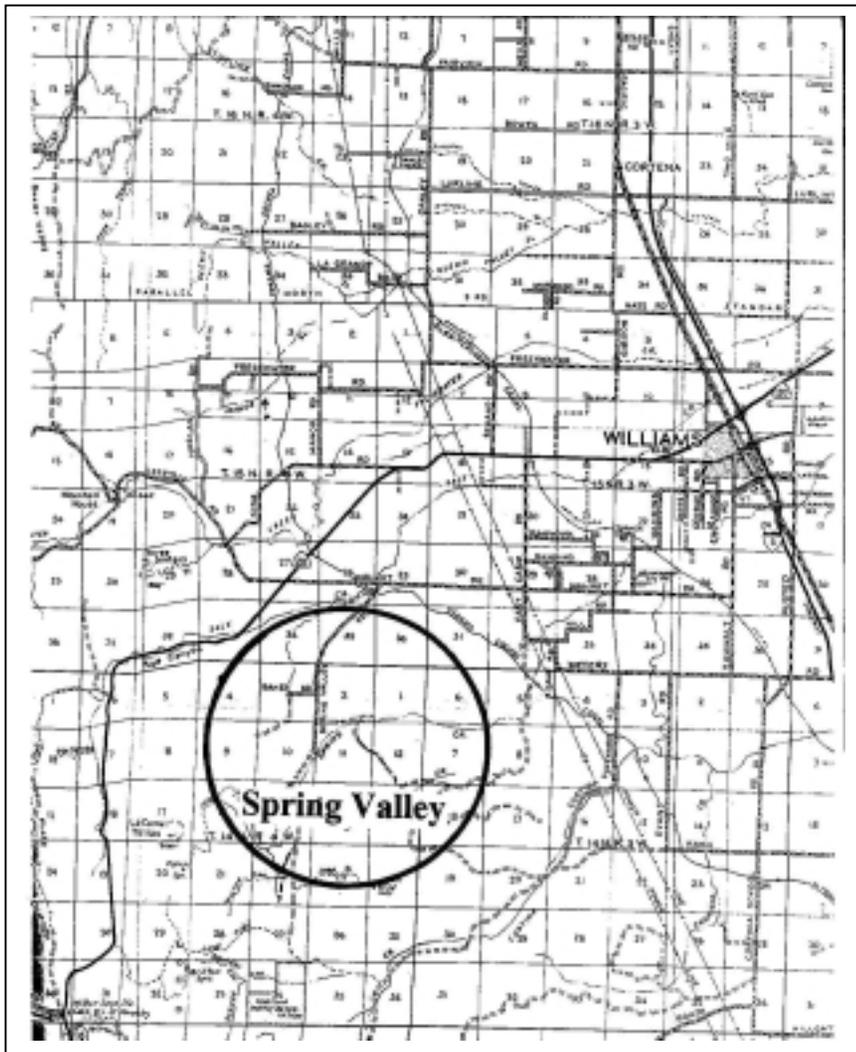
TABLE 4-1
List of Persons Commenting on the Draft EIR

Commentor	Comment Letter Number	Comment Numbers	Commentor	Comment Letter Number	Comment Numbers
Dr. Paul Favero Favero Ranches	16	16-1 through 16-3	Theodore Chester Smiland & Khachigian	44	44-1 through 44-6
Michael Rex Favero	17	17-1 through 17-4	Vic LaGrande Salt Creek Ranch	45	45-1 through 45-2
Ted Frame Frame & Matsumoto	18	18-1	Alan Harvey, City Manager City of Shasta Lake	46	46-1 through 46-2
Matt Ferrini Ferrini Sheep	19	19-1	Alan Harvey, City Manager City of Shasta Lake	47	47-1
Karna Harrigfield Herum, Crabtree, Dyer, Zolezzi & Terpstra, LLP	20	20-1 through 20-2	Elizabeth Katsaris M & B Almonds	48	48-1
Ronald Vickery, President Kanawha Water District	21	21-1 through 21-5	Jean Terkildsen Murphy Ranch	49	49-1
Thomas Birmingham Kronick, Moskovitz, Tiedemann & Girard	22	22-1 through 22- 24	Rick Minter, Director, Energy Management Sacramento Municipal Utility District	50	50-1
Thomas Birmingham Kronick, Moskovitz, Tiedemann & Girard	23	23-1	John Herrick, Attorney South Delta Water Agency	51	51-1 through 51-3
Thomas Keene Linneman, Burgess, Telles, Van Atta & Vierra	24	24-1	Fred Vogel Sunflower Ranch Co.	52	52-1 through 52-2
Thomas Keene Linneman, Burgess, Telles, Van Atta & Vierra	25	25-1 through 25- 20	Ralph Modine, Chairman Trinity County Board of Supervisors	53	53-1 through 53-3
Charles Marsh	26	26-1	James Turner, Assistant Regional Solicitor U.S. Department of the Interior, Office of the Solicitor	54	54-1 through 54-34
Stephen Marsh Myers-Marsh Ranch	27	27-1			
Matt Ferrini Ferrini Sheep Co.	28	28-1			

Responses to Comment Letter 1

- 1-1 The DEIR addresses the lands that are specified in the petition filed by the USBR. The specified lands are located within the service area boundaries of existing CVP water contractors where the service areas have expanded outside the existing POU in the water right permits. The exclusion of the lands referenced in this comment is beyond the scope of analysis of this DEIR.
- 1-2 See response to Comment 1-1.
- 1-3 See response to Comment 1-1.





Map of Spring Valley

Township/ Range	Acres Beyond Phase-Of-Use	SWSA Acres (Terminated)	SWSA Acres (Current)	Acres Developed Pre-1966
29S/28E	1,198	150	0	100
29S/29E	1,579	226	294	64
30S/30E	375	0	178	178
31S/30E	58	0	58	58
11N/20W	85	0	85	85
Total	3,295	326	535	465

- 4) Of the 861 SWSA acres, 465 acres appear to have been developed before 1966. Dry land farming was common practice in the fifties and early sixties, and it is doubtful any of the 465 acres were certifiable as habitat at the time SWSA deliveries were initiated. Of the remaining 396 acres developed subsequent to the District's creation, a portion of that land appears to have been developed for oil and gas production before 1966. Please refer to the sample aerial photograph attached. It appears there has been no appreciable change in land use on the disputed acreage since the District's inception.
- 5) Lastly, it should be noted the District has made deliveries from a variety of sources over the last 30 years, including but not limited to, the CVP-Friant-Kern Canal, the Cross Valley Canal, and non-project water from the Kern River or the groundwater basin. It is highly probable the acreage in question has received at least a portion, if not all, its deliveries from non-project sources.

We have included a baseline of the map you provided, a photocopy of the aerial map you provided and a sample aerial photograph which displays land use as of 1966.

If we can be of further assistance, please do not hesitate to call.

Sincerely,

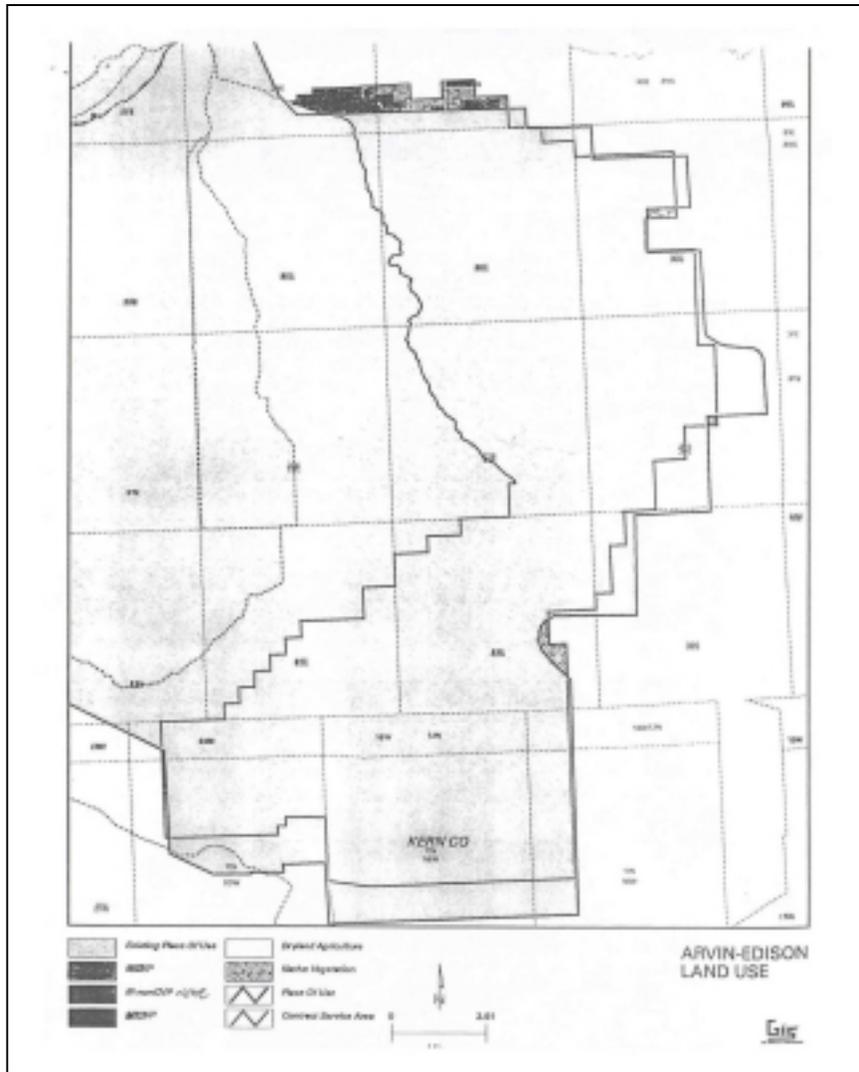


Steven H. Lewis
Staff Engineer

SHL/mtg/psk/ky/ky

Enclosures

- 2-4 The acreages presented in the commentor's letter differ from those presented in the DEIR. The acreages presented for each water contractor throughout the DEIR were calculated by Reclamation using a computerized GIS and were considered the best available estimates. As noted on the response to Comment 2-3, the acreage of land located outside the POU boundary has been reduced. Regardless of the different number of acreage, the conclusion, as presented in the DEIR in Table 3-10, was that no acreage in Arvin-Edison Water Storage District was adversely affected by CVP-induced agriculture or CVP-induced M&I uses. As shown in that table, all encroached areas within the district were the result of non-CVP induced agriculture and M&I uses.
- 2-5 The fact that water was delivered within the district from several sources, including those mentioned by the commentor, was stated in Section 3.4.2.4 of the DEIR.



Map of Arvin-Edison Land Use

Although we do not profess to be experts on Eby-Delta issues, undoubtedly there are such experts within the Bureau and the CVPWA, which should be consulted prior to finalizing this DEIR.

3) Arvin-Edison continues to doubt the legitimacy of the Place of Use (POU) Boundary itself. The lack of a legal description, the vague and dubious history of the development of the map, and its apparent egregious errors make the basis for this exercise highly suspect. Many of Arvin-Edison's lands proposed to be included in the POU closely parallel the POU boundary but lie just outside the POU (roughly 3,600 acres). Other lands are inside the POU but beyond and parallel to Arvin-Edison's boundaries (roughly 14,000 acres). One must wonder about this effort, at least as it applies to Arvin-Edison, as it appears to be in large part an accumulation of clerical errors. This fact should be noted in the DEIR. 3-3

In addition to these general matters, several changes specific to Arvin-Edison are also suggested:

Section 3.4.2.1 (page 3-28), please insert the following sentence between "... its CVP water contract service area." and "Of this total..":

52,716 acres are included in Arvin-Edison's surface water service area (SWSA) and 78,944 acres are included in the groundwater service area (GWSA). 3-4

Section 3.4.2.4 (page 3-28), please add the following as a third paragraph:

Arvin-Edison historically has regulated its erratic Friant-Kern supply through its conjunctive use program and its exchange program. The exchange program involves delivering a portion of its Friant supply to exchange contractors along the Friant-Kern Canal and taking delivery of exchangers' westside CVP supply through the Cross Valley Canal. The conjunctive use program is discussed further in Section 3.4.2.5. 3-5

Rename Section 3.4.2.5 (page 3-30), "Groundwater Resources and Conjunctive Use Program" and replace the existing text with the following:

Arvin-Edison's conjunctive use program involves storing wet year imported water in excess of coincident irrigation demand in two spreading basins that have associated wellfields and extracting stored water in dry years for delivery to the SWSA. 3-6

During dry years, deliveries consist of a blend of surface water and stored water extracted from its wellfields. Growers in the GWSA benefit from in-line recharge in the SWSA and from water stored in the two spreading basins.

- 3-3 Comment noted. The original POU boundary was defined on a broad-scale map that does not allow its precise delineation. However, with current technologies the boundary can be defined very accurately. The corrected map of the original POU boundary accurately defines the area currently within a POU.
- 3-4 The information requested by the commentor is included in the DEIR in the last paragraph on page 3-36.
- 3-5 The information requested by the commentor is included in the DEIR in paragraph 4 on page 3-39.
- 3-6 The information requested by the commentor is included in the DEIR in paragraphs 6 and 7 on page 3-39.

Table 2-2 Page 1 of 2

Table 2-2
Average of CVP Water Contract Service Areas Included in the Place of Use by Alternative

CVP Water Contractor	Total Contracted Water Service Area (Acres)	Average Outside Place of Use	Place of Use Increase (Acres)			
			Proposed Project		No Project Alternative	Existing Conditions Alternative
			Encroachment	Expansions		
Anderson Commercial Irrigation District	10,240	230	0	130	0	0
Arvin-Edison Water Storage District	410,498 173,660	3,687 3,670	3,687 2,111	1,081 1,497	0	3,687 3,111
Arvin, City of	40,828	3,041	1,500	11,307	0	2,511
Bella Vista Water District	15,415	1,201	1,200	340	0	1,201
Colton, City of	196,014	132,330	11,804	90,444	0	11,804
Colton County Water District	40,004	2,247	1,480	434	0	1,480
Genoa-Gama Water District	115,200	1,001	0	1,011	0	0
Corning Water District	10,340	1,004	1,000	311	0	1,641
Del Puerto Water District	36,600	1,200	400	311	0	811
East Bay Municipal Utility District	210,214	1,404	0	1,414	0	0
El Dorado Irrigation District*	35,400	25,400	11,200	6,411	0	17,200
Elmore Valley Water District	1,300	244	0	344	0	0
Escondido Water District	15,200	301	400	311	0	600
Mountain Gate Community Services District	4,012	3,001	1,400	2,444	0	1,400
Escondido-Arriba Water District	11,200	111	111	0	0	111
Lawrence Municipal Utility District	1,400	2,400	1,400	1,500	0	1,410
San Joaquin County Water District	47,540	5,011	3,504	2,340	0	2,504
San Luis Water District	125,000	8,200	2,400	311	0	8,441
Shasta-Clear Valley Water District*	390,004	148,111			0	
Shasta Community Services District	6,204	31	0	31	0	0
Shasta County Service Area No. 6 - Inoco Valley	1,201	1,111	600	300	0	600
Shasta County Service Area No. 12 - Eastville	3,401	2,300	601	1,600	0	601
Shasta-Lake, City of	6,910	311	310	110	0	114
Shoreline Irrigation System	31	30	31	0	0	30
Flowers, Inc.						
Westside Water District	602,541	49,404	43,111	4,501	0	43,213
Westside Water District	21,410	900	310	500	0	250
Total	2,301,487	390,340	141,440	100,000	0	391,540

*Average of district only includes those lands within the Federal or state acre. Other lands within the district served by the City Field facilities are not included.
 *Average includes lands of Santa Clara County totaling 291,245 acres located outside the place of use. Although all of these lands are within the CVP water contract service area, not all lands receive CVP water because of limited water supplies, lack of a feasible means to deliver water, and the contractor's intent to not provide water to all County lands.

Table 2-2 Page 2 of 2

Table 3-3
CVP Contracted Water Deliveries

CVP Water Contractor	Purchased Under Long-Term Contract (acre-feet)	Type of CVP Water Delivery Contract	
		Municipal and Industrial (acre-feet)	Agricultural (acre-feet)
Anderson Commercial Irrigation District	10,000		10,000
Arvin-Ellenton Water Storage District (1)	40,000	20,000,000	20,000
Arwood, City of	3,300	3,300	
Bella Vista Water District	24,000	3,000	17,000
Colings, City of	10,000	10,000	
Columbia County Water District	42,000		42,000
Contra Costa Water District	115,000	115,000	
Covington Water District	23,300		23,300
Del Norte Water District	140,110		140,110
East Bay Municipal Utility District	110,000	110,000	
El Dorado Irrigation District	3,130	3,130	
Elmore Valley Water District	1,730		1,730
Escondido Water District	40,000		40,000
Hamilton City Community Services District	330	330	
Orland-Andis Water District	10,000		10,000
Sacramento Municipal Utility District	60,000	60,000	
San Joaquin County Water District	40,400	4,330	35,070
San Luis Water District	125,000	500	124,500
Sierra Vista Valley Water District	152,500	158,400	35,100
Shasta Community Services District	1,000	1,000	
Shasta County Service Area No. 6—Lower Valley	100	100	
Shasta County Service Area No. 21—Eureka	500	500	
Shasta Lake, City of	2,700	2,700	
Silverthorn Irrigation District, Inc.	15	15	
Wentworth Water District	1,000,000	6,000	1,346,000
Yuba Water District	35,000		35,000
Total	3,300,200	870,730	1,716,650

(1) This reflects AG's Class 3 Supply, which along with a portion of its Class 2 Supply, is exchanged with CVP contractors

Table 3-6

Table 3-6 summarizes the existing land uses in each of the 26 CVP water contractor service areas. As shown, land currently receiving CVP water, encroachment lands, are divided into three categories consisting of:

- CVP Induced AG - Composed of lands that were not developed prior to the introduction of CVP water supplies
- NON CVP AG - Composed of lands that were developed for agricultural use prior to the introduction of CVP water supplies, and
- M&I - Composed of lands that have developed for municipal and industrial land uses which have been addressed, in accordance with CEQA, by local land management agencies.

Lands located outside the permitted plane of use that do not receive CVP water, expansion lands, are also divided into three categories that describe their current land use. None of the expansion lands currently receive CVP water supplies.

Table 3-6
Land Use of Areas Outside the Plane of Use

CVP Water Contractor	Total Acreage	Encroachment Lands			Expansion Lands		
		CVP-Induced Agriculture	Non-CVP Agriculture	M&I	AG	M&I	Native Veg
Anderson-Governor Irrigation District	230	0	230	0	0	0	0
Arvin-Delano Water Storage District	3,029	0	400	2,629	0	0	2,629
Arvin, City of	34,041	0	0	3,480	4,391	0	26,170
Edin Vista Water District	1,281	0	0	1,281	0	0	1,281
Colton, City of	192,304	0	0	4,614	25,823	0	46,311
Colusa County Water District	2,140	0	1,480	0	0	0	414
Colusa-Cuba Water District	1,800	0	0	0	0	0	1,800
Corning Water District	2,000	0	1,600	0	0	0	400
Del Norte Water District	1,008	0	400	0	180	0	0
San Key Irrigation Utility District	1,494	0	0	0	0	0	1,494
H. Brooks Irrigation District	21,200	0	0	0	0	0	21,200
Shasta Valley Water District	248	0	0	0	118	0	130
Kaweah Water District	990	440	0	0	0	0	550
Maricopa Gas Community Services District	3,900	0	0	1,466	0	0	2,434
Orland-Kings Water District	1,111	111	0	0	0	0	0
Sacramento Municipal Utility District	2,858	0	0	1,429	0	0	1,429
San Joaquin County Water District	2,150	0	1,360	0	2,300	0	150
San Luis Water District	8,075	4,815	0	308	250	0	0
Shasta-Clear Valley Water District	34,111	0	0	0	0	0	34,111
Shasta Community Services District	20	0	0	0	0	0	20
Shasta County Service Area No. 4 - Jones Valley	1,170	0	0	400	0	0	770
Shasta County Service Area No. 25 - Keswick	3,500	0	0	300	0	0	3,200
Shasta Lake, City of	250	0	0	100	0	0	150
Shasta-Trinity Summer Homes, Inc.	30	0	0	30	0	0	0
Volcano Water District	40,004	41,800	0	3,000	10,004	0	2,200
Volcano Water District	990	10	0	0	180	0	800
TOTAL	269,840	51,400	1,240	18,300	35,380	0	148,740

Handwritten notes: 3578, 800, 1251 (pointing to CVP-Induced Agriculture, Non-CVP Agriculture, and M&I columns respectively). 1467 (pointing to the Arvin, City of row).

3.4.2 Arvin-Edison Water Storage District

3.4.2.1 General Description and Location

The Arvin-Edison Water Storage District (Arvin-Edison) is located near the southern boundary of the San Joaquin Valley, just south of Bakersfield. Arvin-Edison supplies water to 132,848 acres within its CVP water contract service area. ^{304,100 ac} ^[see letter] ~~Of this total, about 36,877 acres~~ ^{36,000} are located outside the existing authorized place of use. Lands within the CVP contract service area that are located outside the place of use are shown in Figure 3-2.

3.4.2.2 Land Use and Land Use Policies

The CVP contract service area is located within unincorporated lands of Kern County. The County's General Plan designates these lands primarily for agricultural and municipal and industrial uses. The Kern County General Plan also allows mineral and petroleum extraction uses to occur within the CVP contract service area.

Of the ^{3,578} 36,877 acres located outside the place of use, ⁹⁶⁰ 430 acres are in an irrigated agricultural land use; ^{1,467} 1,281 acres correspond to a municipal/industrial land use; and the remaining 1,555 acres are undeveloped and support native vegetation. Prior to the mid-1960s the land was dry land farmed. The irrigated land in Arvin-Edison's contract service area consists primarily of orange and grape crops.

3.4.2.3 Geology and Soils

The majority of the Arvin-Edison Water Storage District area is ^{comprised} ~~located on a mixture~~ of alluvial fans and plains, basin rims, terraces and flood plains. The soils associated with these areas are primarily well drained sandy loams, silt loams and clay loams. (United States Department of Agriculture, 1988).

3.4.2.4 Water Resources and Water Use

Arvin-Edison has a contract for the delivery of 40,000 acre-feet of water ^{and} an additional 311,675 acre-feet of Class 2 water ^{from, or Class 1,} (is available on a temporary basis). CVP water use is restricted to agricultural, and municipal and industrial purposes, consistent with the CVP contract terms. Arvin-Edison ^{has} ~~has~~ historically ^{used up to 85,144 acre-feet of water, per year,} ^{delivered on the average 140,000} non-farm, or

The District has made water deliveries from a variety of sources over the last 30 years, including but not limited to, the CVP-Friant-Kern Canal, the Cross Valley Canal, and non-project water from the Kern River or the groundwater basin.

[see letter]

3.4.2.5 Groundwater Resources and Conjunctive Use Program

Arvin-Edinger uses surface water exclusively on lands outside of the place of use and does not have any groundwater supply sources capable of meeting the water supply needs of the unincorporated lands outside the place of use. [see letter]

3.4.2.6 Vegetation and Wildlife

Lands located outside the place of use are occupied by three vegetative community/habitat types. Table 3-8 identifies each of these types and the corresponding acreage within the CVP contract service area that is located outside the place of use.

Habitat Type	Acreage in Encroachment Area	Acreage in Expansion Area	Total Acreage
Valley foothill riparian/wood riparian wetland	25	113	138
Upland scrub	124	45	169
Annual grassland	1,802	1,317	3,119
<small>¹Vegetation types and habitat communities have been defined according to the Wildlife Habitat Inventory (WHI) system (Shelton and Bell 1995).</small>			

Tables D-1, -2, -3, and -8 list vegetative and wildlife species commonly found in each of these communities and habitat types. Table D-10 lists special-status species, designated by federal and state resource agencies, that were expected to have been present on encroachment lands prior to development with irrigation water supplies, and are still expected to be present on expansion lands.

Of the species listed, the blunt-nosed leopard lizard, Tipton kangaroo rat, San Joaquin kit fox, San Joaquin woolly-threads, and the California jewelflower have been designated as endangered; and Hoover's erismatum has been designated as threatened, in accordance with the federal ESA. The blunt-nosed leopard lizard, Western yellow-billed cuckoo, Tipton kangaroo rat, and the California jewelflower have been designated as endangered; and the San Joaquin kit fox and the striped adobe lily as threatened, in accordance with the State of California ESA.

Based on the review of the CNDDDB, the San Joaquin woolly-threads, California jewelflower, Vasek's clarkia, and the Bakersfield cactus have been observed on lands within the CVP contract service area outside the place of use.

Should
this be
1467? So
TABLES 2
and
3-6

3.4.2.7 Cultural Resources

A general cultural resources assessment was performed in 1992 to broadly characterize the archaeological sensitivity of undeveloped lands in Arvia-Edison. The assessment consisted of a literature/archival search at the California Information Center (contracted by the State Historic Preservation Office). No site surveys were performed. Arvia-Edison lands were determined to have a moderate to high archaeological sensitivity with a high probability of encountering one to five prehistoric sites containing historic-era sites or features. No specific sites have been recorded.

3.4.3 City of Avenal

The city entered into a long-term water service contract, 14-06-200-4619A, with Reclamation for CVP water delivery on November 20, 1969. The District began delivery of the municipal and industrial water in March 1972.

3.4.3.1 General Description and Location

The City of Avenal (Avenal) is located near the southern boundary of the San Joaquin Valley. Avenal's contract service area covers 46,871 acres of which 34,641 is located outside the permitted place of use. The city itself covers only 196 square miles. Lands within the CVP contract service area that are located outside the place of use are shown in Figure 3-5.

3.4.3.2 Land Use and Land Use Policies

The CVP contract service area is located within incorporated lands of the City of Avenal, as well as within the unincorporated lands of Kings and Fresno counties. The Kings County General Plan designates these lands primarily for agricultural, and municipal and industrial uses and also allows mineral resources, public lands, and open space uses within the CVP contract service area. The Fresno County General Plan allows mineral resources and flood zone land uses.

Apart from the city, the land is used primarily for farming, oil & gas extraction, and grazing. The irrigated land in this service area was developed and is being farmed with non-project water except for small areas along the northeast boundaries of the service area. Those small areas, which do receive CVP water for irrigation, get the water through contract with Westlands Water District and that land will be addressed in Section 3.4.25 of this EIR.

The contract service area includes a state prison, a Pacific Gas and Electric (PG&E) gas compressor station, and a chemical waste treatment facility.

Of the 34,641 acres located outside the place of use, 6,341 acres are in an irrigated or dry land agricultural land use that do not use CVP water; 2,480 acres correspond to a municipal/industrial land use; and the remaining 25,778 acres are undeveloped and support native

LETTER 4 MF

ARVIN-EDISON WATER STORAGE DISTRICT

25451 BEAR MOUNTAIN BOULEVARD
MAILING ADDRESS P.O. Box 175
ARVIN, CALIFORNIA 93203-0175

TELEPHONE: (805) 854-5573
FAX: (805) 854-5213

March 31, 1998

MEMBER
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MANAGING ENGINEER
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ENGINEER/PLANNING
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CONTROLLER/ADMINISTRATIVE SECRETARY/Treasurer
David A. Fisher

STAFF ENGINEER
Steven H. Linn

DIRECTOR
Michael R. Linn

ASSISTANT
Bob Osherson

ENGINEER
Howard R. Pace

ENGINEER
Charles M. Johnston

ENGINEER
John G. Moore

ENGINEER
Steven R. Oser

ENGINEER
Charles Fisher

ENGINEER
David A. Fisher

ENGINEER
Steven H. Linn

PLUMBING

**Re: Consolidated Place of Use Programmatic
Environmental Impact Report**

Dear Mr. Falkenstein:

Pursuant to Mr. Anton's letter of December 11, 1997, and the attached Consolidated Place of Use (POU) Program Environmental Impact Report (PEIR), the following constitutes Arvin-Edison Water Storage District's (District) comments. In summary, the District supports all of Reclamation's requested change to reconcile the POU boundary line with the District's fifty (50) year-old CVP Contract boundary. Nevertheless, the District is compelled for several reasons to call into question certain aspects of the PEIR.

INTRODUCTION

The District's comments fall under three broad categories of concern. First, the POU boundary itself is erroneous. Secondly, the encroachment lands (which may account for relatively minor total deliveries historically) and possibly the expansion lands are exempt from CEQA as pre-existing conditions. Thirdly, the PEIR itself improperly defines the "No Project" alternative in violation of CEQA guidelines thus invalidating the PEIR.

ERRONEOUS NATURE OF POU BOUNDARY

The District questions the accuracy of the mapping upon which the POU boundary and acreage determinations are established. There are outstanding issues with respect to the acreages listed in Tables 2-2 and 3-7 and Total Contractor Water Service Area acreage. Individual surface water contracts and parcel maps were examined in order to

1

Responses to Comment Letter 4

verify the encroachment and expansion land acreages summarized on those tables. There is no reference to the sources of these acreages, and when the District attempts to duplicate them using official documents such as legal descriptions and assessor's parcel maps, the totals do not agree. In the event further action is taken with the PEIR, the District reserves the right to contest the acreage totals enumerated in the various tables as they apply to Arvin-Edison. Perhaps the acreage discrepancies speak to the imprecise nature of the POU boundary itself.

4-1

The entire POU boundary establishment process appears to be flawed fundamentally. The POU map itself has no history which might qualify it as a legal basis for a PEIR. When the District, in its letter of September 20, 1995 to Reclamation (attached), challenged the map's legitimacy, no data were offered in response to validate its use. The District continues to maintain that unless the validity of the POU boundary map can be documented with legal descriptions and a history of formal action, we must assume the boundary as presented is erroneous, imprecise at least, and a result of clerical error. When the District boundaries and POU boundaries are compared, it appears obvious the POU boundary was haphazardly drawn and never intended to be used absolutely as it only roughly approximates the legal boundaries established for the District. Absent any historical information and proof to the contrary, one must assume the boundary itself is invalid for such definitive use. Please note in the District's July 16, 1996, letter to Reclamation's Mr. Jon Anderson in Fresno (attached), it was stated just over 3,200 acres of District fall outside the POU. Conversely, nearly 14,000 acres within the POU fall outside District boundaries. It has always been our understanding that the Arvin-Edison Water Storage District boundary, established in 1942, falls entirely within the POU.

4-2

PRE-EXISTING CONDITIONS

Arvin-Edison Water Storage District was established in 1942 under California Water Storage District Law (Division 14 of the California Water Code) and began receiving CVP Friant Water in 1968 and Cross Valley Canal deliveries of Westside CVP Water in exchange for Friant Water in 1975. Please note the CVC deliveries were in exchange of Arvin's Eastside contract supply. In other words, Arvin's Westside CVP deliveries are effectively its contract supply re-regulated. The land within the District's approximately 132,000 acres is comprised of roughly 52,000 acres of Surface Water Service Area (SWSA), which is eligible for contract entitlement surface water deliveries. The remaining 80,000 acres are identified as Groundwater Service Area (GWSA) and do not receive surface deliveries except for a very small portion, which may receive surface water on a temporary basis only when other non-CVP supplies are available. Effectively speaking, all of the SWSA lands identified as encroachment lands received Friant Water before 1970, and, therefore, pre-date CEQA. Consequently, irrigation of the encroachment lands are exempt from CEQA.

4-3

The District has identified permanent crops, mostly citrus and vineyards, in encroachment lands. Given potential groundwater quality issues in the area, it is likely

4-4

- 4-1 Comment noted. The original POU boundary was defined on a broad-scale map that does not allow its precise delineation. The precise location of the authorized POU boundary is subject to questions because of the general methods originally used to place it on maps. The Board has recently ordered revised GIS POU boundary maps be drawn according to specific rules and consistent methodology. These revised maps are presented in Section 2 of the Final EIR.
- 4-2 See response to Comment 3-3.
- 4-3 The acreage presented in the commentor's letter differ from those presented in the DEIR. The SWSA and GWSA acres presented in the DEIR were provided by Arvin-Edison Water Storage District. The other acreage presented in the DEIR were based on GIS-calculated acreage calculated by Reclamation. Regardless of the different number of acres and whether irrigation of lands within the district occurred prior to the California Environmental Quality Act, the conclusion, as presented in the DEIR in Table 3-10 was that no acreage in Arvin-Edison Water Storage District was adversely affected by CVP-induced agriculture or CVP-induced M&I uses. As shown in that table, all encroached areas within the district were the result of non-CVP induced agriculture and M&I uses.
- 4-4 The DEIR acknowledges that the primary crops in the district are oranges and grapes. As shown in Table E-1 of the DEIR, no change in land use is expected from implementation of the proposed project, as compared to existing conditions.

FROM: FROST KRUP ATLAS, MILWAUKEE, WI
 APR 27 1998 11:42PM P 2
 PHONE NO.: 1 530 934 3500

**J. MARK ATLAS
 ATTORNEY AT LAW
 FROST, KRUP & ATLAS**

124 WEST HYACINTH STREET, WILLOW, CALIFORNIA 95881 • (916)934-3414 • FAX (916)934-3558 • INTERNET: JMATLAS@THEGOLDNET

March 27, 1998

VIA FAX (916-617-1450) AND FIRST CLASS MAIL

Mike Falkenstein, Chief
 Environmental Section
 Division of Water Rights
 State Water Resources Control Board
 P.O. Box 2000
 901 P Street, Third Floor
 Sacramento, CA 95812-2000

Re: Comments on Draft EIR for the Consolidated and Conformed Place of Use

Dear Mr. Falkenstein:

I represent Glenn Valley Water District (GVWD), the district described at Section 3.4.12 of the Draft Program Environmental Impact Report for the Consolidated and Conformed Place of Use (DEIR), and I am submitting these comments on the DEIR on its behalf.

I also represent Colusa County Water District, Karawha Water District and Oland-Artis Water District, all of whom, like GVWD, receive their water from the Tehama-Colusa Canal, and I represent Corning Water District, whose service is from the Corning Canal. These districts were all formed for the sole purpose of delivering CVP water to their landowners. Except where these comments specifically relate only to GVWD they should be received on behalf of these other districts, too. These other districts may supplement these comments with explicit comments unique to themselves.

There are significant inadequacies and inaccuracies in the DEIR, both in a general sense, and specifically with regard to GVWD.

General Comments:

First, we object to the entire sense of the DEIR that the delivery of CVP water in the expansion and encroachment areas, and particularly the former, is a *novus*, and more inaccurately, unexamined action that calls for significant State Water Resources Control Board control and

- 5-1 The Board has concluded that a decision approving or denying the pending petition constitutes a discretionary action subject to the requirements of CEQA. As a discretionary action, the Board is obligated to conduct an environmental review of potential impacts associated with implementing the proposed project and alternatives. Where available and appropriate, existing environmental documents were reviewed and considered during the preparation of this DEIR.

FROM : FROST KRUP ATLAS, MILLOUS, OR

MRP. 27, 1998 1143PM P 3
PHONE NO. : 530 334 3586

Mike Felkenstein
Division of Water Rights
State Water Resources Control Board
March 27, 1998
Page 2

mitigation [4-1].¹

The reality is that water service in the Tehama-Colusa service area has been the subject of numerous environmental analyses and mitigation measures. These include the following:

1. Construction of the Tehama-Colusa Canal and delivery of 450,000 acre feet of water to 244,500 acres was the subject of an Environmental Statement under NEPA, finalized June 7, 1972.² A supplement, that, among other things, specifically addressed Reclamation's intent to contract with the County of Colusa, under whose Master Contract GVWD obtains its water, was finalized May 16, 1973. SWRCB was directly notified of the preparation of these documents and given an opportunity to comment on them before they were finalized. A copy of the cover page and Summary from the 1972 Statement are attached.
2. The Colusa County Board of Supervisors formed GVWD on February 20, 1979 for the sole purpose of delivering CVP water to district lands, all of which, including the expansion lands, were included within the boundaries of GVWD at that time. In its resolution the Board of Supervisors noted that the Colusa County Local Agency Formation Commission had adopted a Negative Declaration under CEQA on the formation and its purposes on September 5, 1978. A copy of the formation resolution is attached. There has been no change in the District's boundaries, intended operation or purpose since formation.
3. The Master Contract between Reclamation and Colusa County was signed November 18, 1975, after environmental review. Subsequent renewals in 1995 and 1998 were also the subject of CEQA review, in the form of duly adopted Notices of Exemption and were also the subject of intense NEPA review on both occasions.

Thus the statement that many of the historical environmental impacts occurred prior to establishment of CEQA is simply wrong as to the T-C service area. In fact, the environmental effects of service to the entirety of GVWD was examined and described on these many prior

¹ References in brackets are to page numbers in the OER.

² It should be noted that Reclamation has never contracted for the full quantity of water identified in the Environmental Statement, nor even contracted to meet the entire identified needs of Orland-Arden or Colusa County Water Districts. These two agencies have a combined CVP water service contract deficit of more than 100,000 acre-feet. Until all that water is placed under CVP contract in the T-C service area, use of existing supplies anywhere in the area will be within the parameters of these original environmental studies.

FROM : FROST GRUP ATLAS, WILLOUS, OR

1996.27.2998 1:14:391 P 4
PAGE NO. : 539 934 3599Mike Falkenstein
Division of Water Rights
State Water Resources Control Board
March 27, 1998
Page 3

occasions. GYWD strenuously objects to SWRCB now characterizing this insignificant action as the basis for further environmental study. 5-1

We also challenge the implication in the DEIR that the consolidation of the CVP place of use is a "project" separate and apart from the original issuance of the CVP water rights permits, the construction of the T-C Canal, the formation of GYWD and other T-C contractors, or the execution of CVP water service contracts with GYWD and other T-C contractors. The whole of those actions is the "project" (see 14 CCR §15378), and, as noted above, the effects of delivery of CVP water to these contractors have already been identified and mitigated for.

It is inappropriate at this late stage in the development of CVP water service in the T-C service area to attach new environmental controls in connection with this consolidation of the place of use. The consolidation of the place of use in the T-C service area was never intended as anything more than a correction of essentially clerical errors. Over the years in some isolated cases as the T-C districts developed, their boundary lines were inadvertently extended into areas beyond the place of use. Nevertheless, as noted above, the potential for environmental effects of water service to these areas was examined on a number of occasions, and as necessary mitigated for. While ordinarily a change in the place of use might be viewed as a "project" under CEQA, these changes, in their context as part of a larger, on-going set of activities, are not a project. 5-2

We also note that the total acreage implicated in the consolidation of the place of use for T-C contractors and the Corning Water District is 6,439 acres (assuming the DEIR is accurate) and of this only 1,951 acres are so-called "expansion" lands, scattered over hundreds of square miles. The gross size of those districts is more than 100,000 acres. By definition the impact of delivering CVP water to those isolated tracts is insignificant. 5-3

In many places in the DEIR (first appearing on page 1-3 and again on page 4-1) there is a bias that municipal and industrial (M&I) land use on encroached lands can be ignored, because the DEIR assumes, without any demonstrated factual basis, that the impacts of that use have already been studied in other environmental documents, and that land uses on encroached agricultural lands have not been studied. We have already shown that this is incorrect as to the T-C service area.

In addition, unless the DEIR can state with assurance that such an assumption is based on fact, as to every parcel of encroached land, then M&I lands must be subject to the same controls as agricultural land. As we stated above, the fact is that in a number of contexts (County General Plans, land leveling permits, district water contract renewal, district distribution system construction, district boundary change proceedings, et cetera) the impact of the use of CVP water has been studied on many agricultural lands. 5-4

We also reject the differentiation made between M&I water service and agricultural water service that the former involves an "infrastructure" and other permanent development that 5-5

5-2 See response to Comment 5-1.

5-3 It is unclear how the commentor calculated the 6,439 or 1,951 acres presented in the comment. As noted in the DEIR, the total acreage outside the POU for Colusa County Water District, Corning Water District, Glenn Valley Water District, Kanawha Water District, and Orland-Artois Water District is 5,442 acres, of which 1,496 are considered expansion lands. Adding the acreage from the Westside Water District achieves a total acreage of 6,439. Regardless, the commentor's statement that "delivery of CVP water to those lands is insignificant" is noted.

5-4 The DEIR relies on available information. If previously prepared CEQA documents address site-specific impacts and mitigation applicable to the delivery of CVP water to lands outside the POU, they can be used to demonstrate the need to reconsider the mitigation measures presented in this document. Because the mitigation measures identified in this DEIR have yet to be defined for site-specific application and implementation, there remains adequate opportunity to demonstrate that additional mitigation may not be warranted for certain site-specific circumstances.

5-5 The rationale used for considering M&I development to have a more permanent infrastructure than agricultural development was that cities and towns supporting human populations probably would not be abandoned if CVP water supplies were terminated. Water would likely be secured from another source even if the price of that water was very high.

The Board recognizes that many agricultural water users also have a significant monetary investment in their infrastructure, and the statements made in the DEIR were not intended to discount those water users. However, it was determined that, if CVP water could not be secured for agricultural land uses, and alternative sources had to be secured, the possibility existed that the very high price of water from that alternative water source may result in a change to that land use, be it a change in crop, cropping pattern, or fallowing.

FROM : FROST WRUP ATLAS, WILLOUGH, CA

NR# 27, 1998 11:48PM P 5
PHONE NO. 1 530 534 3500

Mike Falkenstein
Division of Water Rights
State Water Resources Control Board
March 27, 1998
Page 4

would remain even if the CVP water were withdrawn [4-1]. The DEIR seems to imply that agricultural water users have less of a permanent investment in their water use. The reality is that GVWD and the other T-C contractors have major investments in infrastructure. In most cases this was built after CDDQA review, again in the conduct of the whole of the project of developing the contractors to deliver CVP water to land including the encroachment and expansion lands. 5-5

The DEIR is also incorrect in asserting [4-1] that additional decisions would be necessary before delivery of CVP water to the expansion lands. These lands are within the contractors' boundaries, and have a right under State law to a share of the contractor's water supply. And, in most cases they can be served with no additional construction of any significant facilities. 5-6

The DEIR displays a prejudice that delivery of CVP water results in environmental harm and no benefit [5-1]. The DEIR includes no discussion, and therefore is inadequate, of any environmental benefits of CVP water deliveries. The DEIR thus lacks any balancing of the proposed limits on the "expanded" use of CVP water and the cost of mitigation, versus the benefits inherent in that use. 5-7

Even if we were to accept that the consolidation of the place of use is a "project" that warrants this detailed, separate environmental analysis, the DEIR is also deficient in that it proposes major new limits on the use of CVP water in the T-C service area, without substantial evidence that those measures are necessary or will achieve environmental benefits beyond those that would occur without those measures. 5-8

The DEIR includes limited recognition of the major environmental mitigation imposed by the Central Valley Project Improvement Act (CVPIA), but incorrectly characterizes this as applying only to encroachment lands.³ The CVPIA's environmental exactions directly impact the entirety of the T-C contractors' operations. Water deliveries are frequently restricted, water costs are higher due to CVPIA provisions and exactions, water service contract provisions are more onerous and the contractors' rights significantly less certain, *et cetera*. Congress directed that the CVPIA was intended to "address impacts of the Central Valley Project on fish, wildlife and associated habitats" (CVPIA, Section 3405(b)). Clearly the CVPIA mitigates comprehensively for all these impacts, and Congress intended that carrying out its mandates would be "enough". Nowhere did Congress draw a distinction like the DEIR does that CVPIA programs are inapplicable to service to lands outside the then-existing place of use. Therefore the DEIR's suggestion that CVPIA programs are sufficient mitigation for encroachment lands, but not for expansion lands is a difference that has no legal support. The reality is that the CVPIA's programs are so comprehensive and overwhelming that 5-9

³ We conclude this from the statement [1-1] that the CVPIA establishes mitigation for the CVP "as presently configured and operated", and that the CVPIA programs are "valid and appropriate" for the encroachment lands [3-4]. The DEIR makes no reference to the CVPIA with respect to the expansion lands, as though these are exempt from the CVPIA's restrictions and programs. Nothing could be further from the truth.

- 5-6 Regardless of any contracted rights to use CVP water in the expansion area, any development that would involve the construction of water delivery facilities, change land uses, or create land uses inconsistent with applicable local land management plans would require decisions by local authorities. Such decisions would most likely apply to a "project" as defined by the California Environmental Quality Act.
- 5-7 No prejudice is portrayed in the DEIR. The Board recognizes that the delivery of CVP water has provided many benefits. These benefits are undisputed. The purpose of Section 5 of the DEIR is to discuss mitigation that was developed for significant adverse environmental impacts, therefore, benefits would not be appropriately discussed there.
- 5-8 It is unclear how the proposed project would impose "major new limits on the use of CVP water in the T-C service area". As indicated in Table 4-2 of the DEIR, if the proposed project is implemented, no change in the contracted CVP water able to be delivered would occur in the districts that are the subject of the commentor's letter. As shown on Table 4-1, the only district where impacts to species has occurred was in Kanawha Water District. Approval of the proposed project would only increase the area within these districts where water could be delivered, in a manner consistent with state water rights law.
- 5-9 The CVPIA created a program for the enhancement of environmental resources that have been adversely affected by the past operations of the CVP. It does not mitigate future CVP operations that are different from the past. Therefore, if expansion lands are incorporated into the CVP POU, the Board has an obligation to assign new mitigation measures addressing potential significant impacts of expanding the CVP POU boundary.

FROM : FROST KEMP ATLAS, WILLOUS, CA

MWF, 27, 1998 11:49PM P 6
PHONE NO. 1 530 934 3588Mike Telkenstein
Division of Water Rights
State Water Resources Control Board
March 27, 1998
Page 5

attempting to define further credible mitigation measures is impossible. We recognize that the DEIR does define such measures with regard to expansion lands (Sections 5.2 & 5.3), but there is no evidence that they will achieve any real, independent environmental benefits. All those measures do is impose another layer of bureaucratic compliance on these districts with little or no benefit to be derived for the environment. They should be eliminated from consideration as to the T-C contractors.

5-9

Specific Comments Regarding Glean Valley WR:

In addition to the general comments above, there are factual inaccuracies in the DEIR regarding GVWD.

Of the 234 acres identified as outside the current place of use, only 37 acres have never been farmed.⁴ About 28 additional acres were farmed in the early 1970's but have not been since. All of the rest, about 168 acres, have been farmed to various dry-land crops in a regular rotation. The crop mix in the district includes tomatoes, rice, dry-land barley and safflower, beans, wheat and vine seeds. The reason that GVWD has not used its full CVP water supply is that since 1979 the district has only received a full water allocation in three years. The District's landowners thus have a difficult time justifying significant investments in irrigated farming when faced with such an uncertain water supply. The DEIR should note that a major contributor to these water restrictions has been the CVPLA's environmental measures, thus underscoring our suggestion that SWRCB-imposed mitigation is excessive.

5-10

Area of Origin Protections:

There is one final inadequacy of the DEIR that we need to address.

On the hearing on the Consolidated Place of Use, the Tehama-Colusa Canal Authority, of which the T-C and Corning Canal Districts I represent are members, will offer testimony demonstrating that Reclamation's contracting and water allocation policies violate area of origin protections and rights of TCCA's contractors. A number of T-C contractors' CVP water contract supplies are significantly less than their identified needs. Reclamation has refused to increase those supplies, in part asserting that they have no legal obligation to reallocate CVP water to meet any area of origin contractor's needs.

5-11

The consolidation of the place of use could lead to a further erosion in those rights, in that it would be easier for Reclamation to continue to allocate and deliver water to export areas without first meeting its area of origin obligations. In fact it will permit the delivery of water under certain CVP permits into export areas where it cannot be delivered presently. The DEIR lacks any

5-12

⁴ The DEIR uses 244 acres as the measure of area outside the place of use. GVWD's measurements of the area depicted on the map in the DEIR is 234.5 acres.

- 5-10 As a result of revising the POU boundary, there is now an estimated four acres located outside the authorized POU. This acreage is discussed in the Final EIR. These lands have been classified as native vegetation and can be assumed to have never been farmed or have not been farmed in the recent past.
- 5-11 The pending petition only requests three changes to the existing water rights permits for the CVP. None of these changes will alter the allocation of CVP water among the CVP water contractors.
- 5-12 See response to Comment 5-11.

FROM : FROST WRUP ATLAS, WILLIAMS, OR

FEB. 27. 1998 11:58PM P 7
PHONE NO. 1 530 934 3580

Mike Falkenstein
Division of Water Rights
State Water Resources Control Board
March 27, 1998
Page 6

study of the environmental impacts in the Sacramento Valley of a perpetuation of the CVP water contract supply shortages, and it therefore is inadequate. 5-12

SUMMARY:

In summary, the consolidation of the place of use of the CVP water rights permits is not a "project" that justifies this separate environmental review. Moreover, there is no substantial evidence to support the mitigation suggested in the DEIR. There should be no conditions placed on Reclamation's water rights permits that would restrict delivery of CVP water to GVWD or the other T-C contractors. The environmental impacts of such deliveries have been the subject of frequent environmental reviews. The CVPLA imposes major new environmental restrictions on the use of CVP water to mitigate for any otherwise unmitigated impacts of the Project. No additional measures are appropriate or necessary. 5-13

Thank you for considering our comments.

Sincerely yours,



J. MARK ATLAS

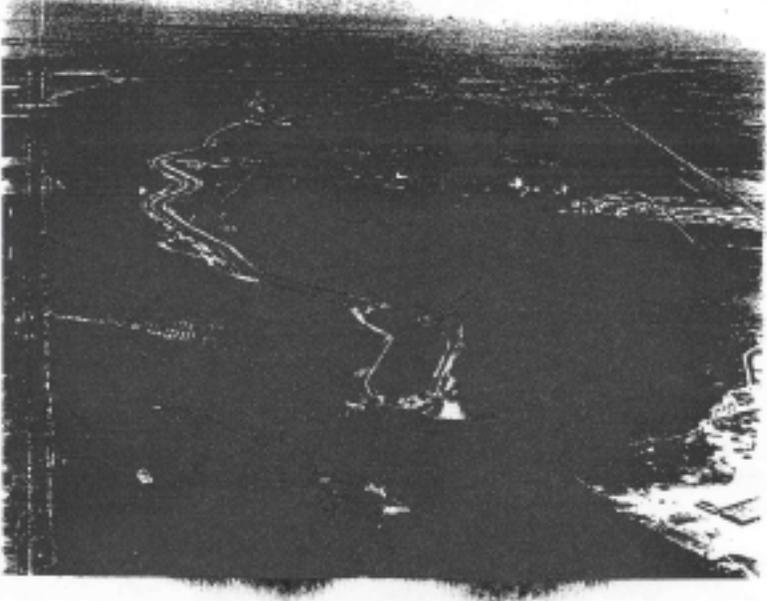
JMA/mse
Attachments (2)

cc: Glenn Valley WD
Tehama-Colusa Canal Authority
Colusa County Water District (Via Fax, w/o enclosures)
Kearney Water District *
Colusa-Artesis Water District *
Corning Water District *

5-13 Comments noted. See response to Comments 5-1 through 5-11.

APR 27 1978 1:52PM P 8
FROM : FROST WRUP ATLAS, WILLOUS, CA PHONE NO. 1 530 934 3588

DEPARTMENT OF THE INTERIOR
FINAL ENVIRONMENTAL STATEMENT
TEHAMA-COLUSA CANAL
CENTRAL VALLEY PROJECT, CALIFORNIA



Prepared by
Bureau of Reclamation

APR 27 1978 1:52PM P 9
FROM : FROST WRUP ATLAS, WILLOUS, CA PHONE NO. 1 530 934 3588

SUMMARY
() Draft (X) Final Environmental Statement
Department of the Interior, Bureau of Reclamation, Region I

1. Type of action: (X) Administrative () Legislative

2. Brief description of action: Construction of 122-mile Tehama-Colusa Canal, Tehama, Colusa and Glenn Counties, California on west side of Sacramento Valley to serve approximately 244,500 irrigable acres in the Tehama-Colusa service area. Includes dual and single purpose salmon spawning channels in the initial 13-mile reach south of Red Bluff. An annual supply of 430,000 acre-feet of water will be provided from CVP storage facilities via a diversion dam at Red Bluff. Work is tentatively scheduled to begin on Reach 1 in 1978 and is expected to continue through 1979.

3. Summary of environmental impacts and adverse environmental effects: A surface water supply will be provided to an area now dry (fenced or dependent upon ground water). Land use changes will cause changes in wildlife habitat and distribution with some temporary losses. The net long term effect will be favorable to wildlife. Construction activities will result in temporary impacts on environmental quality which will be largely controlled by protection clauses in contracts. Spawning gravels for 3,000 salmon are included by Red Bluff Diversion Dam. Fish spawning facilities constructed to replace spawning will discharge some nutrients and turbidity to the river. Water diversion from the Sacramento River will amount to 430,000-acre feet annually and land will be converted to the canal right of way.

4. Alternatives considered: No development, pump plan, single purpose irrigation, the selected plan.

5. List of agencies from whom comments have been requested or received, with responses indicated by "r".
Dept. of Interior, Field Representative, USGS, BIA, EIS*, NPS*, BCC, NPS*, OCS*, USFS, CP*, EIS*, FSA; Calif. State Clearing House*. Complete list is in Appendix 1.

6. Data made available to CEQ and the public:
Draft statement: 2-12-78
Final statement: 6-7-78

FROM : FROST HRP AT&L, WILLOUS, CA

MAR 27, 1998 1:53PM P10
PHONE NO. : 530 934 3500

RESOLUTION NO. 79-22

BEFORE THE BOARD OF SUPERVISORS OF THE
COUNTY OF COLUSA, STATE OF CALIFORNIA

* * *

In the Matter of the Petition for
the Formation of the
GLENN VALLEY WATER DISTRICT, a
California water district.

RESOLUTION DECLARING
FORMATION OF THE GLENN
VALLEY WATER DISTRICT

WHEREAS, the Board of Supervisors of the County of
Colusa, State of California, had a Petition for the Formation of
a California Water District to be known and designated as the
GLENN VALLEY WATER DISTRICT, presented to them on the 23rd day
of January, 1979; and

WHEREAS, on or about the 13th day of December, 1978,
the Local Agency Formation Commission of the County of Colusa,
did, by Resolution No. 78-9, approve, recommend, and authorize
the formation of the GLENN VALLEY WATER DISTRICT, and did fur-
ther recommend and authorize the petitioners to initiate, con-
duct, and complete the proceedings for the formation of said
District pursuant to the pertinent provisions of the California
Water Code; and

WHEREAS, on or about September 5, 1978, a negative dec-
laration prepared for the proposed GLENN VALLEY WATER DISTRICT
pursuant to the provisions of the California Environmental Qual-
ity Act was filed with the Board; and

WHEREAS, the petitioners for the formation of the
District constitute the sole landowners therein, and as such,
have requested that the Board of Supervisors declare the formation
of the District without an election and appoint to the office of

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PAGE NUMBER -1-

FROM : FROST HRP AT&L, WILLOUS, CA

MAR 27, 1998 1:53PM P11
PHONE NO. : 530 934 3500

Director and to the office of Treasurer, Assessor and Tax Collector,
the hereinafter named persons to be the respective officer indi-
cated, each of which person constitutes a qualified appointee to
such office; and

WHEREAS, pursuant to the Resolution of the Board of
Supervisors, the ex-officio Clerk of the Board has caused to be
published in the Colusa Sun Herald, a newspaper of general cir-
culation, a notice in the manner, form and for the time prescribed
by law of a hearing to be held this date on the Petition for the
Formation of the GLENN VALLEY WATER DISTRICT; and

WHEREAS, said hearing was held this date, no one appeared
in opposition to the formation of the District, and no one requested
that property be included or excluded from said proposed District.

NOW, THEREFORE, IT IS HEREBY ORDERED AND DECLARED THAT:
There is formed and established this 20th day of February, 1979,
without election, the GLENN VALLEY WATER DISTRICT, a California
water district, which is comprised of that certain real property
situate in the County of Colusa, State of California, and described
as follows:

All that real property situate in the County of
Colusa, State of California, described as follows:

PARCEL NO. 1:

The North half, the Southwest quarter, the West half
of the Southeast quarter, the Northeast quarter of
the Southeast quarter, the West half of the West
half of the Southeast quarter of the Southeast quar-
ter of Section 28; the Fractional North half of Sec-
tion 33, Township 16 North, Range 4 West, Mount
Siablo Base and Meridian.

PARCEL NO. 2:

All that portion of the Northeast quarter of the
Northeast quarter of Fractional Section 3, Township

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PAGE NUMBER -2-

FROM : FROST KRUP ATLAS, WILLOUS, CA
 DATE: 1979 FEB 27 11:53PM P12
 PHONE NO. : 530 934 3588

1 15 North, Range 4 West, Mount Diablo Base and Meridian,
 2 lying westerly of the line between Sections
 3 34 and 35, Township 16 North, Range 4 West, extended
 4 through the Northeast quarter of said Section 3, and
 5 the Fractional Northwest quarter of the Northeast
 6 quarter and the Fractional North half of the North-
 7 west quarter of Section 3; and the Fractional North
 8 half of the Northeast quarter of Section 4, Town-
 9 ship 16 North, Range 4 West, M.D.B.&M.

10 ALSO: The Southeast quarter of Section 31, the South-
 11 west quarter and the East half of Section 34, and
 12 the Northwest quarter of Section 35, Township 16
 13 North, Range 4 West, Mount Diablo Base and Meridian.

14 EXCEPTING THEREFROM the portion thereof described
 15 in deed of Mattie Belle McWayne to County of Colusa,
 16 dated October 8, 1921, and recorded November 18,
 17 1921, in Book 34 of Deeds, at page 383, Colusa
 18 County Records. Conveys 1.5 acres, more or less.

19 The office of Assessor, Tax Collector, and Treasurer,
 20 is consolidated; and

21 The County Clerk and ex-officio Clerk of the Board of
 22 Supervisors is hereby further ordered to appoint to the offices
 23 indicated, on the GLENS VALLEY WATER DISTRICT, the persons named
 24 as follows:

25 Directors:

26 1. JOSEPH P. ALVERNAS
 27 2. ROBERT JOHN ALVERNAS
 28 3. LINDA J. ALVERNAS
 29 4. GLORIETTA ALVERNAS
 30 5. ROBERT JOSEPH ALVERNAS

31 Assessor, Tax Collector and Treasurer:

32 1. JOSEPH P. ALVERNAS

33 The County Clerk shall immediately file with the Secre-
 34 tary of State and record in the Official Records of the County
 35 of Colusa, a certified copy of this order as more particularly

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39 RECEIVED
 40 FEB 28 1979
 41 COUNTY CLERK
 42 COLUSA COUNTY, CALIFORNIA

43 PAGE NUMBER 3

FROM : FROST KRUP ATLAS, WILLOUS, CA
 DATE: 1979 FEB 27 11:54PM P13
 PHONE NO. : 530 934 3588

1 required by California Water Code Section 34501 through Section
 2 34503.

3 The foregoing order was made by the following vote of
 4 the Board:

5 AYER: Supervisors David G. Umbles, T. K. Marshall,
 6 Floyd Myers March, Richard L. Hand and H. L. Peterson.
 7 NONE: None.
 8 ABSENT: None.
 9 DATED: February 20, 1979

10 COUNTY OF COLUSA

11 By: *H. L. Peterson*
 12 Chairman of the Board
 13 of Supervisors

14 ATTEST:

15 *Martha Hanney*
 16 County Clerk and ex-officio Clerk
 17 of the Board of Supervisors,
 18 Colusa County, California.

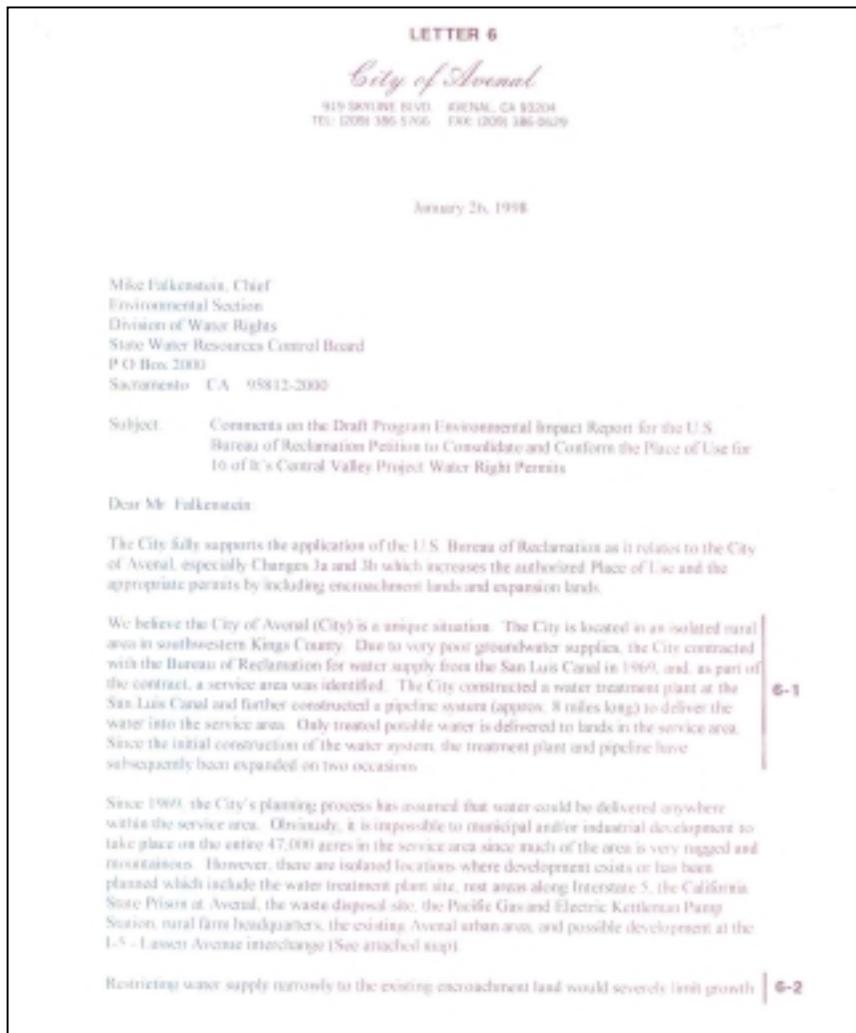
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29 I CERTIFY THIS COPY TO BE A TRUE
 30 COPY OF THE RECORD IN THIS OFFICE
 31 ATTEST: FEB 28 1979
 32 MARTHA HANNEY
 33 COUNTY CLERK AND EX-OFFICIO CLERK OF
 34 THE BOARD OF SUPERVISORS
 35 COLUSA COUNTY, CALIFORNIA
 36 By: *William Stibbe* CLERK

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39 RECEIVED
 40 FEB 28 1979
 41 COUNTY CLERK
 42 COLUSA COUNTY, CALIFORNIA

43 PAGE NUMBER 4



Responses to Comment Letter 6

- 6-1 Comment noted. The DEIR describes the existing conditions within the City of Avenal service area.
- 6-2 Comment noted. Approval of Change 3a would limit future CVP water delivery outside the POU to those currently receiving these supplies. Potential new water users located in the expansion area would not be able to receive CVP water supplies, unless Change 3b is approved.

MIKE FALKENSTEIN, CHIEF
 JANUARY 26, 1998
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and economic activity within the City and is, quite simply, impractical. Restricting use to solely encroachment lands could require a single house that may be constructed within the existing urban area but out of the encroachment land area to petition the State Water Resources Control Board for water service. This is impractical in the City of Avenal's situation. **6-2**

It should be noted the City has a very limited water supply of 3,500 acre-feet. The City's water use has significantly increased since the construction of the California State Prison at Avenal in 1988, and again in 1997 when the prison expanded. Future prison expansion would likely require the prison to provide additional water from outside sources. Any other new developments within the contract service area could only be allowed if water was obtained or if it did not increase water requirements over and above the City's contract amount. **6-3**

In addition, the encroachment lands as identified on the map in Figure 3-4 in the draft EIR do not accurately depict existing municipal and industrial uses. It does not show the uses for the Interstate 5 rest areas along the I-5 corridor or uses that go beyond the existing residential area boundaries. **6-4**

Therefore, we request that the approved Place of Use for the City of Avenal include the entire contract service area boundary including the addition of Section 3, Township 23 South, Range 18 East as shown on the Figure 3-4 (also see attached map).

We thank you in advance for your favorable consideration of our request.

Sincerely,



Melissa Whitten
 CITY MANAGER

MH:meh

cc: Summers Engineering, Inc
 Jen Anderson, USBR-Fresno

- 6-3 The DEIR recognizes that the City of Avenal has no surplus CVP water (page 3-45 and Table 4-3 in DEIR) and that it has an alternative water source (Table 4-4).
- 6-4 As a result of revising the POU boundary, land located adjacent to Interstate-5 are now within the authorized POU and not subject to the pending petition nor discussion in the Final EIR.



City of Avenal—Service Area

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Landholders request that the State Water Resources Control Board ("SWRCB") promptly certify a negative declaration or a final EIR stating that no significant environmental impact will result from the narrow action of conforming the authorized POU to the boundaries of Westlands. 7-1

No significant environmental impact under CEQA will result because:

(1) The Legislature expanded the authorized POU of waters delivered by the San Luis unit to include the whole of Westlands prior to the enactment of the California Environmental Quality Act ("CEQA"), therefore CEQA does not apply; 7-2

(2) Most of the environmental impacts purportedly caused by land conversion occurred prior to passage of CEQA (PEIR at p. 4-1) and the SWRCB cannot now impose mitigation requirements for legal actions that occurred many years ago; 7-3

(3) The SWRCB is estopped from denying a change in the authorized POU to conform to Westlands boundaries, and from imposing further conditions on such change; 7-4

(4) Capital investments, distribution systems, and the availability of groundwater and alternative surface water supplies through transfers make it highly unlikely that any of the 36,386 acres outside the authorized POU in Westlands that are currently served by CVP water ("encroachment lands") will revert to native vegetation or other habitat if the authorized POU is not expanded to the district boundary; 7-5

(5) As the PEIR notes, the volume of CVP water used within Westlands will remain constant, regardless of the alternative chosen. Thus, the expansion of the authorized POU to Westlands boundaries will have no effect on river flow or reservoir conditions (PEIR at pp. 4-6 to 4-10); 7-6

(6) There may be significant, and currently unexamined, adverse environmental impacts caused by changing the existing condition of CVP water deliveries to the encroachment lands in Westlands; 7-7

(7) Official expansion of the authorized POU to the Westlands boundaries merely validates United States Bureau of Reclamation ("Reclamation") and Westlands policy that the entire Westlands area is potentially eligible for CVP water deliveries. Therefore, this particular expansion of the POU will not induce or result in conversion of any lands that have not previously received CVP water ("expansion lands"); and 7-8

- 7-2 The Board has discretionary authority to approve or deny the pending petition. As such, compliance with CEQA is required. The Board has determined that an EIR is the appropriate CEQA document needed to address the potential consequences of implementing the proposed project.
- 7-3 The proposal before the Board has not been approved. While many impacts associated with agricultural land development took place prior to the passage of CEQA, the Board is obligated to identify and assign mitigation to projects at the time an action is taken to permit such activities. Therefore, regardless of whether lands were developed years ago, the action before the Board today requires that appropriate measures be implemented as part of its obligations pursuant to CEQA.
- 7-4 The Board has authority to approve or deny the pending petition. As part of this authority, the Board may impose terms and conditions to the permit, as appropriate.
- 7-5 The DEIR assumed that habitat conditions would return to native vegetation conditions provided that no other local supplies were available to continue irrigated agricultural practices after the termination of CVP water supplies to encroached lands. While existing water distribution system may prevent the total return of native vegetation to previously irrigated lands, it is reasonable to expect that the majority of lands would revert to conditions similar to native vegetation. Other actions that would convey water non-local water supplies to these lands, such as through a water transfer, would be considered a separate project subject to applicable approvals and agreements. Such a project is speculative at this time and not subject to this environmental analysis.
- 7-6 This comment is correct. The proposed project would not alter the volume of CVP water contracted for use within the Westlands Water District.
- 7-7 The DEIR has addressed the consequences of ceasing CVP water deliveries to currently encroached lands. While other unknown impacts may occur, they were not identified during this analysis.
- 7-8 The proposed project would expand the POU in the Westlands Water District service area to correspond with Reclamation's contract for water service. However, because water delivery to currently non-irrigated lands could occur with expansion of the POU, the DEIR has addressed the consequences of ultimately delivering CVP water to these lands. Expanding the POU would not induce or directly result in the delivery of CVP water to expansion lands.

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{8} If any land conversion does occur, CEQA requires that any potentially adverse impacts on the seven threatened or endangered species discussed in Table 3-44 at 3-152 of the PEIR be addressed site specifically. SWRCB's expansion of the authorized POU neither authorizes the taking of any endangered species, nor relieves Westlands or any landholder of their State or Federal environmental compliance obligations.

7-9

I. THE CALIFORNIA LEGISLATURE EXPANDED THE AUTHORIZED POU OF WATERS DELIVERED BY THE SAN LUIS UNIT TO INCLUDE ALL LANDS WITHIN THE WESTLANDS BOUNDARY PRIOR TO THE ENACTMENT OF CEQA. THUS, THE "PROJECT" PREDATES CEQA AND CEQA DOES NOT APPLY TO CONFORMING THE AUTHORIZED POU TO THE WESTLANDS SERVICE AREA.

Conforming the authorized POU to Westlands boundaries is essentially a clerical recognition of existing conditions authorized by prior approvals. The decision to expand the authorized POU to include the entire district was made at least as early as 1965, as evidenced by Water Code Sections 37800 et seq. (the "Merger Statute").

7-10

Westlands, in its current form, is the result of the consolidation of two previously existing districts: The original Westlands Water District, which comprised what is now the approximately eastern two-thirds of the current District, and the West Plains Water Storage District ("West Plains"), which comprised what is now approximately the western third of the current District.

As noted in the PEIR, Westlands receives Federal project water under a long-term contract with Reclamation dated June 5, 1963. This contract belonged to the original Westlands Water District; the West Plains area, where the bulk of the encroachment and expansion lands are located, did not have a contract with Reclamation.

During 1963-64, West Plains was involved in negotiations with both the Federal government and the State of California for a long-term water supply contract. During this period, the Federal government suggested that the two districts discuss a possible merger. By a 1964 memorandum known as the "Holun Memorandum," the United States Department of the Interior ("Interior") indicated its willingness to provide CVP water service throughout the merged districts in return for the districts' assuming repayment responsibilities for certain Federal facilities. Interior also indicated that, in addition to supplies provided under the 1963 contract, it would provide the remaining yield of the San Luis unit to the new district. (February 9, 1982 Class Notice, Barcellos and Wolfson, Inc. v. Westlands Water District and Westlands Water District v. United

7-9 Comment noted. As noted on page 5-8 of the DEIR, future water deliveries to expansion lands would require compliance with applicable federal and state regulations relating to impacts on endangered species. The current action before the Board does not relieve any party from future measures required for environmental compliance.

7-10 Regardless of when other parties historically decided to include the entire water district within the POU, the pending petition before the Board requires that a formal decision be made at this time. As part of this decision, the Board is obligated to comply with the requirements of CEQA.

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Statute, p.2 attached hereto as Exhibit B; case referenced at p. 3-148 of the PEIR.)

In reliance on the Holus Memorandum, the two districts requested State legislation to allow them to become one district under the California Water District Act. The California Legislature considered the issues involved in joining the districts and passed the Merger Statute. (Id.) The Legislature expressly found that:

The state and the people thereof have a primary and supreme interest in securing to the inhabitants and property owners within and adjacent to the federal service area of the San Luis unit of the Central Valley project now under construction by the United States the greatest possible use and conservation of the waters to be made available from said unit and the greatest use thereof to the area, thereby assuring that the greatest productivity of the largest possible area may be accomplished and safely carried on within reasonable limits of economy.

(Water Code §37801, emphasis added.)

The circumstances leading to the Merger Statute and the language of the statute itself clearly show that the Legislature intended that the entire West Plains area receive CVP water. The Legislature's intent to expand the authorized POU to encompass the entire district is also demonstrated by the priority provisions of the Merger Statute. Section 37854 provides:

Lands which were within the Westlands Water District immediately prior to the merger shall, so long as said lands remain in the said district, have a prior right with respect to water to which said district was entitled under any contract with the United States in effect on the date of said merger over (1) lands added to the Westlands Water District as a result of the merger and (2) lands annexed to the said district subsequent to the merger.

The Legislature clearly envisioned that "lands annexed to said district" would be eligible to receive CVP water under the 1963 Contract. Otherwise, it would be unnecessary to establish a priority for the original Westlands area in relation to annexed areas.

In the Barcellos judgment, a Federal court confirmed that all land within Westlands is entitled to receive CVP water. Barcellos arose because the Federal government

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asserted that it was not legally bound by the Holun Memorandum, and that the authorized service area of the CVP excluded significant portions of Westlands. (February 9, 1982 Class Notice at p.3.) Section 10 of the judgment in Barcellona affirms that the Westlands District boundary is entirely within the authorized CVP service area.

In the Merger Statute, the Legislature authorized delivery of CVP water to all land within the Westlands boundary. Therefore, there is no legal effect, and no environmental impact, if the SWRCB conforms the permit to the legislatively authorized district area. As to Westlands, the "project" that might otherwise be subject to CEQA review occurred in 1965, not 1998. Because the "project" predates CEQA, it is not subject to review in the current PEIR. (CEQA Guidelines, 14 OCR § 15261(a); hereafter "Guidelines.")

II. CEQA DOES NOT REQUIRE MITIGATION FOR EXISTING CONDITIONS.

The PEIR attempts to analyze the effect of the introduction of CVP water to the encroachment lands, then require mitigation of those supposed effects. The PEIR's analysis is flawed both because it overestimates the CVP induced agriculture within Westlands encroachment areas and because it wrongly asserts that CEQA requires mitigation for preexisting conditions.

A. Many encroachment lands within Westlands were developed for dry farming or by using groundwater.

The PEIR incorrectly claims that development of Westlands encroachment lands was a direct result of CVP water availability. (PEIR at p. 4-1.) In fact, much of the encroachment acreage was dry farmed or farmed with well water before Westlands obtained CVP water to enhance existing agricultural endeavors in the District. Therefore, the PEIR's comparison of current land uses with pre-development conditions dramatically overstates the historical impact of CVP water deliveries to encroachment lands.

B. CEQA requires mitigation only for future impacts.

An EIR is to analyze potential changes in the existing environment. The baseline for this analysis is the "no project" alternative. "A 'no project' alternative must describe the maintenance of the existing environment as a basis for comparison of the suggested alternatives to the status quo." (Dusak v. Redevelopment Agency of the City of Anaheim (1985) 173 Cal.App.3d 1029, 1043.) CEQA "clearly expressed concern with the effects of projects on the actual environment upon which the proposal will operate." (Environmental Planning

- 7-11 See response to Comment 7-10. The pending petition before the Board requests an action be taken at this time to expand the POU. Actions taken by other parties do not satisfy the Board's obligation to comply with CEQA as part of approving or denying the pending petition.
- 7-12 The estimate of both encroachment and expansion lands within the 26 CVP water contractors was performed by Reclamation using GIS. The number of CVP agricultural induced acres within Westlands Water District presented in the DEIR is based on the best available information, including Reclamation's consultation with Westlands Water District staff. As noted in this Final EIR, the acreage of encroachment lands has been revised based on the Board's directive to recalculate the location of the existing POU boundary. The revised acreage outside the POU is addressed in this Final EIR.
- 7-13 During preparation of the DEIR, Reclamation consulted with Westlands Water District, which defined the location and extent of encroachment lands that were developed from CVP water supplies. The numbers presented in the DEIR were based on the best available data at the time of preparation.
- 7-14 The project pending before the Board is the action requiring compliance with CEQA. While lands may have undergone changes in the past from the unauthorized delivery of CVP water supplies, it does not eliminate the Board's obligation to assign mitigation at this time to comply with CEQA. To the degree ascertainable, the baseline conditions used in this analysis is the pre-CVP water delivery conditions.

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Information Council v. County of El Dorado (1982) 131
Cal.App.3d 350, 354.

The PEIR claims, without any support, that historic deliveries of CVP water to the encroachment lands cannot be construed as a "vested right" to the continued delivery of water. Based on that misstatement of law, the PEIR concludes that CEQA requires mitigation of the current impacts of the historic conversion of land to agriculture. (PEIR at p.5-1.)

7-15

It may be proper to require mitigation for past actions in limited circumstances where actions were taken in flagrant violation of applicable laws. By contrast, however, conversion of the encroachment lands to agriculture and continued farming with CVP water was not only legal, but also based upon the Landholders' reasonable good faith reliance upon the actions of the State and Reclamation.

7-16

Accordingly, the Landholders dispute the PEIR's assertion that they have no vested right to the delivery of CVP water. To the contrary, Landholders and their predecessors have paid and continue to pay Westlands assessments (and ultimately the State and Reclamation) for the construction and maintenance of project facilities which serve their properties. In fact, some Landholders with expansion lands must pay Westlands assessments even though no distribution system currently serves their properties, and the properties have no definite allocation of project water. (See enclosed letter dated March 30, 1998, to Christopher L. Campbell from Mark and Margaret McWhinney; also see enclosed letter dated March 31, 1998 to Christopher L. Campbell from James P. Case.) Should SWRCB decide not to expand the authorized POU to Westlands boundaries, the Landholders will no doubt take legal action to enforce their vested rights, as illustrated by the Barcellos case.

7-17

C. There are no effects cognizable under CEQA for conforming the authorized POU to the Westlands boundary.

A correct application of CEQA would compare expansion of the authorized place of use to conditions existing today. Because authorized California representatives, including the State Legislature, the Department of Water Resources and Westlands, as well as the Federal government, through Reclamation and the District Court for the Eastern District of California, have considered all land within Westlands eligible to receive project water, expansion of the authorized place of use to the Westlands boundaries is the true "no project" alternative. No significant environmental effect as defined by CEQA occurs under the true "no project" condition. Therefore,

7-18

7-19

- 7-15 Comment noted. The Board retains the authority to approve or disapprove the pending petition to modify the POU. If disapproved, continued delivery of CVP water outside the existing POU would be contrary to state water rights law.
- 7-16 The delivery of CVP water to lands outside the existing POU was not authorized nor approved by the Board. Therefore, this delivery has never been approved in accordance with applicable state law.
- 7-17 The DEIR takes no position regarding whether landholders have a vested right to the delivery of CVP water. This issue is not a subject before the Board in association with the pending petition.
- 7-18 The Board has determined that environmental conditions present prior to the delivery of CVP water supplies is the correct baseline to be used in this analysis.
- 7-19 Regardless of other agencies' determinations toward the eligibility of lands to receive CVP water supplies, the POU does not encompass all of those lands that Reclamation has contracted to deliver CVP water supplies. The Board is only now considering modifying the POU from its original configuration. Therefore, the "No Project Alternative" consists of the POU as currently defined.

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CEQA requires no environmental mitigation for past or future deliveries of CVP water to encroachment lands. 7-19

III. THE SMRCB IS ESTOPPED FROM CHANGING EXISTING CONDITIONS BY USING THE "TECHNICAL" POU TO DENY CVP WATER TO ANY PORTION OF WESTLANDS, AND FROM IMPOSING ANY MITIGATION REQUIREMENTS ON THE AVAILABILITY OF CVP WATER TO ANY LAND IN WESTLANDS.

The SMRCB is equitably estopped from denying a change in the authorized POU to encompass Westlands boundaries and from imposing further conditions on such a change. The State knew that CVP water was being delivered to areas outside the authorized POU. The Landholders had every reason to believe that all Westlands land was eligible to receive CVP water. Any discrepancy between the authorized POU and the District boundary was reasonably understood to be merely a clerical or administrative delay in conforming the authorized POU to the District boundary authorized by the Merger Statute. The Landholders reasonably expected that the oversight would eventually be corrected. Conversely, the Landholders had no reason to believe that the areas technically outside the authorized POU might be in jeopardy of losing CVP water eligibility. Based on their reasonable reliance, the Landholders made investments that will be lost if the State now cancels CVP water eligibility for a portion of Westlands. 7-20

A. The State led the Landholders to believe that the whole of the District was, or would be, included within the authorized POU.

The Merger Statute clearly indicates the legislative intent that all of Westlands receive CVP water, and that all District land be used for agricultural purposes. The legislative intent is continually confirmed by the State's operation of the San Luis unit. The California Department of Water Resources ("DWR"), along with Westlands, (itself expressly declared to be a State agency under the Merger Statute [Water Code Section 37823]), constructed and operates laterals from the San Luis and Delta-Mendota Canals. Many of those laterals are designed to, and do, deliver water directly to areas outside the authorized POU. Since the first laterals were completed in the late 1960s, DWR has been knowingly and intentionally delivering CVP water outside the POU.

In addition to the Westlands laterals, many landholders have built their own distribution systems to serve encroachment lands. These private systems are connected to a State-owned and operated canal. Furthermore, the State must approve the engineering and design of private systems. Finally, the private systems often use low cost electricity

7-20 The Board has the authority to approve or deny the pending petition. As part of making a decision regarding this petition, the Board has the obligation to consider potential impacts to the environment and identify and implement mitigation, as appropriate.

The pending petition involves an action subject to the requirements of CEQA. Therefore, the Board must address the proposed project and alternatives in a manner consistent with the requirements of CEQA prior to approving or denying the petition.

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provided through State and Federal facilities for the conveyance of irrigation water. Clearly, the State, at multiple stages, has reviewed and approved the delivery of CVP water to encroachment lands.

B. The Landholders' reasonable belief that their properties were eligible to receive CVP water is further shown by their compliance with Federal Reclamation law.

Reclamation law imposes detailed ownership and pricing requirements on those who receive CVP water. Since 1965, the Landholders have conducted their business operations and based their estate planning on Reclamation law requirements to preserve eligibility to receive CVP water on these lands.

Moreover, many Landholders have purchased formerly "excess" lands in reliance upon formal written determinations from Reclamation that the lands will be eligible for CVP water in the Landholders' ownership. Under Reclamation law, "excess" lands cannot receive Federal project water. To become eligible to receive CVP water, excess land must be sold. Reclamation must approve the sale terms and confirm that the buyer is eligible to receive CVP water on the new land. When Reclamation's approvals are completed, it provides written notice to the buyer that the property is eligible to receive Federal project water in the buyer's ownership. An example of a recent price approval letter is attached as Exhibit "C."

A substantial amount of the lands outside of the authorized PCU were once excess lands. The Landholders purchased these properties in reasonable reliance upon the written notices from Reclamation that these properties are entitled to receive CVP water. The State knew or should have known that its permittee, Reclamation, was providing these written assurances of CVP water eligibility for lands outside the authorized PCU.

Landholders have made significant investments in land and irrigation improvements for the Westlands land outside the authorized PCU. In making those investments, they reasonably and detrimentally relied on the State's continuing tacit and explicit approval of each investment. Severe injustice would result to those landowners if the SWRCB now changes existing conditions to deny CVP water eligibility to these lands.

C. Landholders outside the authorized PCU have made investments in these lands in reliance on CVP water deliveries.

As shown in Exhibit "A," the Landholders grow a variety of crops on the encroachment lands. Many have invested in permanent plantings of pistachios, almonds, apples, peaches,

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cherries and vineyards, along with highly-efficient permanent irrigation systems. The State reviews and approves these on-farm systems because they are connected to the Westlands distribution system. Other farmers have received organic certification for their land and many have invested in leveling, ripping, and building the soil for row cropping. The State has always been aware of the significant investment being made in encroachment lands within Westlands. When these investments were being made, the State did not indicate to either the District or the Landholders that CVP water eligibility would be denied to these lands.

IV. REMOVING CVP WATER ELIGIBILITY FOR THE WESTLANDS ENCROACHMENT LANDS WILL NOT RESTORE NATIVE VEGETATION, CREATE ADDITIONAL HABITAT, OR MAKE ADDITIONAL WATER SUPPLIES AVAILABLE FOR OTHER WATER USERS.

A. Westlands annually relies upon significant alternative water supplies that can be reallocated to the encroachment lands.

The PEIR is inaccurate in saying that there is no proven alternative water supply in Westlands. Groundwater, and surface water obtained through voluntary transfers, are now important components of the Westlands supply each year. The "Priority 2" area of Westlands (where the encroachment lands lie) has an annual maximum CVP water entitlement of only 1.3 AF/acre/year. That supply is insufficient to meet crop requirements. Furthermore, following passage of the Central Valley Project Improvement Act of 1992, Priority 2 seldom even receives 1.3 acre feet of CVP water. Westlands' average CVP supply over the last five years has been only 65 percent of its contractual CVP supply, despite several wet years. Therefore, individual landowners throughout Westlands have made significant investments in groundwater production. In addition, both Westlands, as a district, and individual landowners have become extremely active in the developing water market.

7-21

The distribution systems necessary to deliver these alternative water supplies are already in place. Westlands has an extensive pressurized underground pipeline system serving the entire District, including the encroachment lands. Landowners have developed additional distribution systems to serve some encroachment lands. These systems allow the encroachment lands to receive water from any source available to Westlands. Therefore, alternative water supplies are available to the Westlands encroachment lands.

7-22

- 7-21 The DEIR acknowledges that Westlands Water District has access to an unspecified amount of groundwater in Section 3.4.25.5 on page 3-151. In addition, the DEIR acknowledges that there are no onsite water sources on page 4-9, but indicates that Westlands could acquire non-CVP water from purchase or transfer from willing sellers.
- 7-22 Comment noted. See response to Comment 7-21.

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B. A SWRCB decision that Westlands encroachment lands cannot continue to use CVP water will merely result in a reallocation of water supplies within the District.

The PEIR notes that Westlands is entitled to 1.15 million acre feet of CVP water each year, but that Westlands has an annual irrigation requirement of 1.4 million acre feet. Therefore, the current levels of agricultural production in Westlands require all available CVP water and significant amounts of groundwater and supplemental surface water each year. Because Westlands will remain entitled to the same amount of CVP water regardless of SWRCB's action on the authorized POU, any CVP water denied to the encroachment lands will automatically be delivered to and consumed within the remainder of Westlands. That, in turn, will make more supplemental water available to lands outside the authorized POU. Even if some of the encroachment lands do go out of production, the marginal amount of additional water supplies available to the rest of Westlands will probably be used to farm other properties more intensively.

7-23

V. THE PEIR FAILS TO EXAMINE THE POTENTIAL ADVERSE ENVIRONMENTAL IMPACTS OF REMOVING THE CVP WATER THAT IS CURRENTLY DELIVERED TO THE ENCROACHMENT LANDS AND WEIGH THOSE IMPACTS AGAINST THE INSIGNIFICANT BENEFITS OF THAT ACTION.

A. The impact, if any, of changing existing conditions by denying CVP water to Westlands encroachment lands will be a negative local impact on the economy and the physical environment.

The PEIR fails to examine potential adverse impacts of changing existing conditions by denying CVP water to encroachment lands in Westlands. At best, this reallocation of surface water supplies will result in no impacts, positive or negative, to the physical environment. At worst, the reallocation will increase the groundwater pumping intensity causing overdrafts and subsidence on the west side of the District.

7-24

Some of the encroachment lands have been planted to permanent crops (orchards and vineyards). The investment in permanent crops and in distribution systems, in addition to other land improvements, makes it unlikely that the landowners will abandon the encroachment lands even if CVP water is cut off. The encroachment lands can be farmed entirely with non-CVP water already available within Westlands. Doing so, however, is likely to result in an increase in groundwater pumping on the western edge of Westlands. As noted in the PEIR at p. 3-151, this area has experienced groundwater overdrafts

7-25

7-23 Comment noted. The DEIR notes that those CVP water contractors could still use their contracted water supplies within the existing POU boundary if Reclamation's petition is denied.

7-24 The DEIR evaluates the impact of implementing Alternative 1 (No Project) when compared to existing conditions in Section 4.5.2. Table E-1 in the DEIR shows that, with implementation of Alternative 1, the 36,386 acres of CVP irrigated agricultural lands would likely change to dryland agriculture. If alternative non-CVP water supplies are delivered to these lands, it would be performed as a separate project subject to applicable approvals and appropriate CEQA documentation. Because the location of the POU boundary has been revised, the acreage noted in this response has been modified in this Final EIR to reflect the revised location of the POU boundary.

7-25 As indicated in Section 3.4.25.5 of the DEIR, the quantity of available groundwater is limited. Because of this, a reliable long-term alternative water supply was not considered to be available, resulting in the conversion of CVP irrigated agricultural lands to dryland agriculture in Table E-1. If alternative non-CVP water supplies are delivered to these lands, it would be performed as a separate project subject to applicable approvals and appropriate CEQA documentation.

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in the past, due to the extensive pumping prior to availability of surface water. Accordingly, by overlooking the distinct possibility (in fact, likelihood) that these acres will be farmed without CVP water, the PEIR fails to address major environmental concerns.

7-26

Although supplemental water would be available to farm the encroachment lands if they lose their CVP water eligibility, the total water cost for these properties would increase. There would also be additional management, accounting, and transaction costs for Westlands and the water users if a portion of the District is limited only to non-CVP supplies. The cost and continuing administrative burden of shifting the water allocation is a significant impact under CEQA that the PEIR fails to acknowledge.

7-27

Westlands is already one of the most water-efficient farming areas in the world, so farmers will not be able to conserve additional water to offset increased water costs. Farmers do not have the ability to raise prices to offset increased costs. Therefore, the farmers bear the burden of absorbing all increased costs.

Farmers may try to shift this burden by reducing labor, deferring long-term capital investment, or consolidating farms to achieve greater economies of scale. Reducing labor has the obvious negative impact of increasing unemployment in an area already suffering from high unemployment. Deferring capital costs can reduce the long-term productivity of the land -- a serious negative impact. Consolidation of farms will result if small landowners, many of whom have owned their land for generations, are forced to sell because water costs are too high.

7-28

These impacts go far beyond the change in gross farm receipts described in tables 4-12 and 4-13. (PEIR at pp. 4-51 and 4-52.) The PEIR tables indicate that individuals in Westlands will suffer a loss of over \$37 million if no irrigation water is available to Westlands lands outside the authorized POU. (The landholders dispute this figure as far too small if the encroachment lands actually go out of production, as assumed in the PEIR.) The PEIR fails, however, to analyze the effect of this loss on the surrounding economy. In Fresno County, where the majority of the affected lands are located, each dollar received by the producer results in a benefit of approximately three and one-half dollars to the total economy of the county. (County of Fresno 1993 Agricultural and Livestock Report, p. 1.) Therefore, a loss of \$37 million in gross farm income would translate into a total local economic loss of at least \$129.5 million.

7-29

7-30

7-26 As indicated in previous responses, because the quantity of available water is limited and past pumping has caused overdrafts to occur within Westlands, a reliable long-term alternative water supply was not considered available. This may ultimately result in the conversion of CVP irrigated agricultural lands to dryland agriculture. Therefore, the DEIR did not overlook the consequences of implementing Alternative 1 (No Project).

7-27 The DEIR, in Section 4.3.2 on page 4-8, acknowledges that acquiring water for M&I uses (such as the acreage within Westlands) could occur regardless of cost. On page 4-9, the DEIR indicates that the acquisition of non-CVP water to support either existing or future land uses outside the authorized POU would be considered a separate action subject to a separate CEQA environmental review. Therefore, the impacts of such separate action need not be addressed in the DEIR. While the economic evaluation presented in the DEIR addresses the consequence of implementing the alternatives on farm income, it does not address additional administrative costs that may be required with specific sources of water. Such an analysis would be speculative at this time because of the various sources of water that could be made available to these lands.

7-28 Comment noted. This is not a comment on the DEIR.

7-29 The CVP-irrigated agricultural lands would not go out of production, as indicated by the commentor, but would likely be converted to dryland agriculture, as indicated in the DEIR. This assumption is the basis for the approximately \$37 million decrease in gross farm receipts if Alternative 1 (No Project) is implemented, when compared to Alternative 2 (Existing Conditions).

7-30 The DEIR on page 4-50 recognizes that more than 75 percent of the total economic impact associated with the No Project Alternative would be realized in Westlands Water District.

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Most importantly, the individual Landholders we represent are not comforted by the PEIR's statement that putting them out of business would result in only a 1.4% drop in total CVP-wide farm output. The individual impacts of depriving land of CVP water can be devastating. The economic losses and dislocation of families that may result are significant impacts under CEQA.

7-31

Further study is not necessary, however. The PEIR indicates that there are no environmental benefits to water supply or habitat within Westlands to weigh against the tremendous impacts on affected individuals. The CEQA Guidelines provide (at § 15093(a)) that:

CEQA requires the decision-maker to balance the benefits of a proposed project against its unavoidable environmental risks If the benefits of a proposed project outweigh the unavoidable adverse environmental effects, the adverse environmental effects may be considered 'acceptable'.

7-32

Because there are no environmental benefits to offset the tremendous risks, those risks are clearly unacceptable. Therefore, the SNECH should immediately conform the authorized POU to the Westlands boundary and end the uncertainty that it has now created for these landholders.

VI. AS TO WESTLANDS, CEQA IS NOT IMPLICATED BECAUSE CONFORMING THE AUTHORIZED POU TO DISTRICT BOUNDARIES SIMPLY CONFIRMS EXISTING PRACTICE AND POLICY, AND ENABLES NO DEVELOPMENT THAT WOULD NOT OTHERWISE OCCUR UNDER EXISTING CONDITIONS.

As discussed above, Westlands, Reclamation and the Landholders have been operating since at least 1965 as if the whole of Westlands was within the authorized POU. All planning and land use decisions by Fresno County, Kings County, Westlands and private parties since 1965 have been based upon that expectation. Conforming the authorized POU to Westlands boundaries will merely confirm that long-standing expectation.

No direct or indirect environmental change will result from conforming the authorized POU to the Westlands boundary. Public Resource Code Section 21151(a) requires an EIR for any project that which may have a "significant effect" on the environment. Section 21068 provides that "significant effect on the environment" means a substantial, or potentially substantial, adverse change in the environment. Conformation of the authorized POU to Westlands boundaries has no significant effect on the environment because there is no change from existing conditions. No future agricultural

7-33

- 7-31 See response to comment 7-30. The DEIR, on page 4-51, notes that the effect on individual districts that have more than minor revenue/earnings and local employment reductions could suffer substantial economic impact.
- 7-32 Comment noted. The Board will consider the environmental and socioeconomic consequences associated with its decision to expand the POU.
- 7-33 When compared to the original POU boundary, the proposed project would increase the amount of lands that could receive CVP water supplies. This increase includes those lands that received CVP water without Board authority in the past, as well as those lands that could receive it in the future. Therefore the Board has determined that an EIR is the appropriate CEQA document for addressing potential significant effects associated with expanding the POU.

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development will occur that would not otherwise occur under the existing reasonable understanding of all parties that all land within the District's boundaries is eligible for CVP water. The SWRCB's decision in this matter will not encourage any party to take actions that would not otherwise be taken had Reclamation not included this issue in its petition and simply continued water deliveries as it has since 1945.

The basic purpose of CEQA is inform governmental decision makers and the public about the potential, significant environmental effects of proposed activities, and to identify ways that environmental damage can be avoided or significantly reduced. (Guidelines, 14 CCR §15002(a).) The fundamental purpose of an EIR is to inform the public and responsible officials of the environmental consequences of their decisions before those decisions are made. (Black Property Owners Association v. City of Berkeley (1994) 22 Cal.App.4th 974, 984., citing Laurel Heights Improvement Assn. v. Regents of the University of California (1993) 6 Cal.4th 1112, 1123.) CEQA applies only to the future effects of a project, and does not apply to existing effects of ongoing activities. (Haird v. County of Contra Costa (1995) 32 Cal.App.4th 1464, 1468.) A long standing and well established use does not constitute an environmental change. (Sissons v. City of Los Angeles (1977) 72 Cal.App.3d 924, 938.) Therefore, the criteria for requiring an EIR are not met. All impacts of conforming the authorized PCU to Westlands boundaries have already occurred. An EIR will not inform anyone about "potential impacts," because conforming the authorized PCU to the Westlands boundaries will not result in change from existing conditions. Therefore, neither the language nor the intent of CEQA necessitates an environmental review in the instant situation.

VII. THE EXPANSION OF THE AUTHORIZED PCU TO INCLUDE ALL OF WESTLANDS WILL NOT AUTHORIZE OR INDUCE ANY ENVIRONMENTAL IMPACT ON EXPANSION LANDS.

Expansion lands may or may not be brought into agricultural production. The broad decision to bring these lands within the authorized PCU, however, was made by the Legislature in 1945, and is not now subject to environmental review. The Legislature's decision regarding the authorized PCU does not, however, remove the burden of future environmental compliance from owners of the expansion lands. If and when facilities are constructed to serve these properties, Westlands or another appropriate agency will be required to determine if CEQA applies to that project. Furthermore, each individual landowner is required to comply with the various State and Federal laws regarding endangered species and wildlife habitat.

- 7-34 An action to approve or deny the pending petition is subject to the requirements of CEQA. Regardless of when actual physical changes to the environment occurred with the historical delivery of CVP water to lands outside the POU, the petitioner is now requesting the Board to take an action to expand the POU. Therefore, the Board is obligated to address the consequences of this action at this time.
- 7-35 Comment noted. The last paragraph in the DEIR in Section 1.2 on page 1-3 acknowledges this point.

7-34

7-35

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Mitigation may or may not be required if expansion lands are brought into production, but such determination will be made by the appropriate agencies, at the appropriate time; i.e., when a landowner desires to change a land use. For example, the excess land determination letter from Reclamation, attached as Exhibit "C," states that "any of the sale property which has not been cultivated in the past three years cannot receive project water until it has been proven to [Reclamation] that the property is not currently nor has possible habitat potential for threatened or endangered species."

Since endangered species within Westlands are already protected by State and Federal programs, conforming the authorized POU to the District boundary will not have any environmental effect. Any examination of the endangered species that were, or might be, in Westlands is, therefore, irrelevant to the clerical action of correcting the authorized POU boundary.

7-36

VIII. IF THE SWRCB DECIDES THAT CEQA IS IMPLICATED BY CONFORMING THE AUTHORIZED POU TO THE WESTLANDS BOUNDARY, THEN THE PEIR IS SERIOUSLY FLAWED AND CANNOT BE THE BASIS FOR MODIFYING THE PLACE OF USE AS IT IS APPLIED TO WESTLANDS.

The landholders assert that the only decision the PEIR supports is conforming the authorized POU to the Westlands boundary. Any other action will require significant additional environmental work.

The primary defect in the PEIR is the incorrect use of pre-CVP conditions as the existing conditions for the PEIR's baseline "no project" analysis. As a result, the PEIR fails to analyze the significant impacts of a SWRCB decision to withdraw CVP water service from significant acreage. The failure to use the correct "no project" alternative makes the PEIR inadequate to support a change from existing conditions in Westlands and similarly-situated districts.

7-37

In addition, the PEIR is flawed in at least the following general ways:

1. The PEIR fails to recognize prior environmental compliance work that has been performed by other State and Federal agencies;

2. The PEIR fails to evaluate the impact of permit consolidation and conformance on the economic conditions within districts that receive CVP water;

7-38

7-36 Any action that may jeopardize a species that is designated in accordance with federal or state endangered species acts is subject to conditions that may be assigned by the respective regulatory agency to protect those species. Requirements under the ESA do not eliminate the requirement that impacts of an action be addressed in an appropriate CEQA document and discussed in terms of the project's potential impact on those species.

7-37 See response to Comment 7-19. The DEIR does address the consequences of the No Project Alternative including the potential impact to the regional economy that would be associated with terminating CVP water deliveries to lands outside the existing POU.

7-38 The Board recognizes work previously performed by other federal and state agencies, however, their authority does not include evaluating a petition to modify the POU pursuant to state water rights law. This responsibility is within the sole jurisdiction of the Board.

On pages 4-44 through 4-52, the DEIR does address the economic effects of the proposed project and alternatives on a farm-level as well as a regional basis. The DEIR does address property values in the form of net annual returns to irrigated farming. Because property values include the capitalized value of expected net returns, to count property values in addition to the earnings values that have been presented would double count economic changes associated with the project alternatives. Therefore, the "earnings" values presented in Table 4-10, include wages, salaries, net income, and all other sources of personal income associated with irrigated agricultural practices in the project impact area.

The Final EIR will be modified to explicitly state that the "earnings" values presented in Table 4-10 include all net annual returns from irrigated farming practices. The basis for which the existing POU boundary was established, or the process that resulted in its establishment is not relevant to the petition pending before the Board. This analysis evaluates expanding the POU boundary to encompass additional lands not included in the POU as defined in existing water rights permits.

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3. The PEIR fails to recognize and analyze the local economic impacts of damaging property values;

4. The PEIR fails to explain the basis for the "authorized POU" boundary, or the process that resulted in the establishment and validation, if any, of that boundary.

7-38

Additionally, the landowners join in the comments submitted by San Luis Water District concerning the general flaws of the PEIR. The SWRCB must address these flaws if it is inclined to proceed with any decision other than accepting that the POU does include all land within Westlands.

IX. IN CONCLUSION, THE LANDHOLDERS REQUEST THAT THE SWRCB PROMPTLY CONFORM THE POU BOUNDARY TO THE BOUNDARIES OF WESTLANDS.

The landholders we represent are individuals, families and extended families who have built their dreams and economic well-being around farming property in Westlands. While the economic effect of taking water away from these properties may be "insignificant" in terms of State or national farm output, it is extremely significant to each of these landholders.

While alternative water supplies are available in Westlands, most of its current water supply is CVP water. Property without CVP water can be farmed, but the property value will decline significantly and immediately if CVP eligibility is taken away. Such a severe decline in value is akin to a governmental taking. To proceed with an action that takes private property, the government must show that the property is necessary for a public purpose and it must pay just compensation. There is no public purpose served by taking CVP water from these landholders, and the government has not offered to pay compensation.

7-39

More important than any legal argument the landholders can make is the policy that government should treat citizens fairly. All of the landholders have developed their property with the full knowledge, and often the cooperation, of one or more State agencies. The encroachment lands within Westlands are extremely productive. Many are intensively farmed with high value crops that require extensive investment. Our clients alone have significant acreage devoted to pistachio, almond, apple, apricot and cherry orchards, and to vineyards. The conditions on the western boundary of Westlands are particularly well adapted to these permanent crops. The time necessary to bring orchards and vineyards into production and the permanent irrigation systems in most orchards and

7-39 The action pending before the Board does not change any agreements or contracts between Reclamation and designated CVP water contractors. The action only designates the authorized lands that can receive CVP water in accordance with state water rights law. The DEIR addresses the economic changes that could occur with implementation of the proposed project and alternatives. Issues regarding the "taking" of private property is a legal matter beyond the scope of this environmental document.

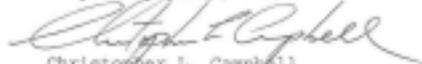
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vineyards make these crops a significant investment for the owners, and often for their bankers as well.

Furthermore, some of our clients' land is certified organic by the California Certified Organic Farmer's (CCOF) organization. Similar to orchards, certified organic land requires time and extensive investment. The western boundary of Westlands is also ideally suited for growing organic produce.

There is no way to replace the mature trees and vines, the organic land, the stream of income, retirement plans, or the family histories that are invested in lands within the encroachment area of Westlands. The Landowners cannot understand why anyone would want to wipe out their farmland and their investment. They do not see any benefit that would accrue to the environment if they have to work harder and pay more to farm their land in the future. What they do understand is that they have done what the Legislature intended them to do. They made their land extremely productive through investment and hard work. They ask that the SWRCB recognize that hard work by removing the additional uncertainty that this process introduces for their water supply to the detriment of their livelihoods. They ask that the SWRCB promptly conform the authorized Place Of Use to the Westlands Water District boundaries.

Very truly yours,



Christopher L. Campbell
BAKER, MANOCK & JENSEN

CLC:sab

Enclosures

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EXHIBIT "A"

EXHIBIT "A"
Participating Landholders

Landholder	Affected Acres	Crops
104 Partners	738.41	pistachios
Brughelli, Eugene Sr.	7.73	cotton, row crops
Cantua Farms Group (including Hetsick, Inc. and Klein Row Crop Farming Enterprises)	373.00	cotton
Case, James P. & Carol (individual comments enclosed)	425.43	fallow
Clark Anderson Trust	40.00	fallow
Colusa Pistachio	160.00	pistachios
Deiner, Matthew, Trustee	195.00	CCOF certified organic farm
Derrick Pistachio	190.12	row crops
Don Alsedras	147.37	permanent plantings
El Dorado Pistachio	77.00	pistachios
Elizagoyen, James A., Trustee	638.95	cotton, row crops
Gragmani, Don & Thelma, Trustees	175.30	fallow
Hutchinson Family Trust #1	160.00	cotton, barley, row crops
Jayne Avenue Almonds	10.00	pistachios
Jensen, Douglas B., Trustee	1,226.86	sugar beets, melons, baby lissas, garbanzos, cotton, tomatoes, alfalfa seed
Kass Pistachio	311.00	pistachios
Logoluso Group (JC&S Land Co., Tres Panchos Land Co., Triple L Land Co.)	1,344.83	vines, apple trees, apricots, peaches, cherries, row crops

<u>Landholder</u>	<u>Affected Acres</u>	<u>Crops</u>
McWhinney, Mark S. (individual comments enclosed)	80.64	fallow
Mello, Atone L. & Elizabeth	440.00	cotton, garlic, wheat, barley
Mouren Family and Mouren Entities (James S. Anderson, Christine Fisher, Rita K. Mouren, Robert Montoya, Bear Canyon Farms, Inc., Cottonwood Farms, Inc., JBA Farms, Inc., W.J. Mouren Farming, Inc., et al.)	2,000.51	almonds, onions, garlic, cotton, tomatoes, wheat
Nelson, Walter G. & Nancy	159.88	almonds
Pappas Family and Pappas Entities (George P. Pappas, Helen P. Pappas, Pappas Family Farms III, Pappas Family Farms IV, et al.; including properties leased from Brian Lands Corp., Mary Sporcus and Claire H. Jones)	1,479.64	almonds, melons, lettuce, onions, garlic, other row crops
Perez Family (John A. Perez, Mark T. Perez, Michael J. Perez, Ramon L. Perez, et al.)	1,541.96	almonds, row crops
Polsen, Hugh & Mary, Trustees	55.00	row crops
Ryan Family (Mayo & Karlene Ryan, Ryan Family Trust Six; including properties leased from Johnny A. Denis and Wilma Shiner)	1,206.51	cotton, garbanzos, wheat, alfalfa
Souza, Joseph Jr. & Roseanne	473.09	cotton, garlic, wheat, barley
Tonco	316.06	almonds
Wolf Family and Wolf Entities (John L. & Bernice Wolf, C.A. Dingle, Trustee, and Lansing Farming Co., a partnership)	3,223.22	almonds, pistachios, row crops

<u>Landholder</u>	<u>Affected Acres</u>	<u>Crops</u>
Wood, Leonard D. & Antoinette (individual comments enclosed)	40.00	row crops
	<u>17,237.21</u>	
4895\8021\106864 CLC		

EXHIBIT "B"

UNITED STATES DISTRICT COURT
 EASTERN DISTRICT OF CALIFORNIA
 U. S. COURT HOUSE
 FRESNO, CALIFORNIA 93721

TO: Landowners and Water Users Within Westlands Water District

This letter and the attached Class Notice concern a lawsuit identified as *Bancroft & Wolfson, Inc., et al. v. Westlands Water District, et al.*, U.S. District Court, Eastern District of California, No. CV-79-186-EDP, which has been partly consolidated with a lawsuit identified as *Westlands Water District, et al. v. United States of America, et al.*, U.S. District Court, Eastern District of California, No. CV-78-245-EDP.

As a landowner or water user within Westlands Water District, you are included as a member of one or more of four classes of the District's landowners and water users who have been sued in the *Bancroft v. Westlands* lawsuit. Each class consists of all landowners and water users within one of four Areas of the District (Area 1A, Area 1B, Area 2A and Area 2B). These Areas are shown on the map attached at the end of the Class Notice. The location of the lands which you own, and on which you use water, determines the class or classes of which you are a member. You should be aware that if you own land or use water in more than one Area you are a member of each of the classes covering the Areas in which you own land or use water. Each class is represented by one or more class representatives.

The outcome of the litigation could significantly affect the amounts and prices of water and drainage service from the U.S. Central Valley Project in which you and other landowners and water users within the District are entitled. It will determine whether the District, the United States and the Area 2A and 2B Classes have violated the claimed rights of the Area 1A and 1B Classes. It also will determine whether Area 2A and 2B Class members and the District are required to pay money damages to the plaintiffs in the *Bancroft v. Westlands* lawsuit. The class representatives, however, are not seeking money damages for their classes.

The Class Notice is divided into the following parts after a brief introduction:

A. **Background of the Dispute**, which summarizes the history of Westlands Water District and its dealings with the United States and how the present disputes involving the District, the United States, and landowners and water users in the four Areas of the District arose.

B. **Parties to the Litigation**, which identifies the categories of parties—the plaintiffs, the District, the federal defendants, the Area 1A Class representatives (all of whom are plaintiffs), the Area 1B Class representative, the Area 2A Class representatives and the Area 2B Class representatives. It also describes the four Areas of the District.

C. **History of the Litigation**, which recites how the litigation developed to its present status and summarizes the current pleadings.

D. **Issues in the Litigation and Positions of the Parties**, which summarizes the principal issues and the positions of these issues of the various parties.

E. **Rights and Obligations of Class Members**, which explains how class members' interests will be represented by their class representatives and how class members may represent their own interests.

F. **Persons to Contact for More Information**, which gives the names of the class representatives, and the names and addresses of their attorneys who should be contacted if more information is desired by class members.

As a member of one or more classes, you have one or more class representatives, named in Part F of the Class Notice, who the Court has determined will adequately protect your interests. Therefore, you are not required to actively participate yourself in the litigation to protect your interests. However, you have the right to challenge the adequacy of the representative provided by your class representative or to seek Court permission to participate individually. If you are in more than one of the four Areas of the District, you have the right, without further Court permission, to file a Notice of Election to Appear Individually. However, you can decide not to file a Notice of Election to Appear Individually, in which event you will be represented by the representatives of the classes of which you are a member. If you decide to file a Notice of Election, the original must be filed with the Court and copies served on the attorneys for Westlands Water District and the attorneys for the representatives of the four classes no later than twenty days after receipt of the Class Notice. Both your participation in this litigation and the Notice of Election to Appear Individually are explained in Part E of the Class Notice.

Please read the Class Notice carefully. If you have any questions, you should see your own attorney or you should contact the representatives of the class or classes of which you are a member through their attorneys at their addresses stated in Part F of the Class Notice.

Dated: February 9, 1981.


 Judge, U.S. District Court

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

BARCELLOS AND WOLPSEN, INC., et al.,
Plaintiffs,

v.

WESTLANDS WATER DISTRICT, et al.,
Defendants.

WESTLANDS WATER DISTRICT,
Counterclaim and
Cross-Claimant,

v.

BARCELLOS AND WOLPSEN, INC., et al.,
Counterclaim and
Cross-Claim Defendants.

BARCELLOS AND WOLPSEN, INC., et al.,
Counterclaimants and
Cross-Claimants,

v.

UNITED STATES OF AMERICA, et al.,
Counterclaim and
Cross-Claim Defendants.

FRANK ORFF, as representative of 18 Cities,
Counterclaimant and
Cross-Claimant,

v.

UNITED STATES OF AMERICA, et al.,
Counterclaim and
Cross-Claim Defendants.

No. CV-79-106-EDP

WESTLANDS WATER DISTRICT, et al.,
Plaintiffs-In-
Consolidation,

v.

UNITED STATES OF AMERICA, et al.,
Defendants-In-
Consolidation.

BARCELLOS & WOLPSEN, INC., et al.,
Plaintiffs

v.

WESTLANDS WATER DISTRICT, et al.,
Defendants.

EMPLOYED
By: CV-79-106-EDP

CLASS NOTICE

Introduction

This Notice is being sent by the Court in the above litigation to all water users and landowners in each of four major areas of the Westlands Water District. The Court has made the water users and landowners in each such area members of one or more of the four classes involved in this litigation. The litigation consists of two related cases, Action No. CV-79-106-EDP and Action No. CV-F-81-243-EDP.

This Notice will summarize the factual and legal issues in this complex and important litigation and will describe how you will be represented by class representatives and how you may intervene if you desire.

Among the various suits and counterclaims involved in this litigation, each of the four classes and others have been sued by the Westlands Water District and two of the classes and others have been sued by plaintiffs, some of whom are also representatives of a third class.

A. Background of Dispute

The original Westlands Water District was formed in 1952 under the California Water District Law. (California Water Code Sections 34800, et seq.) It then contained about 400,000 acres, about two-thirds its present size of about 600,000 acres.

On December 11, 1954, the Secretary of the U.S. Department of the Interior transmitted to Congress a report concerning the feasibility and recommending the construction of the San Luis Unit as an integral part of the Interior's Central Valley Project. A map in the report outlined a proposed initial service area then contemplated for the San Luis Unit on the west side of the San Joaquin Valley in Kings, Fresno, and Merced Counties. This proposed service area included most but not all of the original Westlands District and of the territory later organized as the Westplains Water Storage District, as well as territory outside both districts. This purported service area is now commonly referred to as the "Knutzt Service Area," because former Solicitor of the U.S. Department of the Interior Leo Knutzt opened in 1976 that this limited area constituted the entire authorized service area of the San Luis Unit.

On June 1, 1960, Congress enacted a law authorizing construction, operation, and maintenance of the Unit by the Secretary of the Interior as an integral part of the Central Valley Project. The principal facilities of the Unit were listed, including the San Luis Dam and Reservoir, a tunnel and siphon, the San Luis Canal, the Pleasant Valley Canal, and necessary pumping plants, distribution systems, drains, channels, levees, flood works and related facilities. The authorizing act of Congress also specifically required that either a major San Joaquin Valley drain or the San Luis Drain to the Sacramento-San Joaquin Delta be constructed to meet the drainage requirements of the San Luis Unit.

As of 1960, the authorized facilities of the Unit have now all been constructed and are in operation with two major exceptions. First, some of the necessary internal distribution system facilities and most of the necessary internal collector drain facilities within Westlands remain to be constructed. Second, the San Luis Drain is only partly constructed; however, to an interim measure it is being operated to remove and dispose by evaporation of a small portion of the drainage water from the San Luis Unit.

In 1962, the Westplains Water Storage District was formed under the California Water Storage District Law. (California Water Code Sections 39000, et seq.) It was located to the immediate west of the original Westlands District and most but not all of it was also within the so-called Knutzt Service Area. The Westplains District contained about 200,000 acres, about half the size of the original Westlands District.

In 1962, in response to an inquiry from the original Westlands District, the Regional Solicitor of the U.S. Department of the Interior in Sacramento issued a legal opinion that all the territory within the original Westlands District was within the authorized service area of the San Luis Unit.

On June 3, 1963, the United States and the original Westlands District entered into a long-term water service contract commonly referred to as "the 1963 Contract." It provided for delivery by the United States to Westlands from the San Luis Unit of a firm agricultural water supply of 1,000,000 acre feet annually until 1980, and thereafter a fixed annual amount between 153,000 and 900,000 acre feet depending on the availability of local groundwater, plus additional levee water if requested and available, and for sewerage drain service through the San Luis Drain to remove and dispose of drainage water from Westlands. (In 1979, it was agreed between the United States and Westlands that, in light of the availability of local groundwater, the fixed annual amount beginning in 1980 should be 900,000 acre feet.) The term of the contract is 40 years from the year of the initial delivery of water from the Unit, which was 1969, so it expires in the year 2008. The price provided in the contract was \$7.50 per acre foot water service charge, plus 1.50 per acre foot of water delivered as a drainage service charge for use of the San Luis Drain beginning when drainage service became available. The 1963 Contract was validated by a State court judgment after its execution.

During 1963 and 1964, the original Westlands District and the United States negotiated a proposed contract providing for construction by the United States of internal water distribution and drainage collector facilities within Westlands and for repayment by Westlands of the construction cost. This contract is commonly referred to as "the 1963 Contract" because it was subsequently executed in 1965.

During the same period, the Westplains District was negotiating with the United States for a long-term water service contract for water from the San Luis Unit and simultaneously with the State of California for a long-term water supply contract for water from the State Water Project. At the time the Westlands and Westplains districts merged in 1965, the such contracts had been agreed upon.

Also during the same period, the United States and Westplains districts merged in 1965, the such contracts had been agreed upon. Also during the same period, the United States and Westplains districts merged in 1965, the such contracts had been agreed upon. Also during the same period, the United States and Westplains districts merged in 1965, the such contracts had been agreed upon.

Also during the same period, the United States and Westplains districts merged in 1965, the such contracts had been agreed upon.

Objections to execution of the proposed 1965 Contract between the original Westlands District and the United States were raised by third parties during Congressional Committee hearings in 1964 arising from their opposition to certain aspects of the 1963 Contract relating to acreage limitation. As a result, and after negotiations among the interested parties, Assistant Secretary of the Interior Kenneth Heinen, in a Memorandum to the Secretary of the Interior dated October 4, 1964, commonly referred to as "the Heinen Memorandum," discussed certain proposed modifications to the previously executed 1963 Contract relating to acreage limitation. The Heinen Memorandum also discussed the proposed merger of the Westlands District with the neighboring Westplains District. The Heinen Memorandum stated that, assuming the merger was completed, the United States would consent to the continued Westlands-Westplains District the water conveyed by the 1963 Contract plus the remaining yield of the San Luis Unit, or a total of 1,150,000 acre feet annually just including the 70,000 additional acre feet from the Mendocino Pool discussed below. It also stated that, in contemplation of the merged district assuming the annual cost of operation, maintenance and replacement of the Pleasant Valley Canal and Pumping Plant, this total water supply of 1,150,000 acre feet would be delivered through the merged district at the price of \$7.50 per acre foot for agricultural use and \$11.00 per acre foot for municipal and industrial use, plus 1.50 per acre foot of water delivered as a drainage service charge beginning when drainage service from the San Luis Drain became available. On October 7, 1964, the Heinen Memorandum was approved by the Secretary of the Interior.

During negotiations involving the United States and the two districts leading to the Heinen Memorandum, the United States agreed that, if they were merged, in addition to an emergency water service contract, they would be an emergency repayment contract for construction of internal water distribution and drainage collector facilities to serve the merged district.

In accordance with the Heinen Memorandum, Westlands and Westplains both requested its ratification and supported legislation in the California Legislature to accomplish the merger. The merger was subsequently accomplished by an Act of the California Legislature on June 9, 1965, and it codified in California Water Code Section 17828.3193, commonly referred to as "the merger statute." Water Code Section 17828 is the merger statute provided that "lands which were within the original Westlands Water District immediately prior to the merger shall ... have a prior right with respect to water to which said district was entitled under any contract with the United States in effect on the date of said merger over ... lands" in the original Westplains District.

The merged district contained about 581,900 acres of land. (Subsequent acquisitions brought the total acreage of the District up to its present size of about 600,000 acres.) About 271,000 acres within the original Westlands area were within the Knutzt Service Area and about 310,900 acres were outside, while about 134,150 acres within the original Westplains area were within the Knutzt Service Area and about 27,750 acres were outside. These areas are shown on the map attached at the end of this Class Notice.

Upon the execution of an operating agreement, which carried out certain of the other requirements of the Heinen Memorandum, the original Westlands District and the United States executed the 1965 Contract on April 1, 1965.

After the merger, Westlands and the United States began negotiations of an emergency contract to carry out the commitments of the Heinen Memorandum and the negotiations leading to it. In the meantime, in carry out the terms of the memorandum while the emergency contract was being written, Westlands and the United States entered into a series of short-term water service contracts to provide water to the enlarged district. Under these contracts, covering the period 1968 through 1977, the United States agreed to deliver for use throughout the enlarged Westlands both within and outside the Knutzt Service Area the 1963 Contract amounts together with the remaining San Luis Unit water supply committed to the enlarged Westlands in the Heinen Memorandum, totaling 1,100,000 acre feet annually, plus an additional 30,000 acre feet annually from the Mendocino Pool of the Central Valley Project, which was also committed to Westlands. Up to these amounts of water were delivered each year, as requested by Westlands, from 1968 through 1977 under these contracts. The price for the water was \$7.50 per acre foot for agricultural service from the San Luis Unit, \$3.50 per acre foot for agricultural service from the Mendocino Pool, and \$11.00 per acre foot for municipal and industrial service.

The water distribution lines provided to be constructed under the 1963 Contract have since been built in the enlarged Westlands.

both within and outside the Kralitz Service Area. These lines were built first in the original Westlands area. Construction has also been completed on some of the lateral collector drains. Conceptual authorization to appropriate more money is required to complete all needed distribution lines and collector drains. A substantial amount of money originally earmarked for collector drains in the original Westlands area was spent for distribution lines in the former Westplains area.

Pursuant to the 1963 and 1963 Contracts, recordable contracts have been executed with the United States by owners of certain lands throughout the enlarged Westlands, both within and outside the Kralitz Service Area, providing for the sale of such lands to receive their eligible under Federal reclamation law for long-term agricultural water service.

Also, since the merger the enlarged Westlands has assumed the annual costs of operation, maintenance and replacement of the Pleasant Valley Canal and Pumping Plant, as provided in the Holm Memorandum.

A proposed "Amendatory Contract" is being put in the memorandum and the regulations leading to it and also providing for delivery of 30,000 acre feet of water committed to Westlands from the Mendota Pool was agreed to by the United States and Westlands in 1971. On November 1, 1975, the Secretary of the Interior became authorized under Federal law to sign the proposed contract for the United States after it had been introduced in Congress for the required ninety day oversight period without being disapproved. Approval by the California State Treasurer and Westlands' voters was still required under State law to authorize Westlands to sign the proposed contract. On November 28, 1975, before there was time to obtain these approvals, a lawsuit was brought by the Contra Costa County Water District to prevent its signing until the environmental impact statement on the San Luis Unit previously prepared was supplemented; the lawsuit resulted in a court order to that effect.

By legal opinion dated November 5, 1976, and February 2, 1977, the Regional Solicitor of the U.S. Department of Interior in Sacramento held that the San Luis Drain is not a main Central Valley Project feature, but that its cost may be repaid by service charges (such as the \$30 per acre foot drainage service charge in the 1963 Contract).

Beginning in 1977 and after the Carter Administration took office, the United States repudiated its prior agreements and commitments to Westlands, including the obligation to complete construction of the San Luis Drain. In 1978 it informed Westlands that it would not execute the proposed Amendatory Contract as previously agreed to or any other contract that would carry out the terms of the Holm Memorandum. Instead, Westlands was informed that the United States would demand numerous modifications of the agreements previously reached. The United States took the following new legal positions:

1. While the 1963 Contract is valid, the \$30 per acre foot drainage service charge provision therein is illegal and will have to be replaced by a provision requiring the District to repay the full reclamation cost of the San Luis Drain within forty years, or the water delivery to the District cannot be implemented under the 1963 Contract and will have to be shut off beginning in 1979.
2. Lands in Westlands outside the Kralitz Service Area are not within the authorized San Luis Unit service area and, therefore, cannot legally receive a firm water supply. (These outside areas are Areas 1B and 2B.)
3. The United States is not legally bound to honor the commitments of the Holm Memorandum and the regulations leading to it and related Mendota Pool commitments.

Based upon the above three legal positions, the United States demanded the following new contract terms:

1. In a dry year, the amount of water to be delivered would be 181,000 acre feet (less than previously committed).
2. The price for water service would not be the \$7.50 per acre foot San Luis Unit agricultural rate set forth in the 1963 Contract and the Holm Memorandum, the \$1.50 per acre foot Mendota Pool agricultural rate previously committed, and the \$17.00 per acre foot municipal and industrial rate set forth in the Holm Memorandum, but would be significantly higher.
3. Westlands would give up its rights under the 1963 Contract regarding eligibility of lands for water service under the excess lands and related provisions of Federal reclamation law and instead would agree to comply with future unspecified changes by Federal legislation or administrative regulation.
4. Instead of the \$30 per acre foot price for use of the San Luis Drain, Westlands would agree to repay the full reclamation cost of the Drain within forty years.

Westlands disputed the validity of the new Federal legal positions and the propriety of the new demanded Federal contract terms. But, instead of filing a lawsuit to challenge them, Westlands attempted to resolve the disputes by negotiation and compromise.

To assure continuance of water delivery while efforts were made to resolve these disputes and negotiate and execute acceptable long-term contracts without resort to judicial process, Westlands and the United States entered into several temporary water service contracts for the latter half of 1978, for 1979, for 1980, and for 1981, each of which provided for annual delivery of 1,150,000 acre feet of water, subject to certain reductions if the Central Valley Project water was in short supply. Under these temporary contracts, Westlands agreed to pay the United States higher prices (in some cases, substantially higher prices) than those contained in the 1963 Contract and the Holm Memorandum, subject to reservation of rights as to 1978 and 1979 to recover payments in excess of the price ultimately determined by long-term settlements or by litigation to be Westlands' payment obligations, and to bear certain quantity reductions in dry years.

Westlands rejected internal water pricing and allocation regulations which charged these higher prices and allocated the water received both in the original Westlands area and the original Westplains area of the District.

This litigation was started in April 1979 when Action No. CV-79-306-BDP (referred to hereinafter as "Bavelas v. Westlands") was filed against the District as the only defendant by plaintiff, certain landowners and water users within the original Westlands area. Plaintiff's suit for declaratory relief and damages based on their claim that the District's annual water service contracts with the United States for the latter half of 1978 and subsequent years and the internal water pricing and allocation regulations therewith deprived them of alleged primary rights in water.

In 1978, Westlands' Board of Directors by majority vote and the United States reached tentative agreement, subject to further negotiations and to agreement on long-term water service, on a new temporary contract providing continuation of additional water distribution and drainage collector facilities within Westlands and resumption of completion and repayment of the cost of the San Luis Drain. The provisions for repayment of the cost of the San Luis Drain in the proposed new contract would result in charges many times in excess of the \$30 per acre foot of water delivered provided in the 1963 Contract as a drainage service charge for use of the Drain; the estimated cost of the Drain has increased many-fold since the 1963 Contract was signed. The proposed new contract also included limitations on the United States' obligation to complete the Drain not included in the 1963 Contract.

In 1978, Westlands' Board of Directors by majority vote and the United States reached tentative agreement on the principles of a proposed new long-term water service contract, which represented a compromise settlement of the disputes as to water service between the United States and Westlands. These principles would have provided for a firm water supply of 1,150,000 acre feet annually to Westlands from the Central Valley Project, subject to certain reductions in dry years, at prices higher (and in certain cases substantially higher) than Westlands contended it was required to pay under its existing contracts but lower in some cases than the United States contended was

Westlands' legal obligations. Final agreement on such a contract would be conditioned upon also reaching final agreement on the new repayment contract discussed above. In addition, they tentatively agreed that a condition of reaching final agreement and executing the new contracts would be the enactment of Congressional legislation ratifying that the entire Westlands District, and not just the part within the Kralitz Service Area, is entitled to long-term water service and authorizing appropriation of the additional funds necessary to complete the distribution and drainage collector facilities and proceed toward completion of the San Luis Drain.

This package of tentative agreements was met with substantial opposition from landowners and water users, particularly with respect to the United States' obligation and the District's cost of completing the San Luis Drain.

In May 1980, the majority of the District's Board of Directors approved a proposal to the United States taking a new position concerning the United States' and Westlands' obligations with respect to the San Luis Drain and relieving positions previously tentatively agreed to with the United States on the other issues. This proposal had neither been accepted nor rejected when the Carter Administration left office in 1981. The proposal included payment by Westlands of a maximum of \$8.00 per acre foot to repay the construction cost of the Drain commencing upon its completion, plus Westlands' share of the operation and maintenance cost of the Drain.

Since then, during 1981, Westlands' negotiations and the United States' negotiations under the new Reagan Administration jointly proposed changes in the limitations on the United States' obligation to complete the Drain (which had been included in the proposed new repayment contract tentatively agreed to in 1978) to strengthen that obligation. The negotiators also jointly proposed that Westlands pay for use of the San Luis Drain as follows: (1) A charge beginning at approximately \$38 per acre foot of water delivered and building up to approximately \$4 per acre foot delivered when construction of the Drain has been completed, to repay the construction cost of the Drain; (2) a charge of approximately \$10 per acre foot of drainage water discharged to build up a fund for construction of drainage water treatment facilities at the outlet of the Drain if required; and (3) Westlands' share of the operation and maintenance cost of the Drain. These proposals have not been accepted or rejected by Westlands' Board of Directors or the United States.

Any new long-term contracts which might be fully agreed to could not be signed unless and until approved by the State Treasurer of California and by a two-thirds vote of the District's landowners at an election and then could not become effective as binding agreements until validated as being legal in a court validation action. In addition, the legality of any such long-term contracts may be in issue in this litigation.

In May 1981, the United States, under the new Reagan Administration, withdrew its approval of the tentative compromise respecting the prices of water service reached with Westlands under the Carter Administration and informed Westlands that, unless it agreed by the end of the year to a new long-term water service contract providing for higher water service prices, similar to those originally demanded by the Carter Administration before the tentative compromise had been agreed to, all water service to Westlands would be discontinued on January 1, 1982. The United States, under the new Reagan Administration, also withdrew the demand made under the Carter Administration that in a dry year delivery of water to Westlands would be 181,000 acre feet less than previously committed. Westlands requested the United States to withdraw its threat to discontinue water service and assure continuation of water delivery while efforts to resolve the disputes were renewed between Westlands and the Reagan Administration. However, the United States refused on the basis of its adherence to the legal positions taken by the Carter Administration. As a result, on July 24, 1981, Westlands filed Action No. CV-F-81-345-EDP (referred to hereinafter as "Westlands Water District v. U.S.") against the United States, the Department of the Interior and certain departmental officials, including a motion for a preliminary injunction against the disallowed water shut-off. As a basis for seeking the preliminary injunction, the action unconditionally asks for a declaration of the rights and obligations of the United States and Westlands with regard to the disputes which first arose under the Carter Administration.

After Westlands Water District v. U.S. was filed and before argument on the preliminary injunction motion, Westlands and the United States through their attorneys negotiated and signed a Stipulated Agreement for continuation of water delivery, which was accepted and approved by the Court solely as a resolution of the matters raised by the preliminary injunction motion and not as a judgment as to its validity. The Stipulated Agreement provides for continuation of delivery of 1,150,000 acre feet of water per year to Westlands from the Central Valley Project and use by Westlands of the San Luis Drain for three years beginning January 1, 1982, while the merits of the disputes are being litigated. The United States will be paid for water service and use of the San Luis Drain at the lower rate Westlands contends it is legally obligated to pay under the 1963 Contract, the Holm Memorandum and the commitments respecting water delivery from the Mendota Pool, while the difference between those lower rates and the higher rates demanded by the United States will be paid out an excess fund. This fund will be awarded to draw interest and then will be disbursed, along with the interest, in accordance with the final resolution of the disputes.

Although negotiations between Westlands and the United States have not been terminated, it appears now that at least certain of the major disputes between them will not be resolved by negotiation and will be decided by the Court in this litigation.

The following is a summary of the major items relative to agricultural water service of the temporary contracts and proposed long-term contracts with the United States, previously mentioned, which Westlands has entered or tentatively agreed or proposed to enter, and of the internal pricing and the allocation regulations, also previously mentioned, which Westlands has adopted, beginning in the latter half of 1978:

1. LATER HALF OF 1978.

Under the temporary contracts covering the latter half of 1978, for agricultural water service Westlands paid the United States \$14.50 per acre foot for San Luis Unit water and \$11.00 per acre foot for Mendota Pool water, under payment and subject to a reservation of rights to recover payments in excess of what is ultimately determined to be its legal obligation. Westlands' internal pricing passed on the \$14.50 and \$11.00 per acre foot prices internally within both the original Westlands area and the former Westplains area of the District.

2. 1979.

Under the 1979 temporary contracts, for agricultural water service Westlands paid the United States \$13.50 per acre foot for San Luis Unit water and \$12.00 per acre foot for Mendota Pool water, subject to agreement that if Westlands' legal obligation is ultimately determined to be neither more or less than these payments, it will either receive a credit for any excess payments with interest or will be charged for any underpayment with interest. Its internal pricing passed on the \$13.50 and \$12.00 per acre foot prices uniformly within both areas of the District.

Westlands' internal allocation regulations for 1979 allowed within the original Westlands area approximately 750,000 acre feet of the total 1,150,000 acre feet agricultural water service entitlement under the 1979 temporary contracts and the remaining 400,000 acre feet within the former Westplains area. Westlands would have been entitled to 1,000,000 acre feet in 1979 under the 1963 Contract. This resulted in an actual allocation of approximately 1.4 acre feet per acre irrigated in the original Westlands area and approximately 3.77 acre feet per acre irrigated in the former Westplains area.

3. 1968 and 1981.

Under the 1968 temporary contract, for agricultural service Westlands paid the United States \$8.00 per acre foot for a 900,000 acre foot entitlement from the San Luis Unit, \$8.50 per acre foot for a 30,000 acre foot entitlement from the Mendota Pool, and \$11.00 for an additional 200,000 acre foot entitlement from the San Luis Unit. These amounts and prices were the same as the actual amounts and prices included in the principles of the proposed new long-term water service contract tentatively agreed to between the District's Board of Directors by majority vote and the United States in 1979.

For 1980, Westlands' annual allocation regulations allocated within the original Westlands area approximately 813,000 acre feet of the 900,000 acre foot entitlement from the San Luis Unit and the remainder, plus the additional 250,000 acre feet, or a total of approximately 1,063,000 acre feet within the former Westplains area. (Westlands would have been entitled to 900,000 acre feet in 1980 under the 1963 Contract.) This resulted in an annual allocation of approximately 2.53 acre feet per acre irrigated in the original Westlands area and approximately 2.03 acre feet per acre irrigated in the former Westplains area.

Westlands' annual pricing for 1980 provided for variable charges. It passed on within the original Westlands area the \$8.00 per acre foot price paid the United States for the San Luis Unit agricultural water allocated by Westlands to that area. It passed on within the former Westplains area the price paid the United States for the remaining agricultural water received under the 1968 temporary contract which was allocated by Westlands to that area, resulting in an agricultural price averaging slightly less than \$11.00 per acre foot within that area.

For 1981 the temporary contract and Westlands' annual pricing and annual allocation regulations were substantially identical to those for 1980.

4. 1982-1984.

The Sitco-1984 Agreement which Westlands and the United States negotiated and signed, through their attorneys in Westlands Water District v. U.S., provides that for 1982, 1983 and 1984 Westlands will pay the United States for agricultural service \$8.00 per acre foot for 1,100,000 acre feet of San Luis Unit water and \$4.00 per acre foot for 30,000 acre feet of Mendota Pool water, and an additional \$1.30 per acre foot into an expense fund, as a total of \$13.30 per acre foot for San Luis Unit water and \$9.30 per acre foot for Mendota Pool water. The amounts paid into the expense fund are subject to possible increase in 1983 and 1984 to reflect increases in the United States' cost of providing the water service. Westlands possessed the right to challenge the reasonableness of the United States' determinations of cost of service. Westlands has yet to adopt annual pricing relating to 1982, 1983 and 1984. For 1982 only, Westlands has recently adopted allocation regulations comparable to those operative in 1980 and 1981.

5. Long-Term Proposals.

As previously stated, in 1979 Westlands and the United States reached tentative agreements, subject to various conditions previously mentioned, upon the principles of a new long-term water service contract. These principles included the following:

- Westlands would be entitled to deliveries of a total of 1,100,000 acre feet per year (1,000,000 acre feet from the San Luis Unit and 30,000 acre feet from the Mendota Pool) plus additional interim water if requested and available.
- In a dry year Westlands would take an initial 183,000 acre foot reduction and then make reductions along with existing Central Valley Project long-term contracts.
- For agricultural use, Westlands would pay the following prices: (a) an average of \$8.26 per acre foot for 900,000 acre feet of San Luis Unit water per year through 2000, and then the United States' cost of water service for the remainder of the period; (b) periodic increases to reflect increases in the cost of water service; (c) \$11.00 per acre foot for 300,000 acre feet of San Luis Unit water and \$8.50 per acre foot for 30,000 acre feet of Mendota Pool water per year, both subject to periodic increases to reflect the United States' cost of water service.

As previously stated, in May 1981 the United States, under the Reagan Administration, withdrew its approval of the tentative agreement on water prices. In present position it has Westlands may agree to pay the cost of service for all water delivered. For agricultural service, the United States claims that its cost of service is presently \$13.30 per acre foot for San Luis Unit water and \$9.30 per acre foot for Mendota Pool water, and that these are subject to periodic increases as the cost of service increases.

B. Parties to the Litigation

Currently, the parties to the litigation include:

- Westlands Water District;
- Federal Defendants.

These are the United States; the U. S. Department of Interior; the Bureau of Reclamation of the Department of the Interior; the Secretary of the Department of the Interior; the Assistant Secretary of the Department of the Interior; the Commissioner of the Bureau of Reclamation; and the Regional Director of the Bureau of Reclamation for the Mid-Pacific Region. They are collectively referred to as "the federal defendants."

C. Plaintiffs.

Plaintiffs include Barrotius & Wolfson, Inc.; Boston Ranch Company; Valley Farms, Inc.; Maria Grate, Inc.; Edwin R. O'Neill; O'Neill Livestock Company; J. B. O'Neill, Inc.; O'Neill Farming Enterprises; O'Neill Farming Enterprises, II; and Valle Verde Farms, Inc. They are the landowners and water users who filed the original lawsuit. Several of them are also representatives of the Area 1A Class.

4. Area 1A Class.

The members of this class include all landowners and water users whose lands are located within Area 1A, i.e., within the boundaries of the original Westlands District (as it existed prior to June 29, 1963), and also within the "Knoxville Service Area."

5. Area 1B Class.

The members of this class include all landowners and water users whose lands are located within Area 1B, i.e., within the boundaries of the original Westlands District, but outside the "Knoxville Service Area."

6. Area 2A Class.

(Also known as Priority 11A Class.)

The members of this class include all landowners and water users whose lands are located within Area 2A, i.e., within the boundaries of the former Westplains Water Storage District (as it existed prior to June 29, 1963), and also within the "Knoxville Service Area."

7. Area 2B Class.

(Also known as Priority 11B Class.)

The members of this class include all landowners and water users whose lands are located within Area 2B, i.e., within the boundaries of the former Westplains District, but outside the "Knoxville Service Area."

¹West 1A, 1B, and 2B are shown on the map attached at the end of this Class Comment.

C. History of the Litigation

The litigation began in April 1979 when plaintiffs, certain landowners and water users largely within the original Westlands area inside the Knoxville Service Area, filed *Barrotius v. Westlands* against the District as the only defendant. On motion of the District and of persons who were later named as the Area 2A Class representatives, but over the opposition of plaintiffs, the Court ordered plaintiffs to bring (a) the action as defendants the federal defendants and all landowners and water users in Area 2A and 2B. Plaintiffs did so by amending their complaint.

The complaint has since been amended several times. Under the third amended complaint, the latest one, plaintiffs sue the District and the members of the Area 2A and 2B (also referred to as Priority 11A and Priority 11B) classes for declaratory relief and monetary damages. Plaintiffs claim that the District's internal pricing and allocation regulations beginning the second half of 1978 violate their "prior right" under the merger statute. They contend a priority guarantee arises from alleged contracts resulting from pre-merger discussions and writings involving representatives of the original Westlands and Westplains Districts and from Water Code Section 37506 in the merger statute. Plaintiffs contend the priority guarantee provides members of the Area 1A and Area 1B classes with rights superior to the rights of the members of the Area 2A and Area 2B Classes and guarantees Areas 1A and 1B 1,000,000 acre feet in 1979 and 900,000 acre feet annually thereafter at \$1.50 per acre foot for water service and \$1.50 per acre foot for drainage service.

In *Barrotius v. Westlands* plaintiffs also sue the District and the federal defendants for declaratory relief as to the District-United States contracts. They claim that certain terms of the water service contracts for the second half of 1978, for 1979, for 1980, for 1981, and for 1982 through 1984, and any possible future long-term contracts desired by the United States and the District will be illegal and violate the claimed priority guarantee of the members of the Area 1A and Area 1B Classes.

Reverse of the District's belief that an adjudication of plaintiffs' rights to water allocation and pricing would affect the rights to water allocation and pricing of the other landowners and water users in the District, in December 1979 Westlands filed a counterclaim in *Barrotius v. Westlands* against the four classes described above. While the Area 2A and 2B Classes had already been joined, as described above, this counterclaim additionally brought in the Area 1A and 1B Classes. This counterclaim has been amended several times, the latest being the second amended counterclaim and cross-complaint. In the portion of the counterclaim against the four classes of District landowners and water users, Westlands seeks a declaratory judgment that the annual increases and the District's internal water pricing and allocation regulations theretofore used, and the possible future long-term contracts would be, valid, within the District's authority, and not in violation of the rights of any of the District's landowners and water users.

In its counterclaim, Westlands also sued the federal defendants. If the Court ruled against Westlands in the portion of its counterclaim seeking declaration of its authority to settle its disputes with the United States by entering into the recent short-term contracts challenged by plaintiffs, or if the District and the United States are unable to reach a compromise agreement on the terms of long-term contracts to settle their disputes, the District seeks a declaration of the respective rights and obligations of the United States and Westlands as to the San Luis Canal, the Holman Memorandum, the Knoxville Service Area and other related issues.

In May 1980, the representatives of the Area 1A Class filed their own counterclaim in *Barrotius v. Westlands* against the District and the federal defendants. Subsequently, in September 1981, a similar counterclaim was filed by the representative of the Area 1B Class. These counterclaims seek a judicial declaration that the terms of the annual water service contracts beginning the second half of 1978 and the possible new long-term contracts to settle the disputes between Westlands and the United States and the internal water pricing and allocation regulations of the District since then violate the rights of the Area 1A and 1B Classes.

The Area 1A and 1B Class representatives' counterclaims also seek a declaration that the Holman Memorandum and commitments thereunder bind the United States and that the \$3.00 per acre foot drainage service charge is valid. In addition, the Area 1B Class representative's counterclaim seeks a declaration that Area 1B is within the authorized San Luis Unit service area. All these declarations are sought unconditionally, rather than conditionally as sought by the District in its counterclaim.

On July 24, 1981, Westlands filed *Westlands Water District v. U.S.* seeking a preliminary injunction against the termination of water delivery on January 1, 1982, threatened by the United States in May 1981, and also a secondarily seeking a declaration of rights and obligations as to the dispute between Westlands and the United States. On September 18, 1981, the Court ordered partial consolidation of *Barrotius v. Westlands* and *Westlands Water District v. U.S.* The consolidation is of issues, amenable to both cases, concerning the legal rights and obligations between Westlands and the United States under contract and federal reclamation law.

D. Issues in the Litigation and Position of the Parties.

There are five major legal issues in this litigation. The basic issues, and the key positions of the parties with respect thereto, are summarized as follows:

ISSUE 1: Drain Payment Method

The first major issue is by what method must the District pay the United States for use of the San Luis Drain, (a) the drainage service charge of \$3.00 per acre foot of water delivered as provided in the 1963 Contract and the Holman Memorandum, or (b) repayment of the reasonable cost of the Drain within forty years under a repayment contract.

The District and the Area 1A, 1B, 2A and 2B Class representatives contend that the \$3.00 per acre foot drainage service charge is a legally valid method of payment.

The federal defendants contend, instead, that the District must agree to a repayment contract to repay substantially all of the cost of constructing the Drain within forty years and that, unless and until the District so agrees, the 1963 Contract may not be implemented.

ISSUE 2: Additional Water Supply and Price

The second major issue is whether the Holman Memorandum and related commitments require the United States to deliver to the District until 2000, in addition to the 900,000 acre feet under the 1963 Contract, 300,000 acre feet of water per year from the San Luis Unit as a water service charge of \$1.50 per acre foot and 30,000 acre feet of water per year from the Mendota Pool as a water service charge of \$3.50 per acre foot for agricultural use and as a water service charge of \$1.50 per acre foot for municipal and industrial use of the water from both sources, plus a drainage service charge of \$1.50 per acre foot for all water delivered.

The District and the Area 2A and 2B Class representatives contend that the United States is required to do so. The Area 1A and 1B Class representatives support this contention.

ISSUE 3: Service Area

The third major issue is whether Area 1B, and whether Area 2B, are entitled to receive a dependable, long-term water supply from the San Luis Unit.

The Area 1B Class representative contends that Area 1B is within that authorized service area and in any event is entitled to such a water supply the same as Area 1A. The Area 2B Class representatives contend that Area 2B is within that authorized service area and is not

event is entitled to such a water supply the same as Area 2A. The District contends that both areas are within that authorized service area and thus entitled to such a water supply.

The federal defendants contend that neither area is within that authorized service area and thus that neither is entitled to such a water supply.

The Area 1A Class representatives make no contention on this issue either as to Area 1B or 2B, but seek a rapid determination thereof.

The Area 2A Class representatives make no contention on this issue, but contend that by virtue of the position of the United States with respect to the Krulitz Service Area, whatever "prior right" the lands which were in the original Westlands District may have by reason of the provisions of the merger statute (Water Code Section 37856), or the alleged agreements which led to its enactment, extends only to Area 1A and not to Area 1B.

The Area 1B Class representative contends that regardless of the position of the United States with respect to the Krulitz Service Area, whatever prior rights the lands which were in the original Westlands Water District may have by reason of the provisions of the merger statute (Water Code Section 37856), or the alleged agreements which led to its enactment, extend to Area 1A and 1B lands and that such rights are not affected by the position of the United States with respect to the Krulitz Service Area.

ISSUE 4: Contract Validity

The fourth major issue is whether the District's past entry into new short-term contracts for the latter half of 1978 and subsequent years (and possible future entry into new long-term contracts) with the United States which entitled it or would entitle it to buy lower quantities of water and require it to pay higher water and drainage service charges than set forth in the 1960 Contract and the Holme Memorandum (or which otherwise adversely affect their provisions), as part of a comprehensive settlement of the three major issues described above, are authorized and violate the claimed rights of the Area 1A and 1B Classes.

The Area 1A and 1B Class representatives contend that the District's entry into such contracts is unauthorized and violates their claimed rights.

The District and the Area 2A and 2B Class representatives deny the contentions of the Area 1A and 1B Class representatives. The federal defendants contend that the District's entry into such contracts is authorized.

ISSUE 5: Validity of Internal District Water Allocation Rules and Charges

The fifth major issue is (a) whether the internal water allocation rules and charges adopted by the District for recent years, which permitted water users in Areas 1A and 1B to buy less than 900,000 acre feet of water per year (less than 1,000,000 acre feet in 1979) and required such water users to pay more than \$1.30 per acre foot for water service plus \$.30 per acre foot for drainage service, were legal, and (b) whether the internal water allocation rules and charges adopted by the District in 1980 and 1981, which gave preferential prices and allocations to Areas 1A and 1B, were legal.

The Area 1A and 1B Class representatives seek declaratory relief to the effect that such internal water allocation rules and charges for all years were illegal for failing to fully recognize their claimed prior and water allocation rights. They contend that such rights arose from (1) the merger statute and also (2) from discussions and writings involving representatives of the two districts, prior to the merger statute, that the merger would not adversely affect the rights of lands within the original Westlands District with respect to water under the 1961 Contract and that thereafter those rights would be prior to the rights of the former Westlands area. Furthermore, plaintiffs have sought injunctive relief and money damages against the District and the Area 2A and 2B Classes with respect to the adoption of these rules and charges.

The District contends that it lawfully adopted all such rules and charges. The Area 2A and 2B Class representatives do not challenge the District's 1978 and 1979 rules and charges, but they seek declaratory relief to the effect that the 1980 and 1981 rules and charges gave unlawful prices and water allocation preferences to the Area 1A and 1B Classes. They contend that any prior rights which may exist in Areas 1A and 1B were solely by reason of the merger statute. Furthermore, the District and the Area 2A and 2B Class representatives contend that plaintiffs are not entitled to injunctive relief or money damages with respect to these rules or charges.

II. Rights and Obligations of Class Members

Through a legal procedure called "class certification", substantially all of the landowners and water users within Westlands Water District are class defendants in *Berrett v. Westlands*. As set forth in Part B above of this Class Notice, the membership of each class is defined by the geographical location of lands within the four Areas of the District.

It is not necessary for a landowner or water user to participate individually in the litigation. As a member of a class, a landowner or water user has "class representatives" whose legal duty it is to protect the interests of the class members. The representatives of each of the four classes are landowners or water users of substantial acreages of land within the area of the District where the lands of their respective class are located. The Court has determined that the designated representatives of each class will adequately protect the interests of their class.

Plaintiffs, some of whom are also representatives of the Area 1A Class, are seeking money damages from the District and from the members of the Area 2A and Area 2B Classes. Plaintiffs are also seeking to enjoin Westlands from causing future damages through the District's water allocation and pricing policies. Plaintiffs, however, are not seeking money damages or injunctive relief on behalf of anyone other than themselves. Similarly, the Area 1B Class representative is not seeking money damages or injunctive relief on behalf of anyone. Any member of the Area 1A Class or of the Area 1B Class who seeks such relief may wish to intervene individually in this litigation.

The Area 1A Class representatives and the Area 2A Class representatives take no position on the validity of the Krulitz Service Area. A judicial decision that either Area 2B is, or that both Areas 1B and 2B are, inside the authorized San Luis Unit service area might benefit the members of the Area 1A Class and the members of the Area 2A Class. Any member of the Area 1A Class or of the Area 2A Class who believes a contention should be made on behalf of his or her respective Area that the Krulitz Service Area does define the authorized San Luis Unit service area, thus including Areas 1B and 2B, may wish to intervene individually in this litigation.

The Area 1A Class representatives requested the Court to exclude from the scope of the Area 1A Class representation the issues concerning plaintiffs' claims for monetary damages. Plaintiffs' request for injunctive relief and the validity of the Krulitz Service Area. The Court determined that exclusion was premature at this time and expressly reserved the question of exclusion on such issue for future determination.

Because class membership is determined by the geographical location of land which is owned or on which water is used by each landowner and water user, those landowners and water users who own or occupy lands in more than one area (sometimes called "straddlers") are members of more than one class. Therefore, unless a straddler elects to participate individually, as discussed below, the straddler will be represented by two or more sets of class representatives who may take different positions on the same issue. Some class representatives are also members of more than one class, although most of their interests are in the class they represent. The Court has determined that representation of the classes, even with this overlapping class membership, is fair and efficient for all parties concerned.

The Court ordered the plaintiffs (including those who are also Area 1A Class representatives) in their individual capacities to set

the Area 2A and 2B Classes, including those persons in Area 2A and/or Area 2B who are also in Area 1A. The Area 1A Class representatives asked the Court to exclude such straddlers from the scope of the Area 1A Class representation. The Court did not order such exclusion.

The Court has ruled that a landowner or water user who is a straddler may elect to participate in the lawsuit individually rather than being represented by his class representative or representatives. An election to participate individually does not entitle the landowner or water user to be deemed from the lawsuit.

A straddler who wants to participate individually must initiate the process by filing on the Notice of Election to Appear Individually which is attached to this Class Notice and mailing the original to the Court and one copy each to Westlands and the representatives of the four classes through their attorneys NO LATER THAN 20 DAYS AFTER RECEIPT OF THIS CLASS NOTICE, addressed as explained at the end of the Notice of Election to Appear Individually.

When the Notice of Election to Appear Individually is received by Westlands, a copy of Westlands' latest amended counterclaim and cross-claim will be mailed to the landowner or water user who filed the notice. The landowner or water user must then file with the Court, and serve the other parties through their attorneys, by mail, an answer to that latest Westlands' amended counterclaim and cross-claim NO LATER THAN 20 DAYS AFTER RECEIPT OF THAT LATEST COUNTERCLAIM AND CROSS-CLAIM. Failure to do so will be deemed a withdrawal of the landowner's or water user's election to appear individually, and that landowner or water user will thereafter be represented in the litigation by his or her class representative or representatives.

A landowner or water user who is not a straddler may wish to challenge the adequacy of representation provided by his or her class representative or may seek the Court's permission to participate in the litigation in the usual manner provided by law. IF THIS IS DESIRED, IT SHOULD BE DONE WITHOUT DELAY.

The identity of the class representatives and the attorneys they have selected, set forth in Part F below of this Class Notice, are factors which class members may wish to consider, along with the positions which the class representatives have taken on the issues of the litigation, in deciding whether to file a Notice of Election to Appear Individually (if the class member is a straddler) or to challenge the adequacy of representation or to seek to intervene and represent their own interests.

F. How to Contact for More Information

If class members wish more information, they should contact the attorneys for the representatives of their particular class or classes. The class representatives and the names and addresses of their attorneys are as follows:

Area 1A Class

Representatives:
Berrett & Walker, Inc.
Boston Ranch Company
Foley Farms, Inc.
John K. O'Hall
Vale Verde Farms, Inc.
One of the above are also plaintiffs
Attorney:
William M. Swinand
Robert M. Newell, Jr.
Dorothy, Clark & Chase
32nd Floor, 787 Wilshire Boulevard
Los Angeles, CA 90017
(also attorneys for plaintiffs)

Area 1B Class

Representatives:
Frank Gelf
Attorney:
Chalmers Edwin Lewis
2141 Tuletime, Suite B
Fresno, CA 93721

Area 2A Class

(Also Called Priority 2A Class)

Representatives:
John Backhaus
Peter Gilten & Associates
Wayne Deines
Jim Lewis, Inc.
Clegg Farms, Inc.
Attorney:
Ernest A. Kuey
Berryhill, Kover & Burkhardt
145 North N Street
P. O. Box 609
Tulare, CA 93275

Area 2B Class

(Also Called Priority 2B Class)

Representatives:
Hughes Farms
Richard Swearingen
Attorney:
Forrest A. Platt
Jack V. Lovell
Dicksonbrook, Wadell, Platt & Hangeras
433 Capitol Mall, Suite 808
Sacramento, CA 95814

Dated as of December 18, 1981.


Judge, U.S. District Court

EXHIBIT "C"

01 1986 085 11:07 FAX 200 8328 WOLF INT. FRESCO 2002

 United States Department of the Interior
BUREAU OF RECLAMATION
Ranch-Crest California Area Office
444 North Coast Industrial Drive, Suite 200
Fresno, California 93704

FEB 29 1986

SCC-441
LSD-3-86

Mr. Single
Wolf Enterprises
1511 North Palm, Suite 80
Fresno, California 93704

Subject: Westlands Water District - Approval of Sale F-88-010 - Chevron
U.S.A. to Wolf Family Trust #1

Dear Mr. Single:

The total sale price of \$880,000.00 for which Chevron U.S.A. sold 1,730 acres of excess land in the Westlands Water District (Westlands), 321 acres outside Westlands and improvements to the Wolf Family Trust #1 (Trust) is a price that does not reflect project benefits. This determination is based upon information supplied by you and the opinion of our appraiser. A copy of the appraisal report is enclosed.

The Trust is eligible to hold the sale property within Westlands as reversionary land and all requirements for sale approval have been met. Therefore, the subject sale is approved and the 200-Class 6 land in the parcels described below is eligible to receive irrigation water from Reclamation project facilities as excess land in the ownership of the Trust. However, please note that any of the sale property that has not been cultivated in the past three years cannot receive project water until it has been proven to this office that the property is not currently or has possible habitat potential for threatened or endangered species.

1. N1/2 SW1/4 and SE1/4 of Section 1-18-13
2. SW1/4 lying north of I-5 and N1/2 of Section 11-16-13
3. SW1/4 of Section 13-18-13 lying south of I-5
4. N1/2 of Section 13-18-13
5. SW1/4 of Section 15-18-14
6. SW1/4 of Section 3-17-14 lying north of I-5
7. N1/2 and SW1/4 of Section 11-17-14
8. SW1/4 of Section 23-17-14

This sale contains approximately 330 acres of class six land which must remain ineligible to receive project water.

10/27/98 MON 10:38 FAX 218 9323

WOOLF EXT. FRESCO

0000

If you have any questions about this matter, please feel free to contact me at (209) 487-5843 or for the hearing impaired (209) 487-5811.

Sincerely,



Robert Phillips
Regulatory Specialist
South-Central California Area Office

Enclosure

cc: Larry Collins (w/enc1)
Chevron U.S.A.
2828 North Chester Avenue
Bakersfield, California 93308

DNA Schare (w/enc1)
Westlands Water District
PO Box 4024
Fresno, California 93703

03/30/1998 10:44 4087410422

DENNY ALFF

PAGE 01

March 30, 1998

Mr Christopher L. Campbell
Baker, Manock & Jensen
1200 North Palm Avenue
Fresno, California 93704

Dear Mr Campbell:

We are owners of 80 acres in the expansion lands of Westlands and wish to send these comments for inclusion in the EIS response due April 1, 1998.

Our land is Area III shown on the map as "native vegetation". It is APN 29-040-274 and the property is located at SUR RTS 40.64 at lots 1 and 8, Sec 5T19R12.

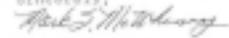
This land was owned by our grandmother in the 1970s, inherited by our mother, Denny Vawter, and is now owned by us. At the time of purchase, no information was given indicating there was no water available. We were never advised that we were outside the use area.

It was and is our long term intention to rent the land for farming and receive rental income. This is not happening. Furthermore, we must pay Westlands Water District over \$500/year for our 80 acres for water service and construction of the water delivery system. This charge, plus the property taxes, have caused us to have a negative cash flow for this property. This was neither expected nor is currently appreciated.

We need to be fully included in the Westlands Water District and be able to receive the water allotment that should be rightfully ours.

Thank you for the attention to this.

Sincerely,



Mark McWhinney
Margaret McWhinney
14185 Teerlink way
Sacramento, California 95070

(408) 741-0422
e-mail: dna@sirius.com

MAR-31-98 TUE 16:22 JIM CASE

P. 01

James P. Case
 4757 NW 89th Road
 Leomin, CA 95820
 916-652-6765

March 31, 1998

Christopher L. Campbell
 Baker Masock & Jensen

And

David Sorriek
 Westland Water District

Concerning the "place of use" issue.

Myself and my family, as tenants in common, have owned for many years parcel 039 840 125 which is further described on the following page.

We have paid irrigation district taxes since shortly after acquiring the property. During the 1980s, when surplus water was available to the district, the property was farmed for irrigated crops. I strongly urge that this property continue to be included in the district and be allocated and receive water.

Removing this property from the district, after having been allocated water and paying district taxes for many years appears to be confiscatory unless compensation is given.

If I can be of further assistance, please let me know.

Sincerely,



James P. Case
 (916) 652-6765
 (916) 652-7777 fax



Susan Donohue

MAR-31-98 TUE 16:22 JIM CASE

P. 02

EXHIBIT A

Government Lots 3 and 4 and the West 1/4th of the South half of the North half of Section 4, Township 14 South, Range 13 East, Mount Diablo Base and Meridian, according to the United States Government Township Plat, approved by the Surveyor General on June 4, 1881, EXCEPTING therefrom all the coal and other minerals in said lands together with the right to prospect for, mine and remove the same lands reserved to the provisions and limitations of the Act of December 29, 1916 (39 Stat., 862), as observed in the Patent from United States of America to Homer M. Babcock recorded April 18, 1925 in Book 559, Page 185 of Official Records, Document No. 11718.

03/31/98 17:02 FAX 7144970747

Indian Territory

4002

Memo

March 31, 1998

To: Baker, Monock & Jensen
Attorneys at Law
5260 North Palm Avenue, Fourth Floor
Fresno, CA 93704-2209

From: Antoinette W. and Leonard D. Wood
135 La Brea Street
Laguna Beach, CA 92651
(714) 497-3900 (home)
(714) 497-5747 (business)
(714) 497-6933 (FAX- call business phone first to clear FAX line)
info@indianterritory.com (business e-mail)

Re:

A private response to the submitted Environmental Impact Statement for the Bureau of Reclamation's consolidated and confirmed place of use petition before the State Water Resources Control Board as it pertains to Westland landholders as outlined by Christopher Campbell.

Our land, 40 acres, SE 1/4 SW 1/4 S24 T17S R14E MDBM, lies within the irrigated CVP area and has a history of dry farming pre-dating the introduction of irrigation water.

This land is the remnant of acreage purchased by my great-grandfather, General Matthew Miller, in the late 1800's. Through the years our family has paid all the taxes on the land, often having to sell property to cover same because dry farming receipts were so slim. Our interest in the farm land has continued to present day. We have continued to pay all the taxes, installed hookups to the water line at an expense of thousands of dollars and continued to pay all water assessments.

My husband and I, both in our sixties and facing retirement, look to this land as supplemental income to our Social Security. As owners of a family business these past 30 years, we have no company pensions nor retirement funds to enhance our future. We are representative of that diminishing group of small business owners, "Mom and Pop" enterprises, fiercely independent, relying on themselves to take care of their own.

The small rental income derived from the land is imperative to our simple financial plan. We ask that our long history of irrigation by the CVP, our financial expenditures including payment of all

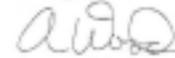
03/31/98 17:02 FAX 7144970747

INDIAN TERRITORY

4002

real and property taxes, and later water assessments, our installation of water line hookup and continuous cultivation of this fertile soil over the years, will allow us to enjoy the fruits of our hard work, and allow us to reap the benefits in our retirement years.

Thank you,



Antoinette Wood

MF

GUIDO J. BALATTI
636 MADISON AVE.
LOS BANOS, CA 93635

JANUARY 22, 1998

MIKE FALKENSTEIN, CHIEF
ENVIRONMENTAL SECTION
DIVISION OF WATER RIGHTS
STATE WATER RESOURCES CONTROL BOARD
PO BOX 2000
SACRAMENTO, CA 95812-2000

PLEASE BE ADVISED AS A PROPERTY OWNER IN THE PROPOSED AREA
THAT WOULD PREVENT THE DELIVERY OF WATER FROM THE FEDERAL CENTRAL
VALLEY PROJECT TO MY PROPERTY. I AM ADAMANTLY OPPOSED TO THE
ADOPTION OF ALTERNATIVE 1 OR ALTERNATIVE 3.

PROPERTY OWNER


GUIDO J. BALATTI



Responses to Comment Letter 9

- 9-1 Expansion of the POU boundary constitutes a project in accordance with CEQA.
- 9-2 The areas that presently do not receive CVP water have the potential to undergo physical environmental change, depending on the land uses that would occur and be made possible by the availability of CVP water supplies. Therefore, expanding the POU is a project that has the potential to cause a physical change to the environment and constitutes a project in accordance with CEQA.
- 9-3 Comment noted. The Board has concluded that M&I development that occurred after 1970 have been subject to the requirements of CEQA because of variety of actions implemented by local land management authorities. The Board concluded that further evaluation of these lands in this DEIR would be redundant. Therefore, this analysis focuses on the effects of delivering CVP water to agricultural lands that may not have been subject to a prior CEQA review.

The Board relied on available information to prepare this DEIR. If previously prepared CEQA documents address site-specific impacts and mitigation applicable to the delivery of CVP water to lands outside the POU, they could be used to demonstrate the need to reconsider the mitigation measures presented in this document. Because the mitigation measures identified in this DEIR have yet to be defined for site-specific application and implementation, there remains adequate opportunity to demonstrate that additional mitigation may not be warranted for certain site-specific circumstances.

Mike Falkenstein
March 10, 1998
Page 2

boundary change proceedings, as examples, show that the impact of the use of CVP water has in fact been studied on many agricultural and M&I lands receiving CVP water. 9-3

The DPEIR incorrectly concludes that additional action by most water contractors would be necessary before delivery of CVP water to the expansion lands. Insofar as BVWD is concerned, those lands are within its boundaries, and as such, the District is obligated under the California Water Code to deliver a share of its water supply to all such properties. The District has no discretion in this regard, excepting in times of drought or lack of facilities. In most cases, those properties can be served with minimal construction of additional facilities. 9-4

The DPEIR does not include any discussion of delivery of CVP water resulting in environmental benefit. Long-term water deliveries of CVP water has, in fact, created habitat for species that otherwise would not exist and the report fails to identify any of those benefits. The properties within Bella Vista Water District are significantly different from their pre-1964 condition when only groundwater supplies were available prior to the service of CVP water. A balancing of the benefits created by existing uses is appropriate in the determination of significant impacts and mitigation measures. 9-5

The most problematical area, in our view, is the attempted coordination of new State Board review with those required by CVPIA for water service contractors. The Draft Programmatic Environmental Impact Statement prepared as required by CVPIA prior to long-term contract renewal has been recently released. That document purports to require that water service contractors will not be entitled to water service deliveries in excess of their highest historical use without environmental review. The same condition was included in the Biological Opinion adopted prior to the first interim contract renewals to which each of the 67 renewing contractors was bound. As for BVWD, its interim renewal contract contains a specific restriction on use beyond its historical maximum without environmental review. Thus, environmental and species protection is provided for. Approval by both the State Board and Reclamation any time BVWD requests water delivery beyond its historical maximum is unworkable and will result in an effective denial of the District's contractual and vested rights to the contract quantity it was promised more than 30 years ago (and for which it devoted substantial public funds to protect). 9-6

As for expansion lands, CVPIA was intended to "address impacts of the Central Valley Project on fish, wildlife, and associated habitats" (CVPIA, Section 1402(b)). CVPIA was intended to mitigate comprehensively for all those impacts. CVPIA's programs (and the draft PEIS) are comprehensive. Attempting to define further mitigation measures on a separate level of review is unworkable and unfair to the contractors who must deal with these additional regulatory burdens. 9-7

- 9-4 As noted in this comment, properties within the expansion area would require the construction of additional facilities. The decision to install such facilities is a discretionary action that would be undertaken by the respective water supply district. The action would also be subject to CEQA.
- 9-5 The delivery of CVP water has provided many benefits. These benefits are undisputed. The purpose of the EIR is to address the environmental consequences of approving or denying the pending petition before the Board.
- 9-6 The petition pending before the Board only addresses the purposes of use, consolidating the POU, and expanding the POU. It does not change any terms or conditions of Reclamation's contracts with individual CVP water contractor. The mitigation measures described in Section 5 of the DEIR are presented as measures to compensate for impacts that occurred to lands and habitats outside the POU.
- 9-7 See response to Comment 9-6.

Mike Falkenstein
March 10, 1998
Page 1

BVWD does not agree that the consolidation of the place of use of the CVP water rights permits is a "project" that justifies separate environmental review. CVPIA is adequate to address all environmental concerns for CVP contractors, and specifically, Bella Vista Water District. No additional measures are appropriate or necessary. 9-8

Thank you for considering our comments.

Sincerely,

BELLA VISTA WATER DISTRICT



Robert Nash, President

/s/ (SRWD13)

- 9-8 See response to Comments 9-1, 9-2 and 9-4. The CVPIA provides mitigation for impact associated with past CVP operations. It does not address impacts of expanding the POU to lands currently not receiving CVP water supplies. This environmental document not only addresses the impacts associated with expanding the POU to lands not currently receiving CVP water supplies but also addresses impacts that occurred with the delivery of CVP water in a manner inconsistent with applicable state law.

Responses to Comment Letter 10

LETTER 10 MF

RAYMOND L. CARLSON ATTORNEY AT LAW
2745 North Adeline Avenue, Fresno, CA 93705 (209) 229-1371

March 31, 1998

Mike Falkenstein, Chief
Environmental Section
Division of Water Rights
State Water Resources Control Board
Post Office Box 2000
Sacramento, California 95812-2000

Re: USBR-CPOU Draft PEIR Comments

Dear Mr. Falkenstein:

Enclosed is the original and one copy of comments on the draft Program EIR for the USBR Consolidated Place of Use Petition. The comments were also faxed to you at the Division of Water Rights on March 31, 1998. Please contact me if you have any questions. Thank you.

Very truly yours,

RAYMOND L. CARLSON

RLC:rc
A.LTR10.RLC

RAYMOND L. CARLSON ATTORNEY AT LAW
 2345 North Adeline Avenue, Fresno, CA 93705 (208) 329-1371

VIA FAX AND
 FIRST CLASS MAIL

March 31, 1998

Mr. Mike Folkensstein, Chief
 Environmental Section
 Division of Water Rights
 State Water Resources Control Board
 Post Office Box 2000
 Sacramento, California 95812-2000

Re: Comments on the Draft Program Environmental Impact Report (PEIR) for the U.S. Bureau of Reclamation Petition to Consolidate and Conform the Place of Use for 16 of its Central Valley Project Water Right Permits

Dear Mr. Folkensstein:

Thank you for the opportunity to comment on the State Water Resources Control Board's (SWRCB) draft Program Environmental Impact Report (PEIR) for the U.S. Bureau of Reclamation's (USBR) petition to consolidate and conform the place of use for 16 of its Central Valley Project (CVP) water right permits. The comments in this letter are submitted to aid the Board in ensuring that any action on the subject petition is consistent with applicable law. Historically, the SWRCB has failed to enforce applicable provisions of California water law governing the place of use and purpose of use of the specific water rights identified in the petition. This failure to enforce applicable law is, indeed, the reason d'être for the USBR's petition, and comments analyzing the legal framework governing action on the petition are therefore appropriate. These comments are not made on behalf of any specific client.

The draft PEIR for the USBR petition, known as the consolidated place of use or CPOU petition, contains several significant omissions which render the draft PEIR insufficient as a matter of law. The draft PEIR impermissibly includes waters governed by post-1914 appropriative water rights other than those included in the CPOU petition itself. The draft PEIR omits certain beneficial areas, forcing such areas to file for appropriations under the states protecting the rights of the counties and watersheds of origin, if such areas are to receive water. Finally, SWRCB action on the CPOU petition is premature and unnecessary due to the pendency of implementation of the 1995 Bay-Delta Water Quality Control Plan (WQCP), the Bay-Delta water right decision, and the ongoing implementation of the Central Valley Project Improvement Act (CVPIA). The draft PEIR should be withdrawn, revised in light of comments, and only released once the 1995 Bay-Delta WQCP, water right decision, and the CVPIA are more fully implemented.

10-1

ONLY THE WATER RIGHTS SPECIFICALLY INCLUDED WITHIN THE PETITION MAY BE INCLUDED IN THE DRAFT PEIR AND MADE SUBJECT TO SWRCB ACTION ON THE CPOU PETITION.

The CPOU petition explicitly includes the USBR's water rights¹ allowing for diversion of San Joaquin River (SJR) water at Friant to the Friant Division consumers, which include Arvin-Edison Water Storage

10-2

¹ USBR diverts SJR water at Friant under post-1914 appropriative water rights represented by one license and three permits (collectively "the permits"). The permits, summarized on the enclosed table, were issued pursuant to the Inbanan Water Right Decision D 825, adopted on

- 10-1 The expansion of the POU, as proposed in the pending petition, can be implemented independently from the other ongoing programs mentioned in this comment. The DEIR addressing the consequences of the proposed project is not premature.
- 10-2 Including the lands of Arvin-Edison Water Storage District in the DEIR is not a violation of California water law. As noted on page 3-39 of the DEIR, AEWSD has a contract for CVP water but receives its supplies through an exchange program. Therefore, because AEWSD delivers water to lands in the CVP POU, it is addressed in this document.

Mr. Mike Paterson
March 31, 1998
Page 2

District (AEWSD). See draft PEIR at p. A-9, Notice of Preparation of EIR on the CPOU dated December 1, 1986. Table 3-1 of the draft PEIR, however, includes SJR water delivered to AEWSD among the waters subject to the CPOU petition. This inconsistency violates basic principles of California water law. 10-2

Federal reclamation law requires that water rights acquired by the United States for purposes of carrying out reclamation law are subject to state water rights law so long as application of the state law is not directly inconsistent with the congressional directives governing the project. See, e.g., Act of June 17, 1902, § 8 [32 Stat. 388, codified at 43 U.S.C. § 372]; Act of July 2, 1896, § 5, [70 Stat. 483, 484, codified at 43 U.S.C. § 485b-4]; CVPIA § 341100 [Title XXXIV of the Act of October 30, 1992, 106 Stat. 4706, 4731]; *California v. United States* (1978) 438 U.S. 465, 677-678; *United States v. State Water Resources Control Board* (1986) 182 Cal.App.3d 82, 106; Central Valley Basin, A Comprehensive Report on the Development of the Water and Related Resources of the Central Valley Basin for Irrigation, Power Production and Other Beneficial Uses in California, and Comments by the State of California and Federal Agencies, S.Doc. No. 113, 81st Cong., 1st Sess. 39, 64-65, 104 (1949).

California water law requires that any change in the point of diversion, purpose of use, or place of use of water yielded by post-1914 appropriations requires application to, and approval by, the SWRCB. Cal. Water Code § 1701. This requirement has not been met with respect to the water contracted to AEWSD.

AEWSD takes delivery of SJR water from the United States under Interim Contract no. 24-06-200-229A-IR2, in effect for the period March 1, 1998 through February 29, 2000. Section 3(a) of the Interim Contract obligates the United States to make available annually to AEWSD up to 40,000 af of Class 1 water for irrigation and/or municipal and industrial purposes and up to 311,675 af of Class 2 water for irrigation purposes. "Class 1 Water" is defined as SJR water "...stored in or flowing through Millerton Lake which, subject to the contingencies hereinafter described, ...will be available for delivery from Millerton Lake, the Friant-Kern and Madera Canals, and the San Joaquin River as a dependable water supply during each Year." Interim Contract § 1(c). "Class 2 Water" also is defined as SJR water, though less reliable in amount and time of occurrence compared to Class 1 water.

The draft PEIR identifies the AEWSD 40,000 af/yr of Class 1 SJR water as among the waters subject to the consolidation and confining of the place of use under the CPOU petition. See draft PEIR Table 3-1 at p. 3-5. The draft PEIR also refers to AEWSD's 311,675 af of Class 2 SJR water. *Id.* at p. 3-39². None of the permits issued to USHR allowing for diversion of SJR water (see fn. 1 and table enclosed herewith), however, are within the scope of the CPOU petition. By its terms, the CPOU petition includes only those permits specifically identified in the petition itself. See draft PEIR Appendix A containing, *inter alia*, the public notices issued by SWRCB for the petition, though not the petition itself. None of the SJR water received by AEWSD, or Cross Valley Canal (CVC) exchange water attributable to exchange of AEWSD's Class 1 or Class 2 SJR water or other foreign waters imported into AEWSD via the Friant-Kern Canal or the CVC, are properly the subject of the CPOU petition or the draft PEIR. Therefore, as to AEWSD, the draft PEIR is errant in the following aspects: 10-3

1. When it identifies the 40,000 af/yr of Class 1 water subject to the Interim Contract as among the water "...that would be affected by Reclamation's CPOU petition" (PEIR at p. 3-5), when, in fact, the post-1914 water rights governing the water contracted to AEWSD are explicitly excluded from the CPOU petition by the terms of the petition itself. All references in the draft PEIR to AEWSD should be excluded, since the water rights governing the waters received by AEWSD under the Interim Contract are excluded from the CPOU petition.

place of use to include the area shown on USHR map nos. 214-208-3330 and 214-208-3331 revised as of July 19, 1960, and map no. 214-212-33 dated April 30, 1951, revised December 15, 1951. The public notices of the CPOU petition, included as Appendix A to the draft PEIR, do not include the permits providing the source of water delivered to the Friant Division contractors (which include AEWSD).

² See also Interim Contract §3(a).

10-3 See response to Comment 10-2.

Mr. Mike Falkenstein
March 31, 1988
Page 3

2. In referring to AEWSD's Class 2 SIR water (see draft PEIR at pp. 3-38, B-1), the draft PEIR raises the possibility that, if the CPOU petition as represented in the draft PEIR is granted, Class 2 water would also be made subject to the CPOU petition even though neither AEWSD's Class 1 or Class 2 water supply is properly or legally within the scope of the CPOU petition. To avoid such confusion, Table 3-1 on page 3-5 of the draft PEIR should be revised to designate, with respect to each CVP water contractor identified, the specific applications, permits, or licenses comprising the source of the waters making up the quantities listed in the column "Purchased Under Long-Term Contract" in Table 3-1. The identification of the water sources would avoid misrepresentations or confusion as to the origin of the waters subject to the CPOU petition, and ensure that none of the water contractors would be using water in a place of use or for a purpose of use not authorized under either existing permits or whatever modifications are made to existing permits if the SWRCB eventually does act on the CPOU petition.

10-4

3. One of the justifications for the CPOU petition is to revise the existing water right permits held by USBR to reflect the integrated operation of the CVP, so that waters yielded under different permits may be used anywhere within the CVP service area, subject to the physical capability to deliver the water. Draft PEIR at pp. A-3, A-10. If the CVP is truly an "integrated" project, however, no good reason exists to exclude the USBR permits which allow diversion of SR water at Friant. SR water should be equally available for environmental impact mitigation and public trust uses below Friant Dam, for use within the county and watershed of origin to help ameliorate water supply problems faced by communities located above Friant and other locations within the protected areas, as well as available for export to the South Coast region under the CVPWA water transfer between AEWSD and Metropolitan Water District of Southern California (MWD). If the CVP is an integrated project, then all of its water rights permits, including the Friant permits, should be revised to change the places of use so that water attributable to each permit is available for transfer and use wherever the water can be delivered directly or by exchange, to fulfill the water transfer provisions of the CVPWA. Changes in the authorized POUs for the USBR's water rights permits will be required before any CVPWA style transfers may occur. The POU changes for both the CPOU as well as the CVPWA should all be evaluated at the same time in environmental review documentation, at least on a programmatic level so that all cumulative impacts are fully evaluated and disclosed.

10-5

THE DRAFT PEIR IMPROPERLY IGNORES THE NEEDS OF THE COUNTIES AND WATERSHEDS OF ORIGIN.

The water rights included in the CPOU petition are subject to the California county of origin and/or watershed protection statutes. Cal. Water Code §§ 10905, 11128, 11490, 11463. The enlarged place of use requested in the petition is defined to include so-called "encroachment lands" that have already received water deliveries but are outside the existing authorized place(s) of use, and "expansion lands" that have not received water deliveries but are inside areas contractually entitled to receive water delivery. Defining the enlarged place of use in this way erases certain foothill and mountain communities with serious water supply problems that could easily receive delivery of project water. The draft PEIR fails to disclose whether the proposed action will have a direct or a cumulative impact on the supply of water reasonably required to adequately supply the beneficial needs, including present and future development and environmental needs, of the watersheds and counties of origin.

10-6

In eastern Fresno County, for example, various communities and developments in the vicinity of Shaver Lake have experienced water supply problems for several years, both in quantity and quality. There may well be other mountain and foothill communities entitled from the proposed enlarged place of use that could greatly benefit from CVP water, as well as easily accept delivery of such water either directly or through exchange. The CPOU should address those needs, rather than limiting itself to obtaining permission to deliver

10-7

10-4 See response to Comment 10-2.

10-5 The subject of the pending petition include the facilities composing the CVP and the respective purposes of use and POU. Facilities and POU of the Friant Project are not a subject of this DEIR.

10-6 As noted on page 4-10 of the DEIR, the proposed project or alternatives would not significantly change the volume of water delivered in accordance with existing CVP contracts. Therefore, the proposed project would not alter or impede the delivery of CVP water to existing CVP water contractors. There is no provision in the pending petition that would affect the use of CVP water for beneficial purposes to others.

10-7 The pending petition only requests three changes to the existing water rights permits for the CVP. The matter raised in this comment is beyond the scope of the petition, and therefore, is not discussed in the DEIR.

Mr. Mike Falkenstein
 March 31, 1988
 Page 4

water to what in most cases probably are agriculturally marginal lands, evident by the fact that the original area of the "expansion lands" has been reduced from 4,000,000 acres in 1985 to about 850,000 13 years later.

In most cases, water quantities needed in foothill and mountain communities should be smaller than agricultural deliveries to cropland or expansion lands. Without cooperation from USBR, these mountain and foothill communities may be forced to file applications under the county-of-origin, watershed protection, municipal priority or other provisions of the Water Code due to the fact that most streams in the Central Valley Basin have been declared fully appropriated, and thus closed to conventional appropriation pursuant to Water Right Order 88-25 and subsequent amendments. Failure to disclose fully the impacts of the proposed action on the areas of origin makes the PEIR inadequate as a matter of law.

10-8

IT IS PREMATURE AND UNNECESSARY FOR SWRCB TO ACT ON THE PETITION OR THE DRAFT PEIR AT THIS TIME.

The CPOU petition was originally filed in September 1985 and has been amended several times since that time. The fact that almost 13 years later only a draft PEIR has been released demonstrates that no urgency or necessity compels SWRCB action on the petition at this time. The fact that USBR diverted water outside the authorized places of use of its permits for a quarter century prior to filing the petition likewise explains any reason for action on the petition at this time. Indeed, the USBR diverted water and operated the CVP prior to issuance of many (if not all) of the permits included in the petition.

Any SWRCB action on the petition at this time or in the foreseeable future is premature. The draft EIR for implementation of the 1995 Bay-Delta WQCP is circulating concurrently with the CPOU draft PEIR. Implementation of the 1995 Bay-Delta WQCP and the water right decision required by the Kacanal decision, together with the corresponding environmental documents for those actions, as well as the ongoing implementation of the CVPIA, will no doubt address many of the environmental impacts identified in the draft PEIR, particularly conditions in the Delta and lower SJR. These actions may, for example, render moot the proposal to divert water to some 850,000 additional acres of so-called "expansion" lands by requiring greater amounts of water for environmental uses. In short, implementation of the 1995 Bay-Delta WQCP, adoption of the Bay-Delta water right decision and CVPIA implementation will undoubtedly have consequences for the actions proposed in the petition. To the extent those consequences are not foreseeable at this time, action on the draft PEIR or the petition, either now or in the near future, is wholly premature if not without meaning, the more so as the alternatives presented in the draft PEIR tend toward the hypothetical and make the PEIR process of little value as a planning tool. Given these circumstances, the draft PEIR should be withdrawn and not revised and reissued until the 1995 Bay-Delta WQCP, Delta water right decision, and the CVPIA are more fully implemented.

10-9

Again, I thank you for the opportunity to comment on the draft PEIR and hope the above remarks prove helpful to the Board as it fulfills its duties under the Water Code.

Very truly yours,



RAYMOND L. CARLSON

Enclosure

Table entitled "USBR Post-1914 Appropriative Water Rights Allowing Diversion at Friar"

10-8 See response to Comment 10-7.

10-9 See response to Comment 10-1.

USBR POGT-1914
 APPROPRIATIVE WATER RIGHTS ALLOWING DIVERSIONS AT PRIANT¹¹

Application Number	Date Application Filed	Permit Number	License Number	Assignor	Date of Assignment	Water Quantity	
						Diversion to Storage ¹	Direct Diversion ²
23	3/27/15 ³	273	1986	M&L	10/30/39	None	44340 AFY ⁴
234	1/19/16	11885	None	MID	10/13/39	500,000 AFY	3000 cfs ⁵
1465	9/26/19	11886	None	MID	10/13/39	500,000 AFY	3000 cfs ⁵
5638	7/30/27	11887	None	Cal.	9/30/39	1,210,000 AFY	5000 cfs ⁵

¹ Diversion to storage authorized during the period November 1-August 1 only. D 935 at 102-103.

² May not exceed 6,500 cfs at any one time. D 935 at 103.

³ Originally filed by Saatche canal company, predecessor to Firdaugh Canal Company. See USBR D 935 Brief, Appendix B, at p. 2.

⁴ To be diverted during the period April 1-July 1 only.

⁵ During the period February 1-October 31 only. The yield of 13969 should be deducted from the yields under 211885-11887 because it is an "acquired vested right" under D 935.

 <p>LETTER 11</p> <p>CENTRAL DELTA WATER AGENCY 225 East Weber Avenue • P. O. Box 1461 • Stockton, CA 95201 Phone 209/465-5683</p>	<p>DIRECTORS Gene Sup Jr. Ron Stone Alvin P. Johnson</p> <p>COUNSEL Gene Lee Thomas M. Johnson</p>
<p>March 31, 1998</p>	
<p>Mike Falkenstein, Chief Environmental Section Division of Water Rights State Water Resources Control Board 901 P Street P. O. Box 2090 Sacramento, California 95812-2000</p>	
<p>Re: Draft Program Environmental Impact Report for the Consolidated and Conformed Place of Use</p>	
<p>Dear Mr. Falkenstein:</p>	
<p>These comments are submitted on behalf of Central Delta Water Agency, Reclamation District No. 2029, Reclamation District No. 2072 and H. C. Farms, Inc.</p>	
<p>The Draft fails to set forth the impacts associated with conformance to the requirements of existing permits as compared to ratification of the unlawful actions represented by existing conditions.</p>	<p>11-1</p>
<p>In order to be meaningful, the Draft must set forth as an alternative the compliance with existing permits and law and the related impacts.</p>	
<p>The conclusion that the same amount of water would be delivered to each contractor regardless of the size of the permitted place of use ignores the serious effort to achieve real water conservation and the need to comply with reasonable benefi- cial use.</p>	<p>11-2</p>
<p>It would appear that conformance to the limitations in existing permits could help alleviate the serious detrimental impacts caused by exports from the Delta and related degradation of the water quality of the San Joaquin River.</p>	<p>11-3</p>
<p>Yours very truly,</p>  <p>DANTE JOHN MCELLENI Manager and Co-Counsel</p>	
<p>DJN:ju</p>	

Responses to Comment Letter 11

- 11-1 The DEIR, throughout Section 4, addresses the impacts of Alternative 1 (No Project) when compared to Alternative 2 (Existing Conditions).
- 11-2 When preparing the DEIR, the Board assumed that up to the amount specified in the water contracts (in Table 3-1) would be delivered to the districts. To assume an amount less than the contracted amount would be speculative. The pending petition would not affect the volume of CVP water available for delivery in accordance with Reclamation's contracts.
- 11-3 Comment noted.

Responses to Comment Letter 12

- 12-1 The Final EIR will be corrected to reflect that the City of Coalinga prepared the Habitat Conservation Plan that was mentioned on page 3-57 of the DEIR.

LETTER 12



MF

135 W. Duane Avenue
Coalinga, CA 93210

Phone (805) 935-1333
FAX (805) 935-3912

January 29, 1998

Mike Falkenstein, Chief
Environmental Section
Division of Water Rights
State Water Resources Control Board
P. O. Box 2000
Sacramento, CA 95812-2000

RE: Response to Draft PEIR for USBR Petition to Consolidate and Conform
the POU for 16 Central Valley Project Water Rights Permits

Dear Mr. Falkenstein:

After reading and reviewing the document, the City of Coalinga has the following comments to make. First of all, there is one statement made on page 3-57 that is incorrect. The reference made to a Habitat Conservation Plan prepared by the Pleasant Valley Water District is not correct. The City of Coalinga is the lead agency for the Habitat Conservation Plan and this document is in the final review process before implementation. This should be corrected. 12-1

Secondly, in terms of support for the alternatives presented, the City of Coalinga would request that the State Water Resources Control Board (SWRCB) consider adopting either the Proposed Project which would result in the SWRCB approving Changes 1, 2, and 3a, (and 3a pending future approval by SWRCB) as requested in USBR's CPOU petition; or adopt **Alternative 2** the Existing Conditions Alternative which would result in SWRCB approving Changes 1, 2, and 3a requested in Reclamation's petition.

The request is made for the following reasons:

1. Water and the growth that it supports seems to be the underlying reason for this process and PEIR. While it can be assumed that the City's water contract with USBR took into consideration growth for the community over the 40 year term of the contract, it also considered the major types of industry that drove the region's economy. At one time, the oil industry in the region used 50% of the City's treated water supply for enhanced oil

recovery processes. If you were to look at a historical trend of growth in the Coalinga area since the water contract, you would see a fairly flat growth rate until about 1981 and a recent modest growth rate attributable to the recent construction of a State Correctional Facility near the community.

2. The existing conditions of all USBR contracts, were a part of a contractual agreement between USBR and contractors, and put into place many years ago. With respect to Coalinga, the City has had its contract with USBR since October 1968. To make major changes to the point of use will have detrimental impacts to all of the contractors. 12-2

3. Coalinga, with the help of Congressman Bernie Sisk, was able to secure a viable water supply for its municipal needs because of the CVP and its contract with USBR. The document mentions the brackish groundwater conditions of the area which is correct and renders this water supply cost prohibitive to treat to drinking water standards. A bit of historical information, during the 1960's Coalinga was the site of one of the first desalination plants in the United States because of the groundwater quality. Coalinga was also known, up until the arrival of the CVP water, as a town with three faucets - hot and cold water (from the local groundwater table both brackish and very hard) and imported "soft" water which was imported from Hanford, California. There was a separate distribution water system to deliver this water to your home.

4. Figure 3-6 on page 3-53 depicts the City's water service area found in its contract with USBR and all of the native vegetation lands to the west, north, and northeast of the City are currently, and have been for many decades, oil exploration and extraction areas. Here again, Congressman Sisk was instrumental in recognizing the importance of the oil industry to the community's economic vitality. Now enhanced oil extraction from the surrounding area is the process used, but it is still important and not being able to use CVP water to assist in extraction would have a tremendous impact to the local economy from Oil Companies closing down shop because of the cost for doing business. 12-3

5. Also on Figure 3-6 within the non-CVP Water Service area, the City and rural homeowners, mainly to the east and south of the City, created an assessment district 16 years ago to make available the City's potable, treated CVP water supply to these people as a replacement to the brackish groundwater they had previously. These folks have made a substantial financial investment for almost 20 years to improve the quality of their drinking water supply.

6. Lastly because of the water service area described and agreed between USBR and the City in the 1968, the City has entered into water contracts with such entities as the California Department of Corrections, Polvadero Country Club and Harris Feed Lot. The Department of Corrections, shown on Figure 3-6, receives potable, treated CVP water for a 5,000 inmate facility. The Polvadero Country Club is also shown on Figure 3-6. This golf

12-2 The DEIR, page 3-52, recognizes that the City of Coalinga's contract with Reclamation was entered into in October 1968. Impacts of implementing Alternative 1 (No Project) are discussed in Section 4 of the DEIR, and the expected acreage changes are presented in Table E-1 of the DEIR.

12-3 Comment noted. The DEIR, page 3-55, acknowledges the importance of the oil industry. If the proposed project is implemented, CVP water could be delivered to lands within the authorized POU within the City of Coalinga service area in a manner consistent with applicable state law.

course is a local recreation area used by many and purchases non-potable water from the City for irrigation. Harris Feed Lot, home to some 200,000 head of beef, also purchases non-potable water from the City for dust control. I could not find this particular M&I CVP user illustrated on the map and it probably should be. Here also, the potential capital expenditure to develop a water source would create significant financial burdens, to not only private enterprise, but also the State of California taxpayer.

12-4

It is easy to equate water to growth and in many areas of this State growth due to water availability has been phenomenal. The fact of the matter, as it relates to Coalinga and the Pleasant Valley, is that growth has been at a much different pace than other parts of California. To the contrary, the CVP water has provided a better water supply source for both the municipal and industrial needs to sustain what had been achieved through hard work and perseverance with a marginal water supply.

Adoption of Alternative 1 and possibly Alternative 3, which alters where CVP water can be used, is going to create a insurmountable financial capital expense by many current City water users as they struggle to find other sources of water in the service area. This cost will push many to take a second look at their costs and cease their operations in the area creating a terrible ripple effect and economic ruin to the community.

12-5

I would hope that the decision-makers would weigh all of the evidence provided by the users, as they exist today, look at the "big picture" before acting in a manner that would significantly alter existing conditions, and adopt the Proposed Project or Alternative 2.

Sincerely,



Rene A. Ramirez
Acting Interim City Manager

12-4 Although Figure 3-6 in the DEIR could be modified by delineating the Harris Feed Lot, the addition of such feature to the graphic would not change the conclusions presented in the DEIR; therefore, no change to the Figure will be made. In addition, the text in the DEIR (page 3-55 in the last paragraph) recognizes that the Harris Feed Lot received CVP water.

12-5 Comment noted. The DEIR, Table 4-3, indicates that the City of Coalinga currently has a surplus of CVP water. Table 4-4 recognizes that the City has no alternative water source. The DEIR on page 4-49 acknowledges that certain M&I water contractors (including the City of Coalinga) may sustain substantial adverse economic impacts if Alternative 1 (No Project) is implemented.



**CONTRA COSTA
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LETTER 13

4/1/88

April 1, 1988

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State Water Resources Control Board
P.O. Box 2000
Sacramento, California 95812-2000

Subject: Draft Program EIR for the Consolidated and Conformed Place of Use

Dear Mr. Falkenstein:

Thank you for the opportunity to provide comments on the Draft Program Environmental Impact Report (PEIR) for the Consolidated and Conformed Place of Use (POU) petition submitted by the U.S. Bureau of Reclamation. The Contra Costa Water District (CCWD) comments cover primarily Section 3.4.7, the Environmental Setting for the CCWD, although reference is made to other sections where updated acreage figures on CCWD are needed.

The project is the U.S. Bureau of Reclamation's petition to the State Water Resources Control Board (SWRCB) to make three changes to existing Central Valley Project (CVP) water right permits:

1. Confirm the purposes of use in the individual permits so that the 16 existing permits authorize use of water for the 11 purposes shown in Table 3-2 in Section 3 of the PEIR.
2. Consolidate the authorized POU for water diverted from all authorized CVP sources so that new POU maps identify all areas where water from a particular facility may be delivered consistent with the current integrated operation of the CVP; and
3. Increase the authorized POU specified in the appropriate permits by: (a) including microchannel lands, and (b) including expansion lands.

CCWD notes that Federal Endangered Species Act (FESA) issues are addressed in the document; however, specific questions or comments are provided in the following specific comments relative to the Vegetation and Wildlife Section, 3.4.7.6. Comments are provided in the sequence of the document. Actual recommended changed language or figures are shown in **bold print**.

Responses to Comment Letter 13

Mike Falkenstein, SWRCB
 Draft Program EIR for the Consolidated and Confirmed Place of Use
 April 1, 1998
 Page 2

Page 3-10, Section 3.3.2.3 Sacramento-San Joaquin Delta.

The statement that "reverse flows can occur in the fall when CVP and SWP pumping increases compared to Sacramento River inflow to the Delta, resulting in subriver intrusion" is not supported by field measurements of salinity or by the basic principles of tidal dispersion in branched estuaries. Salinity intrusion results from tidal action and reduced outflow, not reverse flows. There are numerous examples of severe salinity intrusion in the absence of reverse flows (1977, 1991 and 1992) as well as no salinity intrusion in the presence of reverse flows. It is more reasonable to expect that salinity intrusion into the interior Delta will be controlled by tidal exchange of salinity and outflow rather than by advection by the tidally-averaged flows. The DEIR should either present supporting evidence of the effect of reverse flows on salinity intrusion or remove that statement.

13-1

Page 2-6, Table 2-2.

Update Total Contracted Water Service Area (Acres) from 115,220 to 126,542 for the Contra Costa Water District.

13-2

Page 3-62, Section 3.4.7 Contra Costa Water District.

Update acreage figure from 115,220 to 126,542 in second line in subsection 3.4.7.1 General Description and Location. In subsection 3.4.7.2 Land Use and Land Use Policies, the description of land uses makes reference only to planned land uses according to the respective Contra Costa and Alameda counties' general plans. It would be appropriate to also indicate current land uses or indicate an estimate of the extent of existing urban development as opposed to agriculture and undeveloped lands.

13-3

13-4

CCWD estimates that approximately 55 percent of its service area (i.e., the 126,542 acres) has been developed for urban land uses, with the remaining area in military, regional parklands and wetlands, agriculture, rural and open space lands, water bodies, and the Kellogg Creek watershed area. The Kellogg Creek watershed contains the Los Vaqueros Project reservoir, an off-sisam facility that will contain up to 100,000 acre-feet of stored water for water quality improvement and emergency supply reliability. The Project has been recently completed and reservoir filling has begun.

13-5

The second sentence in the second paragraph of this subsection is unclear (i.e., "Some land is wetlands and is under water"). Wetlands are generally classified as "land area", while "water bodies" is in a separate classification. Based on Table 3-18, it is clear that the 1,031 acres comprising lands outside the POU are both shoreline wetlands (i.e., Saline emergent wetland) and Kellogg Creek watershed (annual grassland, valley-foothill riparian/fresh emergent wetland). It would not appear that any (or at least very little) of the 1,031 acres would be considered to be permanently under water.

13-6

In subsection 3.4.7.4 Water Resources and Water Use, it is recommended that an additional sentence is added for assurance that CVP water cannot be extended to the lands outside the POU: The 749 acres in Alameda County within the Kellogg Creek watershed have been approved for watershed purposes only.

13-7

In subsection 3.4.7.5 Groundwater Resources, it indicates that all of the "lands outside the authorized POU are located in the Kellogg Creek watershed". However, this could

- 13-1 The statement in Section 3.3.2.3 of the DEIR quoted by the commentor will be removed from the Final EIR.
- 13-2 The acreage presented for each water contractor throughout the DEIR were calculated by Reclamation using GIS. The Final EIR will present revised acreage estimates in Section 2. The acreage of individual CVP water contractors will be based on current information maintained by Reclamation.
- 13-3 See response to comment 13-2.
- 13-4 As a result of correcting the POU boundary shown in the EIR, only 359 acres within the Contra Costa Water District service area are located outside the authorized POU. These lands are located entirely within Alameda County. The Final EIR provides a discussion of these affected lands uses.
- 13-5 The information provided by the commentor in this comment will be added to Section 3.4.7.5 of the Final EIR.
- 13-6 The portion of the statement in Section 3.4.7.2 on page 3-62 of the DEIR, "and is under water" will be deleted from the Final EIR.
- 13-7 The information provided by the commentor in this comment will be added to Section 3.4.7.4 of the Final EIR.

Mike Falkenstein, SWRCB
Draft Program EIR for the Consolidated and Confirmed Place of Use
April 3, 1998
Page 3

not be the case if the 347 acres listed as "Saline emergent wetland" in Table 3-18 are shoreline wetlands. Figure 3-8 also appears to identify a section of the Martinez shoreline area as outside the existing permitted POU. It appears that it is assumed that this is part of the 1,031 acres because of both the boundary line and the acreage listed as saline emergent wetland. Please research this matter further and document clearly the lands outside the POU. If further study confirms the Martinez shoreline as an area included in the lands outside the POU, please revise the first sentence to read: The lands outside the authorized POU are located in the Kellogg Creek watershed and along a portion of the Martinez shoreline. The last two sentences of this subsection (i.e., Wells in the vicinity of the creek are used for primarily domestic purposes. Nearly all irrigation uses are supplied by imported surface water) need to be revised or removed because of the recent Los Vaqueros Reservoir construction and current inundation. There is one residence, with cattle grazing privileges in this area, that relies on well water. There is no known imported irrigation water within the 749 acres contained in the Kellogg Creek watershed portion of this study.

13-8

13-9

Page 3-65, Table 3-18.

The 347 acres listed as "Saline emergent wetland" seems to be too high, if this is the area believed to be the Martinez shoreline. CCWD documents that the Kellogg Creek watershed portion is confined to 749 acres (e.g., 749 + 347 = 1,096, not 1,031). Please research the locations and acreage further for an accurate distribution of lands outside the POU.

13-10

Page 3-65, Table 3-19.

The title of the table (i.e., Threatened and Endangered Species within Contra Costa Water District) implies that both habitat and identified species are within the entire service area of CCWD. However, it is assumed that the list is confined to the area of study (Lands Outside the POU, including both the Kellogg Creek watershed portion in Alameda County and the Martinez shoreline). While the list is derived from Table D-2 which is compiled [apparently] from Federal and State Endangered and Threatened Species Listings, it does not appear to be documented. For example, the State Department of Fish and Game maintains the Natural Diversity Data Base (NDDB), which is generally accepted as baseline biological resource information on listed species occurrences (i.e., sightings). It is not clear how the interpretation is made that the habitat in the area(s) of study clearly support the listed species (i.e., based on observation, documented sightings), or if the vegetative types described represent potential habitat, based on known relationships between species and vegetation types elsewhere. This matter is raised because CCWD's Interim Service Area Map (prepared as a Los Vaqueros Project Biological Opinion requirement) does not indicate the presence (from NDDB occurrences data) of the California clapper rail in the shoreline areas of the service area.

13-11

Page 3-66, Subsection 3.4.7.7 Cultural Resources.

It is noted that a literature/archival search has revealed that three sites have been recorded on lands outside the authorized POU. In the last sentence, it is indicated that although the sites have "a low archaeological sensitivity" there would be a high probability that they would be encountered "during M&I development". Please indicate also that M&I development would not be allowed within the Kellogg Creek watershed lands because of existing mitigation that requires the lands remain in open space (i.e., conservation

13-12

13-8 See response to Comment 13-4. The lands remaining outside the POU are located entirely within the Kellogg Creek watershed.

13-9 The statements in Section 3.4.7.5 on page 3-62 of the DEIR indicated by the commentor will be deleted from the Final EIR.

13-10 The acreage presented for each CVP water contractor in the DEIR was calculated by Reclamation using GIS and are considered the best available estimates. If Contra Costa Water District has more precise information regarding the extent of their service boundary, it should be made available to Reclamation at the earliest possible date.

13-11 The title of Table 3-19 was not meant to indicate that all species listed in the table are found within the entire service area of Contra Costa Water District. It is meant to convey that habitat and threatened and endangered species may occur somewhere within the district, and not just on lands outside the authorized POU, as the commentor indicates.

Table D-2 was developed using federal and state species lists. The habitats expected to occur within the districts were determined using various sources, including the CNDDB, field visits, review of other environmental documents prepared for the areas being evaluated, and firsthand knowledge of certain areas being evaluated.

The Final EIR will be revised to reflect those species listed by respective federal and state agencies and those species believed to occupy lands located outside the POU.

13-12 Section 3.4.7.7 will be modified in the Final EIR to indicate that M&I development would not be allowed within the Kellogg Creek watershed because of existing mitigation (from the Los Vaqueros Water Quality and Resource Management Project) that requires that the lands remain in open space land uses.

Mike Palkovits, SW ECH
 Draft Program EIR for the Consolidated and Conformed Place of Use
 April 1, 1998
 Page 4

comments granted to Federal and State resource agencies). The U.S. Bureau of Reclamation, in previously approved Kollage Creek watershed agreements (i.e. inclusion into CVP contractual service area), has conditioned such lands for watershed uses only, specified by prohibiting the extension of M&I water supplies to the area (note: see Draft PEIR, page 4-13, 3rd paragraph, sentences 4-6, which confirm this statement).

13-12

Table B-1.

Change the 115,239 acres for Contra Costa Water District to ~~126,542~~ acres.

13-13

If you have any questions on these comments or require further information on CCWD, please contact Dennis Pella, Senior Planner at (925) 684-8119.

Sincerely,



Richard A. Denton
 Water Resources Manager

RADDP

cc: Joel A. Medlin, Field Supervisor, U.S. Fish & Wildlife Service, Sacramento
 Robert Edwards, Chief, Engineering, Maintenance & Operations, Tracy

- 13-13 The acreage for Contra Costa Water District in Table B-1 in the Final EIR will be changed to 115,220 acres, consistent with the text of the DEIR, rather than 126,542 acres, as suggested by the commentor. The acreage presented for each water contractor throughout the DEIR was calculated by Reclamation using GIS.

LETTER 14 MF

Del Puerto Water District

March 24, 1998

Mike Falkenstein, Chief
Environmental Section
Division of Water Rights
State Water Resources Control Board
P. O. Box 2000
Sacramento, CA 95812-2000

Re: Consolidated Place of Use Programmatic Environmental Impact Report (PEIR)

Dear Mr. Falkenstein:

These comments on the above referenced PEIR are submitted on behalf of Del Puerto Water District ("District") and its effected landowners.

The District has been in existence since 1947. It entered into its first long term water service contract with the Bureau of Reclamation on June 10, 1953. On February 13, 1985 the District was assigned the water service contracts of the following districts:

District Name	Date Formed	Contract Date
Hospital Water District	4/14/47	6/10/53
Kern Cañon Water District	1/28/47	6/10/53
Salado Water District	5/27/46	6/10/53
Sunflower Water District	8/25/52	11/12/53
Orestimba Water District	7/14/47	11/27/59
Foothill Water District	9/14/53	5/31/55
Davis Water District	7/7/52	10/23/53
Mustang Water District	6/6/53	10/23/59
Quinto Water District	5/3/54	1/24/61
Romero Water District	1/10/54	5/11/59

The development of original District lands and irrigation systems took place over the first several years of water supply availability. Subsequent annexations of adjacent developable lands in need of water service were undertaken with Bureau of Reclamation approval prior to 1970. The service area of the consolidated District now comprises more than 45,000 acres (not 34,479 acres as stated in the PEIR) of highly developed and productive farmland. 14-1

With the possible exception of the northernmost ±192 acres which was annexed to the Hospital Water District in 1974, District records indicate that the ±808 acres of "encroachment lands" were either part of original District boundaries or were annexed and being served with water from the Delta-Mendota Canal prior to the effective date of the California Environmental Quality Act (CEQA) in 1970. For this reason, the District feels that compliance with CEQA and any mitigation mandated by this PEIR for continuing to serve these lands is neither appropriate nor legally required. 14-2

Responses to Comment Letter 14

- 14-1 The acreage presented for Del Puerto Water District in the DEIR was calculated by Reclamation using GIS. Increases in acreage after the change petition was last amended are not included in the EIR.
- 14-2 The delivery of CVP water supplies to lands outside the POU was not authorized by the Board. Because the pending petition is now requesting expanding the POU to include these lands, the Board must comply with CEQA in its consideration of the petition.

Furthermore, the present condition is that water is being delivered to all of the encroachment lands in the District and that any environmental impacts associated with the delivery this water pre-date the proposed project, initiated by Bureau person in 1985, by more than fifteen years. Since pre-existing (pre-project) environmental conditions do not require an EIR or justify imposition of subsequent mitigation, and since changing the Place of Use to conform to current District boundaries does not change the method or amount of water being delivered, the District submits in the alternative that the consolidation of the place of use to conform with existing District boundaries is categorically exempt under Section 15301 of CEQA guidelines and should be handled as a simple change to the State's permit.

14-3

Given the long history of acknowledged service to these lands, the District can only assume that failure to include these lands within the existing Place of Use permit is due to a clerical error on the part of either the Bureau of Reclamation or the SWRCB which needs to be corrected. Since no discretionary decision is involved, correcting this error constitutes a ministerial act which is exempt from CEQA requirements and mitigation mandates (CEQA Guidelines Section 15268).

14-4

Even if CEQA compliance was deemed somehow to be necessary, the Draft PER for the Consolidated and Conformed Place of Use is factually flawed and legally inadequate.

14-5

To begin with, the consideration of an alternative (Alternative 1) which would require the cessation of water deliveries to lands which have been receiving CVP water since the 1950's and calling it a "no project alternative" is improper and disingenuous. It opens the door to the unthinkable possibility that deliveries to these lands might be terminated. In reliance upon Bureau of Reclamation consent, these landowners have borrowed against their land and spent years building and improving their irrigation systems. Some 300 acres of these "encroachment lands" are now in their second cycle of permanent (i.e. walnut and almond trees) plantings. Pipelines installed in the mid-1950's now bring water to expensive state-of-the-art drip and micro-sprinkler irrigation systems installed on these lands. The estimated value of these orchard lands now exceeds \$8,000 per acre which reflects only some of the hard work and investments of at least two generations of family farmers. The other 1500 acres of "encroachment land" also have invested in pipeline delivery systems and these lands have been successfully planted in tomatoes, beans, wheat, oats and alfalfa over the years.

14-6

The only true "no project alternative" would be one which recognizes the existing conditions and includes those environmental conditions which have resulted from and continue to result from the delivery of water to these lands. Furthermore, each of the remaining alternatives (2 and 3 and the proposal itself) include conforming the purposes of use in the various permits to conform with the purposes listed in Table 3-2. A true "no project alternative" would study the possibility of continued delivery of water to the encroachment lands (i.e. conforming the place of use to District boundaries) and of not changing the purposes of use of the existing permits to authorize the use of water for other purposes. The PER fails to identify and consider a true "no project" alternative as is required under Section 15126 (d) (2) of CEQA Guidelines.

14-7

The scope of this proposed project is far too broad to allow for adequate, meaningful environmental review. It fails to address in any real way the economic and environmental effect of the proposed project on the District, stating only that "the loss could be a significant portion of their income, earnings, and job losses, and may also be significant" (page 4-51). The environmental, economic and water supply consequences

14-8

14-3 An EIR is the appropriate environmental document needed to comply with the provisions of CEQA.

14-4 The areas that presently do not receive CVP water have the potential to undergo physical environmental change, depending on the land uses that would occur and be made possible by the availability of CVP water supplies. Therefore, expanding the POU is a project that has the potential to cause a physical change to the environment and constitutes a project in accordance with CEQA.

14-5 The action pending before the Board is to expand the POU from its current location. The No Project Alternative consists of maintaining the POU boundary at its current location. Therefore, the No Project Alternative is correctly identified in the DEIR.

14-6 See response to comment 14-5. If Alternative 1 (No Project) is implemented, then CVP water deliveries to lands outside the authorized POU would need to cease. Section 4.14 of the DEIR acknowledges the economic losses that are expected if Alternative 1 is implemented.

14-7 Delivery and use of CVP water outside the existing POU is not an authorized use in accordance with existing state law. In order for it to become authorized, the Board must modify the existing water right permits. This action requires that the Board comply with CEQA in its consideration of allowing CVP water to be delivered to these lands. The No Project Alternative would not modify the existing POU boundary and continued delivery of CVP to lands outside the POU would be unauthorized.

14-8 As indicated in Section 1.2 of the DEIR, the document is both a programmatic and project-specific EIR. As such, the level of detail provided in the DEIR is adequate and appropriate.

of either including "expansion lands" in the authorized POU or conforming the purposes of use are impossible to evaluate with the information provided. 14-8

In summary, CEQA compliance should not be required in order to continue to deliver federal water to the "encroachment" lands in the Del Puerto Water District. However, if for some reason it is deemed appropriate as to the District, this PER is inadequate. It fails to consider a true "no project" alternative and considered inappropriately unreasonable alternatives. The more reasonable alternatives are not considered in such a way as to allow for meaningful review, and the PER ultimately fails to consider the potential environmental consequences on the Del Puerto Water District because the project it attempts to examine is confused and overly broad. It is certain that the potentially affected owners of these District lands deserve more adequate consideration than is offered by a document that defines the "project" so broadly that it could destroy a two generations of work without offering so much as one good reason.

With regard to conforming the Place of Use so as to continue deliveries of water to encroachment lands, no PER should be considered necessary. With regard to delivering water to expansion lands, the PER should be rewritten to include additional site-specific CEQA compliance. With regard to increasing the purposes of use in the individual permits, a separate PER should be prepared analyzing the environmental, economic, water supply and growth-inducing effects the proposed changes. 14-9
14-10

Very truly yours,



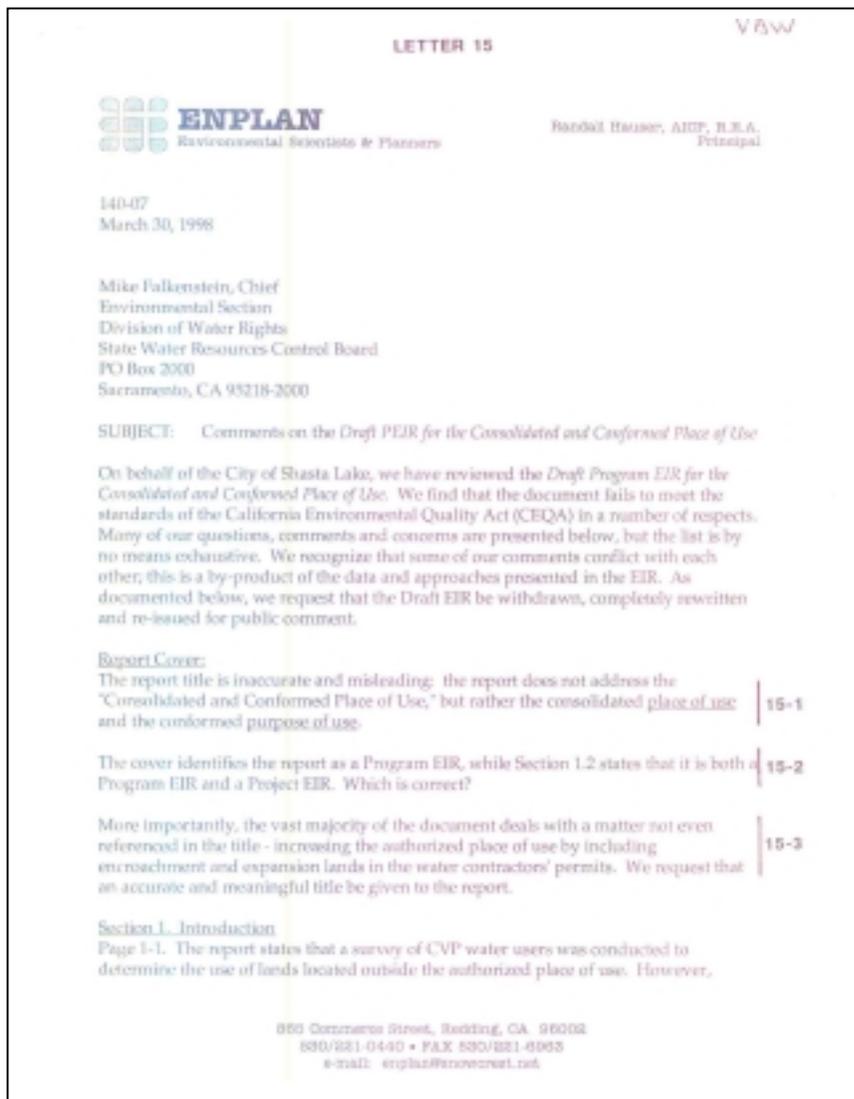
William D. Harrison, General Manager
DEL PUERTO WATER DISTRICT

cc: Board of Directors
Robert Raspo
Fred Vogel
Terry Johnson
Ernest Conant
San Luis & Delta Mendota Water Authority
Central Valley Project Water Association

14-9 Comment noted. The purpose of the DEIR was to (1) determine the acreage and location of encroachment lands within the CVP water contractor boundaries to ascertain the impacts to biological resources from the ongoing delivery of CVP water to those lands and (2) to identify mitigation for significant adverse impacts.

As indicated in Section 1.2, last paragraph on page 1-3 of the DEIR, site-specific CEQA compliance could not be accomplished on expansion lands without speculating future uses of CVP water and decisions by local land management authorities.

14-10 This environmental document is the appropriate document for addressing petitioned changes to the purposes of use.



Responses to Comment Letter 15

- 15-1 Comment noted. No response required.
- 15-2 Page 1-2 and 1-3 of the DEIR states that the DEIR is both programmatic and project-specific in addressing potential impacts to expansion lands and past impacts to encroachment lands, respectively.
- 15-3 The title of the DEIR is appropriate to address the petitioned changes to the water rights permits currently pending.

<p>Mike Pollock March 30, 1998 Page 2</p>	
<p>essential data is not presented. When was the survey conducted? What types of data were requested? How many of the users responded? Was the data provided by the users verified by the EIR preparers? How was the data incorporated into the EIR? Data presented in the EIR regarding the City of Shasta Lake is incorrect. We request that all land use data be reviewed and corrected, and that a summary of the survey be presented.</p>	15-4
<p>Page 1-2. Reclamation's request for a time extension to complete the full beneficial use of water is an integral part of the CPOU petition. We thus request that the proposed time extension be fully addressed in the EIR. If the SWRCB determines that the time extension is not part of the proposed project, data supporting the determination must be provided in the EIR. Even if the extension is not considered a part of the project proposal, it still must be addressed under the Cumulative Impacts section, since it is related, reasonably foreseeable action (CEQA Guidelines, Section 15130). We request that the EIR be revised accordingly.</p>	15-5
<p>Page 1-2. The action addressed in the EIR consists of SWRCB approval of the amended CPOU petition. However, the action is being requested by a federal agency and extensive federal involvement is proposed in refining and implementing the mitigation program for the project. Implementation of mitigation measures by federal agencies is an integral part of the project being considered. Environmental review must therefore be subject to both CEQA and the National Environmental Policy Act (NEPA). We request that a joint EIR-EIS be prepared for the project. If Reclamation and the SWRCB contend that NEPA review is not required, support for this position must be fully presented.</p>	15-6
<p>Page 1-2. The action addressed in the EIR consists of SWRCB approval of the amended CPOU petition. However, the action is being requested by a federal agency and extensive federal involvement is proposed in refining and implementing the mitigation program for the project. Implementation of mitigation measures by federal agencies is an integral part of the project being considered. Environmental review must therefore be subject to both CEQA and the National Environmental Policy Act (NEPA). We request that a joint EIR-EIS be prepared for the project. If Reclamation and the SWRCB contend that NEPA review is not required, support for this position must be fully presented.</p>	15-7
<p>Pages 1-2, 2-3, 2-5, etc. The discussion under Change 1 states that 11 purposes are shown in Table 3-2. The table only shows nine purposes. Further, the page-number references on page 1-2 are incorrect.</p>	15-8
<p>Page 1-2. Change 3b should be clarified. Are the expansion lands entitled to service under a "CVP water contract" (i.e., a contract with Reclamation) or under a contract between the potential water user and the CVP water contractor?</p>	15-9
<p>Page 1-3. Project EIRs are defined in Section 15161 of the CEQA Guidelines; Program EIRs are defined in Section 15168.</p>	15-10
<p>Page 1-3. The EIR should state the type of coverage provided with respect to Changes 1 and 2. Are they covered at the project level, program level or other level?</p>	15-11

- 15-4 The surveys were conducted between 1990 and 1995. Information on land uses, water uses, and water sources was requested on the surveys. Nearly all of the CVP water contractors responded to the surveys. The data that was provided on the surveys was verified by a variety of methods, including: additional surveys conducted by biologists, review of DWR land use information, review of USGS quadrangle maps, follow-up consultation, and GIS-calculated acreage. The data from these sources were incorporated into Section 3 of the DEIR. The data presented for the City of Shasta Lake is the best available information, unless other site-specific information can be provided.
- 15-5 Reclamation has requested that this issue be addressed separately from the other petitioned changes. This issue is not integral to the other changes being requested by Reclamation. Therefore, this issue will be addressed at a later time by the Board.
- 15-6 Comment noted. The discussion of cumulative effects will be revised in the Final EIR to address Reclamation's petition for a time extension to complete full beneficial use of water.
- 15-7 Comment noted. Reclamation's position is that the submittal of a petition by Reclamation to the Board is not a major federal action that requires an environmental review consistent with the requirements of the National Environmental Policy Act (NEPA). This is not a comment on the adequacy of the EIR under CEQA.
- 15-8 Comments noted. The discussions on pages 1-2, 2-1, and 2-5 of the DEIR will be revised in the Final EIR to reflect "9" rather than "11" beneficial uses. In addition, the page numbers cited on page 1-2 will be corrected in the Final EIR to reflect the correct page numbers of Table 3-2.
- 15-9 Change 3b would expand the POU to include lands within the respective CVP water contractor service areas that have not historically received CVP water supplies. The CVP water contractors would normally require a separate agreement to provide water service to individual water users.
- 15-10 The paragraph on page 1-3 cited by the commentator will be corrected in the Final EIR to reflect that programmatic EIRs are prepared pursuant to CEQA Guidelines Section 15168 and that project-specific EIRs are prepared pursuant to CEQA Guidelines Section 15161.
- 15-11 Section 1.2 in the Final EIR will be clarified to indicate that Changes 1 and 2 are addressed at the project level in this EIR.

<p>Mike Falkenstein March 30, 1998 Page 5</p>	
<p>Page 1-3. The EIR states that municipal and industrial (M&I) encroachment lands have been addressed in other CEQA documents. This is not necessarily the case – many of M&I uses were authorized prior to enactment of CEQA in 1970.</p>	15-12
<p>Page 1-3. Why does the EIR focus on encroached lands that have been served by CVP water for agricultural uses? If the land use conversion occurred historically and was not in accordance with the laws and regulations of the time, then the violations of the law should have been pursued through the legal system. CEQA provides no basis for addressing historical impacts. We request that the document be rewritten to exclude consideration of such historic impacts.</p>	15-13
<p><u>Section 2. Description of the Proposed Project and Alternatives</u> Pages 2-1 to 2-5. The project description should clearly describe the proposal. As currently written, the meaning of "conforming the purpose of use" is identified only in the Environmental Setting section (Section 3.3.1.2) and is even then not adequately defined. Are any changes in allowable use proposed other than deleting navigation and flood control from the water right permits? Would Change 2 allow CVP water to be used by any of the 26 contractors for all nine beneficial uses?</p>	15-14
<p>Pages 2-1 to 2-5. If, as described on Page 3-6, the State has no authority to regulate storage of water or regulation of flow for navigation and flood control, why is modification of the CVP water contractors' permits to reflect this fact being considered in an EIR? To the extent that the action is described in the report, it would certainly not result in any physical changes in the environment, and does not appear to meet the CEQA definition of a "project." We request that Change 1 be deleted from the EIR or that it be more fully addressed so that potential physical effects on the environment can be evaluated.</p>	15-17
<p>Page 2-1. A full range of reasonable alternative is <u>not</u> addressed. We request that the following three alternatives be addressed:</p> <ul style="list-style-type: none"> • Denial of Changes 2 and 3b and approval of Changes 1 and 3a. • Denial of Change 2 and approval of Changes 1, 3a and 3b. • Partial approval of Change 3b, to include only the 21,678 acres of new development that can be served by CVP water. Refer to our comment regarding page 4-5 for more information. 	15-15 15-16 15-19
<p>Pages 2-1, 2-2 and 2-4. Under the "no project" alternative, Reclamation would also notify water contractors that expansion lands could not be served with CVP water.</p>	15-18
<p>Page 2-3. If Changes 3a and/or 3b are adopted, will the affected lands be included in the consolidated place of use boundary?</p>	15-20 15-21

- 15-12 Comment noted. The text on page 1-3 will be modified in the Final EIR to clarify that M&I projects that occurred after 1970 are assumed to have been reviewed through CEQA documents. Projects completed prior to 1970 do not have such documents.
- 15-13 The delivery and use of CVP water to lands outside the authorized POU was not performed in accordance with state law. The action pending before the Board, today, is to determine if such use should be approved. Therefore, the impacts of that use outside the existing POU must be addressed in an environmental document prepared in accordance with CEQA.
- 15-14 The description of each alternative clearly explains each water right permit change being considered by the Board. Although it references a table presented elsewhere in the document, this does not prevent a clear understanding of the permit changes requested.
- 15-15 In addition to deleting navigation and flood control as specific purposes, the petition requests that each of the permitted uses be included in each CVP water right permit to correspond with actual CVP operations.
- 15-16 CVP contractors acquire CVP water from Reclamation through individual water service contracts. Each contract specifies the purposes for which the water is delivered.
- 15-17 Reclamation must operate the CVP in accordance with state law, including terms and conditions of permits it has been issued. At present, the CVP operates in a coordinated manner that does not allow water from specific facilities be used for specific purposes as specified in the individual permits. Therefore, Reclamation is requesting that the purposes of use be changed to allow CVP water from each facility be used for each of the allowed purposes.
- 15-18 Comment noted. Page 4-6 of the DEIR states that implementation of Change 1 would not result in a physical change to the environment that would constitute an adverse environmental impact. This change is included in the EIR as part of providing a full disclosure of potential impacts associated with the petitioned changes to Reclamation's water rights permits.
- 15-19 The alternatives presented in the DEIR address a reasonable range of alternatives that are capable of meeting the objectives of Reclamation's proposed project. The Board could approve any change independently from the other changes. The DEIR addresses each change independently from one another. Therefore, adding other combinations of changes would not contribute to the public's greater understanding of environmental effects associated with the decision pending before the Board.
- 15-20 The DEIR (pages 2-1, 2-2, and Table 2-4) will be revised in the Final EIR to reflect that, for the No Project Alternative, Reclamation would specify to the CVP water contractors that expansion lands could not be served CVP water.
- 15-21 Yes. As indicated on page 2-3 of the DEIR, the authorized POU would be increased if Change 3a and 3b are approved.

<p>Mike Palomares March 30, 1998 Page 4</p>	
<p>Page 2-4. The EIR states that denial of Change 2 would necessitate creation of "a method for separating the operations of the CVP facilities." Other sections of the EIR state that denial of Change 2 would result in "reoperation" of the CVP. To adequately evaluate the "no project" alternative, the means in which the CVP would be "reoperated" must be described. Although the discussion need not be as detailed as that for the project proposal, we request that it describe the type and number of new facilities, where the new facilities might be located, the type and extent of resources that could be affected, and other key data.</p>	15-22
<p>Page 2-4. What other effects would occur if Change 2 is not approved? Would water not be available to certain contractors? Which contractors would be affected and to what extent? What are the economic implications, and subsequent physical changes, associated with denial of Change 2?</p>	15-23
<p>Figures 2-1 through 2-5. As shown in the referenced figures, extensive acreage on the east side of the San Joaquin Valley can legally be served only by water from the Trinity River project. We request that the effects of Change 2 with respect to water availability be fully defined. How much water is currently available from the Trinity River Project? How much land is this water currently authorized to serve (M&I and agricultural lands)? Given average water usage rates, how much of the land can actually be served by Trinity River Project water? Is there sufficient water available from the Trinity River Project to serve the expansion lands identified in the EIR? If not, what will be the source(s) of water used to serve the expansion lands? How will the rights of other water contractors be affected by implementation of Change 2? We request that similar data be presented for all water sources and their currently permitted places of use.</p>	15-24
	15-25
	15-26
<p>Page 2-6. Table 2-2 presents incorrect data for the City of Shasta Lake.</p>	15-27
<p>Section 3. Environmental Setting Table 3-1 is inaccurately titled. See comments under "Report Title."</p>	15-28
<p>Section 3.3.1.1 should note that the current method of CVP operation is not in accordance with existing water rights permits.</p>	15-29
<p>Page 3-7. Table 3-2 is misleading in that it over-generalizes the permitted places of use. For example, the table implies that water from all of the listed sources except Rock Slough can currently be legally directed to the entirety of the San Joaquin Valley service area. However, as shown on Figures 2-1 through 2-5, a vast majority of the San Joaquin Valley can legally be served only by water from the Trinity River project. We request that Table 3-2 be revised to present meaningful data.</p>	15-30

- 15-22 DEIR indicates that denying Change 2 would result in Reclamation having to reoperate the CVP (page 2-1). The DEIR also indicates that denial of Change 2 would result in Reclamation having to separate water sources, which is not currently possible (page 2-4). Page 2-4 also indicates that a method to operation of CVP facilities would have to be created. Because a method does not currently exist, it is not possible to describe how Reclamation would reoperate the CVP. If Change 2 is denied, then Reclamation would determine what would be needed to reoperate the CVP, including the type and number of new facilities, where they would be located, and the type and extent of resources that could be affected, as applicable.
- 15-23 If Change 2 is not approved, all CVP water contractors would continue to receive CVP water; however, the CVP would not continue to operate in a coordinated manner. Therefore, it would have to be re-operated to provide water from a specific facility to only locations within the authorized POU that are specified in the individual water rights permits. No economic or physical effects are expected beyond those described in Section 4 of the DEIR.
- 15-24 If the Proposed Project is implemented, water would be able to be delivered anywhere within the authorized POU from any CVP facility where hydraulically feasible.
- 15-25 Appendix A, Table 1 in the DEIR identifies the amount of water that can be diverted or stored in accordance with the Trinity River permits. The Trinity River Project can now deliver water to 834,667 acres, as shown in Figure 2-1 in the DEIR. The actual amount of acreage receiving CVP water in any given year depends on the management practices of the individual CVP water contractors and the amount of water available for delivery. This amount varies from year to year.
- 15-26 The expansion lands are considered to be a gross area in which CVP water may be delivered. There is sufficient CVP water to serve portions of the lands within the existing POU, encroachment area, and expansion area. It is not known if there is sufficient CVP water to serve all lands in the expanded POU.
- Individual CVP water contractors are delivered CVP water pursuant to water service contracts with Reclamation. The petition before the Board does not affect the terms of the contracts between the CVP water contractors and Reclamation.
- Figures 2-1 to 2-5 show those lands that can receive CVP water in accordance with individual water rights permits. Whether the expansion areas are irrigated with CVP water depends on the management decisions of the individual CVP water contractors.
- 15-27 The data presented in Table 2-2 and throughout the DEIR are GIS-calculated acreage provided by Reclamation.
- 15-28 It is unclear why the commenter believes that Table 3-1 is inaccurately titled. The title to Table 3-1 accurately portrays the information provided in the table, namely, the amount of water listed for delivery in each of the CVP water contracts.
- 15-29 Section 3.3.1.1 of the DEIR will be revised in the Final EIR to indicate that the current method of CVP operation is not in accordance with the existing 16 water rights permits.
- 15-30 Comment noted. The purpose of Table 3-2 in the DEIR was to summarize the uses and the authorized POU, and was not intended to substitute for a depiction of where CVP water can be used, as was presented in Figures 2-1 to 2-5.

Mike Follenstein
March 30, 1998
Page 5

Page 3-16. The current status of the steelhead trout should be documented. 15-31

Page 3-25. The EIR states that county-designated land uses for lands served by the CVP contractors are described in Section 3.4. Why are land uses in incorporated areas served by CVP water not summarized (such as incorporated lands served by the El Dorado Irrigation District, Orland-Artois Water District, Santa Clara Valley Water District, etc.)? We request that the applicable municipal land uses be addressed in the EIR. 15-32

Page 3-25. The statement that CVP water contractors have decision-making authority regarding the boundaries of their service areas fails to recognize the role of Local Agency Formation Commissions. 15-33

Page 3-27. Section 3.3.10 (Economics) is so generalized that it is misleading. It is not informative to apply county-wide economic characterizations to small water service providers such as the City of Shasta Lake and the other seven Shasta County CVP water contractors listed in Table 3-6. We request that the economic characterizations be rewritten to individually address each of the areas served by the CVP water contractors. 15-34

Page 3-31. Table 3-7 understates the acreage of the City of Shasta Lake's service area outside the authorized place of use. Approximately 883 acres (not 231 acres) are outside the authorized place of use, and an even larger area is in the City's service area but outside the contract service area. In separate correspondence, the City has asked that the service area be revised to coincide with the City boundaries. We request that the corrected data and proposal to modify the City's service area be addressed in this EIR. 15-35
15-36

Page 3-31. Four categories of encroachment lands are shown in Table 3-7, not three. 15-37

Page 3-32. The report text states that the ACID service area is located within unincorporated lands of Shasta and Tehama counties. However, the contract service area boundaries shown in Figure 3-2 include lands within the City of Redding and the City of Anderson. 15-38

Pages 3-35 and 3-36. Table 3-8 shows that there are no encroachment lands in the ACID service area. However, the text and Table 3-9 reference a number of special-status species that "are expected to have been present" on these non-existent encroachment lands. The same type of error is made throughout Section 3.4 (e.g., Contra Costa Water District, East Bay MUD, Glenn Valley Water District, Shasta Community Services District, etc.). We request that all such inconsistencies be purged from the EIR. 15-39

Page 3-47. The Bella Vista Water District service area includes lands within the City of Redding municipal boundary. We request that the text be revised accordingly and that applicable land uses and policies pertinent to these lands be described. 15-40

- 15-31 Paragraph 4 on page 3-16 will be corrected in the Final EIR to indicate that steelhead trout within the Central Valley Evolutionary Significant Unit is listed as a federally threatened species.
- 15-32 Comment noted. As stated elsewhere on this page, applicable land management authorities control land uses on lands addressed in this DEIR. This includes both county and municipal governments, as appropriate. The land use descriptions presented in Section 3.4 of the DEIR refers to the applicable county or municipal land use designations for each CVP water contractor.
- 15-33 Section 3.3.8, page 3-25 of the DEIR will be revised in the Final EIR to reflect that Local Agency Formation Commissions also have decision-making authority regarding the location of municipal and special-district service boundaries.
- 15-34 Because of the programmatic nature of the EIR, county-wide economic characterizations were presented. Providing water contractor-specific economic characterizations would not change the conclusions presented in Section 4.14. The impacts discussions are presented in the DEIR in Section 4.14 for each of the CVP water contractors.
- 15-35 The acreage values presented in Table 3-7 and discussed further in Section 3.4.23 of the DEIR reflect lands currently included in the CVP water contract with the City of Shasta Lake. While the City boundaries may be larger than this area and a request to include these additional lands in the CVP service area is being made, such changes are not the subject of the pending petition or this DEIR.
- 15-36 See response to Comment 15-35.
- 15-37 The text on page 3-31 of the DEIR will be revised in the Final EIR to indicate that four categories are provided in Table 3-7.
- 15-38 Section 3.4.1.2 on page 3-32 of the DEIR will be modified in the Final EIR to indicate that the ACID service area is located within unincorporated lands of Shasta and Tehama counties, and the incorporated lands of the cities of Redding and Anderson.
- 15-39 The title of Table 3-9 was not meant to indicate that all species listed in the table are found within the entire service area of Anderson-Cottonwood Irrigation District, nor was it meant to convey that the species are found only within the encroachment lands. It is meant to convey that habitat and threatened and endangered species may occur somewhere within the district. This circumstance is also true for the other CVP water contractors listed in the commentor's statement. No changes to the table in the Final EIR are necessary.
- 15-40 In response to the Board's direction, the POU boundary has been relocated to include all of the BVWD service area. BVWD has been eliminated from further discussion in the Final EIR.

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Page 3-47. Please define "Class 6" lands. | 15-41

Page 3-51. The Wintu Pumping Plant is located in, not near, the City of Redding. | 15-42

Figures 3-2 through 3-27. The scale on the maps is meaningless. We request that the maps be revised to show the scale units. | 15-43

Page 3-96. The statement that incorporated lands are present within the Mountain Gate Community Services District appears to be erroneous. | 15-44

Table D-2, referenced on page 3-99, does not mention the Shasta snow-wreath, a special-status plant species (California Native Plant Society List 1B) known to occur within the Mountain Gate Community Services District. | 15-45

Page 3-130. The mechanistic writing style used in the Section 3.4 has led to several meaningless statements. Some are referenced above in our comment regarding pages 3-35 and 3-36. Other examples are found in the cultural resources discussions under Section 3.4. For example, page 3-130 states that one cultural resource site has been recorded on lands outside the authorized POU, and then concludes that these lands have a "moderate probability" of containing cultural resources. Similar contradictory statements are made in other cultural resource discussions (e.g., City of Coalinga). | 15-46

Page 3-138. The EIR should be revised to state that the City of Shasta Lake service area is entirely within the City's incorporated boundary. Further, Shasta County General Plan land use designations are not applicable within the City. | 15-47

Page 3-141. The description of the City the Shasta Lake as including "a lumber mill and several businesses" is a gross misrepresentation of the City's industrial and commercial land use base. | 15-48

Table 3-41. Aerial photograph review shows that expansion lands mapped in Figure 3-24 support mixed chaparral and valley-foothill hardwood-conifer habitats, not annual grassland. We request that the EIR be revised accordingly. | 15-49

Page 3-142. Section 3.4.23.7 should be clarified to identify whether the known cultural resources are located within the City, the old Shasta Dam PUD service area boundary or on expansion/encroachment lands. | 15-50

Page 3-142. The Shasta salamander is a limestone-dependent species. Geologic mapping shows that limestone is not present in the encroachment or expansion lands of | 15-51

- 15-41 Class 6 lands typically consist of steep, eroded, or soils with high salt concentrations; soils with too coarse or fine grain; shallow soils; or have some other deficiency that cannot be corrected and which prevents them from having a payment capacity to meet OM&R costs. Class 6 lands also include unclassified lands when there is a surplus of arable lands (USBR Land Classification Instructions, 1984).
- 15-42 The POU boundary has been corrected and includes all of the BVWD service area. BVWD has been eliminated from further discussion in the Final EIR.
- 15-43 The scales shown on Figures 3-2 through 3-27 are in miles. The scales have been clarified in the revised figures in the Final EIR.
- 15-44 The scales shown on Figures 3-2 through 3-27 are in miles.
- 15-45 Table D-2 lists only the special-status species that are designated and protected pursuant to federal and state regulations; therefore, species on the California Native Plant Society list are not included on the list. No change to the Final EIR is necessary.
- 15-46 The intent of the cultural resource discussions, such as in Section 3.4.20.7, is to (1) present the actual number of sites identified on lands outside the authorized POU, (2) determine an area's sensitivity to disturbance, and (3) list the probability of encountering a site if the lands outside the authorized POU are served with CVP water.
- 15-47 The POU boundary has been corrected and includes all of the City of Shasta Lake service area. The City of Shasta Lake has been eliminated from further discussion in the Final EIR.
- 15-48 See response to Comment 15-47.
- 15-49 See response to Comment 15-47.
- 15-50 See response to Comment 15-47.
- 15-51 See response to Comment 15-47.

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the City of Shasta Lake. Thus, there is no potential for this species to be present. We request that the EIR be revised accordingly.

15-51

Page 3-142. The California red-legged frog is incorrectly identified as a state-listed threatened species.

15-52

Page 3-142. California Department of Fish and Game considers the City of Shasta Lake to be within the historic range of the California red-legged frog, but does not expect the species to occur in the area at this time. We request that the EIR identify when the California red-legged frog was thought to have become extinct in the northern Sacramento Valley. If the species was locally extinct before CVP water was available, then the EIR should not address historic impacts with respect to this species.

15-53

Figure 3-24. This figure does not show the City of Shasta Lake boundary, but rather the old Shasta Dam PUD contract service area. We request that the map be revised accordingly.

15-54

Section 4. Effects of the Proposed Project and Alternatives

Page 4-1. The first paragraph of this section recognizes that much of the CVP-induced land use conversions occurred prior to enactment of CEQA, the endangered species acts and other environmental laws. Given this fact, why are these laws being retroactively applied to this project? Based on discussions with Office of Planning and Research staff and our own reading of CEQA, we understand that there is no explicit basis in CEQA or case law to allow consideration of historic impacts. We request that the basis for evaluating historical impacts be fully disclosed; the disclosure should address CEQA, the endangered species acts, cultural resources statutes and other applicable environmental statutes.

15-55

Page 4-1. If historic impacts are to be addressed, we request that the following be evaluated:

- How much habitat loss occurred prior to CEQA enactment and how much after CEQA enactment?
- On what basis are pre-CEQA impacts now being subjected to CEQA review?
- Of the post-CEQA encroachments, which were addressed under other environmental documents (and authorized in compliance with CEQA) and which were not?
- With respect to the projects authorized by CEQA, why is additional evaluation and mitigation now being proposed?
- Of the post-CEQA projects for which no environmental documentation was prepared, when were the projects authorized? For which of these projects has

15-56

15-52 Paragraph 2 on page 3-142 of the DEIR will be corrected in the Final EIR to reflect that it is a federal threatened species.

15-53 It is appropriate to address the consequences of modifying the authorized POU regardless of when CVP water was actually delivered to the individual CVP water contractors.

15-54 See response to Comment 15-47.

15-55 Because the petition for changing the POU is presently being considered, the EIR needs to address the consequences of expanding the POU from its existing location. Therefore, the change to the POU is a current action, regardless of when the unauthorized CVP water delivery took place.

15-56 See response to Comment 15-55.

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the statute of limitations not expired? We contend that only projects in the latter category should now be subject to CEQA review. 15-56

Pages 4-1 to 4-25. On what basis are historic impacts on threatened and endangered species addressed? Species have been added to the lists over time. For example, the vernal pool fairy shrimp and vernal pool tadpole shrimp were not listed until 1994. There is no basis for mitigating historic effects on these species if the effects (i.e., encroachment) occurred before the species were listed. We request that the EIR be rewritten to exclude such historic "impacts." 15-57

Pages 4-1 to 4-25. The purported impacts on threatened and endangered species are significantly misrepresented. A few examples of these misrepresentations are presented below:

- There is no evidence, or only limited evidence, that the 49,602 acres of habitat for which mitigation is proposed actually supported threatened and endangered species at the time CVP-induced development occurred. On the contrary, scientific evidence suggests that most of these lands were not critical habitat for threatened and endangered species when CVP water was provided. For example, annual grassland is a widespread non-native habitat. Although it supports some threatened and endangered species, and other rely on the habitat for foraging, most of the habitat is of low value to threatened and endangered species. The threatened and endangered species often occur in special habitat inclusions such as vernal pools. No professional biologist would contend that all 19,262 acres of non-native grassland habitat provided critical habitat for threatened and endangered species at the time CVP water was provided. The EIR should be rewritten to better address purported impacts on threatened and endangered species. 15-58

- California linderella is inaccurately described as proposed for federal listing as endangered (Tables D-2, 4-1 and 5-1, etc.). 15-59

- Shasta salamander is described as being expected to have been present on encroachment lands in the City of Shasta Lake and Silverthorn service areas. This species is a limestone endemic. Geologic and soils mapping show that there is only a remote potential for limestone outcrops to be present in the areas. Nonetheless, the EIR calls for mitigation for the historic loss of Shasta salamander habitat. This is erroneous and should be dropped. 15-60

- The bald eagle is described as being expected to have been present on encroachment lands in the Silverthorn service area. Bald eagles are relatively abundant around Lake Shasta because they extensively utilize the habitat. 15-61

15-57 Endangered species addressed in the DEIR are those that are currently listed by the respective state and federal management agencies. The DEIR identifies historic impacts that occurred with delivery of CVP water to lands outside the POU. This discussion is needed to fully disclose the impact of the unauthorized delivery of CVP water.

15-58 As described on page 4-23 of the DEIR, the analysis on special-status species considered that if habitat conditions were present in an area, their respective species of concern were assumed to inhabit that area. It is not feasible at this time to attempt to reconstruct the presence or absence of these species given the magnitude of land use/habitat changes that have taken place since the delivery of CVP water.

15-59 Comment noted. The California linderella has been deleted from the Final EIR because it is not currently listed.

15-60 Both the City of Shasta Lake and Silverthorn Summer Homes, Inc. service areas are now included within the existing POU boundary and have been eliminated from further discussion in the Final EIR.

15-61 The POU boundary shown in the DEIR has been corrected and includes all of the Silverthorn Summer Homes, Inc. service area. The Silverthorn Summer Homes, Inc. service area has been eliminated from further discussion in the Final EIR.

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provided by the lake (a CVP-created reservoir). Bald eagles typically nest within one mile of large water bodies. Had Lake Shasta not been created, bald eagle habitat would not have been present at Silverthorn. Thus, there is no "historic impact" on bald eagle habitat at Silverthorn.

15-61

Page 4-1. The EIR states that it is not reasonable to assume that M&I lands would be abandoned if delivery of CVP water is terminated. However, it may be extremely expensive to develop another water source. The Silverthorn area is a good example, as it has no groundwater resources (Page 3-143) and is relatively isolated such that development of an alternative water delivery system would be costly. The resulting economic effects could lead to physical degradation of the area. Pursuant to Section 15131 of the CEQA Guidelines, we request that these indirect effects be fully evaluated in the EIR.

15-62

Page 4-2. Section 4.2.1.1 states that the proposed project would allow delivery of CVP water to 21,678 acres of expansion lands. The derivation of this figure is explained only in subsequent sections of the EIR, which leaves Section 4.2.1.1 very difficult to understand. We request that Section 4.2.1.1 be clarified.

15-63

Page 4-3. Many of the species identified in Table 4.1 are not threatened or endangered.

15-64

Page 4-5. The reference to 211,678 acres should be corrected to 21,678 acres.

15-65

Page 4-5. If CVP water can serve only an additional 21,678 acres of new development, on what basis can the State Water Resources Control Board accept Reclamation's petition to expand the authorized place of use by 718,003 acres (expansion lands)? Further, if only 13 of the water contractors can support additional development with CVP water, on what basis would expansion lands be added to the authorized place of use for the remaining contractors? We request that this be clarified. We also request that another alternative be addressed in the EIR. This alternative would allow extension of the place of use to include encroachments lands and ±21,678 acres of expansion lands; the expansion lands would be located only in the service areas of the referenced 13 CVP contractors.

15-66

15-67

15-68

Page 4-6. The reference to Table 3-4 is incorrect.

15-69

Page 4-6. Section 4.3 argues that because there is no change in the status quo, Changes 1 and 2 will not result in physical changes to the environment and will thus not result in environmental impacts. Why is this argument not applied with respect to Change 3a (encroachment lands)? Instead, the EIR concludes that continuation of the status quo with respect to encroachment lands is a significant adverse impact and recommends that an extensive mitigation program be formulated to offset the impact. Such

15-70

- 15-61 The POU boundary shown in the DEIR has been corrected and includes all of the Silverthorn Summer Homes, Inc. service area. The Silverthorn Summer Homes, Inc. service area has been eliminated from further discussion in the Final EIR.
- 15-62 It would be speculative to assume that physical changes to the environment would result from increased water supply costs. Although alternative water supplies may be expensive, the expense would not prohibit continued M&I land uses.
- 15-63 The Final EIR presents a discussion of those lands and the methods used to calculate the acreage assigned to each land use category based on the revised location of the authorized POU boundary.
- 15-64 This comment is correct. The title to Table 4-1 will be revised in the Final EIR to reflect that these species are those that are considered special-status species by federal and state management agencies.
- 15-65 The number "211,678" in Section 4.2.2.1 will be revised in the Final EIR to indicate "21,678".
- 15-66 The pending petition requests that the POU boundary be expanded to encompass the area of all of the existing CVP water contractors. This request will enable each water contractor to deliver its contracted CVP water volume to lands in their respective boundaries up to the amount capable with available CVP water supplies.
- 15-67 See response to Comment 15-66. The delivery of CVP water to lands within the respective water contractor boundaries is a local decision conducted in a manner consistent with the existing CVP contracts. All CVP water contractors have the ability to reallocate water deliveries to lands within their boundaries, as long as the delivery is consistent with the terms and provisions of their respective CVP water contract.
- 15-68 A new alternative, as described, would not meet the objectives of the project proponent and therefore is not considered a reasonable alternative. The Board has the discretion to only modify the POU boundary in areas that it deems appropriate. The DEIR addresses the consequences of expanding the POU to all service areas, as petitioned by Reclamation.
- 15-69 The reference to Table 3-4 in Section 4.3 on page 4-6 will be corrected in the Final EIR to indicate Table 3-2.
- 15-70 Page 4-17 of the DEIR acknowledges that the continued delivery of CVP to encroachment lands outside the POU would not result in a physical change to existing land uses and the environment. Where such physical change occurred without appropriate CEQA review, associated impacts are subject to mitigation at this time. Based on the information available during the preparation of the DEIR, M&I encroachment lands are not subject to further mitigation.

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contradictory logic undermines the scientific validity of the entire EIR. We request that the EIR be withdrawn and fully rewritten to avoid such significant errors. 15-70

Page 4-8. Given the extent of planned and newly approved development, the City of Shasta Lake does not have any "surplus water." We request that Table 4-3 and the remainder of the EIR be revised accordingly. 15-71

Page 4-10. Section 4.3.5 states that implementation of the "no project" alternative would have no effect on river flow or reservoir condition. This appears to contradict data in Section 2, which indicates the "no project" alternative would require alteration of CVP operations. Although the latter is not defined in the EIR, it seems obvious that alteration of CVP operations would affect river flows and reservoir conditions. We request that alteration of CVP operations stemming from implementation of the "no project" alternative be identified, and that subsequent effects on river and reservoir conditions be evaluated. 15-72
15-73

Page 4-10. Section 4.4.1 should refer to 26 water contractors, not 236. 15-74

Page 4-12. The assumptions listed at the top of the page appear arbitrary. We request that the rationale for the assumptions be presented. 15-75

Page 4-14. The statement under Section 4.4.3 that the "no project" alternative would jeopardize many land management activities and land uses that have historically relied on the delivery of CVP water is accurate, but contradicts statements elsewhere in the EIR (e.g., page 4-1). 15-76

Page 4-14 (second paragraph). There is no basis to assume that if CVP water is not available for irrigation, irrigated agricultural lands will convert to dryland agricultural uses. It is quite possible that these lands could convert directly to M&I uses, or could be left unused. This fact is not recognized until much later in the evaluation. Secondly, the 51,069 acres referenced on page 4-14 and many other pages does not correspond with figures used elsewhere on page 4-14 and in Table 4-5. 15-77
15-78

Page 4-19. The statement that loss of 8 acres of valley-foothill hardwood-conifer habitat and 47 acres of mixed chaparral habitat in the Silverthorn area is significant appears to conflict with the general principals outlined on page 4-22. Both of these habitat types are widespread in the Silverthorn area. We request that more specific analyses be conducted before concluding that significant adverse impacts would result. 15-79

Page 4-22. The EIR discusses "special-status species" and references lists in Table D-2 and elsewhere, but does not define this category. Special-status species must be defined in the EIR, given the varying usage of this term by professional biologists. 15-80

- 15-71 The POU boundary shown in the DEIR has been corrected and includes all of the City of Shasta Lake service area. The City of Shasta Lake has been eliminated from further discussion in the Final EIR.
- 15-72 Comment noted. While the "No Project" alternative would require reoperation of CVP facilities to meet the terms of the existing water rights permits, these facilities would also be required to convey CVP water in accordance with existing contracts and other obligations. The DEIR concludes that the change associated with the "No Project" alternative would be minor on existing river and reservoir conditions.
- 15-73 The "No Project" alternative would not alter the volume of water to be delivered to existing CVP contractors, except to those CVP water contractors located entirely outside the existing POU, or other obligations of the CVP. Because a method to reoperate the CVP in a manner consistent with existing water rights permits does not currently exist, it is not possible to describe how Reclamation would reoperate the CVP. If Change 2 is denied, then Reclamation would determine what would be needed to reoperate the CVP, including the type and number of new facilities, where they would be located, and the type and extent of resources that could be affected, as applicable.
The Final EIR will be revised to note that the "No Project" alternative may require reoperation of the CVP facilities.
- 15-74 This comment is not correct. Changes 1 and 2 of the proposed petition would apply to all CVP water contractors, not just those with lands located outside the POU.
- 15-75 The assumptions made on pages 4-11 and 4-12 of the DEIR to develop future land use estimates are not arbitrary. The assumptions are reasonable for estimating future land uses.
- 15-76 No conflict between page 4-1 and 4-14 in the DEIR exists regarding the effects from implementing Alternative 1 (No Project) on land management activities and land uses that rely on CVP water delivery. Page 4-1 indicates that, if Alternative 1 is implemented, M&I land uses would not likely be abandoned because of the investment in infrastructure. Page 4-14 indicates that, land uses that rely on CVP water delivery (both agricultural and M&I) would be jeopardized if Alternative 1 is selected.
- 15-77 This statement is not correct. Page 4-14 of the DEIR concludes that if delivery of CVP water supplies are terminated to lands listed in Table 4-5, these lands would revert to dryland agriculture or commercial agricultural production would be discontinued unless an alternative water supply is acquired. Other land uses could occur if adequate alternative water supplies were acquired.
- 15-78 The 51,069 acres referenced on page 4-14 is calculated from Table E-1 by subtracting the Dryland Agriculture column total in Alternative 2 from the Dryland Agriculture column total in Alternative 1. It is correct that the 51,069 acres do not correspond with the total in Table 4-5 because they are discussing two separate issues.
- 15-79 The POU boundary shown in the DEIR has been corrected and includes all of the Silverthorn Summer Homes, Inc. service area. The Silverthorn Summer Homes, Inc. service area has been eliminated from further discussion in the Final EIR.
- 15-80 The term "special-status" species will be defined in the Final EIR.

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Page 4-23. The EIR assumes that if suitable habitat conditions are present in an area, the associated species of concern are (or were) present. This is extremely inaccurate, particularly given the very generalized nature of the habitat assessment. Refer to our comments regarding page 3-142 and pages 4-1 to 4-25 for examples of the inaccuracies of this approach. We request that a more detailed evaluation be prepared for inclusion in the EIR.

15-81

Page 4-23. Section 4.6.1, which deals with special-status species, states that alteration of small, isolated tracts of land is not considered to have resulting effects on wildlife species. This is another scientifically inaccurate over-generalization. We request that a more detailed evaluation be prepared for inclusion in the EIR.

15-82

Pages 4-24 and 4-25. The EIR states that Alternatives 1 and 3 could result in significant adverse impacts to Swainson's hawks. If so, why are mitigation measures for this adverse impact not addressed in Section 5?

15-83

Pages 4-26 and 4-27. The argument that development of 21,678 acres would not result in significant air quality impacts is weak, particularly considering that many of the affected air basins are nonattainment for particular pollutants. Further, significant development may be concentrated in small areas, such as 1,631 acres of development in the City of Coalinga (Table 4-6). We recommend that the EIR treat the effects of the project on air quality as significant unavoidable adverse impacts.

15-84

Pages 4-30 and 4-31. The statement in Section 4.8 that the proposed project and alternatives would not result in changes to CVP operations is in direct conflict with Section 2, which states that the "no project" alternative would necessitate changes in CVP operations. We request that the changes in operation be identified and that the potential effects of the "no project" alternative on water quality be addressed.

15-85

Page 4-33. The introduction to Section 4.9 states that the proposed project and alternatives could result in potentially significant impacts on groundwater resources in specific areas of the San Joaquin Valley. If this is the case, mitigation measures must be presented in Section 5. No such measures are provided.

15-86

Pages 4-33 and 4-34. The EIR presents conclusory statements regarding effects on groundwater resources. We request that the supporting data be provided so that the adequacy of the information can be assessed.

15-87

Page 4-34. The statement in Section 4.10 that the proposed project and alternatives would not result in changes to CVP operations is in direct conflict with Section 2, which states that the "no project" alternative would necessitate changes in CVP operations.

15-88

- 15-81 Because it is not possible to accurately determine if species were or were not present in an affected area prior to the delivery of CVP water, the assumptions used in the DEIR are appropriate.
- 15-82 Comment noted. Although this generalization may have exceptions, as discussed in the relationship to threatened and endangered species, land uses changes on small, isolated tracts of land would not impact common wildlife species in a significantly adverse manner.
- 15-83 Section 5.1 identifies measures suitable for mitigating impacts to encroachment lands from implementation of the Proposed Project and Alternative 2. No mitigation is required for implementation of the No Project Alternative or denying the Changes that are being requested.
- 15-84 Comment noted. The discussion addressing air quality impacts from the Proposed Project when compared to permitted and existing conditions will be revised in the Final EIR to note that locally significant air quality effects may be generated. Where land use changes would occur in expansion lands, it would be speculative to assume that such impacts would be significant.
- 15-85 The "No Project" alternative would not alter the volume of water to be delivered to existing CVP contractors, except to those CVP water contractors located entirely outside the existing POU, or other obligations of the CVP. Because a method to reoperate the CVP in a manner consistent with existing water rights permits does not currently exist, it is not possible to describe how Reclamation would reoperate the CVP. If Change 2 is denied, then Reclamation would determine what would be needed to reoperate the CVP, including the type and number of new facilities, where they would be located, and the type and extent of resources that could be affected, as applicable.
- The Final EIR will be revised to note that the "No Project" Alternative may require reoperation of the CVP facilities.
- 15-86 The introduction to Section 4.9 will be revised in the Final EIR to specify that potential impacts to San Joaquin Valley groundwater resources would only occur with implementation of Alternatives 1 and 3 (denial of Changes 3a and 3b). No mitigation is required for implementation of the No Project Alternative or denial of permit changes.
- 15-87 Section 4.9 of the Final EIR includes an appendix (Appendix A) that presents the calculations developed for this analysis.
- 15-88 See response to Comment 15-85.

<p>Mike Polleszko March 30, 1998 Page 12</p> <p>We request that the changes in operation be identified and that the potential effects of the "no project" alternative on fish resources be addressed.</p>	15-88
<p>Pages 4-37 and 4-38. The introduction to Section 4.11 identifies the historic effects of CVP-induced development on cultural resources as largely irreversible and unmitigable. If unmitigable significant impacts are identified, a Statement of Overriding Considerations must be adopted pursuant to Section 15093 of the CEQA Guidelines. Further, the effects must be detailed in Section 8 of the EIR.</p>	15-89
<p>Pages 4-37 and 4-38. Sections 4.11.1 through 4.11.4 state that the project and alternatives would have no impact on cultural resources. This conflicts with the statement in the introduction to the section. We request that a consistent approach be used throughout the section.</p>	15-90
<p>Pages 4-37 and 4-38. If historic impacts on cultural resources are not considered significant, why are historic impacts on biological resources considered significant? We request that a single approach to determine impact significance be used throughout the EIR.</p>	15-91
<p>Pages 4-41 and 4-43. The statement that five water contractors have relied to some extent on CVP water to support development of municipal and rural residential lands outside the authorized place of use appears to conflict with Table 3-7. The table shows three contractors with CVP-induced M&I lands. One of these contractors is not included on page 4-41. We request that the EIR be revised to eliminate such inconsistencies.</p>	15-92
<p>Pages 4-43 and 4-44. The evaluation of recreational and visual resources addresses only future-effects on expansion lands. The historic loss of recreational opportunities and degradation of visual character is not addressed. Why are historic impacts on these resources not addressed, but historic impacts on biological resources are addressed? We request that a single approach to determine impact significance be used throughout the EIR.</p>	15-93
<p>Page 4-45. The EIR states that the economic analysis of agricultural lands is based on the assumption that water is not a limiting factor. This appears to be an unrealistic assumption.</p>	15-94
<p>Page 4-48. The "Percent Change" shown in Table 4-11 is apparently negative, but is not indicated as such.</p>	15-95

- 15-89 Page 4-38 of the DEIR indicates that no new impact to cultural resources would occur with continued delivery of CVP to agricultural lands or M&I land uses. Historic impacts to cultural resources that may have occurred are considered irreversible. Therefore, no mitigation is recommended as part of this DEIR.
- 15-90 Continued delivery of CVP water to encroachment lands would not affect cultural resources. Only in the case of new development to expansion lands, would cultural resource impacts be expected.
- 15-91 This comment is incorrect; the DEIR does not conclude that historic impacts on cultural resources associated with the delivery of CVP to lands outside the authorized POU are nonsignificant. It is not possible to assign a level of significance in the case of cultural resources. Therefore, the DEIR uses a single approach to determining impact significance.
- 15-92 The text on page 4-41 and 4-43 "CVP contractors have relied to some degree" was not intended to mean "CVP-induced", which is what Table 3-7 shows. Pages 4-41 and 4-43 will be modified in the FEIR to indicate that CVP water was used to support municipal and rural residential land uses, not necessarily the initial development of those lands.
- 15-93 Comment noted. A discussion of historic impacts on recreation and visual resources associated with CVP water delivery on encroachment lands will be included in Section 4.13 of the Final EIR.
- 15-94 The economic analysis calculates a worst-case economic effect. In order to calculate the worst-case economic change associated with implementing the Proposed Project and alternatives, it is assumed that water is not a limiting factor. If water is a limiting factor, no impact or less impact would result from implementation of the alternatives.
- 15-95 Comment noted. The headings of Table 4-11 have been transposed. The first column should be titled Proposed Project Gross Farm Receipts and the second column should be titled Alternative 1 Gross Farm Receipts.

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<p>Page 4-50. The EIR states that significant economic impacts would occur if the "no project" alternative is implemented. In accordance with Section 15131, physical changes resulting from the significant economic effects should be addressed.</p>	15-95a
<p>Section 5. Mitigation Measures</p>	
<p>Page 5-2. Table 5-1 incorrectly identifies many special-status species as threatened or endangered.</p>	15-96
<p>Pages 5-1 to 5-8. Section 5 of the EIR calls for mitigation to offset the historic loss of 49,602 acres of habitat. Existing programs (primarily the Central Valley Project Improvement Act and CalFed program) are then identified as being the appropriate means to obtain mitigation. These programs were authorized by the state and federal legislatures in part to provide habitat restoration. However, the authorized programs are independent of the proposed project. Reliance on existing programs to provide mitigation for a new project is unacceptable. In order for the mitigation to be acceptable it must: 1) have separate funding above and beyond that already planned/proposed for existing programs, 2) have a reliable source of funding not subject to termination by political bodies, 3) must clearly offset the adverse effects of project implementation. We request that the EIR discuss specifically how these criteria will be met.</p>	15-97
<p>Pages 5-1 to 5-8. The EIR (page 1-3) states that impacts on encroachment lands can be addressed at the project level. If this is the case, then the mitigation measures for encroachment land should be presented at the same level of detail. This has not been done. We request that Section 5.1 be rewritten to address mitigation for encroachment lands at the project level. The mitigation measures must be sufficiently detailed so reviewers can determine the feasibility of the measures and evaluate potential indirect effects of the measures. The current mitigation measure section does not comply with Section 15126 of the CEQA Guidelines.</p>	15-98
<p>Pages 5-1 to 5-8. Section 5 does not indicated how effective the purported mitigation measures may be. The efficacy of the mitigation program must be evaluated.</p>	15-99
<p>Pages 5-1 to 5-12. Case law suggests that if specific mitigation measures are not formulated until after project approval (as would be the case with the current proposal), then the adopted measures must: 1) commit the agency to a realistic performance standard or criterion that will ensure the mitigation of the significant effect, and 2) disallow the occurrence of physical changes to the environment until the performance standard can be shown to be satisfied (Remy, Thomas, Meese and Manley, 1996). We request that Section 5 be rewritten to meet those criteria.</p>	15-100

- 15-95a Comment noted. The referenced section (Section 15131) of the CEQA Guidelines does not require an analysis of physical changes that may result from economic effects of a project. The Guidelines state that an EIR may trace the chain of cause and effect of economic changes to physical changes to the environment, emphasizing the changes to the physical environment.
- While the DEIR concludes that Alternative 1 would result in a substantial economic loss to earnings and jobs occurring within the boundaries of several of the affected CVP water contractors, there is no evidence to indicate that such losses would result in physical changes to the environment beyond those changes that would directly occur with the termination of CVP water supplies to lands outside the POU. The DEIR provides a discussion of the physical changes to the environment that would occur with implementation of Alternative 1.
- 15-96 The criteria for an acceptable mitigation program as presented in the comment reflects the opinion of the commentor and is not based on any legal requirement or standard. Reclamation will be responsible for implementing mitigation upon approval by the Board. Because Reclamation has numerous environmental restoration, enhancement, and mitigation programs ongoing to address past CVP operations, it has been determined that the mitigation required for historic POU impacts would be most effectively achieved by coordinating with one or more of these programs. The Board will be responsible for approving all mitigation plans that are employed to address impacts of the petitioned POU changes. The Board will determine the suitability of identified measures to offset encroachment land impacts.
- 15-97 The mitigation procedure would use several ongoing programs to achieve specific criteria and target values for mitigating project impacts. As described on page 5-7 and 5-8 of the DEIR, specific mitigation prescriptions will be achieved through continued planning and consultation with interested resource management agencies. Specific measures and criteria for evaluating the effectiveness of future mitigation has not yet been developed.
- 15-98 The specific measures to be employed are not fully known at this time, however, the DEIR does identify, on page 5-3 of the DEIR, several measures that can be employed to fully mitigate the impacts of delivering CVP water to lands outside the POU. As noted on page 5-8, it will be the Board's and Reclamation responsibility to assign criteria or targets for mitigation success. The Board would then be responsible for evaluating the specific measures in relation to the criteria.
- 15-99 As part of conditions to Reclamation's water right permits, the Board will require Reclamation to develop and follow a schedule for implementing feasible mitigation measures. This item is discussed on page 5-8 of the DEIR. Because the impacts to encroachment lands have already taken place, it is not possible to disallow physical changes to the environment, as suggested in this comment.
- 15-100 No contradiction in Section 6.1 of the DEIR exists. It is not possible to assign responsibility for historic impacts to any single entity or group; however, it is recognized that the CVP has contributed to impacts in the Central Valley. While the USFWS believes that the CVP is responsible for alteration of 2 million acres, the specific habitats, location, and species affected have not been identified. As noted throughout this EIR, many of the lands now receiving CVP water were originally developed using other water sources. This is true throughout much of the CVP service area.

<p>Mike Pollockstein March 30, 1998 Page 14</p> <p><u>Section 6. Cumulative Effects</u></p> <p>Page 6-1. Section 6.1 of the EIR states that it is not possible to assign responsibility for historic impacts to any single entity or group of entities. Two paragraphs later, the EIR assigns responsibility for the degradation of about two million acres of native habitat to operation of the CVP. This is a minor example of the numerous contradictions found throughout the EIR. We request that the EIR be rewritten to remove or fully explain all such apparent contradictions.</p>		15-101
<p>Page 6-3. Section 6.3 of the EIR addresses some of the on-going and planned projects that may contribute to cumulative impacts. This scope falls short of complying with the CEQA Guidelines (Section 15130), which call for "past, present and reasonably anticipated projects" to be addressed. We request that Section 6.3 be rewritten to comply with CEQA.</p>		15-102
<p>Page 6-7. Section 6.4.1 states that habitat loss could occur if CVP water percolates into the groundwater system and is then pumped and reapplied to other lands. This action would not be subject to control by Reclamation or SWRCB, but could contribute cumulatively to habitat loss. Nonetheless, the second paragraph of the section erroneously states that the project would not contribute to adverse cumulative effects. We request that the section be rewritten to eliminate contradictions and recognize the cumulative effects of the project.</p>		15-103
<p>Page 6-7. Section 6.4.2 (first paragraph) states the future M&I and agricultural development would contribute to increases in air emissions. The second paragraph states that emissions can be reduced (not eliminated) by compliance with applicable statutes, and concludes that the project would thus not contribute to cumulative impacts on air quality. As defined in the CEQA Guidelines, the intent of the cumulative impact analysis is to address individually minor, but collectively significant, effects occurring over a period of time. The EIR is thus incorrect in stating that no cumulative effects would occur. The same error occurs in Sections 6.4.3 and 6.4.4. We request that Section 6.4 be rewritten to address cumulative effects in accordance with the CEQA Guidelines.</p>		15-104
<p><u>Section 7. Growth-Inducing Effects</u></p> <p>Page 7-2. Section 7.1.1.2 states that the "no project" alternative could result in abandonment of agricultural lands since CVP water would not be available, and concludes that this would not be growth-inducing. However, in all likelihood, other agricultural lands would be brought into production as needed to meet demand. Although the location of the new agricultural lands is speculative, Section 7 should be rewritten to acknowledge the potential growth-inducing impacts.</p>		15-105

- 15-101 The DEIR presents a list of past, present, and reasonably anticipated future projects that could produce related or cumulative impacts, in accordance with the requirements of Section 15130 of the CEQA Guidelines. This discussion specifically notes that there are a variety of private and local-government sponsored projects that could contribute to cumulative impacts. It would be speculative to list the type and range of potential private and local-government sponsored projects that could occur throughout the CVP service area which may contribute to cumulative impacts.
- 15-102 The DEIR presents a list of past, present, and reasonably anticipated future projects that could produce related or cumulative impacts, in accordance with the requirements of Section 15130 of the CEQA Guidelines. This discussion specifically notes that there are a variety of private and local-government sponsored projects that could contribute to cumulative impacts. It would be speculative to list the type and range of potential private and local-government sponsored projects that could occur throughout the CVP service area which may contribute to cumulative impacts.
- 15-103 The proposed project would not increase the volume of water available for delivery to existing CVP water contractors or re-use by others. Therefore, the concern expressed in this comment would not be increased with approval of the pending petition.
- If CVP water is applied to expansion lands and results in re-use in locations without existing water supplies, this would be the subject of future environmental analyses addressing site-specific projects and associated impacts.
- 15-104 Expanding the POU will not contribute to increased air emissions. Such emissions could increase as a result of future land use management decisions by local authorities. The DEIR correctly notes that mitigation includes project-specific measures that would be assigned during the review of future individual development projects.
- 15-105 If the No Project Alternative is selected, CVP water could only be used within the existing authorized POU. While new lands may be brought into production, existing agricultural lands would most likely receive the CVP water supplies. This would depend on the water allocation and land management decisions occurring at the district and user level.

Mike Falkenstein
March 30, 1998
Page 15

Section 8. Significant Irreversible Environmental Changes

Page 8-1. Section 8 refers to the document as a Program EIR, which is not fully consistent with Section 1, which identifies it as a Program EIR and a Project EIR.

15-106

General Comments

Although specifically required pursuant to CEQA, a summary of the document is not provided. Given the massive scope and implications of the document, a concise summary is essential. We request that a report summary be presented to provide the data identified in Section 15123 of the State CEQA Guidelines.

15-107

In accordance with Section 15124 of the State CEQA Guidelines, the EIR must identify the intended uses of the document, identify agencies expected to use the EIR and provide a list of approvals for which the EIR will be used. None of these items is presented in the EIR. We request that the document be rewritten to include these mandatory items.

15-108

The scope of the EIR with respect to encroachment lands is extremely unclear. Section 1-2 states that the scope of the EIR is to address "encroached lands that have been served CVP water for agricultural land uses." Section 4.1 implies that the EIR addresses all (agricultural and M&I) CVP-induced land use conversions, and M&I-encroached lands are indeed addressed. Which of the two statements regarding scope is intended to be correct?

15-109

Further, at least four conflicting acreage figures are referenced with respect to encroachment lands. Section 4 (page 4-24) states that 60,121 acres of native vegetation "have been converted to M&I development from CVP water" and defines this as a significant adverse impact; if this is the case, mitigation is warranted. In Section 5, mitigation for "encroachment land impacts" is addressed but covers only 49,602 acres. Table 4-7 shows that the 49,602 acres consists of 46,684 acres of agricultural lands served by CVP water and 2,918 acres of M&I lands; according to Section 1-2, only the 46,684 acres should be addressed. Table 5-7 shows only 37,075 acres of CVP-induced agricultural lands. These conflicting data make it impossible to determine the scope of the EIR with respect to encroachment lands – is it to address 60,121 acres, 49,602 acres, 46,684 acres, 37,075 acres or some other acreage entirely? We request that the EIR be withdrawn and completely rewritten to address a clearly defined, consistent scope.

15-110

Purported effects of the project with respect to special-status species tend to escalate throughout the document. Section 3.3.6.8 uses accurate language in describing special-status species "that may inhabit lands" located outside the authorized place of use. Throughout Section 3.4, these species are now "expected to have been present" on encroachment lands prior to development. In Table 4.1 and 5.1, many special-status species (which are not state or federally listed) are incorrectly referred to as threatened

15-111

15-106 The term "Program," as referenced in Section 8 of the DEIR, will be removed from Section 8 in the Final EIR. This document, as described in Section 1 of the DEIR, addresses impacts on both a project level and a programmatic level for the encroachment and expansion actions, respectively.

15-107 An executive summary was attached to the DEIR when it was distributed for public review.

15-108 Comment noted. The EIR will be used by the Board to assess the consequences of approving the petitioned changes to Reclamation's water rights permits for the CVP. The Final EIR will be revised to include this discussion.

15-109 Comment noted. Although the discussion on page 1-3 of the DEIR states that this EIR focuses on encroached lands that have been served CVP water for agricultural land uses, it does not imply that M&I encroached lands are not addressed. The EIR addresses impacts associated with the delivery CVP water to both land uses.

15-110 The 60,121 acres of native vegetation currently receive CVP water for M&I uses is correct. However, Only 2,918 acres were developed by the availability of CVP water (CVP-induced). The remaining acres (57,213 acres of M&I lands) were originally developed using non-CVP water sources. Table 4-7 in the Final EIR will be revised to include a total showing 46,684 acres of agricultural land and 2,918 acres of M&I land.

Table 3-7 in the Final EIR will be corrected to indicate that the total acreage for CVP-induced agriculture equals 46,684 acres, and the non-CVP induced agriculture will be reduced to 9,859. This is because of an error in the San Luis Water District entry, which misplaced 9,609 acres in the non-CVP induced agriculture column.

The Final EIR presents revised acreage estimates based on the correction of the POU boundary shown in the DEIR.

15-111 Comment noted. The term "expected" in the Final EIR will be revised to "may." Tables 4-1 and 5-1 will be revised to include only Threatened or Endangered species designated by respective federal and state agencies.

Mike Falkenstein
March 30, 1998
Page 16

and endangered species. We request that consistent, unbiased, scientifically accurate language be used throughout the EIR.

15-111

The EIR uses contradicting rationales to obtain desired results. For example, the EIR concludes that Change 2 will not result in significant impacts because current operations (and facilities) allow water to be conveyed throughout the CVP service area. Historic impacts due to construction of these facilities are not addressed. Using diametrically opposed logic, the EIR extensively addresses historic impacts on encroachment lands. Numerous other examples are cited above. We request that the EIR be rewritten to address all historic impacts or no historic impacts.

15-112

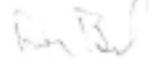
15-113

Although the EIR mentions special-status species throughout document, impacts on all but state- and federally-listed species are ignored. The CEQA Guidelines (Section 15380) state that even non-listed species must be fully addressed if they meet the criteria for listing as rare, threatened or endangered. With respect to plants, Department of Fish and Game (DFG) recognizes that species on the California Native Plant Society (CNPS) Lists 1A, 1B and 2 consist of plants that in the majority of cases qualify for state listing pursuant to CEQA Section 15380. Nearly 30 such plant species alone are listed in Table D-2 of the EIR but are not further addressed: potential effects on these species must be considered and appropriate mitigation measures must be recommended. An unknown number of animal species listed in Table D-2 must also be fully considered in the EIR.

15-114

Thank you for the opportunity to comment on this EIR. Please contact me if you have any questions regarding our comments.

Sincerely,



Donald Burk
Environmental Services Manager

cc: Alan Harvey, City of Shasta Lake

- 15-112 The purpose of this EIR is to address the pending petition before the Board to modify the POU. Construction of CVP facilities is not within the scope of this pending petition, and therefore, not addressed in this EIR.
- 15-113 The petition pending before the Board requests a modification to the POU to include those lands that were historically encroached. This EIR addresses the impacts of historic water deliveries to the encroached lands that occurred without authorization.
- 15-114 The U.S. Fish and Wildlife Service, National Marine Fisheries Service and the California Department of Fish and Game are the primary agencies with technical expertise and responsibility for identifying species for listing as rare, threatened, or endangered. Species listed by other parties have no basis for protection; therefore, for mitigation purposes, only those species designated by U.S. Fish and Wildlife Service, National Marine Fisheries Service, and the California Department of Fish and Game are listed in the document.

Responses to Comment Letter 16

- 16-1 The DEIR addresses those lands located within the boundaries of existing CVP water contractors where the boundaries had expanded outside the existing POU before Reclamation filed the change petition. The exclusion of the lands referenced in this comment is beyond the scope of analysis of this DEIR.
- 16-2 See response to Comment 16-1.

MF

LETTER 16

FAVERO RANCHES

DR. PAUL & ROX FAVERO
2237 PARK TOWN CIRCLE
SUITE ONE
SACRAMENTO, CA 95825

February 14, 1998 Telephone (916) 487-8433
Fax (916) 488-8757

State Water Resource Control Board
901 P Street
Sacramento, California 95814

Re: ENVIRONMENTAL IMPACT REPORT: December 1997

Dear State Water Resource Control Board:

I own a large ranch approximately 8 miles southwest of Williams, California, at 1860 Spring Valley Road. Recently, I was dismayed to learn that your *Environmental Impact Report of December, 1997*, does not include the Spring Valley area in its "Consolidated and Conformed Places of Use". 16-1

As a long-time owner of agricultural land in Spring Valley, I have been working for many years with the Westside Water District in an effort to bring irrigation water to our area. Until such time as this goal is achieved, we are relegated to dryland farming and seasonal cattle. The Valley floor in this location is well suited for permanent plantings such as almonds and grapes. However, we must receive CVP water in order to make our farming endeavors a truly viable and year-round enterprise in this area.

Spring Valley ranches are located in the Sacramento Basin and as such should be entitled to water from the "Area of Origin" long before anyone outside the Sacramento Valley area is considered to receive it. The Bureau of Reclamation has always had the intent and policy of providing irrigation waters to properties in the Sacramento Basin. The Service Area identified in your *Environmental Impact Report of December, 1997*, leaves my property and others in Spring Valley without Bureau water.

I am sure that I speak for all the farmers and ranchers in Spring Valley who are economically impacted by the aforementioned EIR of December, 1997, when I express my strong objections to our being left outside of the "Service Area". 16-2

16-3 See response to Comment 16-1.

State Water Resource Control Board
Re: Environmental Impact Report: Dec. 1997
February 14, 1998
Page Two

The Favero Family, as long term residents of Spring Valley and the Sacramento Basin, respectfully request that the State Resource Control Board do the following:

- 1) Allow Spring Valley Farmers to achieve their economic potential through the ability for permanent crop plantings and year-round livestock support.
- 2) Keep an adequate and appropriate amount of our much needed water resources within the "Sacramento Basin" as the "Area of Origin".
- 3) Re-assess the "Service Area" as outlined in your EIR of December 1997 to include Spring Valley and successfully complete our 15-year quest for much needed irrigation water on the Valley floor.

16-3

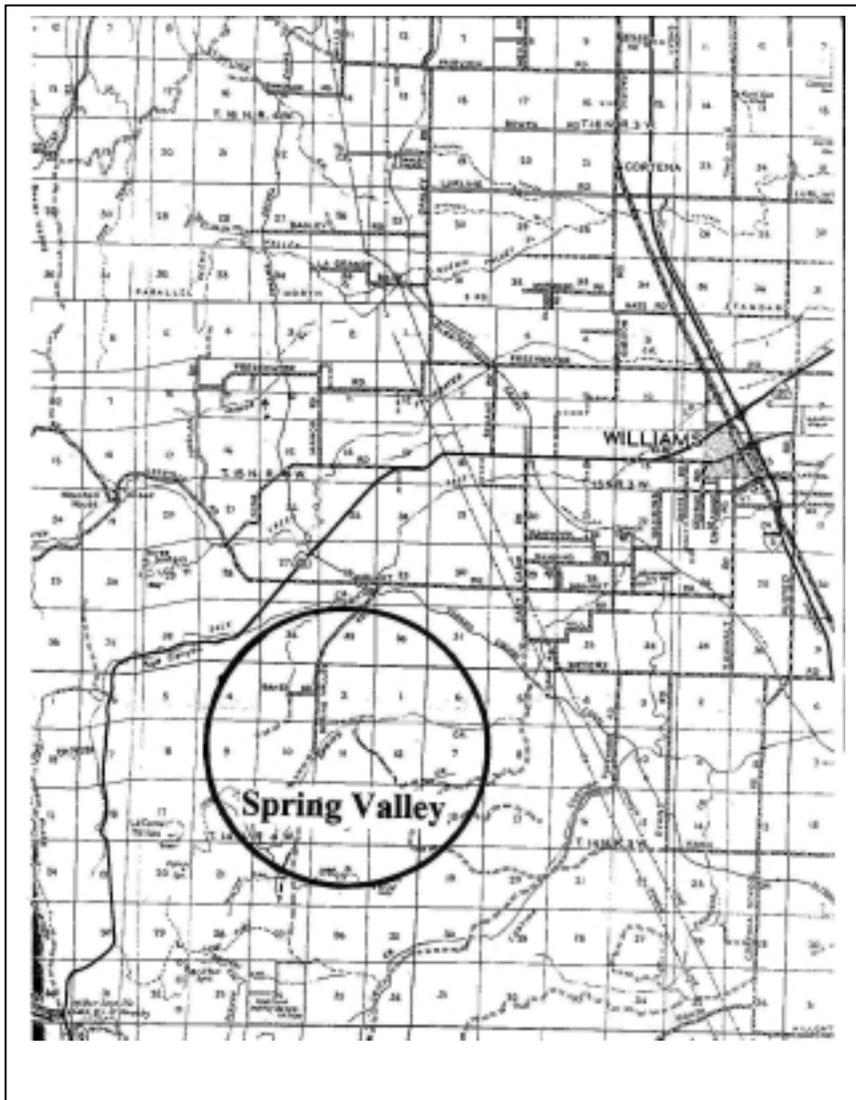
Thank you for your careful consideration of this matter. I would be willing to participate at any level necessary to facilitate a successful resolution of this matter.

SINCERELY,



DR. PAUL FAVERO

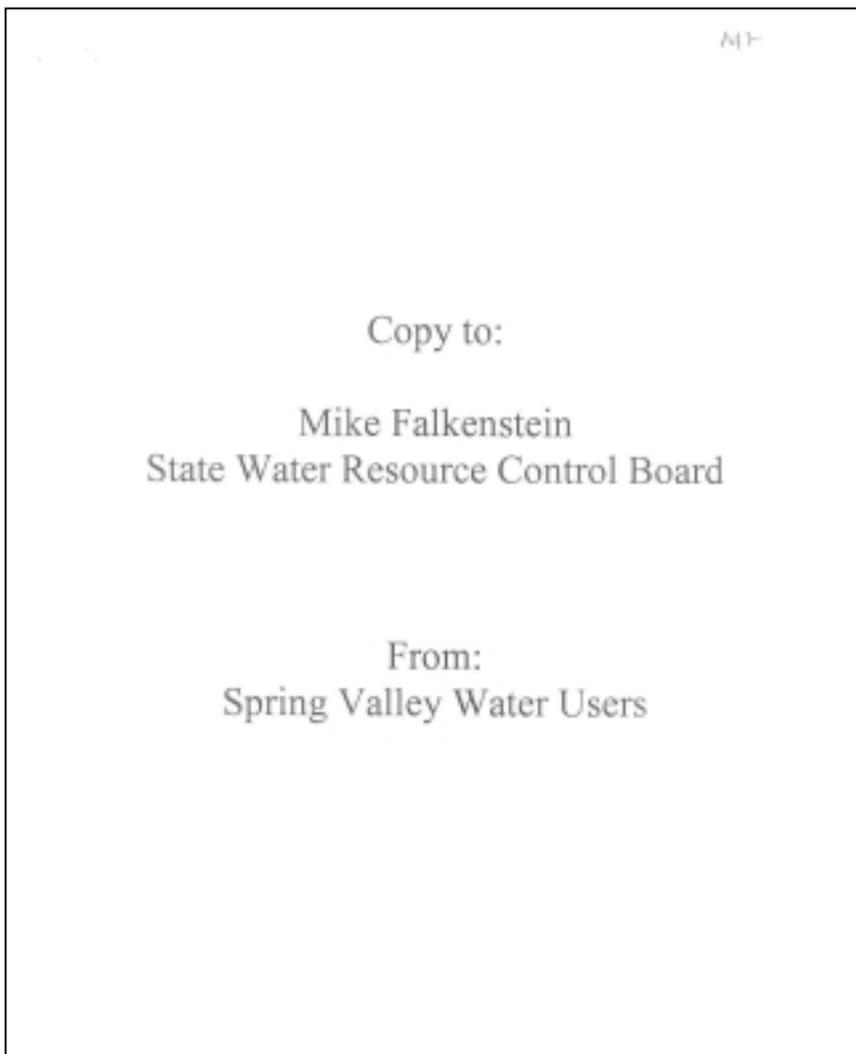
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Responses to Comment Letter 17

- 17-1 The DEIR addresses those lands located within the boundaries of existing CVP water contractors where the boundaries had expanded outside the existing POU before Reclamation filed the change petition. The exclusion of the lands referenced in this comment is beyond the scope of analysis of this DEIR.
- 17-2 See response to Comment 17-1.

<small>OFFICE OF THE ATTORNEY GENERAL</small> PAUL FAVERO, D.D.S., INC. <small>AND</small> MICHAEL REX FAVERO, D.M.D.		MF
LETTER 17		
February 13, 1998		
State Water Resources Control Board P.O. Box 2000 Sacramento, CA 95812		
Dear State Water Resources Control Board:		
I strongly object to the Spring Valley area being left outside the service area identified in your December 1997 EIR.		17-1
I own and ranch on over 1,000 acres in Spring Valley, California. The entire ranch is in the Sacramento Basin. It has always been the intent and policy of the Bureau of Reclamation to provide irrigation waters to properties in the Sacramento Basin. The service area identified in your EIR leaves my property without Bureau water!!!		
Please consider "Area of Origin". Sacramento Valley deserves CVP water before places outside the valley receive it. We have worked with Westside Water District for over 15 years to get water to Spring Valley.		17-2
Please correct this oversight and put us back in the service area where we belong.		
With Regards,		
Michael Rex Favero		



FAVERO RANCHES

DRS. PAUL & REE FAVERO
227 FARM TOWNE CIRCLE
SUITE ONE
SACRAMENTO, CA 95835

February 14, 1998

Telephone (916) 474-4100
Fax (916) 488-4787

State Water Resource Control Board
P.O. Box 2000
Sacramento, California 95812

Re: ENVIRONMENTAL IMPACT REPORT: December 1987

Dear State Water Resource Control Board:

I own a large ranch approximately 8 miles southwest of Williams, California, at 1860 Spring Valley Road. Recently, I was dismayed to learn that your *Environmental Impact Report of December, 1987*, does not include the Spring Valley area in its "Consolidated and Conformed Pieces of Use".

17-3

As a long-time owner of agricultural land in Spring Valley, I have been working for many years with the Westside Water District in an effort to bring irrigation water to our area. Until such time as this goal is achieved, we are relegated to dryland farming and seasonal cattle. The Valley floor in this location is well suited for permanent plantings such as almonds and grapes. However, we must receive CVP water in order to make our farming endeavors a truly viable and year-round enterprise in this area.

Spring Valley ranches are located in the Sacramento Basin and as such should be entitled to water from the "Area of Origin" long before anyone outside the Sacramento Valley area is considered to receive it. The Bureau of Reclamation has always had the intent and policy of providing irrigation waters to properties in the Sacramento Basin. The Service Area identified in your *Environmental Impact Report of December, 1987*, leaves my property and others in Spring Valley without Bureau water.

I am sure that I speak for all the farmers and ranchers in Spring Valley who are economically impacted by the aforementioned EIR of December, 1987, when I express my strong objections to our being left outside of the "Service Area".

17-4

17-3 See response to Comment 17-1.

17-4 See response to Comment 17-1.

State Water Resource Control Board
 Re: Environmental Impact Report: Dec.1997
 February 14, 1998
 Page Two

The Favero Family, as long term residents of Spring Valley and the Sacramento Basin, respectfully request that the State Resource Control Board do the following:

- 1) Allow Spring Valley Farmers to achieve their economic potential through the ability for permanent crop plantings and year-round livestock support.
- 2) Keep an adequate and appropriate amount of our much needed water resources within the "Sacramento Basin" as the "Area of Origin".
- 3) Re-assess the "Service Area" as outlined in your EIR of December 1997 to include Spring Valley and successfully complete our 15-year quest for much needed irrigation water on the Valley floor.

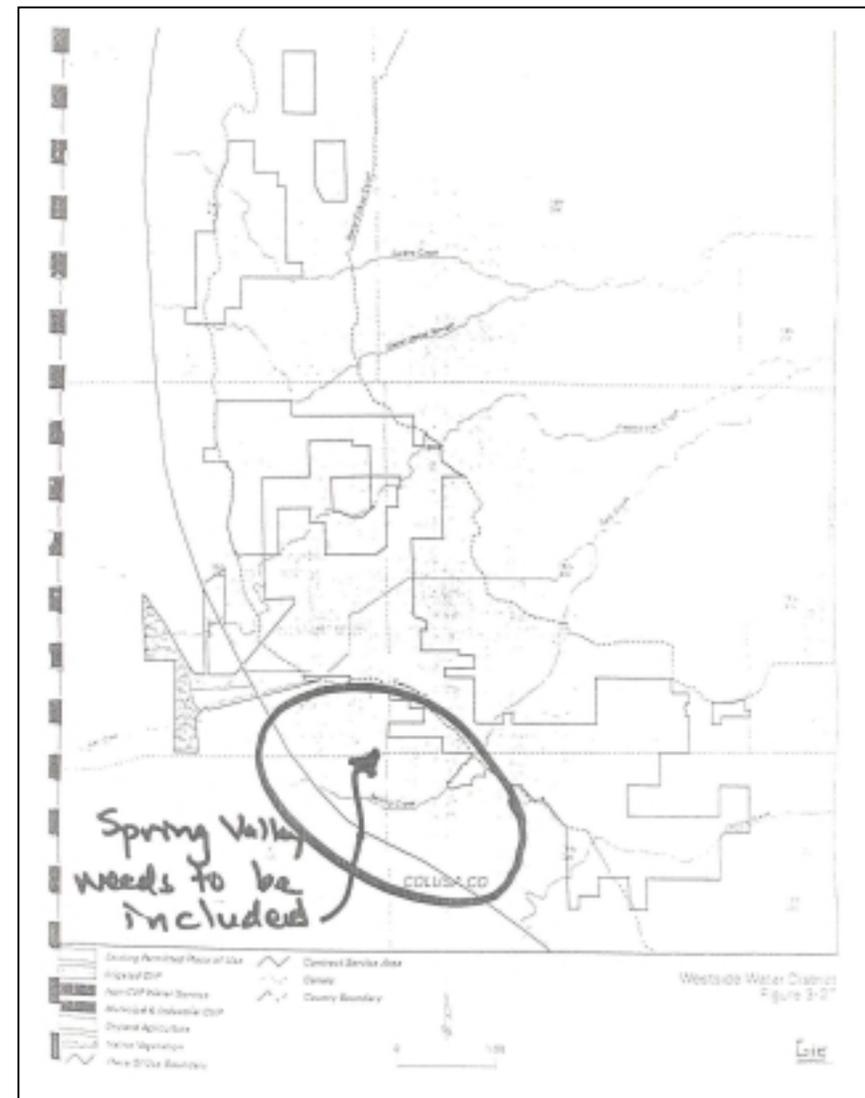
17-4

Thank you for your careful consideration of this matter. I would be willing to participate at any level necessary to facilitate a successful resolution of this matter.

SINCERELY,

DR. PAUL FAVERO

AJGF
 02/14/98
 01499



Responses to Comment Letter 18

18-1 Comment noted. No response required.

03/31/98	14:47	FRAME & MATSUMOTO - 516 627 1485	NO. 867	001
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LETTER 18

LAW OFFICES OF
FRAME & MATSUMOTO
801 WASHINGTON STREET
P.O. BOX 1000
SACRAMENTO, CALIFORNIA 95833
TEL: (916) 442-1485 FAX: (916) 442-1486

YEO & FRAME
TED & FRAME, INC.
11111 FIVEFIVE
SACRAMENTO
RUSSELL MATSUMOTO

mf

March 31, 1998

Mike Falkenstein, Chief Environmental
Section Program Manager
CALIFORNIA STATE WATER
RESOURCES CONTROL BOARD
Division of Water Rights
P.O. Box 2000
Sacramento, CA 95812-2000

VIA FACSIMILE WITH MAIL CONFIRMATION
(916) 657-1485

Re: Consolidated Plan of Use Programmatic
Environmental Impact Report

Dear Mr. Falkenstein:

I write regarding the above-referenced Programmatic Environmental Impact Report ("PEIR"). We do not represent any affected CVP Water Contractors but we do represent affected individual farmers. We believe that SWRCB should have in mind the perspective of affected individual farmers as it proceeds with its consideration of the PEIR and its proposed action.

The Britz family ("Britz") is a good example. Britz was a farmer in the Westland Water District ("WWD") before water deliveries began. It has continued to farm in WWD since that time. In January, 1995, it purchased 1,012 acres of row-crop land which is "encroachment land" in WWD. The land was purchased without any knowledge or notice of any "encroachment" issue. Similarly, other farmers in the so-called encroachment area have purchased their land without any knowledge or notice of any such issue.

The land purchased by Britz consists of portions of Section 1, the East 1/2 of Section 13, and portions of Section 25, all in Township 17 South, Range 14 East, MDM.

18-1

03/31/98 14:47 FRAME & HYTE/PTD - 916 657 1485

NO. 057 062

March 31, 1998

Page 2 of 2

Re: Consolidated Place of Use Programmatic
Environmental Impact Report

Upon acquiring the land, Britz began to improve it, again without any knowledge or notice of any "encroachment" issue. Britz has planted 250 acres of permanent plantings (almonds), and has installed a state-of-the-art irrigation system to service those plantings as well as other wooded ones. Approximately \$1 million dollars has been spent for improvements.

Britz is but one of many farmers in the so-called encroachment area in WWD and in San Luis Water District who have relied on what they reasonably believed would be a continuous source of irrigation water. Therefore, consideration of any alternative which fails to include the continued receipt of CVP water by those lands is simply unfair and unjust.

Yours very truly,



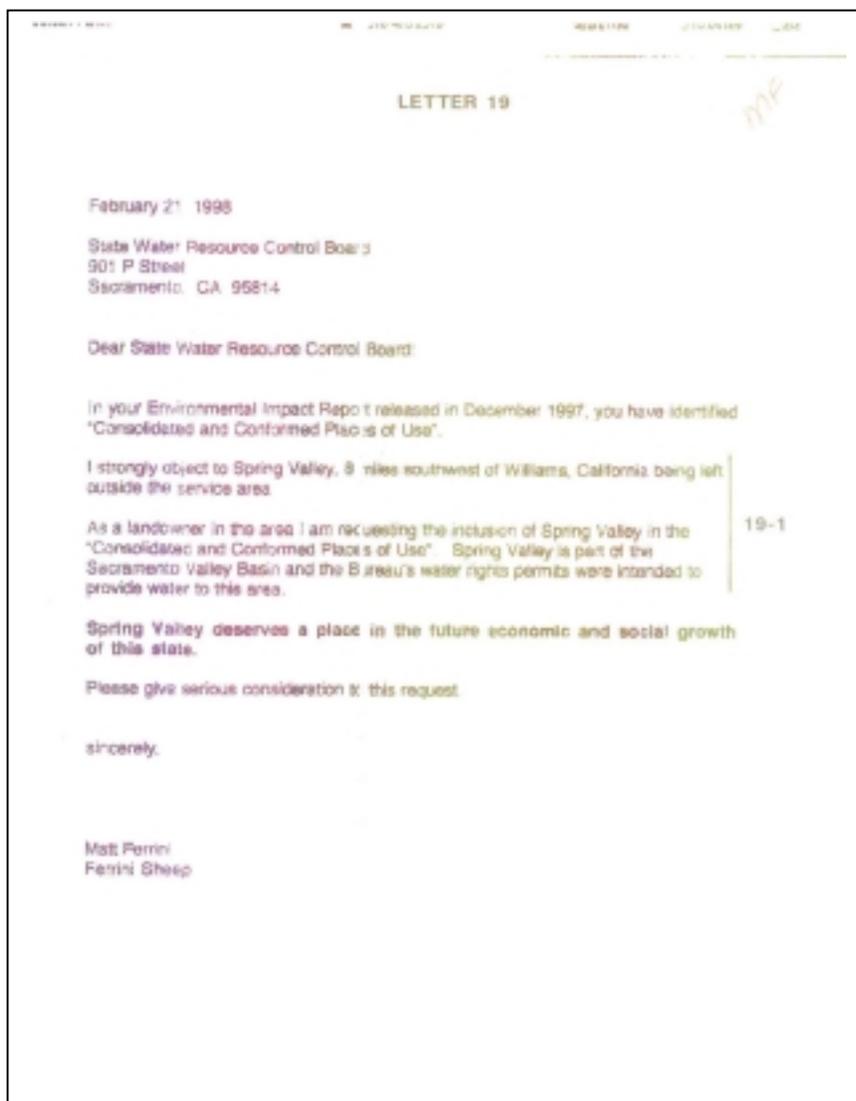
TED R. FRAME

TRF:dj

cc: David Britz, by fax (209) 448-8020
Robert Glassman, by fax (209) 448-8022
Thomas Birmingham, Esq., by U.S. Postal Service
Christopher Campbell, Esq., by U.S. Postal Service
Ernest Conant, Esq., by U.S. Postal Service
Thomas J. Keene, Esq., by U.S. Postal Service

Responses to Comment Letter 19

- 19-1 The DEIR addresses those lands located within the boundaries of existing CVP water contractors where the boundaries had expanded outside the existing POU before Reclamation filed the change petition. The exclusion of the lands referenced in this comment is beyond the scope of analysis of this DEIR.



Responses to Comment Letter 20

- 20-1 The DEIR analysis is sufficient in its discussion of impacts associated with the delivery of CVP water to the expansion areas. The commentor is correct that implementation of the proposed project would allow the delivery of CVP water to any area within the boundary of the CVP water contractor. To assume that this would result in greater competition among CVP water users is speculative. As indicated in Section 1.2 (page 1-3), prior to the Board's authorization for delivery of CVP water to expansion lands, more detailed site-specific environmental analysis would be required.

LETTER 20 MF

HERUM, CRABTREE, DYER, ZOLEZZI & TERPSTRA, LLP

2291 West March Lane
 Suite 11100
 Stockton, California 95207
 (209) 472-7700 (209) 472-7985 Fax
 (209) 525-8444 Modesto (209) 525-8484 Modesto Fax

Karna E. Hareigfeld

April 1, 1998

VIA E-MAIL AND HAND-DELIVERED

Mike Falkenstein, Chief
 Environmental Section
 Division of Water Rights
 State Water Resources Control Board
 Post Office Box 2000
 Sacramento, CA 95812-2000

Re: Comments on Environmental Impact Report for the Consolidate and Conformal
 Place of Use

Dear Mr. Falkenstein:

On behalf of Stockton East Water District the following comments are submitted on the Draft Program Environmental Impact Report for the Consolidated and Conformal Place of Use (Draft EIR) dated December 1997.

Effects on Water Use

The Draft EIR's analysis is legally insufficient in addressing the impacts associated with the delivery of water to the expansion areas. First, the CVP is already over-committed. The Bureau of Reclamation (Reclamation) cannot fulfill its existing contractual obligations. The Draft EIR states that the Reclamation's petition and the three alternatives would not affect the volume of water specified to be appropriate in the existing water rights permits, nor would they affect the amount of CVP water currently contracted on a long-term basis by Reclamation to individual CVP water contractors. However, by expanding the place of use to include all areas specified in the petition, water from any of the designated facilities may be legally used in any area contained in the revised maps. The result of this is that there will be greater competition for water among CVP water users. At present, many of the areas within the areas of origin of the water are not utilizing the water reserved for them by the Legislature. This document does not analyze the impacts that expanding the place of use will have on the Bureau's ability to meet the area of origin demands in the future and is legally insufficient until such impacts are analyzed and any affects properly mitigated.

20-1

Mr. Mike Faulkenstein, Chief
April 1, 1998
Page 2 of 2

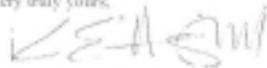
Effects on Water Quality

The Draft EIR states that "the Proposed Project and three alternatives would have no effect on the volume of water available for delivery to each CVP water contractor, therefore no changes to CVP operations or the amount of water that could be delivered are expected. As a result, no change to river flows or water quality would occur with the implementation of the Proposed Project or three alternative." [Page 4-30]. While the volume of water may be unaltered upon approval of the petition, new lands may come into production or additional water may be delivered to existing users that may have an adverse impact on water quality. Detailed analysis must be performed to ensure that any new land irrigated with CVP water does not impact the river to which it drains. This impact must be analyzed in the Draft EIR and any adverse impact mitigated.

20-2

Should you have any questions regarding any of the comments submitted, please feel free to contact me.

Very truly yours,



KARINA E. HARRIGFELD
Attorney-at-Law

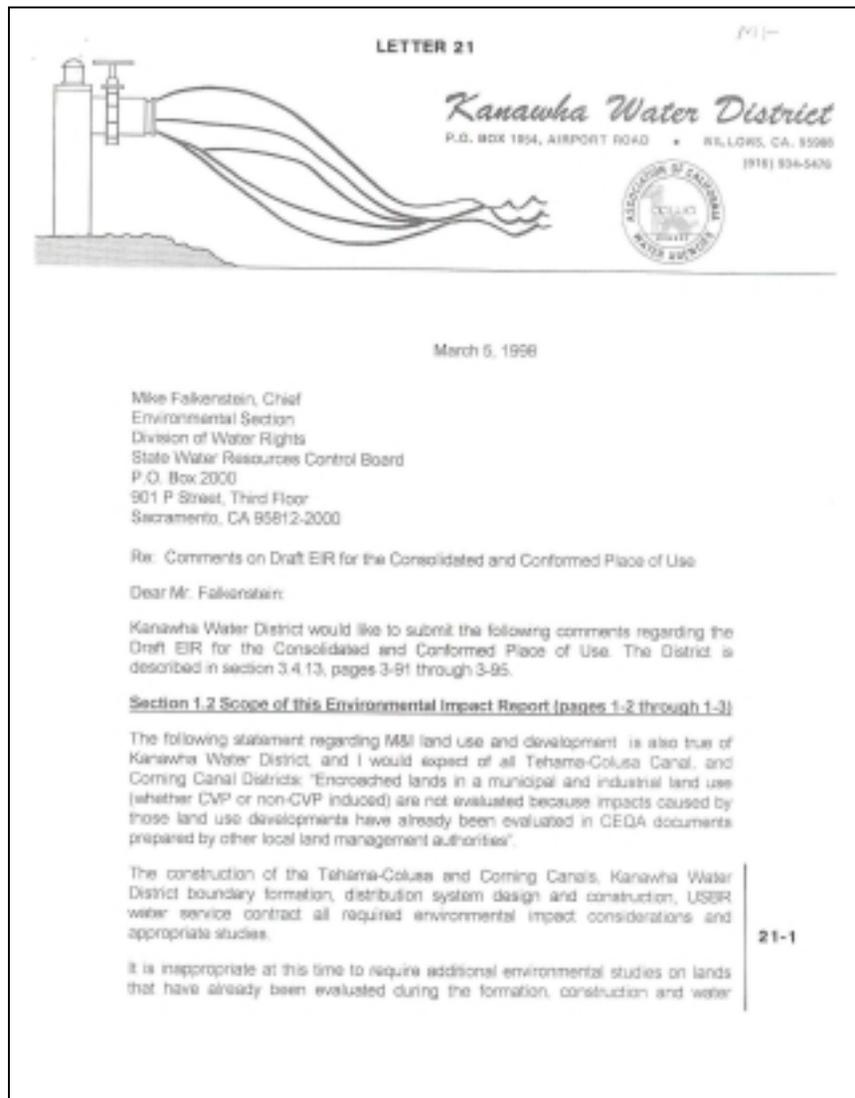
KEH:sds
Enclosure
cc: Edward M. Steffani

- 20-2 The DEIR in Section 1.2 on page 1-3 acknowledges that, prior to the Board's authorization for delivery of CVP water to expansion lands, more detailed site-specific environmental analysis would be required. Continued CVP water delivery to encroachment lands would not adversely affect water quality, as indicated in Section 4.8 of the DEIR.

Responses to Comment Letter 21

- 21-1 Previously prepared environmental documents that were unavailable at the time of preparing this DEIR maybe relevant in developing mitigation being recommended. Such documentation may reveal that mitigation for past CVP water delivery impacts may not be warranted to the degree currently envisioned.

The Board has discretionary authority to approve or deny the pending petition. As such, compliance with CEQA is required. An EIR is the appropriate CEQA document needed to address the potential consequences of implementing the proposed project.



contracting process. The Consolidated and Conformed Place of Use is not a "project", but simply a correction of nothing more than a clerical oversight when a boundary line was drawn on a water rights map years ago. 21-2

Section 2 Description of the Proposed Project and Alternatives (pages 2-1 through 2-6)

The only reasonable alternative is one that includes CVP irrigation for all the encroachment and expansion areas and would not require any additional environmental documentation. 21-3

Section 3 Environmental Setting: 3.4.13 Kanawha Water District (pages 3-91 through 3-95)

The Draft EIR identifies 902 acres of 15,967 acres that falls outside the place-of-use. Of the 902 acres, 688 acres are considered encroachment lands (previously irrigated) and 213 acres are expansion lands (undeveloped and support native vegetation).

Kanawha Water District entered into a long-term contract in the early 1960's and at that time completed the appropriate environmental documentation. The District has historically delivered water to all the encroachment lands within its boundaries, except for the 213 acres identified as expansion lands. However, these lands are small areas that are scattered throughout the District and do not provide highly sensitive habitat or contain highly sensitive species. In addition, the lands have been farmed to various dry-land crops in a regular rotation and plan to be brought under irrigation in the near future. The expansion area lands have an existing underground pipeline irrigation system in place to serve water upon request from the landowners.

The Bureau of Reclamation supported the funding of the distribution system to irrigate lands outside of the permitted place-of-use. The District was not informed that water service to these areas was ever in question. Approximately \$400.00 per acre was invested in the Congressional supported and financed distribution system and approximately another \$400.00 per acre was invested by landowners for the development of the land for irrigation. The distribution system was completed in

- 21-2 The petition to expand the POU boundary constitutes a project in accordance with CEQA.
- 21-3 The alternatives presented in the DEIR addresses a reasonable range of alternatives that are capable of meeting the objectives of Reclamation's proposed project.

1975 after compliance with CEQANIEPA and water service commenced immediately and continues today. If CVP water service was halted to encroachment land and denied to expansion lands, the landowner would default to the lending institutions and the District would default in the repayment of the distribution system loan. CVP irrigation water is the life blood of the area now that it has been placed under irrigation.

There is no alternative source of irrigation water for the "unpermitted" area. Halting water service would mean financial disaster for the landowners and the District and the land uses would return to dry pasture and dry grains. The distribution system would remain a monument to a federal system that permitted the construction of such a system on "unpermitted" lands.

21-4

The District has historically used up to 41,699 acre feet of our 45,000 acre feet contract and plans to put the full contract to beneficial use in the near future. Our annual water usage is increasing once again as we recover from the drought years of the early 1990's. In addition to the several years of drought, ESA restrictions, CVPIA measures and other mandated measures have held back younger districts such as Kanawha Water District from utilizing all of our water held under contract. However, with the development of many tree plantings within the District it is apparent that all the district water contract will be necessary to meet future water needs.

In summary, the consolidation of the place-of-use is not a new "project" that will require additional environmental documentation. No additional measures or documentation is necessary.

21-5

Thank you for considering our comments.

Sincerely,



Ronald Vickery
President

21-4 The commentor is correct that there is no alternative source of water for Kanawha Water District (see Table 4-4 of the DEIR). Table E-1 of the DEIR acknowledges that 689 acres currently irrigated by CVP water would revert to dryland agriculture if Alternative 1 (No Project) is implemented. In addition, Section 4.14 provides an analysis of the economic loss expected in Kanawha Water District if Alternative 1 is implemented.

21-5 See response to Comment 21-2.

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existing physical conditions in the area affected. (Pub. Res. Code §§ 21060.5 and 21061; *Environmental Planning and Information Council of Western El Dorado County v. El Dorado County* (1982) 131 Cal.App.3d 350, 354.)

The California Supreme Court summarized both the purpose and importance of an adequate environmental impact report in deciding *Laurel Heights Improvement Association of San Francisco, Inc. v. Regents of University of California* (1988) 47 Cal.3d 376, 392:

The EIR is the primary means of achieving the Legislature's considered declaration that it is the policy of this state to "take all action necessary to protect, rehabilitate, and enhance the environmental quality of the state." [Citation] The EIR is therefore "the heart of CEQA." [Citations] An EIR is an "environmental 'alarm bell' whose purpose it is to alert the public and its responsible officials to environmental changes before they have reached ecological points of no return." [Citations] The EIR is also intended to "demonstrate to an apprehensive citizenry that the agency has, in fact, analyzed and considered the ecological implications of its action." [Citations] Because the EIR must be certified or rejected by public officials, it is a document of accountability. If CEQA is scrupulously followed, the public will know the basis on which its responsible officials either approve or reject environmentally significant action, and the public, being duly informed, can respond accordingly to action with which it disagrees. [Citations] The EIR process protects not only the environment but also informed self-government. *Id.* at 392.

Moreover, CEQA requires that public agencies include in environmental impact reports a range of reasonable alternatives to the project which would feasibly attain the basic objectives of a project but would avoid or substantially lessen any of the significant effects of the project, and evaluate the comparative merits of the alternatives. (Pub. Res. Code § 21109(b)(2)(4); CEQA Guidelines § 15126(d).) The range of potential alternatives to the proposed project must include those that could feasibly accomplish the basic purposes of the project and could avoid or substantially lessen one or more of the project's significant effects (CEQA Guidelines § 15126(d)(2)), and must include sufficient information about each to allow meaningful evaluation, analysis and comparison. Among the factors that may be considered when addressing the feasibility of alternatives are economic viability, regulatory limitations, and technological facts. (Pub. Res. Code § 21061.1; *Citizens of Galena Valley v. Board of Supervisors* (1990) 52 Cal.3d 553, 566.)

In addition, an environmental impact report must analyze the impacts of the proposed project together with other related past, present and reasonably foreseeable future projects whose impacts might compound or interrelate with the proposed project. (*Environmental Protection Information Center v. Ashman* (1985) 170 Cal.App.3d 604, 625.)



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The discussion of cumulative impacts must reflect the severity of the impacts and their likelihood of occurrence. (CEQA Guidelines § 15130.)

"The following elements are necessary to an adequate discussion of cumulative impacts:

(1) Either:

(A) A list of past, present, and reasonably anticipated future projects producing related or cumulative impacts, including those projects outside the control of the agency, or

(B) A summary of projections contained in an adopted general plan or related planning document which is designed to evaluate regional or area wide conditions. Any such planning document shall be referenced and made available to the public at a location specified by the lead agency;

(2) A summary of the expected environmental effects to be produced by those projects with specific reference to additional information stating where that information is available, and

(3) A reasonable analysis of the cumulative impacts of the relevant projects. An EIR shall examine reasonable options for mitigating or avoiding any significant cumulative effects of a proposed project."

(d.)

Under CEQA, a project is "the whole of an action" that may result in environmental change. (CEQA Guidelines § 15378.) The project is the underlying action, not each separate governmental approval for the action. Future aspects of a project must be included in the initial draft environmental impact report if they are "reasonably foreseeable" and are considered significant if they "will likely change the scope or nature of the initial project or its environmental effects." *Laurel Heights Improvement Assn. v. Regents of University of California* (1988) 47 Cal.3d 376, 395; see also, *Lacar Valley Homeowners Assn. v. County of Marin* (1991) 233 Cal.App.3d 130, 161; *City of Antioch v. City Council* (1986) 187 Cal.App.3d 1325; *Christian Ministry v. Superior Court* (1986) 184 Cal.App.3d 180, 194.

CEQA requires that piecemealing be avoided to ensure "that environmental considerations do not become submerged by chopping a large project into many little ones, each with a potential impact on the environment, which cumulatively may have disastrous consequences." (*Barbark-Giladale-Pasadena Airport Authority v. Howler* (1991) 233



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Cal.App.3d 577, 592; see also *Bonag v. Local Agency Formation Com.* (1975) 13 Cal.3d 263, 283-284.)

II. SPECIFIC COMMENTS

Pages 1-2; 1-3: The Draft EIR incorrectly states that there are eleven purposes of use shown in Table 3-2; the table lists nine purposes. 22-1

The Draft EIR states encroached lands are discussed at the project-specific level "because impacts associated with them have already occurred and can be readily defined." However, expansion lands are "discussed on a programmatic level because future land and water uses cannot be readily determined at this time, and would require speculation of future CVP water contractor uses of CVP water and decisions by local land management authorities." The Draft EIR overstates the difficulty in analyzing the impacts associated with delivering CVP water to expansion lands. Indeed, the potential impacts associated with delivering water to many expansion lands can be readily defined. Contractor uses of CVP water are controlled by their individual contracts, and land uses are regulated by applicable general plans and zoning ordinances. It is not speculative to assume that if CVP water were delivered to expansion lands within the boundaries of a CVP agricultural contractor like Westlands, the water would be used for irrigation. 22-2

Page 2-1: The Draft EIR again refers incorrectly to eleven, rather than nine, purposes of use in Table 3-2. 22-3

Page 2-2: The Draft EIR fails to consider a fourth alternative, consolidating and expanding the place of use, but not conforming the purposes of use. This alternative is feasible and should have been included in the Draft EIR. The failure to include this alternative creates the impression that the Draft EIR is merely a post hoc rationalization for a decision which has already been made to approve a change in purpose of use for each permit held by Reclamation. 22-4

Page 2-3: The Draft EIR again refers incorrectly to eleven, rather than nine, purposes of use in Table 3-2. 22-5

Page 2-4: The description of the No Project Alternative (Alternative 1) states "[i]t is not currently possible to separate water sources." No analysis is provided to support this statement. Moreover, it is preposterous to suggest that Reclamation cannot operate facilities of the CVP in conformance with the permits for those facilities. The Draft EIR also concludes there would be no significant changes in volumes diverted, volumes delivered, instream flows, or the location of where CVP supplies are used resulting from approval of Change 1. (Draft EIR at 4-6.) If it is currently impossible to separate sources, how was this conclusion reached? The analysis determining the impacts of the No Project Alternative regarding purpose of use is not readily apparent. The Draft EIR must provide detailed information concerning the bases for these conclusions. 22-6
22-7
22-8

- 22-1 The discussion on page 1-2 of the DEIR will be revised in the Final EIR to reflect "9" rather than "11" beneficial uses. No such reference could be found on page 1-3 of the DEIR.
- 22-2 It is not feasible at this time to identify the specific locations and uses of water in expansion lands to the degree that site-specific environmental impact analysis can be performed. It is not known if water will ever be delivered to a specific tract of land or the level of change that would occur with future water deliveries.
- 22-3 The discussion on page 2-1 of the DEIR will be revised in the Final EIR to reflect "9" rather than "11" beneficial uses.
- 22-4 A new alternative, as described, would not meet the objectives of the project proponent and therefore is not considered a reasonable alternative. The Board has the discretion approve one or more of the changes petitioned by Reclamation and therefore could approve a project as defined in this comment.
- 22-5 The discussion on page 2-3 of the DEIR will be revised in the Final EIR to reflect "9" rather than "11" beneficial uses.
- 22-6 Under current operations, Reclamation commingles water from several sources for re-division and delivery to locations within its service area. Once commingled, the water from the individual sources cannot be separated for delivery to its authorized POU. As noted on page 2-4 of the DEIR, a method for separating the operations of the CVP facilities would have to be created to ensure conformance with permits.
- 22-7 Approval of Change 1 would only modify the water rights permits to include the 9 purposes for which CVP water could be used. It would not alter current operations of the facilities. Approval of Change 1 does not obligate Reclamation to allocate water to any specific purpose.
- 22-8 As noted on page 4-6 of the DEIR, approval of Change 1 would modify the various purposes of use currently authorized in each of the 16 water rights permits to conform with the 9 purposes listed in Table 3-2. With implementation of the "No Project" alternative, the purposes of use currently authorized in each of the 16 water rights permits would not change.
- If Change 1 is denied, the CVP facilities may need to be reoperated so that water from selected facilities could be used for the specific purposes assigned by the respective water rights permit and continue to meet water service contract and other obligations.
- As noted on page 2-4 of the DEIR, there is no current method to operate the CVP facilities separately, therefore, it is not known how the CVP could be operated in a manner consistent with the assigned purposes of use and meet existing water service obligations.
- The Final EIR will be revised to acknowledge that impacts on environmental resources associated with denial of Change 1 are not known.

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Page 3-5: The Draft EIR identifies the amount of CVP water supplies contracted for annual delivery to each CVP water contractor that would be affected by Reclamation's consolidated place of use petition in Table 3-1. However, the Draft EIR fails to consider that in Westlands, and many other districts, including all lands within the District's boundaries in the permitted place of use would not affect the amount of water used within the District. Even if the change in place of use were not approved, Westland's entire contractual entitlement would be put to a reasonable and beneficial use on other District lands within the existing permitted place of use.

22-9

Page 3-14: The Draft EIR does not discuss fugitive dust emitted from fallowed fields in considering emission sources. Such dust has contributed to the exceedance of State and Federal PM₁₀ standards and auto accidents along Interstate 5.

22-10

Page 3-25: The Draft EIR analyzes the impacts associated with the delivery of CVP water to lands classified as encroachment. Impacts associated with the delivery of CVP water to lands classified as expansion are not analyzed. The Draft EIR states that this analysis was not done because future land use is impossible to predict. However, large areas of these expansion lands in Westlands are currently in agricultural production, and for these expansion lands, future land use is not impossible to predict. A CVP water supply would merely be an alternative source of water.

22-11

Moreover, it is not "impossible to predict" future land uses of expansion lands which are presently in native vegetation. As discussed above, land use is controlled by applicable land use regulations and uses of CVP water are controlled by contract. It is reasonable to conclude that all previously uncultivated expansion lands within Westland's boundaries will be put into agricultural production or remain in native vegetation if they are included in the permitted place of use.

Page 3-27: Table 3-6 sets forth the economic characteristics of those counties with CVP water contractors with land outside the permitted place of use. The City of Avenal is situated in Kings County; however, the table erroneously includes Avenal in Fresno County. Additionally, the description of Fresno County's economic characteristics is based on data from 1982. More recent data is available and should have been used.

22-12

Page 3-31: The acreage classified as native vegetation in the expansion lands of Westlands, 12,732 acres, is incorrect. The following table depicts corrections to Table E-1 in the Draft EIR and includes information collected by Westlands concerning lands that were classified erroneously:

22-13

22-9 Comment noted.

22-10 The term "fallowing" has been added to Section 3.3.4.2 in the Final EIR, along with the other farm operations that were listed in that section of the DEIR.

22-11 This comment is incorrect; the DEIR did not state that analysis of future land use impacts was not performed because it "is impossible to predict." On page 4-1, the DEIR states that, "...Because the Proposed Project and alternative would delineate only the general area where CVP water could be delivered and the purposes for which it may be used, site-specific impacts resulting from future CVP water deliveries to expansion lands cannot be estimated. ... potential impacts to the lands and environmental resources within the CVP water contractor service areas are discussed; however, it is acknowledged that this discussion may be speculative. Additional decisions by local land use authorities and the individual CVP water contractors would be needed prior to the delivery and future use of CVP water ... therefore, the actual places and purposes for which CVP water would be used is not known at this time, except as restricted by the individual water delivery contracts ..."

22-12 This comment is incorrect. As shown on Figure 3-4 in the DEIR, the City of Avenal service area is located within both Kings and Fresno counties, and is correctly listed in Table 3-6. Of the numerous sources referenced in Table 3-6, only one reference is dated 1982. This source is relevant and current in its content.

22-13 The land use values presented in Table 3-7 (page 3-31 of the DEIR) were calculated from available land use data compiled by the California Department of Water Resources (DWR) and selected areas outside the POU were field verified by direct observation. In addition, a survey with each affected CVP water contractor was conducted to verify the acreage of lands historically irrigated.

The combination of these sources yielded the land use acreage presented in the DEIR. More recent or refined information, as presented in this Comment, could provide a more precise estimate of land uses outside the POU.

The Final EIR will be revised to indicate that the land use values may be subject to revision based upon more recent or refined information that becomes available.

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Acreages Outside of Existing Permitted Place of Use Within Westlands Water District					
APN Number	Acres				Landowner
	Irrigated CVP	Native Vegetation	Dryland Agriculture	Irrigated Non-CVP	
F-027-121-395	160.00	460.00			Baker Marshall Tr
F-038-050-08	40.00	40.00			Bank of America Nat Tr & Sav F
F-027-110-255	67.72	67.72			Bell Dewey & Janet Tr
F-027-210-025	66.00	66.00			Bell Dewey & Janet Tr
F-027-210-085	6.93	6.93			Brughelli Eugene Sr
F-038-040-125	258.13	266.33			Carr James P & Carol
F-038-040-13		633.00	633.00		Chevron USA Inc.
F-038-070-05		340.00	180.00*		Chevron USA Inc.
		160.00			
F-038-320-09		160.00		190.00	Diamond Joseph R Tr
F-027-210-295	60.20	60.20			Gingroni Don & Thelma I Tr
F-027-121-385	190.00	190.00			Hansen Robert Tr
F-038-038-17	335.00*	165.00			Marsella Barbara
F-038-098-355	95.25	95.25			Mittler Family Farms
F-038-098-05	20.00	20.00			Miles Wm M Tr
F-038-098-06	20.00	20.00			Miles Wm M Tr
F-038-098-035	135.00*	264.20			Ooms Lee E.
		120.70			
F-027-180-005	206.00	206.00			P & R Almond Orchards Inc
	602.00				
F-027-210-005	206.05	206.05			Parker Stewart H & Margery L.
F-038-040-135	85.07	85.07			Peterson Robt J & Carol A
F-038-050-035	120.00*	420.00			Price Calvin
F-038-050-22	40.00	40.00			Sorg Floyd C & Bernice
F-038-050-23	40.00	40.00			Sorg Floyd C & Bernice
F-038-320-295		344.24		314.24	Triple D Farms
F-038-050-105	143.00*	445.00			Wakefield Dale A.
F-038-050-11	55.00*	55.00			Walker Jason R.
WWD Totals	37,463	8,327	1,053	474	
Draft EIR Totals	36,586	12,732	250	0	

NOTE: According to the landowners, the numbers in strikethrough text are the amount of acreage misclassified in the draft EIR. Acreages are based on Assessor's Parcel Map numbers.

* Acreages approximated.

APN 038-050-05
APN 038-050-06
APN 038-050-07
APN 038-050-08
APN 038-050-09
APN 038-050-10
APN 038-050-11
APN 038-050-12
APN 038-050-13
APN 038-050-14
APN 038-050-15
APN 038-050-16
APN 038-050-17
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APN 038-050-31
APN 038-050-32
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APN 038-050-94
APN 038-050-95
APN 038-050-96
APN 038-050-97
APN 038-050-98
APN 038-050-99
APN 038-050-100

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Maps depicting the correct classification of lands outside the existing permitted place of use within Westlands have also been attached.

Page 3-148: As reflected in the table accompanying the comments to page 3-31, the Draft EIR's statements concerning acreage of encroachment lands, expansion lands, and dry land agricultural uses are erroneous. Of the 48,401 acres located outside the authorized place of use, 37,137 acres are encroachment lands, and 9,131 acres are expansion lands. One thousand fifty-three acres are in dry land agricultural production. 22-14

Page 3-151: The Draft EIR states: "subsurface drainage has been installed in many agricultural areas to flush selenium and other trace elements below the root zone (Gillison, et al. 1989); however none of the lands outside of the authorized POU are drained by such drainage systems." This statement should be modified to reflect that most subsurface drainage collector systems were plugged in connection with the closure of the San Luis Drain, and no drainage is discharged outside Westlands' boundaries. 22-15

Page 4-2: The discussion of land use changes should be modified to reflect the corrections to encroachment acreage and expansion acreage in Westlands. 22-16

Page 4-6: The analysis concerning affects on water use resulting from Change 1 states "confirming the purpose of use would allow Reclamation to use water obtained in accordance with any of the 16 permits for the nine purposes [listed in Table 3-4]. This modification would not alter the volume of water appropriated, the volume of CVP water supplies currently constructed, or the location where CVP waters are used. Therefore, this change is and of itself would not result in a physical change to the environment that would constitute an adverse environmental impact." This analysis is based on an assumption that Reclamation currently uses CVP water for non-permitted purposes. The Draft EIR contains no analysis to support this assumption. Moreover, if the assumption is correct, a Water Board decision rejecting change 1 would affect Reclamation's operation of the CVP. There is no analysis concerning the impacts resulting from a rejection of Change 1. Therefore, the Draft EIR does not provide a basis upon which the Water Board can either approve or reject the proposed change. In addition, the draft EIR lacks sufficient information to allow a meaningful evaluation analysis and comparison of approving or rejecting the proposed change. 22-17

Page 4-9: The statement that under Alternative 2, only the lands within the CVP water contract service area boundaries do not currently receive CVP water would be prevented from future CVP deliveries should be amended to reflect that such lands could receive future CVP deliveries upon appropriate environmental review and approval by the Water Board. 22-19

Page 4-12: Again, the Draft EIR contains no analysis of the potential impacts resulting from a denial of proposed Change 1. This deficiency must be corrected prior to certification of the Final EIR. 22-20



- 22-14 Comment noted. See response to Comment 22-13.
- 22-15 Comment noted. Page 3-151 in the Final EIR will be modified to reflect this comment.
- 22-16 Comment noted. See response to Comment 22-13.
- 22-17 This comment is correct. Reclamation currently operates the CVP in a coordinated manner to meet all the respective uses listed in Table 3-2. If Change 1 were rejected, reoperation of the CVP may require a substantial revision to the CVP operating procedures. The Final EIR will contain an analysis of rejecting Change 1 and its implications on future CVP operations.
- 22-18 See response to Comment 22-17.
- 22-19 This EIR addresses only the project as defined by Reclamation's petition. Any other action to deliver water outside the authorized POU would be a separate project, and not addressed in this environmental document.
- 22-20 See response to Comment 22-17.

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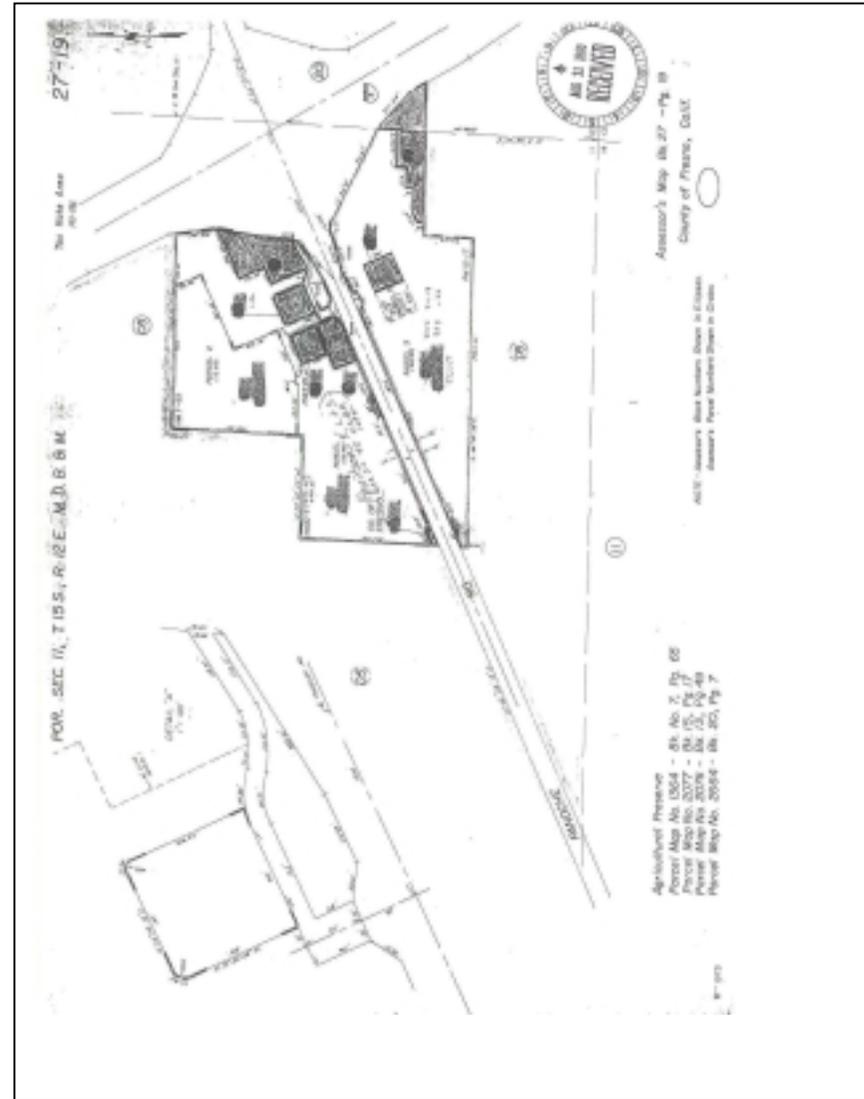
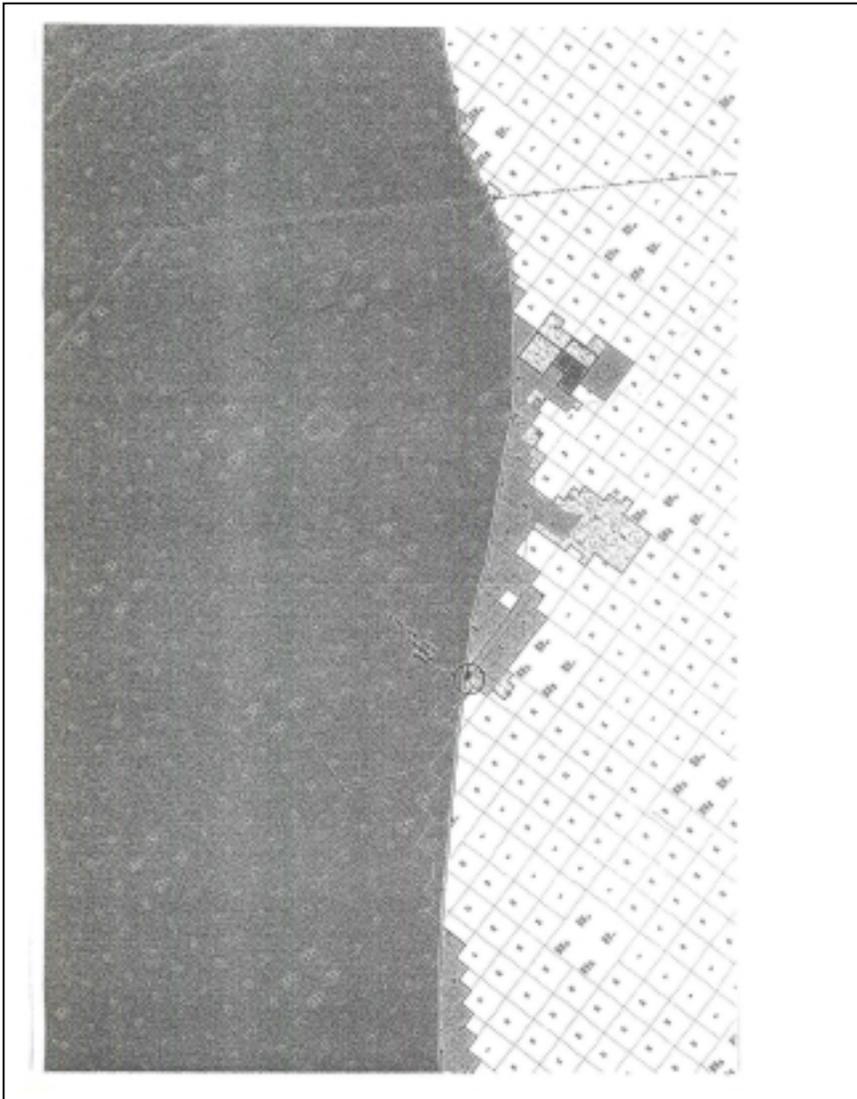
Page 4-28: The Draft EIR concludes that No Project Alternative would result in a non-significant improvement in air quality within Westlands. To the contrary, if the No Project Alternative were approved and CVP water could no longer be delivered to encroachment lands, at least some of these lands would be fallowed. Historically, fallowed lands have emitted dust which contributed to violation of federal and state PSD standards. Approval of the No Project Alternative would have a significant negative impact on air quality. **22-21**

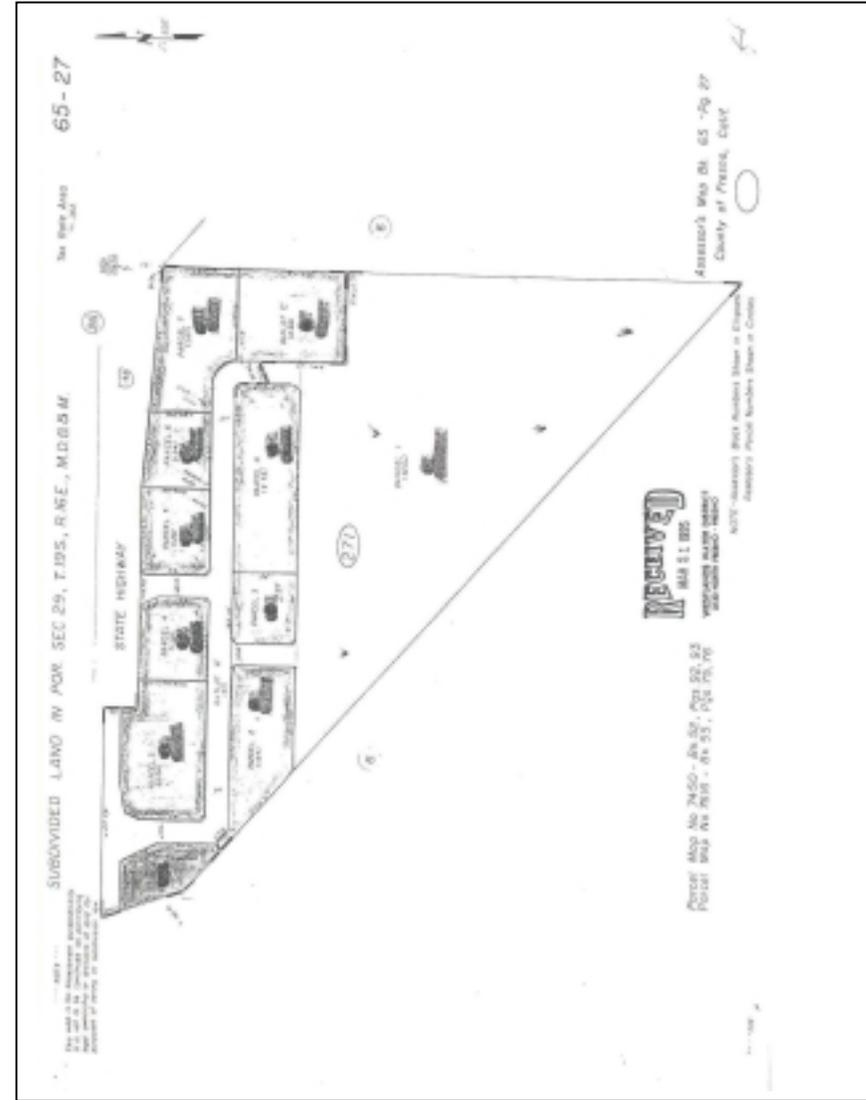
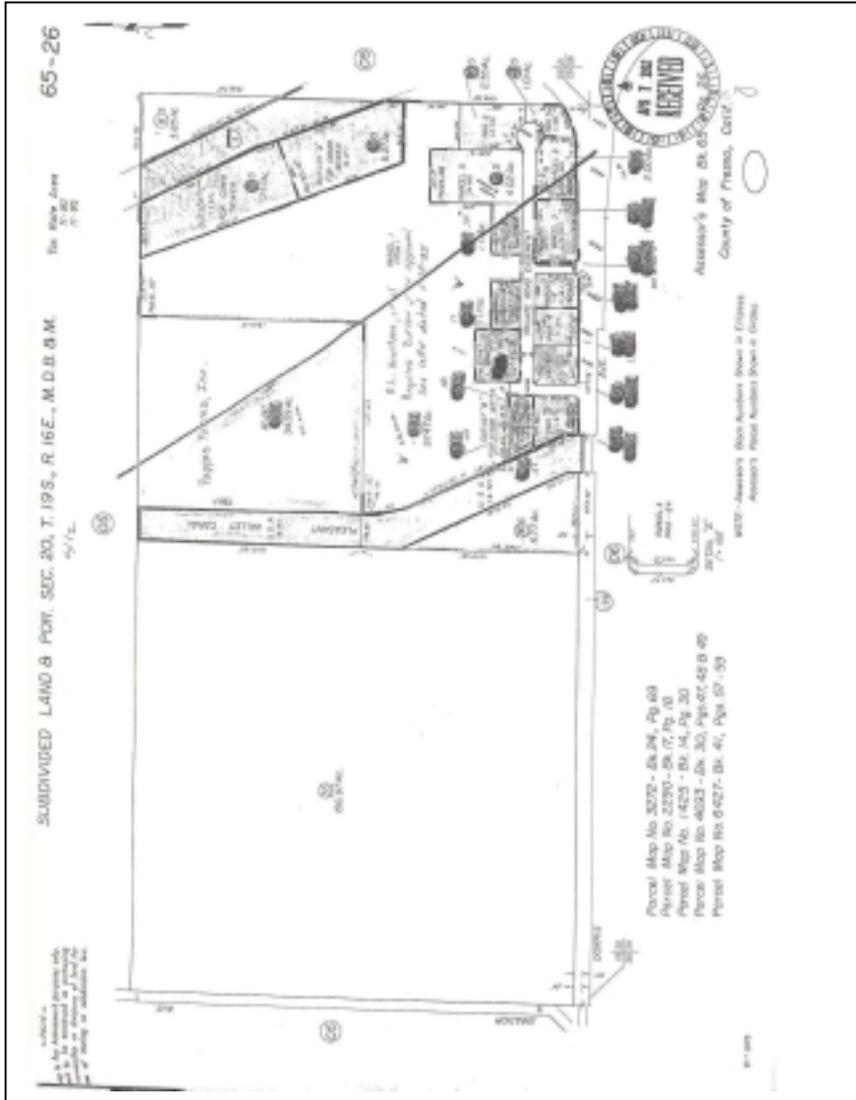
Page 5-3: CEQA does not provide a basis for imposing mitigation measures on approval of a change in place of use to include encroachment lands. The Draft EIR correctly concludes that the environmental impact resulting from the delivery of CVP water to these lands have already occurred. Therefore, approval of this aspect of the proposed project will not result in a significant effect on the environment. (See Pub. Res. Code §§ 21068 and 21100(d) (significant effect means substantial adverse change in the environment).) **22-22**

Page 6-5: Section 3406(b) is omitted from the list of Central Valley Project Improvement Act (CVPIA) requirements that will contribute to the cumulative impacts. It is these CVPIA actions that require the changes in the purpose of use to such an extent that operations could be significantly affected if the permits were not changed. CEQA forbids the practice of "segmentation" or "piecemealing" a project for purposes of environmental documentation. However, this is exactly what the Draft EIR does; future required facilities or actions of the project are not adequately discussed as required under CEQA. The result is that discussion and analysis of required future features of the project will be delayed, and detailed environmental documentation on future components will not be presented to reviewers until a later date. **22-23**

The additional project features needed to comply with CVPIA are more than "foreseeable," they are an absolute requirement. To comply with CVPIA section 3406(b) the purposes of use of Reclamation's system permits must be consolidated. By not presenting or analyzing the actions necessary to comply with section 3406(b), whatever they may be, the document does not allow the environmental effects of the whole project to be analyzed together. This cheats the agencies and the public from making an informed decision about the whole project. Moreover, it violates CEQA. **22-24**

- 22-21 Although the initial stages of fallowing may result in dust emissions, such emissions would decline over time with the re-colonization of vegetation. Therefore, an improvement to air quality could be expected with the removal of continuous farming operations over the long term.
- 22-22 Because the petition for changing the POU is presently being considered, the EIR needs to address the consequences of expanding the POU from its existing location. Therefore, the change to the POU is considered a current action, regardless of when the unauthorized CVP water delivery took place.
- 22-23 Section 6.3.1.1 of the Final EIR will be modified to include a discussion of the requirements of 3406(b) of the CVPIA.
- 22-24 The petition before the Board had been pending several years prior to the adoption of the CVPIA. The purpose of this petition is to make the operations of the CVP consistent with the water rights permits.





Responses to Comment Letter 23

23-1 Comment noted.

LETTER 23

**KRONICK
MOSKOVITZ
& TIEDEMANN
& GIRARD**
ATTORNEYS AT LAW

THOMAS W. BIRMINGHAM

April 13, 1998

Mr. Mike Falkenstein, Chief
Environmental Section
Division of Water Rights
State Water Resources Control Board
901 "P" Street
Sacramento, CA 95812

Re: Comments of Westlands Water District on the Draft Environmental
Impact Report for the Consolidated and Confirmed Place of Use

Dear Mr. Falkenstein:

I write to clarify the comments of Westlands Water District ("Westlands") on the
Draft Program Environmental Impact Report for the Consolidated and Confirmed Place of Use
("Draft EIR"). Our comments to Page 3-31, stated that the amount of acreage classified as native
vegetation in the expansion lands of Westlands was incorrect. We included a table depicting
corrections for certain parcels of land. That information remains accurate; however, it may not
be complete. Other areas within Westlands may have been misclassified in the Draft EIR. The
information provided in Westlands' comments was information Westlands received from
individual landowners that took the initiative to contact Westlands. Currently, Westlands is
attempting to contact other landowners with lands in the expansion category, which may result in
the identification of other misclassified parcels.

If you have any questions or comments regarding this matter please telephone me
at your convenience.

Very truly yours,

KRONICK, MOSKOVITZ, TIEDEMANN & GIRARD
A Professional Corporation

Thomas W. Birmingham
THOMAS W. BIRMINGHAM

cc: Dave Orth
3/18/98

ATTORNEYS AT LAW

100 CALIFORNIA MALL, 27TH FLOOR SAN FRANCISCO, CALIFORNIA 94111-4417 TELEPHONE (415) 774-4400 FACSIMILE (415) 774-4401
100 MAIN STREET, 16TH FLOOR SAN FRANCISCO, CALIFORNIA 94111-4417 TELEPHONE (415) 777-2100 FACSIMILE (415) 777-2101
<http://www.kmg.com>

23-1

Responses to Comment Letter 24

LETTER 24				
OFFICES OF LINNEMAN, BURGESS, TELLES, VAN ATTA & VIENNA ATTORNEYS AT LAW				
C. E. VAN ATTA JAMES F. LINDQUIST CLAYTON J. VIENNA DAVID F. BURBANK ALFRED L. WHITEHEAD JEFFREY A. NELSON	P. B. BURBANK 200 N. BOWLING GREEN ST. DOS PALOS, CA 95820 408-244-8200 FAX 408-244-8244	P. B. BURBANK 242 S. STREET LOS ANGELES, CA 90020 213-552-4400 FAX 213-552-4400	P. B. BURBANK 20 WEST 92 STREET MENLO PARK, CA 94024 650-765-0100 FAX 650-765-0100	L. M. LINDQUIST JOSEPH W. BURBANK JAY F. BURBANK JESSE H. TELLES, JR., OF COUNSEL NORMAN J. ATTENE, OF COUNSEL FUGARRE REPLY TO
February 3, 1998				
DOS PALOS OFFICE				
<p>Mike Falkenstien, Chief Environmental Section Division of Water Rights State Water Resource Control Board Post Office Box 2020 Sacramento, CA 95812-2020</p>				
Re: <u>Area of Beneficial Use for San Luis Water District.</u>				
Dear Mr. Falkenstien:				
<p>This office is general counsel to the San Luis Water District, which, as you are probably aware, stretches along the San Luis Canal from approximately the San Luis Reservoir south into Fresno County. The San Luis District was identified as one of the entities which contracts with the Bureau of Reclamation to receive water which was allowing water to be used on land which was inside the district's boundaries but outside of the beneficial place of use, according to the State Water Resources Control Board's map of the beneficial place of use. This is one of the subjects to be considered in the water rights hearings before the SWRCB later this year.</p>				
<p>The San Luis District is, understandably, concerned. The land in question has been a part of the District, we believe, as long as the District has been in existence in the 1950s. The land in question started receiving federal water in the mid-1970s when the San Luis District began receiving water through the San Luis Canal. The District and the landowners had believed this land was within the beneficial place of use until the present controversy began in the 1980s.</p>				
<p>We are very interested in knowing how this came about as to the San Luis District. Our understanding is that the Bureau of Reclamation has periodically provided maps and/or legal descriptions to the State of California concerning the beneficial place of use and the State has, as a consequence of all or some of those petitions, modified the boundary of the beneficial place of use. Can you provide us with either copies of the maps and/or legal descriptions adopted by the State over the years between 1970 and 1990 which cover at least that portion of beneficial place of use which is within the San Luis Water District? This may help us narrow the focus as to when the discrepancy first arose between the District's boundaries and the beneficial place of use.</p>				

Mike Falkenstein, Environmental Section, Division of Water Rights
Area of Beneficial Use for San Luis Water District
February 3, 1998
Page 2

We would like to have this information in time to analyze it before having to submit the District's comments on the proposed Environmental Impact Report which has been prepared for the State Water Resources Control Board's proposed action on the Bureau's petition to increase the place of use boundary to include both encroachment and expansion lands. If this discrepancy arose as to the San Luis Water District due to a clerical error some years ago, we are considering the position that correcting such an error is a ministerial function and is, therefore, not a "project" under CEQA so that no mitigation may be required. In order for us to be able to prepare the District's comments as to the EIR and to prepare testimony for the water rights hearings, we would like to have this information as soon as possible.

24-1

We are addressing this request and inquiry to you simply because you were designated as the contact person in the Environmental Impact Report and related material which was sent to the District for comment. Please let me know if there is any further information or material you need from the District in order to act on this request.

Very truly yours,

LINNHMAN, BURGESS, TELLES,
VAN ATTA & VIERNA

By



Thomas J. Keene

TJK/ho

24-1 Comment noted. No response required.

Responses to Comment Letter 25

25-1 Previously prepared environmental documents that were unavailable at the time of preparing this DEIR may be relevant in developing mitigation being recommended. Such documentation may reveal that mitigation for past CVP water delivery impacts may not be warranted to the degree currently envisioned.

The Board has discretionary authority to approve or deny the pending petition. As such, compliance with CEQA is required. An EIR is the appropriate CEQA document needed to address the potential consequences of implementing the proposed project.

LETTER 25 MF				
OFFICES OF LINNEMAN, BURGESS, TELLES, VAN ATTA & VIERNA ATTORNEYS AT LAW				
E. C. VAN ATTA	P. D. BIRD 1980	A. D. BIRD 1984	P. D. BIRD 1980	L. M. LINNEMAN 1987/1988
JAMES E. LINNEMAN	1000 PASCADUENA STREET	444 J STREET	30 WEST 90 STREET	JOSEPH E. BURGESS 1988-1990
ROBERT J. VIERNA	1000 PASCADUENA STREET	1000 BAYVIEW, CH. 80008	MERCED, CA 95374	JAY H. WARD 1984-1988
DAVID G. HARRINGTON	1000 PASCADUENA	1000 BAYVIEW	1000 BAYVIEW	THOMAS J. KEENE, OF COUNSEL
ALFRED L. HANDELBAUM	1000 PASCADUENA	1000 BAYVIEW	1000 BAYVIEW	PLEASE REPLY TO
JEFFREY A. NELSON				
March 27, 1998				
DOW PALMS OFFICE				
<p>Mike Falkenstein, Chief Environmental Section Division of Water Rights State Water Resource Control Board Post Office Box 2000 Sacramento, CA 95812-2000</p>				
<p>Re: <u>Consolidated Place of Use Programmatic Environmental Impact Report</u></p>				
<p>Dear Mr. Falkenstein:</p> <p>As you know, this office is General Counsel to the San Luis Water District. This letter is intended to be the San Luis Water District's comments on the above-referenced Programmatic Environmental Impact Report. (PEIR).</p> <p>The San Luis District has been in existence since 1951. It entered into its first long term water contract with the Bureau of Reclamation in 1959. At that time, it received water from the Delta-Mendota Canal to what is now known as the direct service area and Improvement District Number 1. Much of the District as it the existed, had no way of getting water.</p> <p>In 1974, the District's contract with the Bureau of Reclamation was amended to allow the District to receive water from the San Luis Canal. This amendment included a map of the District's boundaries, (a copy of which is marked Exhibit 1, and attached to this letter), at that time which, according to the terms of the agreement, the land to which the District was allowed to deliver water. Virtually all of what has been identified as the District's "encroachment" lands in the above-referenced PEIR were included on that map. The District had filed that same year an application with the Bureau of Reclamation for Public Law 150 100N funds to construct water delivery systems in what became Improvement District Number 2 and Improvement District Number 1.</p> <p>Before signing the 1974 contract with the Bureau of Reclamation, the District fully complied with the California Environment Quality Act by certifying an Environment Impact Report. This EIR defined the project to include both the increase in the District's water allocation from the Bureau from 99,100 acre feet</p>				

Mike Falkenstien, Chief Environmental Section, SWRCB
 Consolidated Place of Use Programmatic Environmental Impact Report
 March 27, 1998
 Page 2

to 128,000 acre feet, the delivery of that additional water to Improvement District Number 2 and Improvement District Number 3 and the application of that water to the lands in those two areas. The Final Environmental Statement, (which was written by the Bureau of Reclamation but certified by the District as the Final Environmental Impact Report, as well,) included a letter of comment from the Water Resources Agency of California. Each of the comments made in that letter, including those concerning habitat for endangered species, were addressed by the District in the Final Environmental Impact Report. After certification of this EIR by the District, the Notice of Determination was filed with the Fresno County Clerk's office on February 26, 1974. Exhibit 2 to this letter is a copy of the Notice of Determination which was filed with the County Clerk of the County of Fresno in February of 1974, and Exhibit 3 is a copy of the Environmental Impact Report which includes a map and a description of the Project. The statute of limitations on that CEQA compliance has long since run, (Public Resource Code 21167).

26-1

In 1976, the District's application for P.L. 130 loan funds was finally approved and the District then filed and brought to judgement a validation action, under California Code of Civil Procedure 860 et seq., concerning both the P.L. 130 loan from the Bureau and the construction of the water delivery system in ID 2 and ID 3. In 1977, Improvement District Number 2 and Improvement District Number 3 both began receiving water from the San Luis Canal. Most of the land which is identified in the above-referenced PEIR as being encroachment land within the San Luis Water District is in ID 2 and ID 3 and was included in both the District's 1974 EIR and in its 1976 validation action. The District's encroachment land also includes some land which has been within the District's boundaries and receiving water from the District through the Delta-Mendota Canal since the 1950's, (ID #1) and a very small amount of land which was been annexed to the District between 1974 and 1989.

A. Further compliance with the California Environmental Quality Act is not legally required to continue to deliver federal water to the encroachment lands in the San Luis Water District.

1. Preior CEQA compliance: As noted above, the San Luis Water District did fully comply with the California Environmental Quality Act when it extended its water delivery system to ID 2 and ID 3, which is where the lion's share of the land now identified as "encroachment" land is located. The balance of the land identified as "encroachment" land in the San Luis Water District was being

Mike Falkenstien, Chief Environmental Section, SWRCB
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served with water from the Delta-Mendota Canal prior to the effective date of the California Environmental Quality Act, which is 1970, (Public Resources Code Section 21000 et seq.) Therefore, regardless of the basis for the discrepancy between the State's version of the Place of Use and the District's boundaries, the mitigation mandated by this PEIR for continuing to provide water to the "encroachment" land in the San Luis Water District is neither legally required nor authorized by law. 25-2

2. Pre-existing environmental conditions: The "project" which is the subject of the PEIR dates back only to 1985, (PEIR, Section 1.1, page 1-1). All of the environmental impacts of the delivery of water to encroachment lands in the San Luis Water District are environmental conditions which pre-exist the proposed project. Some even pre-date CEQA. Pre-existing environmental conditions do not require an environmental impact report, Baird v. County of Contra Costa, (1995) 31 Cal.App.4th 1265, 32 Cal.Rptr.2d 93, and certainly do not justify the imposition of mitigation measures. 25-3

Another way of stating this same point, is that the "project" is categorically exempt, at least as to the San Luis Water District, under Section 15301 of the CEQA Guidelines.¹ The present conditions are that the water is being delivered² to the encroachment lands and the encroachment land was either within the scope of the District's 1974 CEQA compliance or was receiving water prior to 1970, when CEQA went into effect.³ The State now expanding its Place of Use boundary to the current District boundaries is merely a change in permitting, without any change in the volume of water being delivered. Such a change does not trigger the need for additional CEQA compliance, Bloss v. McGurk, (1994) 26 Cal.App.4th 1307, 31 Cal.Rptr.2d 914, relying on the 25-4

¹Title 14, California Code of Regulations, Section 15000 et seq. are referred to in this letter as the CEQA Guidelines.

²The District notes that the owners of certain of these parcels have not purchased water in the last few years, but even those parcels have received water at some time since 1976. The majority of the land in question has been irrigated with water purchased from the District this year and every year since water was first made available to it.

³Or, in the case of a small fraction of the encroachment land added by annexation, has been receiving water since 1989.

25-2 See response to Comment 25-1.

25-3 Because the petition for changing the POU is presently being considered, the EIR needs to address the consequences of expanding the POU from its existing location. Therefore, the change to the POU is a current action, regardless of when the unauthorized CVP water delivery took place.

25-4 See response to Comment 25-3. The pending petition addresses expanding the POU for the entire CVP. The Board cannot segment portions of the CVP service from the remainder to justify qualifying the preparation of a Negative Declaration or Categorical Exemption. Such an action would be inconsistent with CEQA.

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Supreme Court's ruling in Saga Valley Wine Train, Inc. v. Public Utilities Commission, (1990) 50 Cal.3d 370, 267 Cal.Rptr. 569, 787 P.2d 976.

3. Ministerial Act: The question which the San Luis Water District has asked for several months is: How did the discrepancy develop between the San Luis Water District's boundaries and the permitted Place of Use (POU)? In an effort to answer this question the District has requested historical information from both the Bureau of Reclamation and the State Water Resources Control Board, (see Exhibits 4 and 5 to this letter), which has not yet been forthcoming. If, as the District suspects, the only reason for the discrepancy is a clerical error which was made by either the SWRCB or the Bureau of Reclamation, then this clerical error needs to be corrected. Correcting a clerical error is a ministerial act and, as such, is exempt from the requirements of CEQA, (Public Resources Code Section 21080(b)(1); CEQA Guidelines Section 15268). Correcting a clerical error is not a "project" under CEQA in that no discretionary decision is involved, (CEQA Guidelines Section 15378). Therefore, if the basis for the discrepancy turns out to have been a clerical error, the mitigation mandated by this PEIR for continuing to provide water to the "encroachment land" is not appropriate nor legally required.

25-5

B. Assuming, only for the sake of argument, that further compliance with the California Environmental Quality Act as to the San Luis Water District is necessary, the Draft Programmatic Environmental Impact Report for the Consolidated and Conformed Place of Use is legally inadequate for this purpose.

1. "No Project Alternative": Examining the PEIR in light of the San Luis District's history, it is apparent that the PEIR fails to consider a true "no project alternative", as is required by the applicable regulations, (CEQA Guidelines Section 15126(d)(4)). Alternative 1, which is labeled by the PEIR as the "no project" alternative includes a rejection of the proposal to increase the POU by including the encroachment lands. Since, with only very minor exceptions, those lands in the San Luis District which have been identified as encroachment lands have been receiving CVP water since the District itself started receiving water from the San Luis Canal, any alternative which fails to include the continued receipt of CVP water by those lands is not a "no project" alternative.

25-6

In other words, Alternative 1, in the San Luis District, would require the termination of water deliveries to lands which

25-5 See response to Comment 25-3. The areas that presently do not receive CVP water have the potential to undergo physical environmental change, depending on the land uses that would occur and be made possible by the availability of CVP water supplies. Therefore, expanding the POU is a project that has the potential to cause a physical change to the environment and constitutes a project in accordance with CEQA.

25-6 Delivery and use of CVP water outside the existing POU is not an authorized use in accordance with existing state law. In order for it to become authorized, the Board must modify the existing water rights permits. This action requires that the Board comply with CEQA in its consideration of allowing CVP water to be delivered to these lands. The No Project Alternative would not modify the existing POU boundary and continued delivery of CVP to lands outside the POU would not be authorized.

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have been receiving CVP water since the 1950's and the termination of water delivery to lands which have been receiving water from the San Luis Canal since the mid-1970's. CEQA was only adopted in 1970. Some of the lands in the San Luis District which have now been identified as "encroachment" lands had been receiving CVP water for over a decade when CEQA went into effect. To now take any action which terminates water delivery to those lands is a project. To label it "no project" is improper. The PEIR tacitly admits this by having to consistently compare Alternative 1 to the existing conditions in order to identify the impacts. Obviously the existing conditions are the "no project" alternative. The existing conditions include the environmental conditions as they are today, including those conditions which have resulted from and are continuing to result from the delivery of water to these lands. Alternative 1, therefore, is not a "no project" alternative because it proposes the termination of water deliveries to these lands.

25-6

Alternatives 2 and 3, and the proposal itself, each include both conforming the purposes of use in the 14 existing permits so that they authorize the use of the water for the eleven purposes shown in Table 3-2 and consolidating the place of use. Since none of the alternatives considered studies the possibility of both the continued delivery of water to the encroachment lands and not conforming the purposes of use and consolidating the place of use, the PEIR fails to consider a true "no project" alternative. Therefore the PEIR is legally defective under Section 15126(d)(4) of the CEQA Guidelines.

25-7

2. Reasonable Alternatives: The San Luis Water District has issued bonds and other debt instruments secured by its revenue stream. This revenue stream includes both the power to levy assessment on the real property in the District and the power to bill and collect for water delivered to property within the District at the request of the property owner or tenant in possession, (California Water District Law, California Water Code Section 34010 et seq.).

In the case of the San Luis Water District, one of these debts is secured by an assessment lien on all of the land within ID 2, (including that which has been identified as "encroachment" land in the PEIR), and another is secured by an assessment lien on all of the land within ID 3, (including that which has been identified as "encroachment" land in the PEIR). Other debts of the District encumber all of the District's income from lands within the District, including all of the encroachment lands. All of these debts have been sold to the public at large or to a Public Finance

25-7 Modifying the POU boundary to include encroachment lands is a new action. Therefore, the "No Project" is correctly described in the DEIR as denial of proposed Changes 1, 2, and 3.

Mike Falkenstien, Chief Environmental Section, SWRCB
 Consolidated Place of Use Programmatic Environmental Impact Report
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 Page 6

Authority which in turn has sold bonds to the public at large.⁴

The District has also contracted with the State Water Resources Control Board for a loan of up to \$5,000,000, from the State Revolving Loan fund, (SRF), to the District for the District to make available to growers within the District to purchase equipment to improve the efficiency of their on-farm irrigation systems.⁵ Under the terms of this agreement, the District has loaned some of these funds to farmers who own encroachment lands for use on those lands. These farmers have received these loan funds in the form of irrigation equipment to install on their land. Under the terms of the SRF loan contract between the District and the SWRCB the District is relying on the annual installment payments from these farmers to make the District's annual debt service payments to SWRCB on the SRF loan.

Section 4.14 of the PEIR concludes that taking CVP water away from the encroachment lands in the San Luis Water District would decrease gross farm receipts by \$7,500,000, a 15.2% drop, (Table 4-11, page 4-48). Such a large decrease in gross receipts will have the following effects:

a. With such a dramatic decrease in the yield per acre, the assessed value of the land in question will undoubtedly go down. The debt secured by assessments on that property will therefore be significantly less secure.

25-8

b. The income to the District from water sales (over and above the direct cost of the water) will go down since the District will no longer be allowed to sell CVP water for use on the encroachment lands. As noted in the PEIR, the District has no other source of water, (Section 3.4.18.3, page 3-117). This will, in turn effect the ability of the District to repay its debts, including its debts secured by the District's gross income.

c. Stripped of water, the encroachment lands will

⁴Documentation of all of these debts are public records and are available at the District's office during regular business hours. Copies were not attached because of the bulk of paper which would be involved.

⁵The District's CEQA compliance for this contract was in the form of a Notice of Exemption, which was completed in July of 1996, which is on file at the District's office and is a public record.

25-8 The comment correctly notes that the DEIR concluded that with implementation of the No Project Alternative, gross farm receipts would decrease by about \$7,500,000 annually. On page 4-49, however, the DEIR notes that this estimate would only be true if water supplies to San Luis Water District was not a limiting factor effecting irrigated agricultural production. In the future, water supplies will likely be limited in most years. In years when water is limited, the water no longer delivered to encroachment lands would be made available to other lands within the existing POU. With application of these supplies to lands within the POU, District water sales would not be reduced and increased agricultural production within the POU would offset production from lands outside the POU. Since water sales would not be affected, the District would still be able to meet payment obligations. The comment correctly notes that the assessed value of encroachment lands will be reduced, however, it fails to recognize that the assessed value of land within the POU, receiving additional water supplies, may increase.

Mika Falkenstein, Chief Environmental Section, SWRCB
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 Page 7

not be able to produce such income. The income they produce will not be enough to allow payment to the District for that portion of the SRF funds which have been expended on irrigation equipment for these lands. This will limit the District's ability to repay the SRF loan to the SWRCB. 25-9

These effects are not considered in the PEIR.

Article 1, Section 9 of the California State Constitution prohibits the State from taking an action, including a legislative action, which will impair the obligation of an existing contract.

"Generally the law under which public bonds are issued forms a contract between the issuing authority and the bondholders which may not be impaired by subsequent legislation. . . [citations omitted]" Veterans of Foreign Wars of the United States v. State of California, (1974) 36 Cal.App.3rd 688, 692, 111 Cal.Rptr. 750.

This principal has been interpreted as including an act which removes only a portion of the bondholder's security, Goodman v. Riverside County, (1983), 140 Cal.App.3rd 900, 190 Cal.Rptr. 7. It means that, insofar as an action of the SWRCB would cause either the first or the second or both the first and second of the three effects listed above, the action would be in violation of Article 1, Section 9 of the California State Constitution. 25-9

Specifically, as to the SRF loan, it has been held that a governmental agency may not use its legal authority, subsequent to contracting with another party, which will impose additional burdens on the other party or to make it more difficult for the other party to perform under their contract, City of Los Angeles v. Los Angeles City Water Co. (1882) 61 C. 65, Robinson v. Magee (1858) 9 C. 81. In this case, for the SWRCB, after having made the SRF loan to the District, to now take an action to prohibit the District from delivering water to the very lands improved with a portion of the SRF funds, would constitute an abuse of discretion.

Alternatives 1 and 3 would each result in the encroachment lands not being eligible to receive CVP water. Each of these alternatives would impair the security for existing contracts entered into by the District and, as to the SRF contract, would serve to place an additional burden on the District's ability to repay the SRF loan funds. For these reasons, the courses of action proposed by either Alternative 1 or 3 would be illegal, at least as to the San Luis Water District. The PEIR is only supposed 25-10

25-9 Comment noted. It is not the responsibility of this EIR to address legal matters involving issues of contract law or other matters that need to be resolved in a legal forum.

25-10 Alternatives 1 and 3 are considered reasonable because they could be implemented with existing technology and water delivery facilities. The fact that selection of either of these alternatives could place an economic hardship on the San Luis District is not an environmental issues subject to analysis in this DEIR. Such a concern should be presented to the Board as part of its broader obligation to address matters of public interest.

Mike Falkenstein, Chief Environmental Section, SWRCB
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to consider reasonable alternatives, (CEQA Guidelines, Section 15126(d)). By definition, Alternatives 1 and 3 are not "reasonable" under the CEQA Guidelines. The PEIR, to this extent, fails to present or consider reasonable alternatives and is therefore out of compliance with the requirements of CEQA. 25-10

3. Mitigation Measures The District acknowledges that the PEIR is a "Program" environmental impact report, pursuant to Section 15168 of the CEQA Guidelines. The Guidelines indicate that mitigation measures are still to be identified and discussed even in a Program EIR, (Section 15168 (C)(3)). The case authority suggests that the mitigation plans for a Program EIR do not have to be as precise or as complete as one would expect in a standard EIR, (Rio Vista Farm Bureau Center v. County of Salano, (1992) 5 Cal.App.4th 376-377, 7 Cal.Rptr.2d 367).

However, the PEIR indicates that, as to encroachment lands, it is intended to be site specific as well as a "Program" EIR. While additional CEQA compliance is indicated as to expansion lands, no such statement is made as to encroachment lands, (PEIR, Section 1.2, page 1-3). Since no additional CEQA documentation for the encroachment lands is promised, this PEIR must be analyzed as if it were the final EIR for these lands since, unlike other forms of tiered EIRs, a Program EIR may very well be the final EIR under the CEQA Guidelines. Therefore, a challenge to the mitigation measures set forth in this document as being inadequate for the project proposed as to the encroachment lands is appropriate at this juncture since it may be the only environmental document which is ever prepared as to those lands, Stanislaus Natural Heritage Project v. County of Stanislaus, (1996) 48 Cal.App.4th 182, 55 Cal.Rptr.2d 625; Enster v. County of San Joaquin, (1994) 47 Cal.App.4th 29, 54 Cal.Rptr.2d 565. In this situation, a PEIR is just like a standard EIR in that, if the PEIR identifies a significant impact on the environment, it must identify one or more feasible mitigation measures which will lower the level of that impact to being insignificant, or the project cannot be pursued without a finding of overriding considerations, (Public Resources Code Section 21002, CEQA Guidelines Sections 15002(a)(3), 15021(a)(2), (c)).

Chapter 5 of the PEIR on mitigation measures points out that the San Luis District has 9,609 acres of encroachment land, all of which, according to the PEIR, has affected habitats of associated threatened and endangered species. Section 5.1.1 suggests that mitigation measures "could include" the acquisition of lands for habitat restoration, implementing management programs

Mike Falkenstien, Chief Environmental Section, SWRCB
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to enhance existing habitat values and acquiring development rights to control land use activities to be consistent with target species needs and habitat requirements, (Section 5.1.1, PEIR page 5-3). But the PEIR does not say which of these possible mitigation measures will be used, who would pay for this mitigation nor does it even indicate significant detail as to the level of mitigation required, (three acres of mitigation land for every acre of encroachment land, or will it be one acre or five?). Without this information it is impossible to determine the feasibility of the mitigation measures selected or whether they will serve to mitigate the identified impact to a level of insignificance. The feasibility of the mitigation measures are an essential part, if not the very purpose of, an Environmental Impact Report, including a Program Environmental Impact Report, Rio Vista Farm Bureau v. County of Solano, supra. Without a determination that the mitigation measures which the PEIR identifies would serve to mitigate the impact to a level less than significant and that the measures are feasible, this PEIR would necessitate a decision by the State not to pursue the proposed project or any of the alternatives.

25-11

25-11 The specific measures to be employed are not fully known at this time, however, the DEIR does identify, on page 5-3 of the DEIR, several measures that can be employed to fully mitigate the impacts of delivering CVP water to lands outside the POU. As noted on page 5-8, it will be the Board's and Reclamation responsibility to assign criteria or targets for mitigation success. The Board would then be responsible for evaluating the specific measures in relation to the criteria.

4. Economic Impacts. Any discussion of the feasibility of the proposed mitigation plan for endangered species would necessarily include an examination of who pays for it and an examination of how much it would cost. Logically, one would assume either the Bureau of Reclamation or the District would pay the cost of mitigation. Each of them are in a position to pass their costs on to the owners of the encroachment lands themselves.

As noted above, the San Luis Water District is indebted in a number of ways. Some of these debts are assessments of particular improvement districts. If the owners of these encroachment lands are unable to continue to farm their land economically, then they cannot share in the debt repayment for their improvement district. The burden of this debt repayment then must be redistributed among the lands within that improvement district which remain productive. It is entirely possible that this increase in debt service payments may have the impact of forcing other lands within the improvement district out of production. The economic impacts for the region could be catastrophic.⁴

25-12

25-12 Comment noted. Table 4-10 presents an estimate of the economic impact of the alternative, including the No Project Alternative. As shown, the estimated economic impact to the San Luis Water District from the No Project Alternative includes a reduction of gross farm income on the order of \$7,500,000 annually.

⁴The reader should bear in mind that the monthly unemployment figures published at a month before this writing show Merced County with a 19.6% rate of unemployment and Fresno County only a couple

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 Page 10

The PEIR does not even consider the economic impact if the mitigation plan is structured such that the owners of the encroachment lands are required, directly or indirectly, to pay for this mitigation, which is the most logical consequence of the mitigation proposed. In essence, the PEIR fails to consider the secondary effects of the mitigation proposed, namely the economic impact of paying for it. This failure to consider secondary effects is a further violation of the CEQA Guidelines and the law, (Sections 15064 (d), 15146(b), City of Carmel-by-the-Sea v. Board of Supervisors, (1984) 183 Cal.App.3d 229, 227 Cal.Rptr. 899).

25-13

25-13 As envisioned at this time, mitigation funds would be supplied by Reclamation and the available funds collected from fees assigned by the CVPIA and other existing programs. No new funds would be collected from CVP water contractors to pay for mitigation requirements.

5. The definition of the "project" is too broad to allow for a meaningful environmental review. There are at least two different ways in which the scope of the "project" is too broad: (a) It attempts to combine (1) conforming the purposes of use in the 16 existing permits so that they authorize the use of the water for the eleven purposes shown in Table 3-2, (2) consolidating the place of use and (3) expanding the place of use. (b) It attempts to consider all 26 water contractors in need of expanding the place of use into a single document.

25-14

25-14 The petition pending before the Board requests several actions be taken to change Reclamation's existing water rights permits. While the analysis of each change could be addressed in separate environmental documents, the Board has elected to address these changes in a single document.

a. The environmental consequence of conforming the purposes of use is itself a more than adequate "project" for an Environmental Impact Report of its own. Similarly, the consolidation of the authorized Place of Use for CVP water is a large enough topic to be the subject of an EIR of its own. The combination of both of these issues with the increase in the authorized Place of Use creates a "project" for CEQA purposes which is too large to allow for meaningful environmental consideration.

The environmental consequences of conforming the purposes of use in the individual permits so that all 16 permits authorize the use of water for all 11 of the purposes shown in Table 3-2 are neither adequately identified nor discussed in the PEIR. It appears that this proposed change would allow the use of water under 14 of the permits for fish and wildlife enhancement for the first time. This change would also allow use of water under 13 of the permits for salinity control for the first time, and for water

25-15

25-15 As stated on page 3-6 of the DEIR, CVP operations do not necessarily correspond to the authorized uses assigned in each water rights permit. In reality, the CVP is operated in a coordinated manner that allows water from any single facility to be used for each of the purposes listed in Table 3-2. Therefore, as noted on page 4-6 of the DEIR, no physical change would occur with approval of Change 1. The Final EIR will include a discussion of impacts of rejecting Change 1 which would require the CVP to be operated in a manner consistent with the existing authorized uses.

of percentage points lower. The most recent unemployment figures published show only a slight improvement. These counties have had unemployment rates varying between 15 and 20 percent for several years. Each dollar of real income to an area has a "multiplier effect" so that each job lost directly can result in three to five additional jobs lost indirectly.

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quality control under 12 of the permits for the first time. Obviously if this water is being used for fish and wildlife, salinity control and/or other water quality enhancement it is not going to be as available for agricultural uses as it is currently. There is virtually no discussion in the PEIR of the environmental consequences, if any, of these changes. 25-15

This proposal would also allow water under nine of the sixteen permits to be used for municipal and industrial purposes for the first time. The growth inducing impacts this may have are not even mentioned in the PEIR. Obviously this could have significant environmental impacts on air quality, water quality, endangered species and a whole range of environmental concerns. None of this is even discussed. 25-16

b. This PEIR attempts to combine into a single document the discrepancies between the State's version of the Place of Use and the versions of twenty-six public agencies. This makes for a "project" which is too big to have any meaningful environmental review.

As noted above, the San Luis Water District believes that, for almost all of its encroachment lands, it has done all that it was required to do over the last twenty-eight years in order to comply with the California Environmental Quality Act and other applicable laws regarding the expansion of the Place of Use of its water. Because the scope of the PEIR is so large, it is impossible for the PEIR adequately to describe what gave rise to the discrepancy between the State's version of the Place of Use and the San Luis Water District's boundaries or to consider the legal effect of the District's 1974 CEQA compliance. 25-17

The "project", as defined, is so massive that these sorts of issues are not even considered. For example, Section 4.14 of the PEIR, (starting at page 4-44) attempts to analyze the economic impacts of the project. In examining the "worst case" alternative, it concludes that:

"SLWD would bear about 15 percent of the total economic impact. If water is not a limiting factor, losses to gross farm income, earnings, and employment total approximately \$7.5 million, \$3.6 million, and 303 jobs, respectively. This impact affects 22 percent of SLWD's total irrigated acres and might constitute a substantial regional impact." [Emphasis added.] (PEIR page 4-50)

- 25-16 This comment is partly correct. While the water rights permits would be changed to allow water from the CVP facilities to be used for M&I purposes, as they are currently doing, the actual use of water by CVP contractors is restricted by the terms of the individual water service contract. The pending action before the Board will not modify the terms of the existing water service contracts between Reclamation and the CVP water contractors. Therefore, no additional water would become available for M&I purposes beyond that currently contracted with Reclamation.
- 25-17 Regardless of the reason why there is a discrepancy between the existing POU and the location of the CVP water contractor service areas, the petition requesting a change to the POU requires an assessment in accordance with CEQA at this time.

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To conclude that losses of \$7.5 million and 303 jobs which affects 22 percent of the San Luis District's total irrigated acres, "might constitute a substantial regional impact" is the grossest of understatements. This would be a devastating impact for this region, but the PEIR includes no further discussion of what it has identified as potentially a "substantial regional impact." There is no discussion as to how to mitigate this impact so that it is not significant. Basically, the impact to the region surrounding the San Luis Water District is glossed over.

25-18

25-18 Section 15382 of the CEQA Guidelines states that economic or social changes shall not be considered a significant effect on the environment. Therefore, even though the DEIR identified the economic effects on San Luis Water District as a potential substantial regional impact, there is no requirement that mitigation be provided by CEQA to offset or compensate for this effect. The DEIR adequately discusses economic consequences of the No Project Alternative to the degree required by CEQA.

The present PEIR, as a consequence of the overly broad scope of the "project" it studies, defeats the very purpose of CEQA in that it fails to consider the issues which CEQA was designed to compel governmental agencies to consider. Conforming the purposes of use and consolidating the place of use should be considered in separate environmental documentation than expanding the place of use. In the environmental documentation for expanding the place of use, each of the 26 governmental units which is identified in the PEIR should be considered a separate "project" and examined for CEQA purposes separately. In this way, the actual merits of each individual entity and the potential impacts on the community served by that entity can be considered. The San Luis Water District objects to the proposed PEIR as being overly broad in its definition of the "project" and therefore failing adequately to consider the environmental consequences of the proposed action to the San Luis Water District.

25-19

25-19 See response to Comment 25-14.

This PEIR over looks the equities of the situation as they apply to the San Luis Water District. The District has attempted to comply with CEQA since CEQA was enacted and has consistently obtained the Bureau of Reclamation's consent before providing water to additional lands. In reliance on the Statute of Limitations on the CEQA compliance having run and on the Bureau of Reclamation's consent to their land being served, a number of people have borrowed against the value of their land and spent years improving the irrigation systems to make these farms some of the most water efficient in the Valley. To now threaten the future deliveries of federal water or condition it on the payment of money to mitigate impacts which have either predated CEQA or which were considered and addressed by the District's CEQA compliance long before the current investments were made in these lands, is a very serious event. Certainly the owners of these lands deserve more adequate environmental consideration than has been offered or than can be offered by a document which defines the "project" under consideration so broadly as to gloss over the potential devastation of their life's work!

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Conclusions: Further CEQA compliance should not be required in order to continue to deliver federal water to the "encroachment" land in the San Luis Water District. However, even if CEQA compliance is deemed appropriate as to the San Luis District, this PEIR is legally inadequate. The PEIR fails to consider a true "no project" alternative, as is legally required. The PEIR considers, for the most part, unreasonable alternatives. Even for the proposed project itself and Alternative 2, the PEIR inappropriately calls for mitigation measures which it does not fully develop and so which cannot be evaluated as to their feasibility or their environmental impact. The PEIR fails adequately to consider the potential environmental consequences as to the San Luis Water District because the "project" it attempts to examine is overly broad.

25-20

For all of the foregoing reasons, the PEIR should be found to be inconsistent with the law and either rewritten or even done away with, since continuing to deliver water to the encroachment lands in the San Luis Water District does not require further CEQA compliance.

Very truly yours,

LINNEMAN, BURGESS, TELLES,
VAN ATTA & VIERRA

By 
Thomas J. Keene

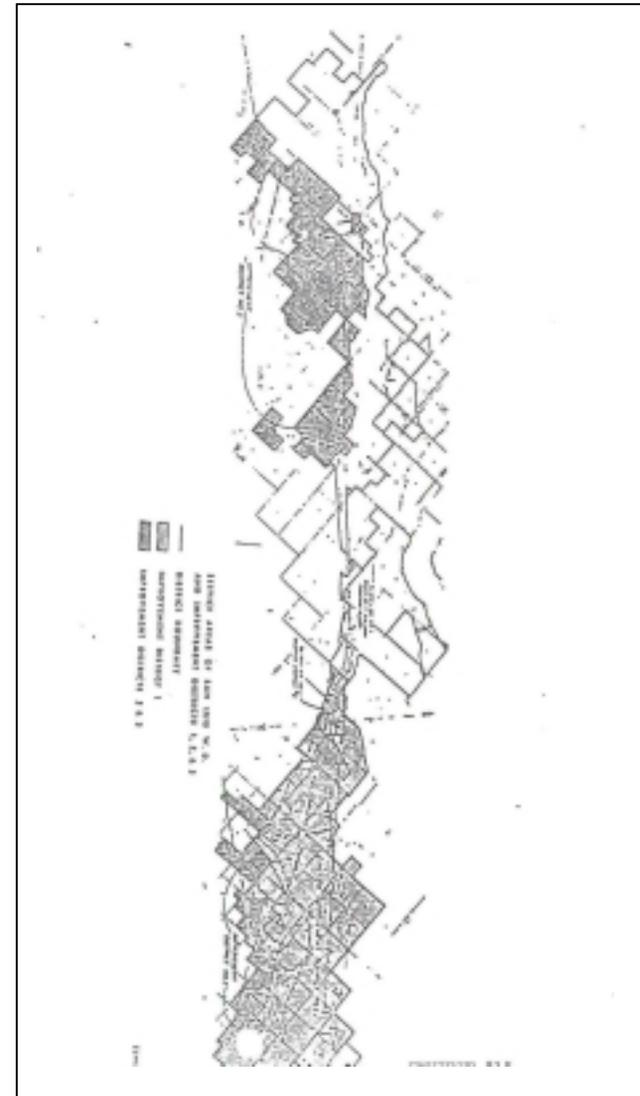
TJK/hs

25-20 Comment noted. See responses to Comments 25-1 through 25-19.

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List of Exhibits

- Exhibit 1 Map of the San Luis District's boundaries which is a part of the District's 1974 contract with the Bureau of Reclamation.
- Exhibit 2 The Notice of Determination which was filed with the County Clerk of the County of Fresno in February of 1974
- Exhibit 3 The (1974) Environmental Impact Report which includes a map of the District's boundaries.
- Exhibit 4 Letter from the office of the General Counsel of the San Luis Water District to the Bureau of Reclamation requesting historical information on Place of Use.
- Exhibit 5 Letter from the San Luis Water District's general counsel's office to the State Water Resource's Control Board requesting historical information on Place of Use and a copy of a letter from State Water Resource's Control Board to the Bureau of Reclamation concerning the request.



Filings and correspondence with: J. L. BROWN, Fresno County Clerk Room 801, Courthouse 1180 Van Ness Fresno, California 93721 Mailing Address: P.O. Box 1628 Fresno, California 93717		Space Below For County Clerk Only CLN 008480 004 TO 00000	
Agency File No.		LOCAL AGENCY NOTICE OF DETERMINATION	
Board of Directors - San Luis Water District		County Clerk File No.: (Enter if Negative Declaration has been filed)	
Address (Street and P.O. Box): P.O. Box 666 - 17961 W. Pump Road		City: Los Banos	
State: 93635		Zip Code: 93635	
Agency Contact Person (Name and Title): Cecil Carey - Chief Engineer - Manager		Agency File Number: 309	
Project Name: San Luis Water District		Project Title: San Luis Water District Construction of Distribution Works in Merced and Fresno Counties, California	
Project Description (Check if Negative Declaration has been filed): <p>San Luis Water District has submitted a P.L. 84-130 loan application to construct an irrigation water distribution network consisting mainly of a pressure pipeline system and one 5-mile reach of open canal. The District is located in Merced and Fresno counties and lies a few miles southwest of Los Banos, California. The loan is in the amount of slightly over \$ 8.4 million, less the value of right-of-ways to be contributed by the District. A supplemental water supply of 133,000 acre-foot per year will be utilized on 35,000 acres.</p>			
Justification for Determination (Check if R. Not Required and See Negative Declaration): <p>The principal environmental impact of the proposed action on the District lands will be to stabilize and enhance the agricultural production on 19,000 acres now under irrigation and to provide a full irrigation water supply to 15,000 acres of land not now irrigated. The 15,000 acres will be changed from lands with very limited wildlife carrying capacity to irrigated crop lands with increased numbers of some wildlife species.</p>			
Negative Declaration Filed: Date: <input checked="" type="checkbox"/> Not Applicable		Notice of Completion Filed with State: Date: <input checked="" type="checkbox"/> Not Applicable	
Decision: Project: <input checked="" type="checkbox"/> Approved <input type="checkbox"/> Disapproved		Determination: Impact: <input type="checkbox"/> Significant <input checked="" type="checkbox"/> Not Significant	
Environmental Impact Report: <input checked="" type="checkbox"/> Required <input type="checkbox"/> Not Required		Environmental Impact Report: <input checked="" type="checkbox"/> Prepared <input type="checkbox"/> Not Prepared	
Title of Environmental Impact Report Available at (Address): 17961 West Pump Road - Los Banos, California 93635			
Date: February 26, 1974		Submitted by (Signature): Cecil Carey	
LOCAL AGENCY NOTICE OF DETERMINATION (Not to exceed one page)			
County Clerk File No. E EXHIBIT "2"			

Responses to Comment Letter 26

- 26-1 This DEIR addresses the consequences of expanding the POU to correspond to the CVP contract service areas recognized by Reclamation at the time when the petition was filed. Changes to this CVP contract service boundary are not the subject of the pending petition or this DEIR.

LETTER 26

Charles M. Marsh
 6343 Myers Road
 Winters, CA 95687
 (916) 473-2328

February 22, 1998

State Water Resource Control Board
 901 P Street
 Sacramento, CA 95812

Dear State Water Resource Control Board:

I have been advised recently that a farm my family owns and operates has been left out of the Draft Form of the Environmental Impact Report for the Consolidated and Confirmed Place of Place of Use prepared by CH2MHILL, dated December 1997.

This oversight needs to be corrected in order for this historically agricultural area to receive any surface water in the future. My family and neighbors have labors for the past several years to develop irrigation systems for this highly productive portion of the Sacramento Valley. We are in the verge of completing the steps needed to begin the infrastructure necessary to receive irrigation water. In researching this matter you will also find that a large portion of this area was originally included in the service area to receive Bureau of Reclamation water.

Spring Valley needs to be included as a whole in the service area, so that we are able to continue to develop in an ecologically and environmentally sound manner. This area has the potential for highly productive agricultural use, given the availability of irrigation water.

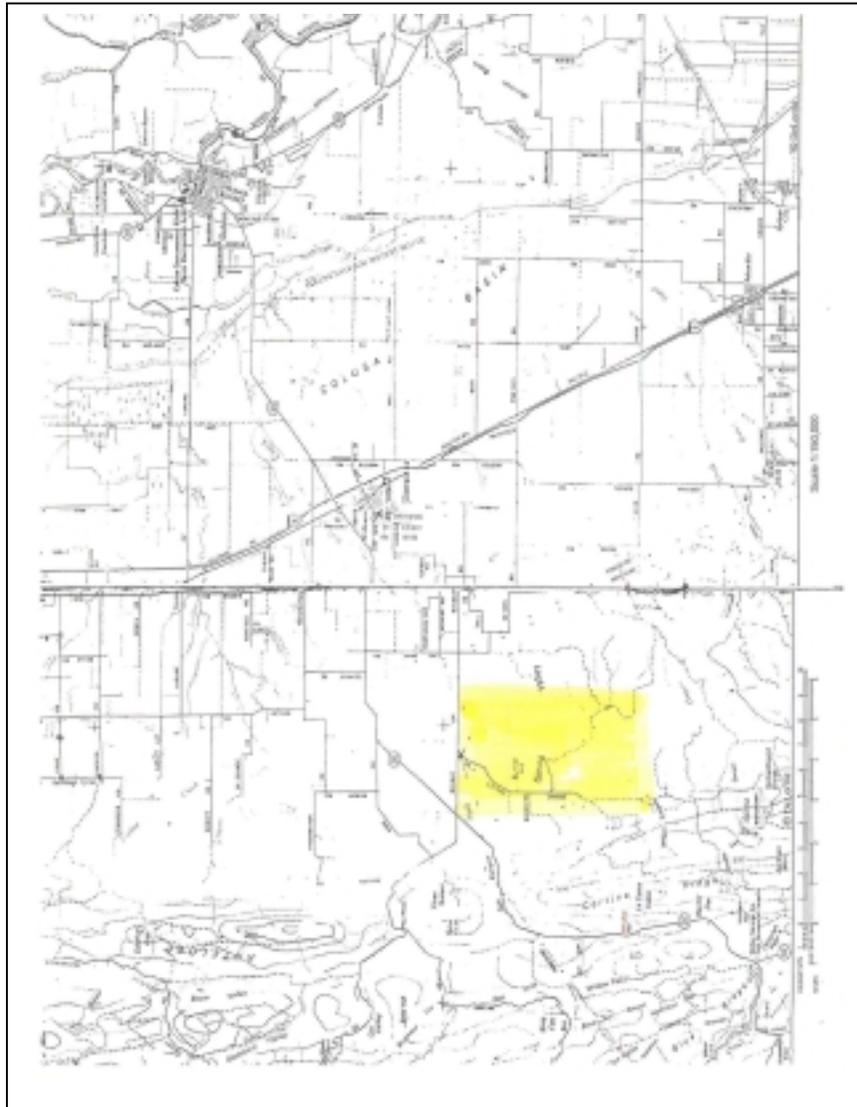
I strongly urge you to revise the draft study to re-include Spring Valley. If your office has any questions, please feel free to contact me.

Sincerely,



Charles M. Marsh

26-1



LETTER 27

MF

Myers-Marsh Ranch
 P.O. Box 72228
 Davis, CA 95617
 February 22, 1998

State Water Resources Control Board
 P.O. Box 2000
 Sacramento, California 95812

Dear State Water Resources Control Board,

In the Environmental Impact Report released in December 1997
 "Consolidated and Conformed Places of Use" are identified.

Please revise the "Consolidated and Conformed Places of Use" to include the Spring
 Valley area of 8 miles Southwest of Williams, California.

I own a ranch in Spring Valley, California. 640 Acres of this ranch has been historically
 dryland farmed. This entire ranch is in the Sacramento Basin. It has always been the
 intent and policy of the Bureau of Reclamation to provide irrigation waters to properties
 in the Sacramento Basin. I am in the Sacramento Basin. The service area identified in
 your EIR leaves my property without Bureau water. 27-1

I object strongly to Spring Valley area being left outside the Service area identified in
 your December 1997 EIR.

Please consider "Area of Origin". We should certainly get water in Spring Valley before
 Los Angeles, or anyone else outside the Sacramento Valley gets Sacramento Valley
 water. To do otherwise, ignores a very valuable portion of Sacramento Valley. It also
 ignores the farm families who want to continue farming for generations to come.

The Spring Valley floor is perfect for permanent plantings, such as, grapes and almonds.
 The flats are also suitable for other crops if water was available. We have worked with
 Westside Water District for over 15 years to get water to Spring Valley. We are very
 close to getting CVP Water to irrigate Spring Valley. Under the places of use outlined in
 your EIR we will never get water.

Please correct this oversight and put us back in the service area where we belong.

Sincerely,


 Stephen F. Marsh

Responses to Comment Letter 27

- 27-1 This DEIR addresses the consequences of expanding the POU to correspond to the CVP contract service areas recognized by Reclamation at the time when the petition was filed. Changes to this CVP contract service boundary are not the subject of the pending petition or this DEIR.

LETTER 28 MF

February 21, 1998

State Water Resource Control Board
P.O. Box 2000
Sacramento, California 95812

Dear State Water Resource Control Board:

In your Environmental Impact Report released in December 1997, you have identified "Consolidated and Conformed Places of Use".

I strongly object to Spring Valley, 8 miles southwest of Williams, California being left outside the service area. 28-1

As a landowner in the area I am requesting the inclusion of Spring Valley in the "Consolidated and Conformed Places of Use". Spring Valley is part of the Sacramento Valley Basin and the Bureau's water rights permits were intended to provide water to this area.

Spring Valley deserves a place in the future economic and social growth of this state.

Please give serious consideration to this request.

sincerely,



Matt Ferrini
Ferrini Sheep Co.

Responses to Comment Letter 28

- 28-1 This DEIR addresses the consequences of expanding the POU to correspond to the CVP contract service areas recognized by Reclamation at the time when the petition was filed. Changes to this CVP contract service boundary are not the subject of the pending petition or this DEIR.

LETTER 29

Myers-Marsh Ranch
 P.O. Box 72228
 Davis, CA 95617
 February 22, 1998

State Water Resources Control Board
 P.O. Box 2000
 Sacramento, California 95812

Dear State Water Resources Control Board,

In the Environmental Impact Report released in December 1997
 "Consolidated and Conformed Places of Use" are identified.

Please revise the "Consolidated and Conformed Places of Use" to include the Spring
 Valley area of 8 miles Southwest of Williams, California.

I own a ranch in Spring Valley, California. 640 Acres of this ranch has been historically
 dryland farmed. This entire ranch is in the Sacramento Basin. It has always been the
 intent and policy of the Bureau of Reclamation to provide irrigation waters to properties
 in the Sacramento Basin. I am in the Sacramento Basin. The service area identified in
 your EIR leaves my property without Bureau water.

I object strongly to Spring Valley area being left outside the Service area identified in
 your December 1997 EIR.

29-1

Please consider "Area of Origin". We should certainly get water in Spring Valley before
 Los Angeles, or anyone else outside the Sacramento Valley gets Sacramento Valley
 water. To do otherwise, ignores a very valuable portion of Sacramento Valley. It also
 ignores the farm families who want to continue farming for generations to come.

The Spring Valley floor is perfect for permanent plantings, such as, grapes and almonds.
 The flats are also suitable for other crops if water was available. We have worked with
 Westside Water District for over 15 years to get water to Spring Valley. We are very
 close to getting CVP Water to irrigate Spring Valley. Under the places of use outlined in
 your EIR we will never get water.

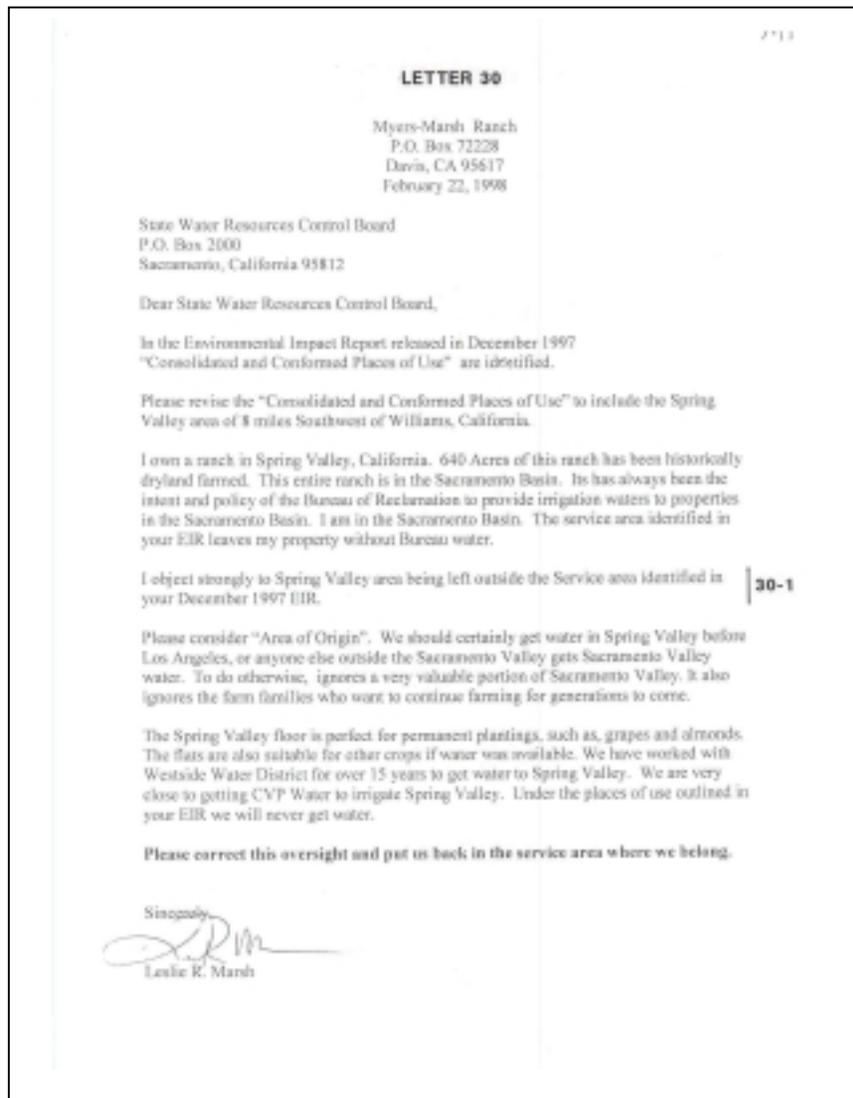
Please correct this oversight and put us back in the service area where we belong.

Sincerely,

Joseph M. Marsh
 Joseph M. Marsh (530)476-3773

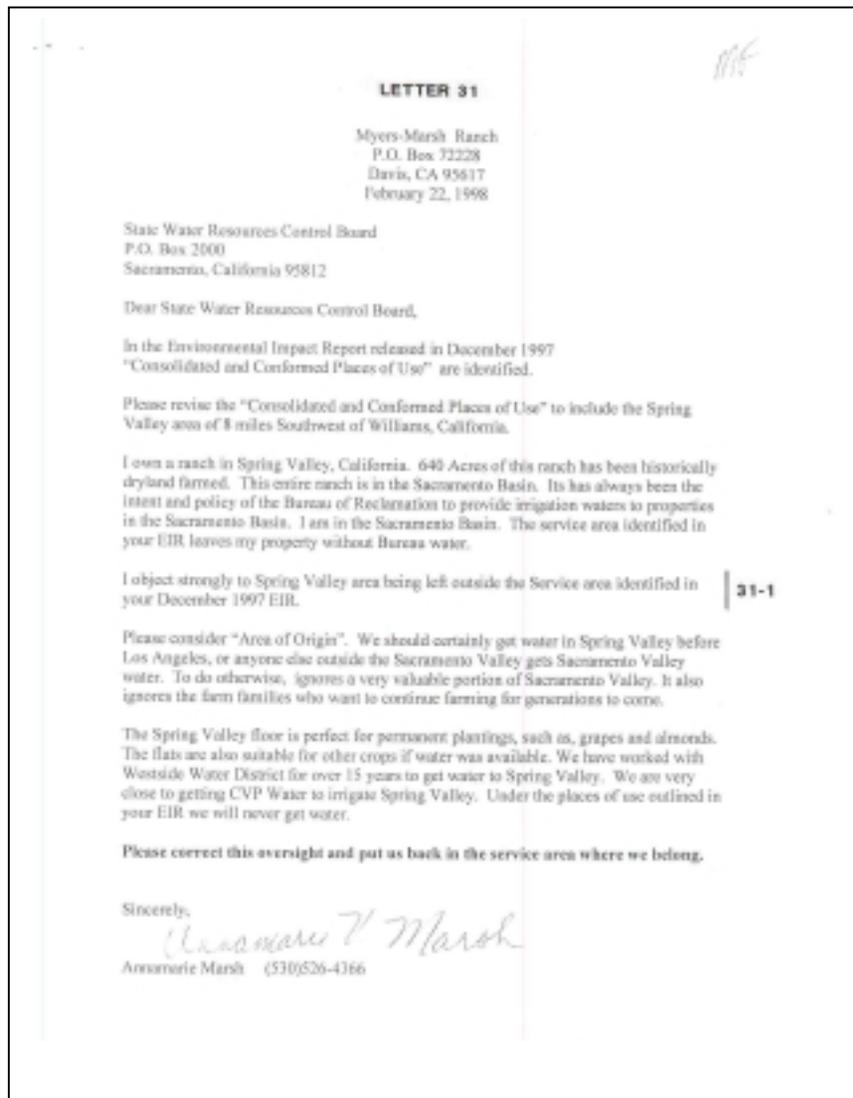
Responses to Comment Letter 29

- 29-1 This DEIR addresses the consequences of expanding the POU to correspond to the CVP contract service areas recognized by Reclamation at the time when the petition was filed. Changes to this CVP contract service boundary are not the subject of the pending petition or this DEIR.



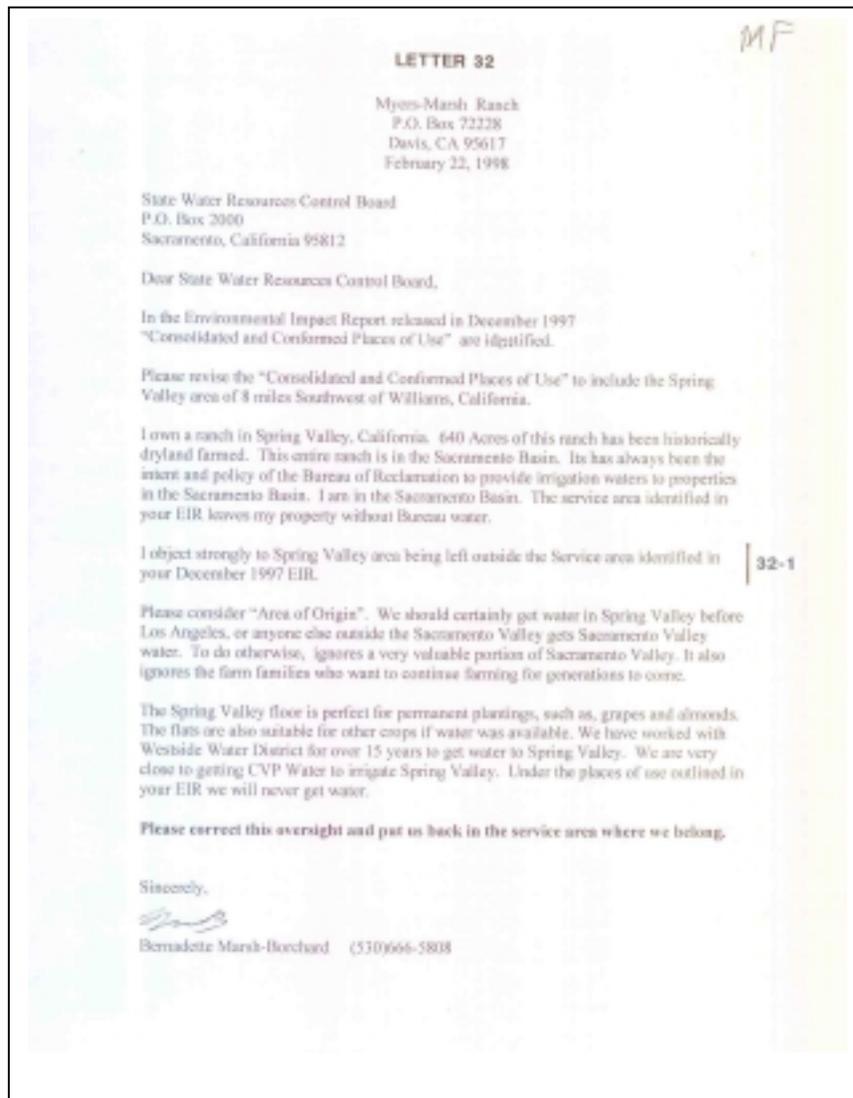
Responses to Comment Letter 30

- 30-1 This DEIR addresses the consequences of expanding the POU to correspond to the CVP contract service areas recognized by Reclamation at the time when the petition was filed. Changes to this CVP contract service boundary are not the subject of the pending petition or this DEIR.



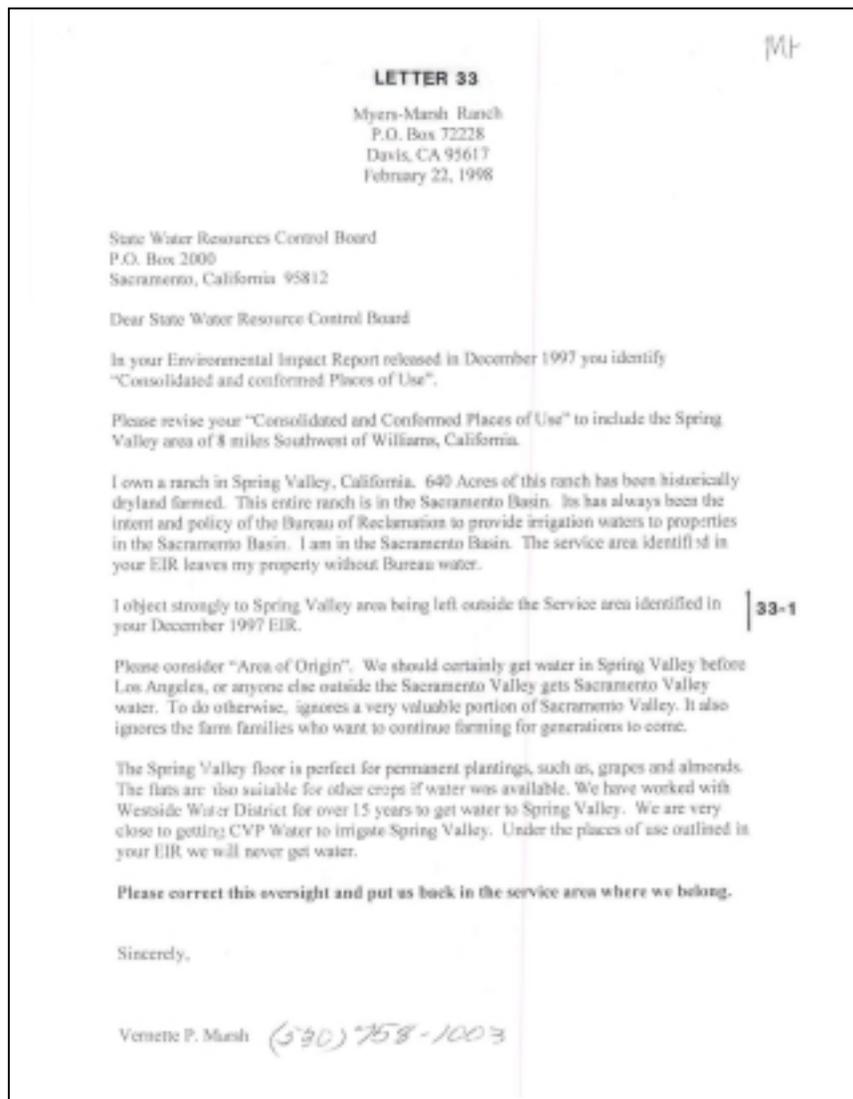
Responses to Comment Letter 31

- 31-1 This DEIR addresses the consequences of expanding the POU to correspond to the CVP contract service areas recognized by Reclamation at the time when the petition was filed. Changes to this CVP contract service boundary are not the subject of the pending petition or this DEIR.



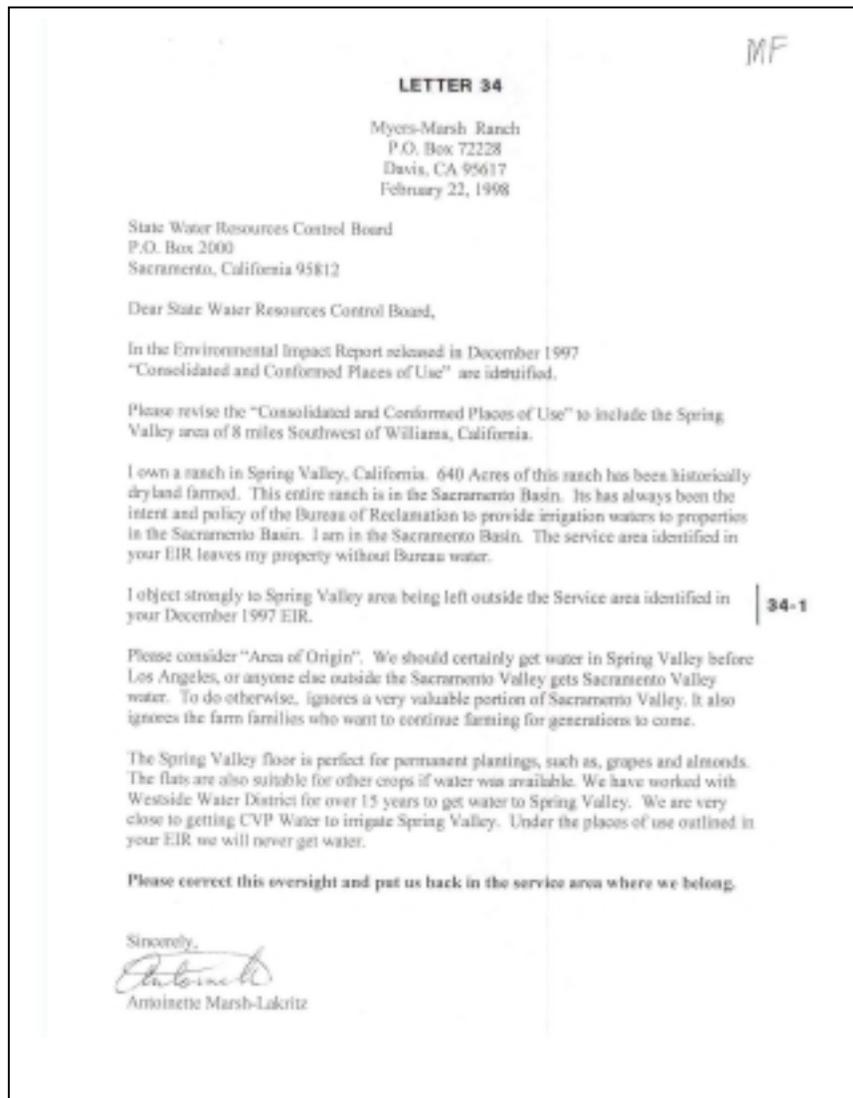
Responses to Comment Letter 32

- 32-1 This DEIR addresses the consequences of expanding the POU to correspond to the CVP contract service areas recognized by Reclamation at the time when the petition was filed. Changes to this CVP contract service boundary are not the subject of the pending petition or this DEIR.



Responses to Comment Letter 33

- 33-1 This DEIR addresses the consequences of expanding the POU to correspond to the CVP contract service areas recognized by Reclamation at the time when the petition was filed. Changes to this CVP contract service boundary are not the subject of the pending petition or this DEIR.



Responses to Comment Letter 34

- 34-1 This DEIR addresses the consequences of expanding the POU to correspond to the CVP contract service areas recognized by Reclamation at the time when the petition was filed. Changes to this CVP contract service boundary are not the subject of the pending petition or this DEIR.

Responses to Comment Letter 35

- 35-1 This DEIR addresses the consequences of expanding the POU to correspond to the CVP contract service areas recognized by Reclamation at the time when the petition was filed. Changes to this CVP contract service boundary are not the subject of the pending petition or this DEIR.

02/20/1998 19:44 4837410422 DENNY ALFF PAGE 01

LETTER 35

March 30, 1998

Mr Christopher L. Campbell
Baker, Monck & Jensen
5260 North Palm Avenue
Fresno, California 93704

Dear Mr Campbell:

We are owners of 80 acres in the expansion lands of Westlands and wish to send these comments for inclusion in the EIS response due April 1, 1998.

Our land is Area III shown on the map as "native vegetation". It is APN 27-040-275 and the property is located at SUE RTS 80.64 ac lots 1 and 8, Sec 5T19R12.

This land was owned by our grandmother in the 1970s, inherited by our mother, Denny Pawler, and is now owned by us. At the time of purchase, no information was given indicating there was no water available. We were never advised that we were outside the use area.

It was and is our long term intention to rent the land for farming and receive rental income. This is not happening. Furthermore, we must pay Westlands Water District over \$500/year for our 80 acres for water service and construction of the water delivery system. This charge, plus the property taxes, have caused us to have a negative cash flow for this property. This was neither expected nor is currently appreciated.

We need to be fully included in the Westlands Water District and be able to receive the water allotment that should be rightfully ours.

Thank you for the attention to this.

Sincerely,
Mark McWhinney
Mark McWhinney
14185 Teerlink Way
Saratoga, California 95070

(408) 741-0423
e-mail: dva@virius.com

35-1

51-98 TUE 16:22 JIM CASE

P. 02

EXHIBIT A

Government Lots 2, 3 and 4 and the West 3/4ths of the South half of the North half of Section 4, Township 16 South, Range 13 East, Mount Diablo Base and Meridian, according to the United States Government Township Plat, approved by the Surveyor General on June 4, 1851, EXCEPTING therefrom all the coal and other minerals in said lands together with the right to prospect for, mine and remove the same lands granted to the provisions and limitations of the Act of December 25, 1916 (39 Stat., 862), as amended in the Patent from United States of America to Homer M. Babcock recorded April 18, 1923 in Book 339, Page 103 of Official Records, Document No. 11778.

Responses to Comment Letter 36

- 36-1 Comment noted. Reclamation has petitioned the Board to expand the POU to encompass all lands within the boundaries of existing CVP water contractor service areas. Therefore, it cannot be excluded from this document unless requested by Reclamation.

<p>LETTER 36</p> <p>MID-VALLEY WATER AUTHORITY (A Public Agency) 4886 E. Jensen Avenue • Fresno, CA 93725 Telephone: (209) 237-5567</p>	<p>MF</p>
<p>January 22, 1998</p>	
<p>Mr. Mike Falkenstein, Chief Environmental Section Division of Water Rights State Water Resources Control Board P. O. Box 2000 Sacramento, CA 95812-2000</p>	
<p>Re: Draft Environmental Impact Report for the Consolidated and Conformed Place of Use</p>	
<p>Dear Mr. Falkenstein:</p>	
<p>The Mid-Valley Water Authority (MVWA), a joint powers agency, made up of public agencies in Madera, Maricopa, Fresno, Kings, Tulare and Kern counties, supports the U. S. Bureau of Reclamation's (Reclamation) petition to (1.) Conform the purpose of use, (2.) consolidate the authorized place of use (POU) for water diverted from all Central Valley Project (CVP) sources; (3.) increase the authorized POU in the appropriate permits for the encroachment lands, lands that have already received CVP water within the 26 CVP water contractor service areas but are presently outside the authorized POU, and (4.) Extend the time to complete full beneficial use of water under the permits.</p>	
<p>The MVWA, however, opposes the inclusion of the 718,000 acres of expansion lands of the twenty-two districts for a POU of the 16 existing permits under consideration.</p>	
<p>The project-specific EIR does not identify impacts associated with the delivery of CVP water in the expansion lands but instead left such determination and the development of mitigation therefore to the local governmental agencies within which the expansion lands are situated. However, the SWRCB will continue to be the responsible agency under CEQA.</p>	
<p>On page 6-4 the EIR states ... "the proposed expansion of the authorized POU would likely result in land use changes. The availability of CVP water could support future development, as determined appropriate by local land management authorities. Such development would be consistent with local land use policies and plans. Therefore, no cumulative adverse effect on land use would occur with implementation of the proposed project."</p>	
	<p>36-1</p>

State Water Resources Control Board
Page 2
January 22, 1998

The EIR also states on pages 4-7 and 4-8; "Therefore, for most of the CVP contractors, no additional CVP water is available to accommodate additional irrigated agriculture or M&I land uses within their service areas."

The report further states on Page 8-1 "Delivery of CVP water to expansion lands could result in significant impacts; therefore, no approval can be issued until adequate site-specific environmental documentation on water delivery proposals is completed."

36-1

Since Reclamation will not be authorized under its water rights permits to deliver water for use in the expansion lands until adequate environmental documentation has been prepared in accordance with CEQA and the SWRCB has approved delivery of CVP water to any specific expansion land, as delivery of the CVP water to the expansion lands could result in significant impacts and since the contractors do not have CVP water available for delivery to the expansion lands, the inclusion of expansion lands should be excluded from this EIR and processed on a case by case basis as CVP water becomes available for delivery to such expansion lands.

Other comments are as follows:

1. Page 3-5, 3.3.1 Water Use. The identification of the San Francisco Bay Area as a place of distribution of CVP water is in error and needs to be removed from the report. The Central Valley Project as initially authorized by the U. S. Congress in 1935, for the purposes of storing and conserving flood and waste waters of the Sacramento and San Joaquin Rivers and their tributaries, covered the Central Valley only, being the Sacramento and San Joaquin Valleys. In 1967 the San Felipe Division Act authorized an extension of the CVP service area within the Santa Clara Valley covering portions of Santa Clara, San Benito, Santa Cruz and Monterey Counties. The San Felipe Division was designed to provide a supplemental irrigation supply of 132,400 acre-feet to 63,500 acres of developed agriculture. The San Francisco Bay Area is not an authorized place of use by either Federal legislation or State permits.

36-2

2. Page 3-5, 3.3.1 Water Use. The Statement "An additional 850,675 acre-feet are also contracted on a temporary basis (Class 2 Water Contracts)," is incorrect.

The contract obligations of the Friant Contractors total 1,401,475 acre-feet of Class 2 water. Class 2 water is not identified as "temporary" but instead termed CVP yield of the San Joaquin River at Friant Dam in addition to Class 1 (firm supply).

36-3

3. Page 3-10, 3.3.2.4 San Joaquin River. Major reservoirs should include Eastman Lake (Bachman Dam) on the Chowchilla River and Hensley Lake (Hidden Dam) on the Fresno River.
4. Page 3-11, 3.3.3 Ground Reservoir. Makes reference to the San Francisco Bay which is an incorrect citation.

- 36-2 Portions of the San Francisco Bay Area are currently included in both the CVP contract service area and the authorized POU. Whether the CVP has authority to deliver water to this area is not a subject of this DEIR.
- 36-3 Comment noted. All references to Class II water supplies will be removed from the Final EIR because the status of such supplies is not a subject of the pending petition before the Board.

State Water Resources Control Board
Page 2
January 22, 1998

We recommend that all reference to Encroachment lands be excluded from the final EIR since the environmental impacts of service to such lands are not evaluated in the report. The statements page 1-3... "those land use developments have already been evaluated in CEQA documents prepared by other local land management authorities", and "Potential environmental impacts associated with the expansion areas are discussed on a programmatic level because future land and water uses cannot be readily determined at this time, and would require speculation of future CVP water contractor uses of CVP water and discussions by local land management authorities" are contradictory of other statements in the EIR. A programmatic EIR cannot be developed without the specific details of the land and water use of the expansion lands or without identifying the source of water supply and the system(s) of conveyance.

36-4

Thank you for the consideration of our comments.

Very truly yours,



R. L. Schafer

RLS/mep

cc: Mr. Jeff Taylor
Mr. Dan Dooley
MVWA Membership

36-4

The DEIR contains a detailed discussion of impacts that occurred as a result of historic CVP water delivery to lands outside the POU (encroachment lands). The comment noting page 1-3 of the DEIR refers to a statement regarding M&I land uses activities only. It does not refer to agricultural land uses that occurred outside the POU with the delivery of CVP water. The DEIR consistently addresses potential impacts in the expansion area throughout the document on a programmatic basis. The purpose of a programmatic EIR is to address a series of actions that can be characterized as one large project and are related. Therefore, it is appropriate to address expanding the POU to the expansion areas on a programmatic basis and rely on subsequent site-specific analyses to address individual changes to the POU expansion areas as they arise.

LETTER 37

MF

Natural Resources
Defense Council

71 Stevenson Street
San Francisco, CA 94105
415 777-0020
Fax: 415 495-8996

Via Fax

April 1, 1998

Mike Falkenstein, Chief
Environmental Section
Division of Water Rights
State Water Resources Control Board
PO Box 2000
Sacramento, CA 95812-2000

RE: Comments on Draft PEIR for Petition to Consolidate and Conform the CVP Water Rights Permits

Dear Mr. Falkenstein:

NRDC appreciates the opportunity to submit these comments on the draft Program Environmental Impact Report (PEIR) on the Bureau of Reclamation's petition to consolidate and conform 16 of its Central Valley Project (CVP) water rights permits, including its proposed expansion of its place of use. Unfortunately, we believe this proposed action is premature and urge you to reissue the draft PEIR and extend the deadline for review and comment accordingly.

The Bureau of Reclamation has failed to implement most of the key provisions of the Central Valley Project Improvement Act (CVPIA), and it has not yet issued its final PEIS for implementing that Act. Its environmental documentation on the interim contracts signed since 1992 has not addressed all of the relevant environmental impacts involved in extending those contracts, and the Bureau has not yet made a serious evaluation of the reasonable and beneficial use requirements applicable to its contractors. Interior is still considering an ambiguous proposal called "the toolbox" which it claims may provide more water to CVP contractors south of the Delta, yet the environmental effects of such a proposal have not been fully analyzed. The Anadromous Fish Restoration Plan has not yet been finalized, nor the San Joaquin River Comprehensive Plan, nor the rules and regulations for implementing the CVPIA. The CalFed Program has just issued a draft EIR that does not yet contain a preferred alternative, and some water users from within the Central Valley are calling for expanded water deliveries to agricultural water users. The State Board has not yet held its hearings on implementing the 1995 Water Quality Plan and there is considerable controversy regarding the various options for meeting the flow requirements of that Plan. Thus, this is not the time for the State Board to be finalizing this extremely old and potentially problematic petition by the Bureau nor the

37-1

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Responses to Comment Letter 37

- 37-1 The petition before the Board requires an action that is independent of other matters related to the operation of the CVP, CALFED, and other programs which are being implemented for the protection and enhancement of environmental resources in California. There is no substantive reason to delay the consideration of this action or continue the completion of this EIR.

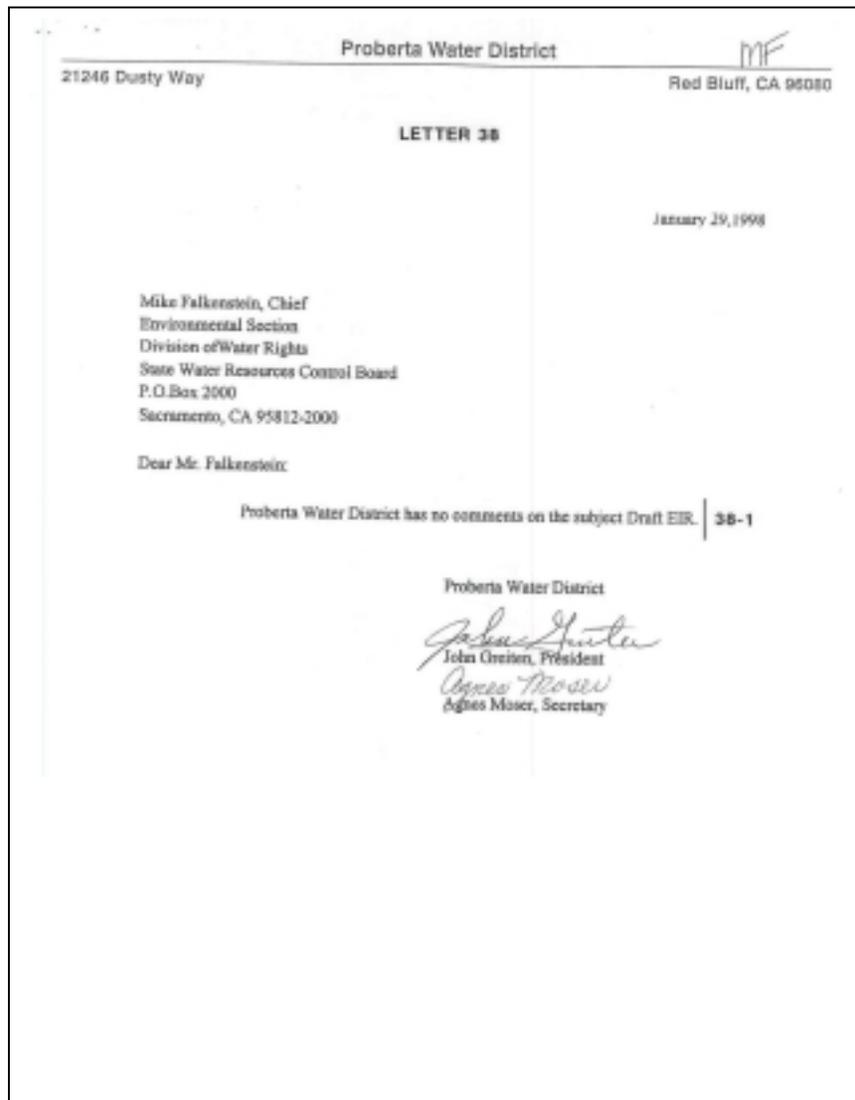
Board's own CEQA documentation on that petition. Given the numerous uncertainties involved in this entire project and watershed, it would be inappropriate to go final with such a far reaching environmental document. 37-1

Accordingly, we believe the current draft PEIR is not yet adequate and fails to meet the relevant state and federal legal requirements. We believe the comment period should be extended until the aforementioned actions are completed and a more appropriate review is possible. Thank you for considering our comments.

Sincerely,

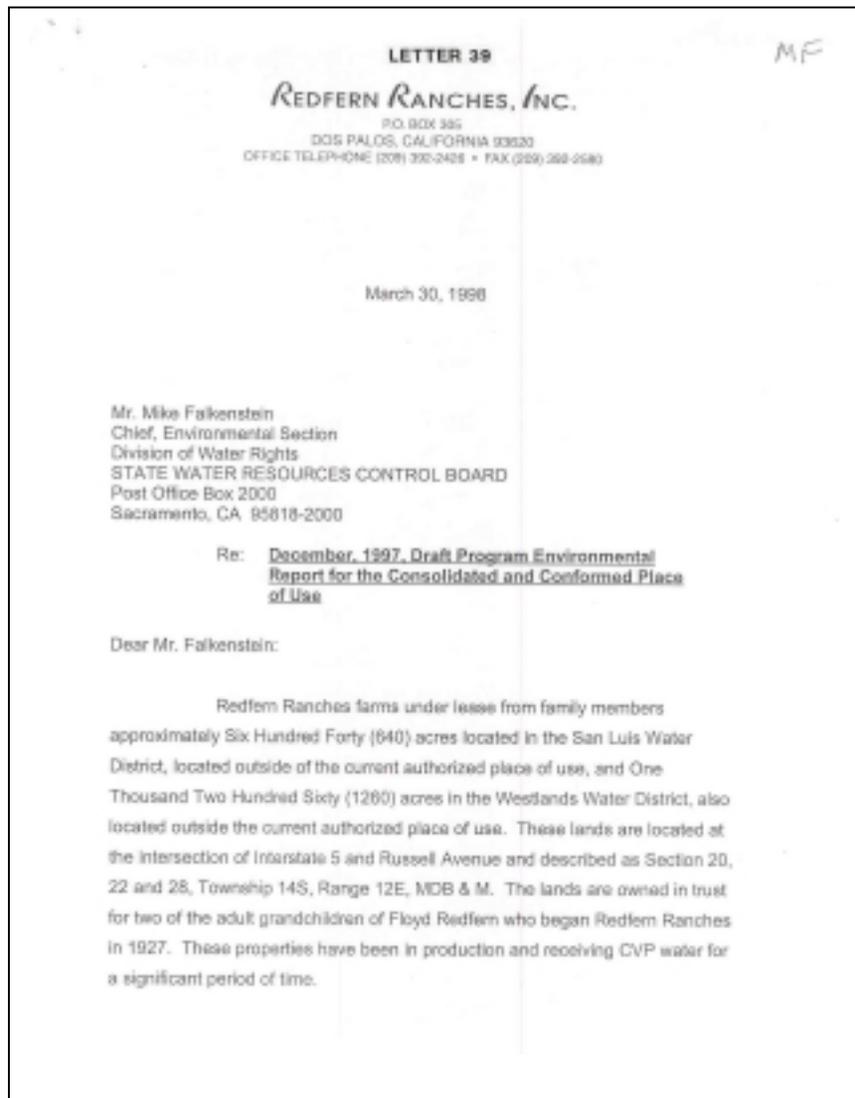


Hamilton Candee
Senior Attorney



Responses to Comment Letter 38

38-1 Comment noted. No response required.



Responses to Comment Letter 39

Mr. Mike Falkenstein
 March 30, 1998
 Page 2

The San Luis properties have been in production since approximately 1977 . Since that period of time, we, or the previous tenants, have grown fresh tomatoes, melons (many varieties), cotton, lima beans, sugarbeets, garbanzo beans, and alfalfa seed on these properties. These properties have received CVP water since approximately 1977 .

The Westlands properties have been in production since approximately 1978 . Since that time, we, or the previous tenants, have grown fresh tomatoes, melons (many varieties), cotton, lima beans, sugarbeets, garbanzo beans, and alfalfa seed on these properties. These properties have received CVP water since approximately 1978 .

As you can see, we have long relied on CVP water to farm these properties. We have complied with all of the Bureau of Reclamation's requirements in order to receive federal project water on these properties. We have made substantial investments in these properties based on the availability of federal project water. If the State Water Resources Control Board does not expand the authorized place of use to include these properties, these properties will dramatically decline in value.

We have always considered these properties to be within the authorized place of use. We have never received any indication to the contrary from San Luis, Westlands, the State, or the Bureau of Reclamation. We, have paid the Westlands and San Luis assessments on these properties, which include repayment for project facilities. Why should we pay for such facilities if

39-1

Comment noted. The DEIR concluded that with implementation of the No Project Alternative, gross farm receipts would decrease by about \$7,500,000 annually. On page 4-49, however, the DEIR notes that this estimate would only be true if water supplies to San Luis Water District was not a limiting factor affecting irrigated agricultural production. In the future, water supplies will likely be limited in most years. In years when water is limited, the water no longer delivered to encroachment lands would be made available to other Districts within the existing POU. With application of these supplies to lands within the POU, District water sales would not be reduced and increased agricultural production within the POU would offset production from lands outside the POU. Since water sales would not be affected, the District would still be able to meet payment obligations. The comment correctly notes that the assessed value of encroachment lands will be reduced, however, it fails to recognize that the assessed value of land within the POU, receiving additional water supplies, may increase.

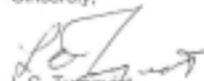
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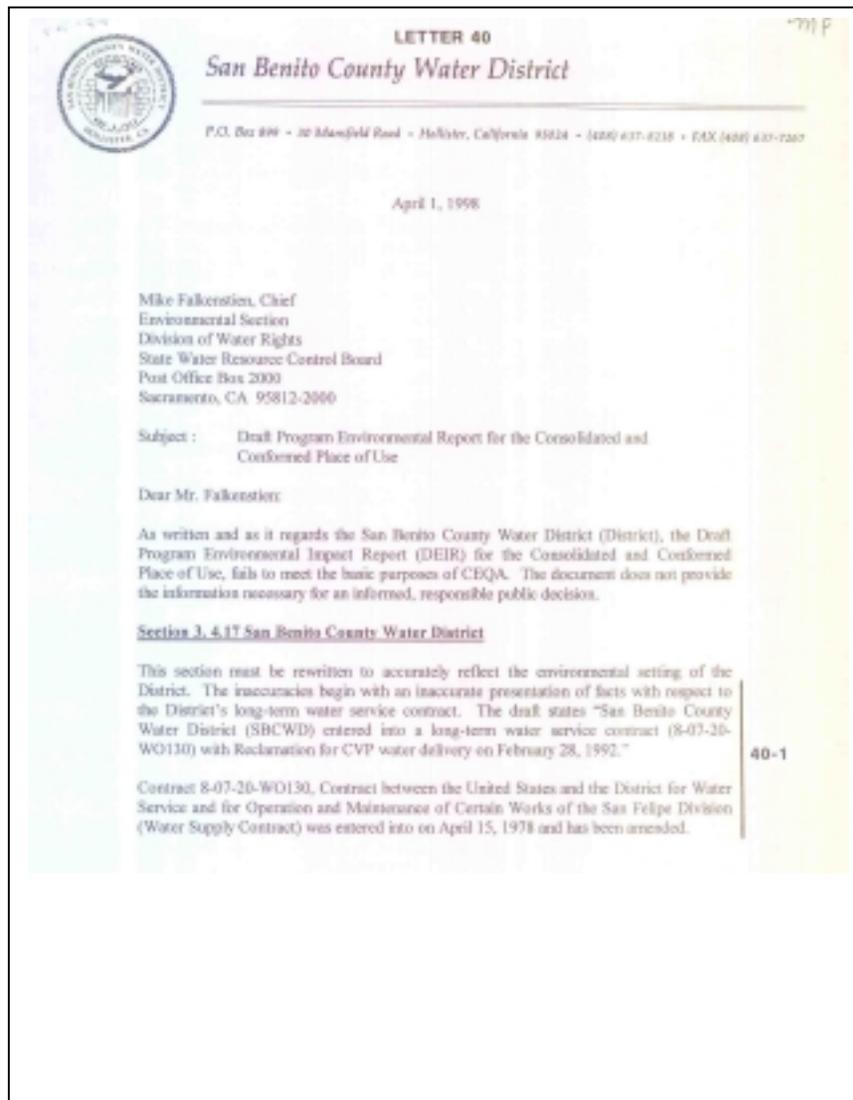
Mr. Mike Falkenstein
March 30, 1998
Page 3

Given that the State and the Bureau of Reclamation have been delivering water to these properties for some time, we naturally assumed that the properties were entitled to receive it, and that any environmental requirements had been satisfied. To refuse to expand the authorized place of use or to require environmental mitigation at this late date would be grossly unfair. Therefore, we urge the State Board to expand the authorized place of use to the boundaries of the San Luis and Westlands Districts. We join in the comments submitted by the San Luis Water District, the Westlands Water District, and the group of private landholders in the Westlands Water District prepared by the firm of Baker, Manock & Jensen.

Thank you for your consideration in this matter.

Sincerely,


L.C. Turnquist
General Manager



Responses to Comment Letter 40

- 40-1 Comment noted. The Final EIR will be revised to reflect that San Benito County Water District originally entered into water service contract 8-07-20-WO130 in 1978.

Mike Falkenstein
Page 2
April 1, 1998

Section 3.4.17.4 Water Resources and Water Use

The document states that CVP water use is restricted to agricultural and M&I purposes. The meaning of the term "restricted" is not given. The District's water supply contract provides for two types of water, 1) agricultural water and 2) municipal, industrial and domestic water. The definition of municipal, industrial and domestic is as follows:

"...Shall mean water used for other than agricultural purposes;"

40-2

In addition to agricultural and M&I uses, the contract further provides that project water may be used by the contractor for recharge into the groundwater basins in San Benito County."

In paragraph 5, the document states "SBCWD has also installed groundwater wells to support existing land uses. The District owns and operates no groundwater wells."

40-3

Section 3.4.17.5 Groundwater Resources

This section implies that lands outside the authorized place of use have access to 8,200 acre feet of water per year from District owned wells and that there is no indication that groundwater use would be limited by water quality issues. This section is wrong on both counts, 1) the District has no District owned wells, and 2) the Central Coast Regional Quality Control Board has determined that surface water and groundwater quality in this portion of San Benito County are inappropriate to support current beneficial uses. Groundwater quality in the area poses significant problems for irrigated agriculture and is and will continue to be a limiting factor. Groundwater quality problems are, in fact, one of the primary purposes to be served/mitigated by CVP water importation to the San Benito County Water District. Groundwater conditions, including groundwater quality, are documented in reports developed by the United States Bureau of Reclamation related to the development, feasibility, congressional authorization and environmental documentation on the San Felipe Division.

40-4

Figure 3.18 incorrectly identifies land use or water service in the areas within the contract service area and outside the place of use as delineated by a freehand drawn line bearing no relationship or coincidence with any know topographical, hydrologic or hydrogeologic boundary on or any institutional, real property or other legal boundary.

40-5

- 40-2 Page 3-113 states that water delivered to SBCWD is restricted to agricultural and M&I purposes consistent with the CVP contract terms. The word "restricted" does not imply any further limited usage not provided in the CVP water service contract.
- 40-3 Comment noted. The Final EIR will be modified to reflect that groundwater wells installed in the area are not owned or operated by San Benito County Water District.
- 40-4 Comment noted. See response to Comment 40-3. Based on the water user survey conducted in 1990, SBCWD representatives indicated that if groundwater was of poor quality, such as excessive boron, increased application rates would be used. As a result, no changes in land use would occur with the use of local groundwater resources. While there may be a reduction in planted acreage, no substantial change to land uses would take place. The Final EIR will be revised to state that high boron concentrations in local groundwater supplies may pose a limit to use.
- 40-5 The figure referenced in this comment is based on Reclamation's GIS mapping system and accurately reflects information currently available to Reclamation. This comment does not provide any information to correct the claimed errors. Land and water use information was originally provided by SBCWD staff as part of the Water User Survey, conducted in 1990. As noted in this Final EIR, the acreage of encroachment lands has been corrected based on recalculation of the location of the existing POU boundary. The revised acreage outside the POU is addressed in this Final EIR.

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Section 3.4.17.6

The vegetative community and habitat types identified for areas outside the place of use as defined in the draft environmental document are also incorrect. To the extent that "historically" relates to conditions prior to the introduction of CVP Water with minor exception, the lands within Zone 6 and outside the place of use, as defined in this document, were devoted to cultivated and irrigated agriculture prior to that introduction of CVP Water. The Final Environmental Statement, San Felipe Division prepared by the Bureau of Reclamation Department of Interior in 1976, provides a detailed inventory of then existing land uses and environmentally sensitive areas.

40-6

Section 4.3.1 Water Use Changes Associated with the Proposed Project

This section concludes, without benefit of definition, details or discussion, that the District has "Surplus CVP". The District is still within the development period provided for in the Water Supply Contract. Current planning calls for the construction of a surface water treatment plant for the Hollister area and for additional surface water distribution systems and groundwater recharge facilities to provide for use of additional CVP water. Further, it is our understanding that the CVP is unable to deliver full contract entitlements except during extreme wet years and that on average deliveries will be about 65% of entitlement. THERE IS NO SURPLUS.

40-7

Identification of Existing Permitted Place of Use for CVP Water

In the DEIR, the existing permitted place of use for CVP Water in the District is shown as an area that does not coincide with the District's Service Area boundary (Zone 6). The existing permitted place of use is shown to be a freehand line which does not coincide with any known topographical, hydrologic or hydrogeologic boundary or any institutional, real property or other legal boundary and which is inconsistent with all documentation for the San Felipe Project including the San Felipe Division Environmental Impact Statement.

40-8

Impacts

The DEIR fails to identify and address the impacts on local water supplies, particularly the existing overdraft of the groundwater basin. The DEIR further fails to address the economic and social impacts of loss of investment in public and private infrastructure, changes in agricultural practices, agricultural jobs, etc. The public record and public decisions regarding water supply and water facilities are based on the water rights being available to the CVP for beneficial use in the Zone 6. The District holds that

40-9

40-10

40-11

- 40-6 Comment noted. The corrected POU boundary has substantially reduced the acreage of lands within the San Benito County Water District service area that are outside the POU. The lands that remain outside the POU have been reclassified as lands that received other water supplies prior to the delivery of CVP water.
- 40-7 Comment noted. Section 4.3.1 of the DEIR only concludes that the SBCWD has not historically used its entire CVP contracted water supply and contracted CVP water supplies are available for future agricultural and M&I uses. The term "surplus" was not intended to imply that SBCWD has water supplies beyond its current or future needs.
- 40-8 Comment noted. The POU boundary does not necessarily coincide with existing District boundaries. The pending petition proposes to expand the POU boundary to encompass all lands included in the SBCWD service area.
- 40-9 Based on the information provided during the water user survey, SBCWD provided no information that a groundwater overdraft existed in the area outside the existing POU. The Final EIR will be modified to characterize the groundwater overdraft conditions present in the SBCWD service area, as claimed in this comment.
- 40-10 Pages 4-44 through 4-52 of the DEIR address the economic consequences of implementing the proposed project and alternatives. This analysis specifically addresses changes in gross farm income, annual net earnings, and employment that would occur with implementation of each alternative. Because the information provided by SBCWD indicated that alternative water supplies were available to support existing land uses outside the existing POU, the analysis indicated that no change to regional economy would result with implementation of the No Project Alternative. This conclusion will be revised, as appropriate, when the modifications to the Final EIR (See response to Comment 40-5) are made.
- 40-11 Comment noted. The petition pending before the Board would enable Reclamation to deliver CVP water to lands within the boundaries of contracted services areas in a manner consistent with state law. The action does not alter the terms of the existing contracts between Reclamation and individual CVP water contractors. Denial of the petition would not allow Reclamation to continue CVP water deliveries outside the existing POU in a manner consistent with state law.

Mike Falkenstein
April 1, 1998
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the United States Bureau of Reclamation (USBR) is contractually obligated to deliver CVP water for use in Zone 6. For the USBR to breach its obligation to deliver water for the entire Zone 6 Area opens the USBR and the District to law suits for damages based on assessments levied for benefits received and to be received. It should be noted that the contract for water service between the United States and the District was approved by Zone 6 voters and required to be validated by the Court.

40-11

The District is available at reasonable times to assist the petitioner, the State Water Resource Control Board and its consultants in correcting the gross inaccuracies of the DEIR.

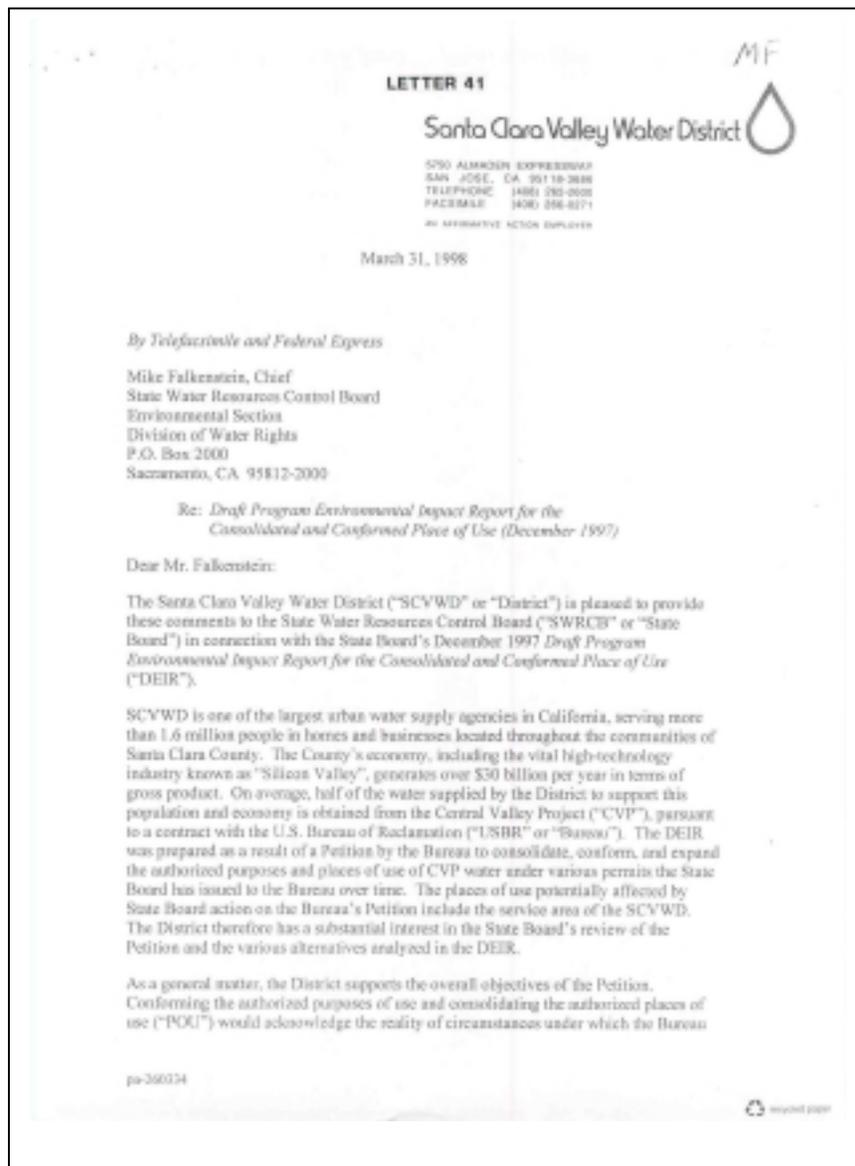
Sincerely,

SAN BENTO COUNTY WATER DISTRICT



John S. Gregg
District Manager/Engineer

Responses to Comment Letter 41



Mike Falkenstein, Chief
 State Water Resources Control Board
 Environmental Section, Division of Water Rights
 March 31, 1998
 Page Two

operates the CVP to most efficiently achieve its multiple purposes. It would also acknowledge the reality of circumstances under which the District and other contractors receive CVP water and distribute it within their respective service areas. With respect to the District, CVP water supplies are managed in an integrated manner with locally conserved water, State Water Project supplies, and other sources of supply to efficiently meet the County's water needs. The District's contract with the Bureau (Contract No. 7--7-20-W0023, dated June 7, 1977), does not limit the purposes or places of use for water delivered under the contract in light of any limitations on POU contained in individual CVP permits to appropriate that water. Rather, CVP water can be and is distributed throughout the District's service area without regard to the water's original source, subject only to physical limitations within the District's distribution system. The District deliberately developed this integrated delivery system that blends CVP water with other sources of supply in order to maximize water supply reliability for the County. To the extent that it may be necessary to conform the Bureau's permits to be consistent with this fact, SCVWD therefore supports the Bureau's proposal.

However, despite this general support for the objectives, SCVWD is deeply concerned with the characterization of the existing POU (and, correspondingly, of the characterization of encroachment and expansion lands outside the existing POU) that is contained in the DEIR. We are aware of no statutory or regulatory definition that limits "place of use" to any particular geographic area, as considered in the 16 permits addressed by the Bureau's Petition or otherwise. The DEIR takes the position that the existing, authorized POU for the Bureau's permits is the geographic area "specified in the appropriate permits (as shown in the POU maps) . . ." See DEIR 2-3. POU maps are included in the DEIR as Figures 2-1 through 2-5. However, it is not possible to determine the basis of the designated POU depicted in these maps from any information provided in the DEIR, nor do the maps constitute the POU described in relevant Bureau permit conditions.

From the District's perspective, clarifying the legal basis for determining the existing POU is particularly important. As characterized in the DEIR, the District's total CVP-contracted water service area is 835,200 acres. Of this total, only 242,212 acres is considered in the DEIR to be within the POU. Moreover, of the 592,988 acres considered in the DEIR to be outside the POU, only 27,669 acres is considered to be encroachment land (i.e., land which already has received the benefit of CVP water), with 565,319 acres, or over two-thirds of the District's total service area, being characterized as expansion lands.

The substantial discrepancies between the DEIR's depiction of POU and the District's total service area raise serious questions as to legitimacy of the method by which the

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41-1

Figures 2-1 through 2-5 depict the POU as defined by Reclamation in drawings submitted to the Board. The original POU boundary was defined on a broad-scale map that does not allow its precise delineation. However, with current technologies the boundary can be defined very accurately. Any change constitutes a formal change in the POU and requires consideration pursuant to CEQA.

The POU location shown in the DEIR has been redrawn to correspond to the Board's interpretation of the POU boundary. The revised POU location is presented in the Final EIR.

41-1

Mike Falkenstein, Chief
 State Water Resources Control Board
 Environmental Section, Division of Water Rights
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 Page Three

POU was determined and subsequently depicted in the DEIR. "Place of use" for CVP water typically is described in generic terms in the Bureau's various applications to appropriate water. For example, the Bureau's Application No. 5626 (amended application received June 18, 1951), which includes Santa Clara County as part of the intended POU, "place of use" is defined in terms of

the service areas of districts, municipalities, water companies, corporations, and other legal entities located within the gross area of the place of potential use delineated on Map No. 602-212-78, provided that the delivery of the water is conditioned upon execution of valid contracts for such deliveries.

See Paragraph 11: Place of Use, at page 6 of Supplement to Application No. 5626.

A fair reading of this paragraph would suggest that so long as the jurisdiction of a water district within the gross area of delineated potential use has a valid contract to receive CVP water, that water can legitimately be used throughout the service area of the district, subject only to limitations imposed in the contract. There is no provision in the District's contract with the Bureau that would limit the District's use of CVP water to anything less than its entire service area. Nor is the District aware of any other provision of law that itself would impose such a limitation.

In this light, the District believes that the authorized POU, at least as it applies to Santa Clara County, should be defined in terms of the District's total service area, not some lesser, arbitrarily selected geographic area. To the extent that modification of Bureau permits may be necessary to adequately reflect the existing POU, the District would support such modification to be accomplished as a ministerial project for which no environmental review is required under Public Resources Code § 21080(b)(1).

In addition to the DEIR definition of authorized POU, the District has significant concerns that the distinction made in the DEIR between encroachment and expansion lands is not adequately explained in the DEIR. While the conceptual distinction is reasonably clear ("encroachment lands" as areas outside the existing POU that already have received CVP water; "expansion lands" as areas outside the existing POU that have not yet received CVP water but are capable of doing so in the future), the basis used in the DEIR for applying the distinction is unclear. As noted above, only 27,669 acres are designated encroachment land within the jurisdiction of SCVWD, while over 20 times that area (565,319 acres) is designated as expansion land. The relative extent of encroachment versus expansion lands within the District is generally depicted in

ps-266334

- 41-2 While the water service contract between Reclamation and the individual CVP water contractor may not explicitly limit use of water in the CVP water contractor service areas, Reclamation must still comply with water rights permit terms and conditions that may be assigned by the Board.
- The Board has discretionary authority to approve or deny the pending petition. As such, compliance with CEQA is required. An EIR is the appropriate CEQA document needed to address the potential consequences of implementing the proposed project.
- 41-3 The action pending before the Board has not been previously addressed in prior CEQA documents and is therefore subject to the analysis presented in this document. The proposed project has the potential to cause significant adverse impacts on the environment and therefore an EIR is the appropriate document needed to comply with the provisions of CEQA.
- 41-4 The distinction between encroachment and expansion lands are defined on page 2-1 of the DEIR. Several figures identify those specific lands, including both encroachment and expansion lands, outside the existing POU that are affected by the petition pending before the Board.
- 41-5 Encroachment lands and expansion lands were defined through several sources of information, including an on-site inspection of selected water service areas. The sources of information included compilation of data obtained from the 1990 water users survey, available land use maps prepared by the California Department of Water Resources, available maps of individual water district distribution systems, and interviews with District personnel conducted by Reclamation.

Mike Falkenstein, Chief
State Water Resources Control Board
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Page Four

Figure 3-20 of the DEIR. However, no information is provided in the DEIR as to how these relative areas were determined.

41-5

The DEIR's distinction between encroachment and expansion lands is important, among other reasons, because of the recommendations contained in Section 5 of the DEIR regarding potential mitigation measures. Because encroachment lands are areas of existing development for which adequate mitigation already is being undertaken by the Bureau, under the DEIR's analysis, no further mitigation measures are recommended. With respect to expansion lands, however, the DEIR recommends implementation of a mitigation monitoring program by which the State Board would have authority to review future proposals for land use development. The District has serious concerns over suggestion that the State Board should be in a position to exercise land use review authority over possible future projects in an area that comprises over two-thirds of the District's jurisdiction within Santa Clara County. No legal basis exists for distinguishing between encroachment and expansion lands in this context in Santa Clara County.

To the extent that the Bureau or other agencies have undertaken environmental review and implemented appropriate measures to mitigate against the environmental impacts of making CVP water available generally, those actions should be sufficient regardless of where that water ultimately is provided within an authorized water service area. To the extent that additional environmental review and mitigation is required for future development projects in currently undeveloped areas, those actions are properly within the purview of local governments having jurisdiction to issue the necessary permits and approvals to allow those projects to go forward. Any additional review by the State Board, as contemplated by Section 5 of the DEIR, would be redundant and is not warranted.

41-6

In addition to these general comments, SCVWD has a number of specific comments on the DEIR.

1. SCVWD Environmental Setting (Section 3.4.19).

As discussed above, no specific information is provided in the DEIR as to the basis for differentiating between areas within or outside of the existing POU in Santa Clara County, or areas outside the designated POU that should be considered encroachment versus expansion lands.

41-7

In addition, section 3.4.19.4 (page 3-123) indicates that while its contract with the Bureau authorizes the delivery of 152,500 acre-feet of CVP water, SCVWD historically has used only up to 118,688 acre-feet. While SCVWD does not dispute that in past

41-8

ps-280334

- 41-6 The DEIR does not suggest that the Board will exercise land use review authority over possible future projects. This authority is placed at the local government level. The Board is the mandated agency with authority to review water development projects that are based on appropriate water rights and includes specific jurisdiction over the approval of water diversions, use, and storage. In this capacity, the Board has a jurisdictional interest in future projects that require expanding the POU as assigned in Board-issued water rights permits. As noted on page 5-8 of the DEIR, local government agencies are lead CEQA agencies for future land development projects that may be proposed in the POU expansion area. The Board would be a responsible agency, as defined by CEQA, because of its permitting authority over the location where appropriated water may be used.
- 41-7 Lands inside and outside the existing POU were defined using water service contract information retained by Reclamation. All information on record was compiled by into Reclamation's GIS system which depicted and calculated the acreage of lands outside the POU. See response to Comment 41-5 regarding how encroachment and expansion lands were classified.
- 41-8 The purpose of this statement, as found on page 3-123 of the DEIR, is to characterize the use and CVP water supplies available to the Santa Clara valley Water District. Its presentation is not intended to imply that unused contracted CVP water is surplus to the needs of this water district.

Mike Falkenstein, Chief
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years it may have received less than its full entitlement to contract water, the basis and significance of this statement should be clarified. SCVWD would object to any suggestion that amounts not historically used by the District should be considered surplus in any way. The conclusions drawn in the DEIR from looking at historical use do not take into account the fact that SCVWD has frequently requested its full contract amount, particularly during recent drought years when locally conserved water was not available. During those years, nearly 90 percent of the County's water demands were met with CVP and other imported supplies, and the District used all the CVP water that it was allocated. The County continues to have a critical need for CVP water during dry years. Historical practice also does not take into account future need, and in fact, SCVWD's contract quantity was determined based upon future need, as evidenced by the build-up schedule for deliveries contained in its CVP water service contract. SCVWD reserves the right to receive all CVP water to which it is entitled under its contract. Any environmental analysis of water usage in Santa Clara County should assume full use of authorized water under the existing contract.

2. Effects of Proposed Project and Alternatives (Section 4).

The assumption in Section 4.1 that no change to the physical environment would occur if CVP water were no longer available for M&I use in developed areas (i.e., encroachment lands) is not supported in the DEIR. Alternative water supplies for M&I use in developed areas may or may not be available, and the DEIR should recognize that development of alternative sources may have environmental impacts. On the other hand, the DEIR correctly acknowledges that discussion of potential environmental impacts associated with use of CVP water in undeveloped areas (expansion lands) is speculative. Any such discussion should therefore await future proposals for site-specific land use change.

Assumptions that CVP water contracted for but not historically used would be available to land use development outside the DEIR's authorized POU is not justified. See Section 4.4.1. Decisions affecting the historical use of CVP water have been the function of a variety of considerations, such as the availability of alternative supplies, that may or may not apply in the future. The DEIR should therefore assume that all CVP water under contract with the Bureau could be used to support existing development, regardless of historical practice, absent some physical limitation on the contractor's distribution system.

The DEIR overstates potential effects on biological resources in expansion areas. See, e.g., Table 4-6. Expansion lands within the District's service area may or may not be subject to development depending on a variety of consideration unrelated to water

ps-266034

- 41-9 The petition pending before the Board does not affect the volume of water contracted by the CVP water contractors with Reclamation. The petition only requests that the POU be expanded to correspond with the boundaries of the CVP water contractor service areas.
- 41-10 On page 4-1 of the DEIR, it was concluded that for M&I land uses, it would not be reasonable to assume that existing land uses would change if CVP water supplies were no longer available for use. As noted, because of the presence of permanent urban infrastructure and human populations, it is assumed that alternative water supplies could be obtained to support that development. The DEIR does not speculate as to other environmental impacts that may occur if alternative water supplies need to be developed to replace CVP water that is delivered to M&I lands outside the POU.
- 41-11 Comment noted. No response required.
- 41-12 The existing water service contract boundaries allow CVP water to be used on expansion lands outside the place of use. In order for water to be used in this area, in a manner consistent with state law, the POU boundary must be expanded to correspond with the respective contract service area. To assume that no CVP water will be delivered to the expansion area implies that the contract service area is invalid and should be reduced to a size reflecting the district's ultimate delivery area. This analysis is beyond the scope of this environmental document. In addition, where a CVP water contractor does use multiple water sources to meet local demand, it is impractical to assume that the CVP water supplies would be segregated from the other sources unless there are separate and distinct water delivery systems in place to keep CVP water within areas of existing development.
- 41-13 Comment noted. The DEIR identifies those biological and cultural resources that could be affected by development in the expansion area. It does not conclude that any specific development proposal would have an adverse effect on these resources. Because the type of development, its location, and source of water supply would influence the severity of impacts that could be generated, this DEIR avoids speculating whether the effects would be substantial.

Mike Falkenstein, Chief
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 Page Six

supply (e.g., geography, access to non-water-related infrastructure, etc.). Even where lands are subject to development, CVP water may or may not be used to support that development. The same comment applies with respect to cultural resource impacts (see Section 4.11.1) and regional economic impacts from the proposed project (see Section 4.14.

41-13

3. Mitigation Measures (Section 5).

SCVWD agrees with the conclusions in DEIR Section 5.1 that existing mitigation measures (including but not limited to ongoing Bureau programs) are adequate to address past environmental impacts to areas designated as encroachment lands. SCVWD has substantial concerns, however, regarding the proposals in Section 5.2 and 5.3 regarding mitigation requirements for expansion areas. These sections would condition the future provision of CVP water to undeveloped areas designated as expansion lands upon the development of enforceable mitigation measures approved by the State Board. See DEIR page 5-9. In addition, the DEIR would require the CVP contractors, like the District, to develop mitigation monitoring programs to assure State Board approved mitigations are implemented. See Page 5-10.

41-14

SCVWD questions the assumption that additional environmental review and implementation of State Board-approved mitigation requirements is warranted at the programmatic level described in the DEIR. To the extent that existing programs being undertaken by the Bureau mitigate against environmental impacts associated with the provision of CVP water within designated encroachment areas, they also would operate to mitigate against impacts outside those areas in designated expansion lands. There is nothing in the DEIR to justify distinguishing different areas in terms of environmental benefits to be derived by existing programs.

41-15

In addition, extensive environmental review of CVP water supply impacts within the SCVWD service area has already been performed. CVP water is supplied to the District through the San Felipe Water Distribution System, which was the subject of a lengthy and comprehensive environmental impact report prepared during the 1970's. See Final Environmental Impact Report, San Felipe Water Distribution System (March 1976) ("San Felipe EIR"). All of Santa Clara County (i.e., SCVWD's full service area) was considered to be within the potential impact area of the project, with no distinction made between areas of use within or outside of any designated POU in Bureau permits for CVP water. The San Felipe EIR considered a full range of environmental impacts associated the project, as well as range of possible alternatives.

41-16

ps-268334

- 41-14 It is envisioned that Board environmental review of expansion land additions to the POU could be achieved in several ways. The first way would be to submit the local government's land use plan and CEQA documentation to the Board for review. Such plans may cover all or parts of the particular expansion area. The Board would then provide comments regarding the adequacy of mitigation for environmental impacts being imposed on future projects. As a second way, the local government could consult with the Board during land use plan development of during preparation of CEQA documents to ensure that the Board's comments are incorporated into the respective analyses. To expand the POU under the CVP water rights, a water right change petition would have to be filed with the Board and approved. It is not the intent of the Board to displace the local government land use decisionmaking authority. The Board would only ensure that mitigation is provided to offset significant impacts associated with expanding the POU.
- 41-15 As discussed in Section 5 of the DEIR, impacts to environmental resources within the encroachment areas are known and can be mitigated through several existing programs that are designed to consider impacts from the past and current operations of the CVP. Because future expansion of the POU and use of CVP water to additional lands has not yet been undertaken, these measures would not apply. Therefore, additional mitigation may be needed for the delivery and use of CVP water to those expansion lands that currently do not receive CVP water supplies. The type and extent of such mitigation would be based on subsequent environmental analyses performed for projects as they are proposed and considered in the future.
- 41-16 Previously prepared environmental documents that were unavailable at the time of preparing this DEIR may be relevant in finalizing mitigation being recommended. Such documentation may reveal that mitigation for past CVP water delivery impacts may not be warranted to the degree currently envisioned.
- For expansion lands, additional project-specific environmental documents are needed to identify potential impacts of future project that would be served CVP water supplies in the expansion areas. Therefore, as noted in the DEIR, it would be the role of subsequent environmental documents to address the impact of future projects, and appropriate mitigation, that require the expansion of the POU to currently unserved lands.

Mike Falkenstein, Chief
 State Water Resources Control Board
 Environmental Section, Division of Water Rights
 March 31, 1998
 Page Seven

To the extent that additional environmental review may be required for specific projects in undeveloped areas in Santa Clara County, the District believes such review should exclusively be the responsibility of municipalities and other local planning agencies with authority to approach projects on a site-specific basis. Determination of the appropriateness of site-specific mitigations, consistent with California Environmental Quality Act ("CEQA") requirements and other applicable provisions of law, is a local matter for local land use authorities. The State Board, on the other hand, does not have clear legal authority under the Water Code to condition permits to appropriate water based on considerations going beyond the protection of the reasonable and beneficial use of water.

41-17

The State Board cannot impose new conditions in permits that go beyond what is authorized under the Water Code and other applicable provisions of law. Nor can it require the inclusion of new conditions (regarding monitoring, reporting, or other mitigation measures) in existing contracts with the Bureau to limit the authorized use of water delivered pursuant to those contracts. To the extent that DEIR Section 5 would require the exercise of such authority, that section should be substantially modified or deleted.

41-18

The District appreciates the opportunity to provide these comments on the DEIR. If you or your staff have any questions concerning these comments or the District's interests in the subject matter of the DEIR, please contact me at (408) 265-2600.

Very truly yours,


 Anthony C. Bennett
 General Counsel

41-17 While local government entities are responsible for land management decisions, they do not have authority to alter terms or conditions of water rights permits issued by the Board. As noted in Section 1701 of the California Water Code, ..." an applicant, permittee, or licensee may change the point of diversion, place of use, or purpose of use from that specified in the application, permit, or license; but such change may be made only upon permission of the board."

Because the Board has discretionary authority to approve or deny the pending petition, it is required to comply with the requirements of CEQA. CEQA, in turn, requires the Board to identify potential significant impacts of a proposed project and apply feasible measures to mitigate impacts to non-significant levels. This includes impacts to the environment not limited to the beneficial uses of water.

41-18 Reclamation has submitted a petition to expand the CVP POU. The Board has the discretion to assign terms and conditions, that would need to be implemented by the petitioner (Reclamation), as part of approving the proposed project. Reclamation has discretion as to how they would provide information required by the Board. Changes in the CVP water contracts, as described in Section 5.3.2.1 of the DEIR, cannot be required by the Board as part of its water rights authority. However, the information described can be required as part of approving Reclamation's petition to expand the POU.

Responses to Comment Letter 42


 April 1, 1998
LETTER 42

Mr. Mike Falkenstein
 Chief, Environmental Section
 Division of Water Rights
 State Water Resources Control Board
 901 P Street
 Sacramento, California 95812

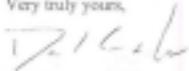
Re: Comments on Draft Program Environmental Impact Report for
 Consolidated and Conformed Place of Use

Dear Mr. Falkenstein:

The enclosed comments on the Draft Program Environmental Impact Report for
 Consolidated and Conformed Place of Use, dated December 1997, are submitted on behalf
 of the San Luis & Delta-Mendota Water Authority. The Authority is a joint powers
 authority, which consists of 32 member agencies. These 32 agencies contract with the
 United States Department of the Interior, Bureau of Reclamation for the supply of Central
 Valley Project water. Project water supplied to the Authority member agencies is pumped
 from the Sacramento San Joaquin Rivers Delta through Reclamation's Tracy Pumping Plant
 and is used to meet the needs of over 1.5 million acres of highly productive agricultural
 lands in the western San Joaquin Valley, San Benito and Santa Clara counties. Authority
 members also provide approximately 200,000 acre-feet of project water annually for
 municipal and industrial uses, primarily in the Santa Clara Valley, and 200,000 to 250,000
 acre-feet of water annually of waterfowl and wildlife habitat in the San Joaquin Valley.

The Water Board's consideration of the enclosed comments is appreciated.

Very truly yours,


 DANIEL NELSON
 Executive Director

DN:dje
 Enclosure
 5/2/98

**SAN LUIS & DELTA-MENDOTA WATER AUTHORITY COMMENTS
ON THE DRAFT PROGRAM ENVIRONMENTAL IMPACT REPORT FOR THE
CONSOLIDATED AND CONFORMED PLACE OF USE**

The member agencies of the San Luis & Delta-Mendota Water Authority ("SLDMWA") are Contractors of the federal Central Valley Project ("CVP"), located south of the Delta. Their water is pumped at the Tracy Pumping Plant into the Delta-Mendota Canal. This water is appropriated pursuant to water rights decisions which provide that the right to the beneficial use of water for irrigation purposes shall be appurtenant to the land on which that water is applied, and that such right shall, consistent with the terms of these decisions, continue in perpetuity. Therefore the members of the SLDMWA have a vital interest in the "Project" examined in the Draft PEIR.

The SLDMWA is providing these comments in support of the comments submitted directly by our individual members, who are directly impacted by the proposed alternatives affecting the conformed place of use, and to place on the record our general comments on behalf of all of our members.

I

PROJECT DEFINITION

The "Project" for which this EIR is being prepared is a proposed action by the State Water Resources Control Board ("SWRCB") amending section 16 Central Valley Project ("CVP") water right permits by incorporating three (3) types of changes:

Change 1. Conforms the purpose of use in the individual permits so that each such permit contains each authorized use of water;

Change 2. Consolidates the authorized place of use for water diverted from authorized CVP sources so that new Place of Use maps identify all areas where water from a particular facility may be delivered consistent with the current integrated operation of the CVP; and

Change 3. Increases authorized Place of Use in the appropriate permits as shown on Place of Use maps by: a) including encroachment lands (lands already receiving CVP water); and b) including expansion lands (lands that have never received CVP water).

The "Project" as described is so broad that it does not allow for a meaningful environmental review. That is, the environmental consequence of conforming the purposes of use is an extremely broad topic. This change alone results in at least three quarters of the permits being modified to allow for the use of water for fish and wildlife enhancement, water quality control and salinity control for the first time. It also allows water under two-thirds of the permits to be used for municipal and industrial purposes for the first time. The environmental consequences of the conforming the purposes of use are hardly discussed in this PEIR, and in particular, there is no discussion of how this change may affect existing uses of water and the impacts of such change. Will more water go to M&I service and induce development? Will having all CVP reservoirs permitted for fish and wildlife facilitate further dedications of water to these purposes?

- 42-1 This comment is partly correct. While the water rights permits would be changed to allow water from the CVP facilities to be used for M&I purposes, as they are currently doing at present, the actual use of water by CVP contractors is restricted by the terms of the individual water service contract. The pending action before the Board will not modify the terms of the existing water service contracts between Reclamation and the CVP water contractors. Therefore, no additional water would become available for M&I purposes beyond that currently contracted with Reclamation.
- 42-2 See response to Comment 42-1.

with a concomitant decrease to water service contractors? What will be the impacts on irrigated lands? Even if the ultimate conclusion was that these environmental impacts were overall positive, CEQA requires a full examination and identification of any significant impacts. This PEIR is legally inadequate for this reason.	42-3
II	
THE DESCRIPTION OF ALTERNATIVES IS INADEQUATE	
There is no alternative under consideration which considers fewer than all three of the proposed changes. For example, there is no alternative which considers continuing to deliver water to the encroachment lands without conforming the purposes of use nor consolidating the Place of Use ("POU"). There is no alternative which considers consolidating the Place of Use without conforming the purposes of use. There is no explanation that mandates that these three (3) changes be considered simultaneously, and a full range of alternatives clearly should include separate consideration of conforming the purpose of use from the place of use issues.	42-4
Further, there is no actual "no project" alternative. The alternative which is labeled "no project" considers not conforming the purposes of use nor consolidating the Place of Use, but it also includes terminating water deliveries to the encroachment lands. This cessation of water service that in some instances has continued for more than forty (40) years clearly is an action with the possibility of a significant impact on the affected environment. It therefore constitutes a project. A true "no project" alternative needs to be designed and considered, together with a reasonable range of other alternatives.	42-5
III	
INCREASING THE AUTHORIZED PLACE OF USE TO ENCRoACHMENT LANDS IS NOT A PROJECT	
Pursuant to the California regulations implemented in the California Environmental Quality Act ("CEQA") an action taken by an agency is not a project and therefore is not subject to CEQA review under the circumstances where the action can have no significant adverse impact on the environment. Virtually all of the encroachment lands have been receiving CVP water, and the act of conforming the Place of Use maps to the delivery area has no independent impact.	42-6
The PEIR does not illustrate any reasons for discrepancies between the POU maps and the encroachment lands to which CVP water has been applied. For significant numbers of acres classified as "encroachment lands" within the jurisdiction of members of the SLDMWA, CVP water has been delivered for an extended period of time. In some instances that period of time has preceded the passage of CEQA. In many other instances review under CEQA was accomplished at the time a district's projects for constructing delivery systems to the acreage occurred. In such areas no additional CEQA compliance is required in order to conform the Place of Use under the permits with the actual place of use. If the reason for a discrepancy between the POU maps and the actual place of application is that a clerical error was made	42-7 42-8 42-9

- 42-3 See response to Comment 42-1.
- 42-4 The alternatives presented in the DEIR addresses a reasonable range of alternatives that are capable of meeting the objectives of Reclamation's proposed project. The Board has the discretion to approve each change independently from the other changes. The DEIR addresses each change independently from one another. Therefore, adding other combinations of changes would not contribute to the public's greater understanding of environmental effects associated with the decision pending before the Board.
- 42-5 Because the petition for changing the POU is presently being considered, the EIR needs to address the consequences of expanding the POU from its existing location. Therefore, the change to the POU is considered a current action, regardless of when the unauthorized CVP water delivery took place.
- 42-6 See response to Comment 42-5.
- 42-7 Comment noted. The original POU boundary was defined on a broad-scale map that does not allow its precise delineation. However, with current technologies the boundary can be defined very accurately. Any change in the POU requires a formal change and requires consideration pursuant to CEQA. The delivery and use of CVP water to lands outside the POU was not authorized in accordance with state law. The action pending before the Board, today, is to determine if such use should be approved. Therefore, the impacts of that use outside the existing POU must be addressed in an environmental document prepared in accordance with CEQA.
- 42-8 The DEIR relies on available information. If previously prepared CEQA documents address site-specific impacts and mitigation applicable to the delivery of CVP water to lands outside the POU, they could be used to demonstrate the need to reconsider the mitigation measures presented in this document. Because the mitigation measure identified in this DEIR have yet to be defined for site-specific application and implementation, there remains adequate opportunity to demonstrate that additional mitigation may not be warranted for certain site-specific circumstances.
- 42-9 See response to Comment 42-7. The original POU boundary was defined on a broad-scale map that does not allow its precise delineation. However, with current technologies the boundary can be defined very accurately. Any change in the POU requires a formal change and requires consideration pursuant to CEQA. The delivery and use of CVP water to lands outside the POU was not authorized in accordance with state law. The action pending before the Board, today, is to determine if such use should be approved. Therefore, the impacts of that use outside the existing POU must be addressed in an environmental document prepared in accordance with CEQA.

<p>which can be corrected as a ministerial act, that act is categorically exempt from further CEQA compliance. Both state and federal governments have been involved in decisions relating to this water service, and water users clearly have relied upon the available CVP service in investing in the lands. What basis other than a clerical error can exist for this discrepancy?</p>	42-9	42-10 See response to Comments 42-4, 42-5, and 42-9.
<p>The PEIR approach of treating the Place of Use as though it were a new project for which no CEQA compliance has ever been completed is taking two (2) bites of the apple. It appears to be a pretext to impose mitigation requirements for long-past actions that were evaluated at a time of different social values. For all the above reasons, there needs to be an alternative which conforms the Place of Use to the encroachment lands, and so long as the conditions discussed in this paragraph are met, no further CEQA compliance is required.</p>	42-10	42-11 The DEIR was not intended to minimize the significance of the economic impact that would occur with implementation of the No Project Alternative. Page 4-50 clearly states that the impact to Westlands Water District overall earnings and jobs would be significantly adverse. However, as noted on page 4-51, these losses would not be significant when considered in a state-wide or CVP-wide perspective.
<p>IV IMPACTS OF CEASING DELIVERIES TO ENCROACHMENT LANDS ARE NOT ADEQUATELY EVALUATED</p>		
<p>The PEIR indicates that as to encroachment lands, it is intended to be a site specific EIR, so that no additional CEQA review will be forthcoming. The alternative of ceasing deliveries to lands that for up to forty (40) years have received CVP water would be hazardous public policy. The Draft PEIR concedes that the value of gross current farm income would decrease by about \$47.9 Million, 75% of which would be within the Westlands Water District, one of the SLDMWA's members. The discussion on page 4-50 concludes that there would be a significant adverse impact to Westlands' overall earnings and jobs, but attempts to argue that there would be no significant regional impact.</p>	42-11	42-12 This comment is partially correct. The DEIR does not present information regarding the methods used to calculate the economic impacts presented in the document. The gross farm income changes were estimated using information from the Central Valley Production Model as developed by Reclamation for CVPIA Programmatic Environmental Impact Statement (PEIS). Estimates of total employment changes and personal income changes were obtained from IMPLAN models that were also developed for the CVPIA PEIS. In regards to additional lands being available for irrigation within the existing POU, the DEIR intended to state that lands not receiving full water supplies could use water now being delivered outside the POU. This could offset crop production losses associated with implementation of the No Project Alternative.
<p>This analysis is impossible to evaluate. There is absolutely no reference to economic models utilized or description of how conclusions about economic impacts were developed. Table IV-12 claims "less of estimated gross farming receipts would be partially offset using CVP water elsewhere within the CVP service area." The amount of such offsets are not at all quantified, and the support for the statement is limited to a discussion of how Westlands, for example, could grow more water-intensive crops on lands within the presently permitted Place of Use or irrigate more lands. There is no support indicating that any more lands exist within the existing POU maps to be irrigated (they do not), and there is no consideration of any of the other variables, such as overall quality and certainty of supply, available financing, etc., to support the bare conclusion that the impacts would be offset.</p>	42-12	42-13 Comment noted. The increase in gross farm receipts shown on page 4-52 associated with existing conditions is made in comparison to permitted conditions. The Final EIR will be modified to clarify that this would not constitute an increase from the present.
<p>Furthermore, the conclusion on page 4-52 that adopting the "Existing Conditions" Alternative 2 would increase value of our farm output is absurd. That output is presently being generated, and the proposed "project" of adopting Alternative 2 would not affect either local or regional economies insofar as continuing services to the expansion lands is concerned. However, combining all the proposed permit changes into Alternative 2 does make it impossible to evaluate the impacts of the different components (purpose of use, integrating place of use and adjusting POU maps).</p>	42-13	42-14 Comment noted. The potential economic effect of Changes 1 and 2 are not included in this analysis. To estimate the economic impact of rejecting the Changes 1 and 2 would require substantial new analyses including a revised CVP operations model to calculate the volume of water that could be delivered to the various parts of the CVP service area in accordance with the individual water rights permits.
<p></p>	42-14	



- 42-15 See response to Comment 42-5.
- 42-16 As envisioned at this time, mitigation funds would be supplied by Reclamation and the available funds collected from fees assigned by the CVPIA and other existing programs. No new funds would be collected from CVP water contractors to pay for mitigation requirements for encroachment area impacts.
- 42-17 Section 5 of the DEIR describes two mitigation programs that are specifically designed to address 1) historic impacts to encroachment areas and, 2) potential impacts to expansion areas.
- 42-18 Page 5-9 through 5-12 of the DEIR presents a Mitigation Monitoring Plan. The specific measures to be employed are not fully known at this time, however, the DEIR does identify, on page 5-3 of the DEIR, several measures that can be employed to fully mitigate the impacts of delivering CVP water to lands outside the POU. As noted on page 5-8, it will be the Board's and Reclamation responsibility to assign criteria or targets for mitigation success.
- 42-19 This comment fails to identify specific examples where land has been misclassified. During the preparation of the DEIR, Westlands Water District personnel were contacted on numerous occasions to compile data and information on the condition and status of lands within the District's service area. These occasions included a comprehensive water users survey conducted in 1990 and extended through recent discussion by Reclamation in 1997. The Final EIR presents a corrected POU boundary description and includes a revised calculation of acreage that would be effected by the pending petition.
- 42-20 Section 15370 of the CEQA Guidelines defines mitigation as actions to avoid, minimize, rectify, reduce, or eliminate impacts. Section 15382 of the Guidelines further clarify that economic or social changes shall not be considered a significant effect on the environment. Therefore, mitigation measures for the economic impacts, as noted in this comment, are not required. If the Board elects to approve the proposed project or alternatives, it will be responsible to prepare a statement of findings support the decision that it makes. It would be premature to prepare and present such a statement prior to the Board's decision.
- 42-21 Comment noted. No response required.



Responses to Comment Letter 43

SHASTA COUNTY WATER AGENCY COMMENTS
 CONCERNING
 SWRCB DRAFT PROGRAM EIR FOR THE USBR
 CONSOLIDATED AND CONFORMED PLACE OF USE PETITION

I. EXECUTIVE SUMMARY

A. SCOPE OF DRAFT PROGRAM ENVIRONMENTAL IMPACT REPORT ("DEIR")

1. The Executive Summary, in describing the Bureau of Reclamation ("USBR") petition to the State Water Resources Control Board ("SWRCB") to "consolidate and conform" 16 of its Central Valley Project ("CVP") water right permits discusses the USBR intention to consolidate authorized places of use of CVP permit water, recognizing an "integrated operation" focus for the CVP. The USBR petition description further indicates a proposal to expand the authorized places of use to include "encroachment land" and "expansion land." Lastly, the petition is described as a proposal to extend the time for USBR to complete full beneficial use of water deliveries authorized under existing permits.
2. As discussed in greater detail below, the Shasta County Water Agency ("SCWA") and the local agencies that it represents as the lead agency in ongoing efforts to complete an Integrated Water Resources Plan ("IWRP") for Shasta County, are generally supportive of the Bureau's petition to conform existing water delivery practices and existing permits. However, SCWA is concerned about any SWRCB action that might result in new water deliveries until such time that additional CVP storage facilities are available, and existing physical and institutional constraints on conjunctive use and water transfer programs are identified and implemented as mitigation necessary to adequately address Shasta County, Sacramento River watershed and California water supply and reliability problems.
3. The proposed project addressed in the DEIR would affect many regions of the state, but especially Shasta County. Eight water purveyors within Shasta County will be affected by this document, more than any other county, and the project has the potential to profoundly affect land and water use within those districts and the task of imposing these impacts upon the property owners would fall to the local authorities. However, no attempt has been made to coordinate the proposed project with the local agencies who are directly affected and regulate land uses within these areas. **43-1**

B. DESCRIPTION OF ALTERNATIVES

1. **Proposed Project** - See comments below.
2. **Denying Requested Changes 1, 2, and 3 to the 16 Existing Water Right Permits.** Here, the DEIR indicates that SWRCB denial of the changes requested by USBR petition would require re-operation of the CVP to convey water from each CVP facility to places

43-1

This comment is not correct. The Board has met all requirements to inform affected parties, the public, and interested regulatory agencies about the pending petition, the preparation of the DEIR, and other actions being performed as part of the water rights process. Appendix A of the DEIR presents the Notice of Petition Change, Notice of Preparation of the Environmental Impact Report, and Notice of Petition Change which were distributed in accordance with applicable regulatory procedures.

of use strictly in accordance with existing water rights, and that "encroached lands" (i.e., those presently delivered CVP water" would necessarily be prohibited from further deliveries).

Although SCWA and the coalition of public and private agencies jointly preparing a Shasta County IWRP do not support this unqualified denial option, were SWRCB to proceed in this fashion it would need to be pointed out that despite DEIR statements to the contrary, local agencies which have historically, and in good faith received and paid for CVP water delivered for use on "encroached lands" and therefore have legal and equitable entitlements to continue deliveries, at least absent feasible mitigation measures that would not have adverse economic and land use impacts on the affected local communities, including all related unavoidable negative impacts to sustained and enhanced growth and development.

3. **Approving Proposed Changes 1, 2, and 3a of the Points of Use ("POU") Petition.** This project alternative is said to allow encroachment of "points of use" into areas within the existing water service contract areas that have already received CVP water, for any newly authorized use, by making use of integrated CVP operations. SCWA is generally supportive of the USBR petition, and alternatives to the proposed project, which would result in conforming existing permits with existing water deliveries. However, to the extent that the proposed project or alternatives would likely result in significantly increased water deliveries, at a time where the cumulative impact of such additional deliveries together with water delivery requirements associated with other existing or foreseeable CVP and State Water Project ("SWP") delivery modifications, are objectionable.

Until the DEIR more fully analyzes the impact of the proposed USBR project and alternatives associated with increased actual water deliveries, both as an isolated project and cumulatively, the environmental documentation associated with the proposed POU project will continue to be inadequate and, in the absence of feasible mitigation addressing adverse local, regional and statewide water supply and reliability impacts, SCWA must necessarily express its opposition to any SWRCB action that would further exacerbate an already critical water delivery problem.

4. **Approving changes 1 and 2; denying changes 3a and 3b.** The so-called "permit consolidation and conformance alternative" which differs from that summarized commented on above, would enable USBR to continue the integrated operation of the CVP by delivering CVP water from any authorized CVP source to any area within the authorized POU. However, as indicated in the Executive Summary, the Bureau "would have to specify to the CVP water contractors that encroached lands could no longer receive CVP water." In contrast to the previous "existing conditions" alternative, this alternative would be the most draconian with respect to adverse impacts, because many existing, longtime CVP water contractors that have relied in good faith upon contract deliveries do not have available reliable alternative water supplies, despite indications in the DEIR to the contrary.

43-2 Comment noted. No response required.

43-3 The petition pending before the Board would not alter the volume of water available to CVP water users that have been contracted through agreements with Reclamation. The proposed changes to Reclamation's water rights permits would only conform the purposes of use, consolidate the POU, and expand the POU to correspond with the service areas of the existing CVP water contractors.

43-4 The petition pending before the Board would not alter the volume of contracted water available for use by CVP water contractors. Therefore, this action would not contribute to the critical water delivery problems noted in this comment.

43-5 Comment noted. A discussion is presented on pages 4-8 and 4-9 of the DEIR, indicating those CVP water contractors that do not have alternative sources of water to replace CVP water deliveries that would be terminated with adoption of the No Project Alternative. The discussion identifies El Dorado Irrigation District, Sacramento Municipal Utility District, Jones Valley (Shasta County Service Area No. 6), and Silverthorn Summer Homes, Inc. as CVP water contractors whose service areas are completely outside the POU. *(Note: Based on the revised POU boundary discussed in the Final EIR, Jones Valley and Silverthorn Summer Homes, Inc. service areas are located entirely within the existing authorized POU and have been eliminated from further discussion, while EID and SMUD service areas are now partly included in the POU.)*

C. SIGNIFICANT IRREVERSIBLE ENVIRONMENTAL CHANGES

The Executive Summary indicates that the State Board and USBR do not know where and for what purpose water may be used if the proposed project is approved. Furthermore, approvals of water delivery to "expansion lands" could only be granted upon SWRCB project approval contingent upon site-specific CEQA review of expansion land proposals. As further discussed below, even at a program EIR level of review, likely use of affected CVP water can and should be identified, for at least generalized environmental impact analysis. Moreover, the DEIR should better explain who would be the lead agency for purposes of site specific delivery proposals, and related CEQA review, if authorized by SWRCB petition approval.

D. MITIGATION - ENCRoACHMENT LANDS

E. MITIGATION - EXPANSION LANDS

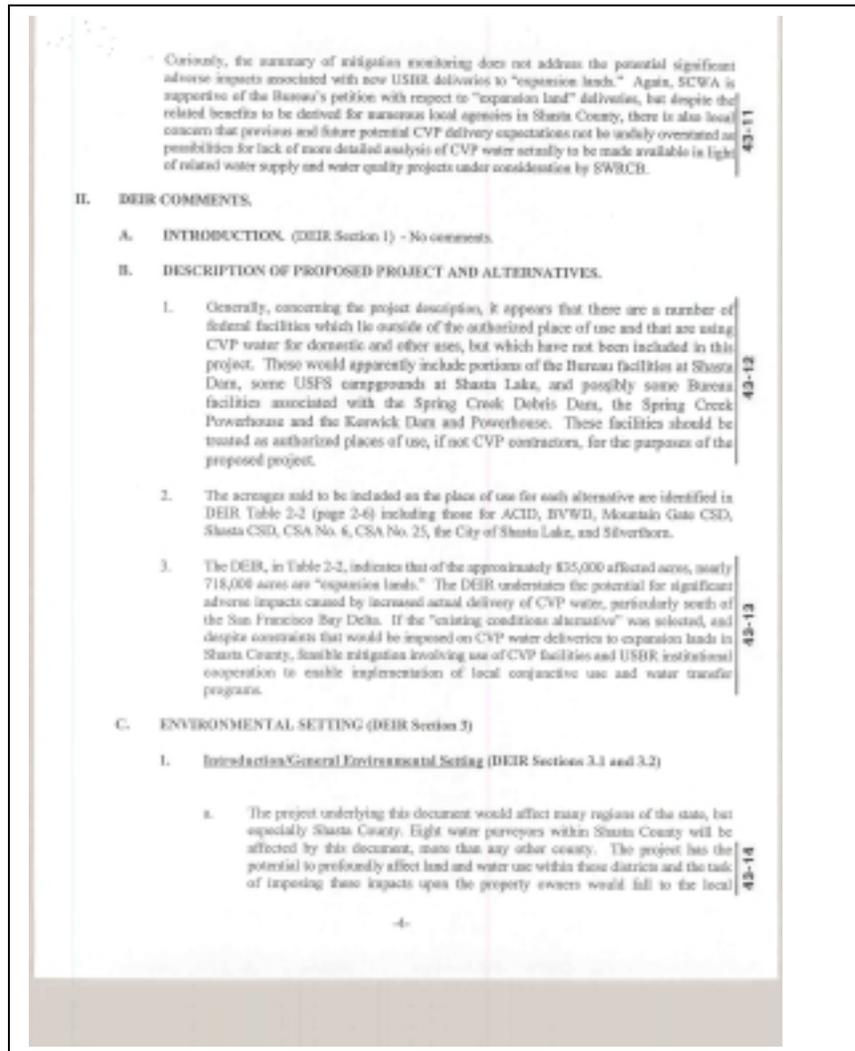
The Executive Summary indicates that SWRCB "will require applicable CVP water contractors or the appropriate local agency to the lead agency in further CEQA action" that may result from State Board approval of the pending petition, and further indicates that mitigation for the project will be developed as part of the site-specific CEQA documents to be written for CVP water contract renewals. However, in addition to the absence of a more adequate project description relative to likely new deliveries to "expansion lands", there is no guidance, even of a general nature or in the form of performance criteria, in the DEIR that would serve as the basis for site-specific mitigation to be incorporated into subsequent CEQA documentation, whether as part of the CVP water contract renewal process or otherwise.

Additionally, the Executive Summary indicates that during contract renewal, needs analysis to determine beneficial uses of CVP water and site-specific species assessments will occur as USBR complies with the national environmental policy act (NEPA) and Endangered Species Act (ESA) requirements. However, in light of the pending USBR project which is the subject of the PEIS, the DEIR analysis of project-specific and cumulative impacts, and related mitigation is too general, even at a program EIR level, to enable SWRCB sufficient information to proceed.

F. MITIGATION MONITORING PLAN

The Executive Summary indicates that SWRCB and USBR "will jointly develop criteria for evaluating the effectiveness of the restoration or mitigation projects and restoring the environmental habitat values needed to mitigate for the . . . encroachment land" impacts. As required by Public Resources Code section 21081.6, SWRCB, as the lead agency for the proposed POU petition action, is required to adopt a mitigation monitoring program, "for changes made to the project or conditions of project approval, adopted in order to mitigate or avoid significant effects on the environment." (PRC section 21081.6a(1).) Section 21081.6 further provides that "the reporting or monitoring program shall be designed to ensure compliance during project implementation", and that SWRCB may request USBR to "prepare and submit a proposed reporting or monitoring program." The DEIR section addressing mitigation monitoring is insufficient with respect to the scope of potential adverse impacts, definition of feasible mitigation measures to adequately address those impacts, and with respect to how SWRCB and USBR will jointly "insure compliance [with conditions required to address significant environmental impacts, and thereby serve as project mitigation], during project implementation."

- 43-6 The likely use of CVP water in the expansion areas is restricted by the provisions of individual CVP water service contracts between Reclamation and each CVP water contractor. Table 3-1 in the DEIR identifies the uses allowed for each of the CVP water contractors addressed in this document.
- 43-7 Pages 5-8 and 5-9 of the DEIR state that local government agencies with land management authority shall be lead agencies for future projects that may be proposed in the expansion area. In the case of projects requiring permits from county or city governments, these agencies would be lead agency where their jurisdictions apply. In the case of agricultural developments that require the expansion of existing irrigation distribution systems, the water supply districts would normally assume lead agency status. In either case, the Board would not be lead agency unless the local government agency deferred its authority to implement CEQA requirements. The Final EIR will be modified to clearly explain future CEQA responsibilities.
- 43-8 The specific measures to be employed are not fully known at this time; however, the DEIR does identify, on page 5-9 of the DEIR, several measures that can be employed to mitigate the impacts of delivering CVP water to expansion lands outside the POU. It is not practical to identify project-specific mitigation for future projects on expansion lands at this time. Specific information regarding proposed project facilities, environmental character, and requirements of interested regulatory agencies would be needed prior to identifying mitigation that is acceptable to both lead and responsible CEQA agencies.
- 43-9 The DEIR presents a detailed analysis of impacts to the encroachment areas that have been effected by past delivery of CVP water outside the POU. In the case of the expansion areas, a detailed evaluation requires substantial speculation about the type of development that could take place. The information presented in the document is sufficient to allow the Board to evaluate the relative impacts of each alternative being considered.
- 43-10 Section 5.3 of the DEIR presents a Mitigation Monitoring Plan which describes the roles of the respective parties who will participate in implementing assigned mitigation. This Plan identifies specific responsibilities of the parties to ensure that mitigation is implemented in accordance with the requirements of the Board or other interested regulatory authorities.



- 43-11 The revised POU boundary now encompasses the service areas of CVP water contractors located in Shasta County. Therefore, the concern expressed in this comment is no longer relevant to these CVP water contractors. It is not the intent of the DEIR to overstate the possibility of future water deliveries to expansion lands. The DEIR clearly avoids such a discussion because such deliveries are speculative.
- 43-12 The pending petition requests expanding the CVP POU to encompass the boundaries of 26 CVP water contractors (Note: The revised POU boundary only affects 19 CVP water contractors) whose service areas extend beyond the existing POU boundary. Other possible changes to the CVP POU are not included in this petition and, therefore, are not subjects of this DEIR.
- 43-13 The petition pending before the Board would not alter the volume of water currently contracted with individual CVP water contractors, no would it alter the amount of water to be delivered to different portions of the CVP service area.
- 43-14 The Revised POU boundary encompasses all CVP water contractor service areas within Shasta County. Only the Anderson-Cottonwood Irrigation District has lands located outside the POU and these lands are located in Tehama County. The Board has implemented consultation with interested public and agencies in accordance with CEQA. In addition, Reclamation, during the course of preparing the DEIR, has contacted each of affected CVP water contractors to discuss either the proposed project or collect relevant information needed to prepare the document.

authorities. However, no attempt has been made to coordinate the project with the local agencies who regulate land uses within these areas. 43-14

b. Generally, in discussing contracted water deliveries, the DEIR specifies the maximum contract deliveries by contractor. However, the DEIR does not appear to provide detail with respect to the difference between maximum contract deliveries, actual contract deliveries and total SWRCB permit entitlements. Further DEIR discussion of this comparison would better describe the general environmental setting and available resources, and existing regulatory constraints in the form of State Board permit maximums, and thereby provide a better foundation for related impact analysis and potential mitigation for the proposed project and alternatives. 43-15 43-16

c. The DEIR indicates that the 26 CVP contract areas are based on acreages using the Bureau's records and that the acreage assumptions "may differ from acreages provided by other sources." The DEIR should identify known conflicting acreage estimates, as the estimates both for encroachment and expansion land potential uses are essential to defining the project, assessing related impacts and identifying feasible mitigation, even at this program EIR level of CEQA review. 43-17

2. Environmental Resources - Lands outside the POI (Section 3.3)

a. *General Discussion.* This portion of the DEIR discusses contracted water deliveries (Table 3-1), and existing authorized use of CVP supplies (Table 3-2) by CVP reservoir (e.g., Trinity Dam and Shasta Dam/Sacramento River). The DEIR discussion of authorized uses of Shasta Dam/Sacramento River Water includes irrigation; domestic M&I; stock water and recreation. However, the DEIR notes that no fish and wildlife/salinity control uses are presently permitted. 43-18

b. *Groundwater Resources.* Section 3.3.3 of the DEIR discusses groundwater resources, including those in the Redding vicinity (Section 3.3.3.2; page 3-11). In this respect, the DEIR reasonably characterizes the Redding groundwater basin, to the extent to which it is presently understood, as covering about 510 square miles and having an "estimated storage capacity . . . of 5.5 million acre-feet" (citing a U.S. Geological Survey conducted in 1983).

However, the DEIR is misleading by its omission to discuss the estimated "safe yield", and the ability of the affected local agencies to utilize groundwater, either conjunctively with or as an alternative to CVP deliveries, based on their locations and specific hydrologic circumstances. 43-19

c. *Economics.* In discussing economics (Section 3.3.10), the DEIR describes the economic characteristics of Shasta County such that "lumbering is a primary economic activity," but that agriculture and livestock grazing are also found within the County. Not surprisingly, because the conclusion with respect to lumbering is based on a 1982 University of California source, the suggestion that lumbering is the primary economic activity is not consistent with today's circumstances. Moreover, this characterization of the local economy and the premise upon which 43-20

- 43-15 Table 3-1 and the discussion presented in Section 3.4 of the DEIR identifies the amount of CVP water contracted by each CVP water user and the historical maximum amount that has been used by each contractor. The DEIR does not address the amount of CVP actually delivered to the CVP water users because this volume of water varies annually according to hydrologic conditions and other obligations of Reclamation. The amount of water permitted for diversion and storage to Reclamation is presented in Appendix A of the DEIR.
- 43-16 The DEIR identifies the volume of water contracted to each CVP water contractor and the amount historically used. Additional discussion of this issue is not warranted because changes to contract amounts and usage is not a subject of the pending petition.
- 43-17 Different acreage estimates were encountered during consultation with individual CVP water contractors. The DEIR acknowledges that acreage estimates differ between the various entities but does not discuss these differences because Reclamation is solely responsible for maintaining records of water delivery in accordance with its water rights permits. Reclamation maintains records and contracts for each CVP water user that has a contract for CVP water delivery.
- 43-18 This comment is partially correct. Table 3-2 of the DEIR identifies Fish and Wildlife Enhancement and Salinity Control as authorized uses of water for Permits 11969 and 11973 (Trinity River). Other permits for water from the Trinity and Sacramento River(s) do not authorize water for these uses. Because the CVP is operated in an integrated manner and provides water from several sources to satisfy needs of multiple uses, the CVP needs to have the authorized purposes conformed to allow the CVP to provide water to each of these uses in a manner consistent with state law.
- 43-19 The DEIR is not misleading by omitting a discussion of "safe yield" or the ability of local water contractors to use groundwater conjunctively with or as an alternative to CVP water deliveries. Because the petition pending before the Board does not address altering the volume of water available to the CVP contractors discussions of yield are not relevant to the action pending before the Board. CVP water that may be stored in underground aquifers and subsequently used is also not relevant to the pending petition. The petition before the Board only addresses surface water stored or diverted by CVP facilities. New storage facilities, either surface or subsurface storage, would require separate analysis in accordance with CEQA.
- 43-20 Comment noted. The Final EIR will be revised to note the recent changes in Shasta County economic characteristics.

water supply needs is therefore based, is not consistent with the draft Bay/Delta Water Quality Control Plan EIR, which will be simultaneously considered by SWRCB at the time the USBR POU petition is to be acted upon.

Instead, agricultural, urban growth and the recreation industry in Shasta County, and particularly within the Redding basin which is the subject of the place of use DEIR, are the primary economic activities which are relevant to water supply and reliability impacts in Shasta County. This should be reflected in the DEIR.

3. Environmental Setting Within the CVP Water Contractor Service Areas. (DEIR Section 3.4.)

a. *General Discussion.* In the introductory discussion of this section, Table 3-7 summarizes existing land uses of areas outside the POU (DEIR pages 3-30 to 31). References in Table 3-7 to "CVP-induced" encroachment land uses, and "native vegetation" uses of expansion lands, are not adequately described.

I. Four of the affected water purveyors in Shasta County (Mountain Gate, City of Shasta Lake, Silverthorn, Jones Valley) divert water upstream of Shasta Dam. Therefore, they are not actually diverting Project Water. Rather, they are exchanging CVP Project Water for water belonging to water right holders downstream. The CVP Project Water is actually put to beneficial use by downstream water rights holders, who are presumably within the authorized Place of Use of the CVP. Therefore, Mountain Gate, the City of Shasta Lake, Silverthorn, and Jones Valley are not using CVP Project Water outside of the authorized Place of Use and should not be included in this report or in the associated water rights hearings.

II. Most of the Encroachment and Expansion lands in Shasta County lie within the original boundaries of their respective water purveyor service areas. The Bureau long ago contracted to serve these areas allegedly lying outside of the approved places of use specified in their underlying water rights. In the majority of the cases, most or all of the original district lies outside.

III. Please refer to Section 3.3.3, Groundwater Resources, Subsection 3.3.3.1 and 2, concerning Redding. The text states that "Well yields vary throughout the basin but are generally high..." and "Water quality is generally good..." These remarks are potentially misleading in the context of this report. All of the encroachment and expansion lands within Shasta County lie beyond the limits of the Redding Groundwater Basin, as defined by the state Department of Water Resources. These lands, without exception, overly fractured rock where groundwater is generally lacking both in quantity and in quality. This fact should be mentioned in Section 3.3.3.

- 43-21 Comment noted. The discussion presented in Section 3.4 of the DEIR provides a discussion of land uses within each of the CVP water contractor service areas. The heading "CVP-Induced encroachment lands" refers to those lands that were developed as a result of available CVP water supplies. "Native Vegetation" refers to those lands that are not either in an agricultural or M&I land use, but still maintain undeveloped or open space characteristics.
- 43-22 Based on the revised POU boundary Mountain Gate CSD, City of Shasta Lake, Jones Valley, and Silverthorn Summer Homes, Inc. are located entirely within the POU and have been eliminated from further discussion in the Final EIR.
- 43-23 The petition before the Board requests that the POU be expanded to correspond with the boundaries of the existing water service contract areas. If expanded, the delivery of CVP water to the service areas would be consistent with state water rights law.
- 43-24 Comment noted. The Final EIR will be revised to note that the affected CVP water contractor services area are located beyond the limits of the Redding Groundwater Basin and that delivering water to these areas may require the installation of new facilities.

IV. The document fails to examine the existing land uses in the encroachment and expansion lands in sufficient detail. The targeted water purveyors in Shasta County typically serve low-income, rural residential areas that have no viable alternate sources of supply. This is particularly true in the encroachment and expansion areas. They are typically steep and rugged lands with rocky soils and limited groundwater. None of these areas enjoy sewer service. These circumstances effectively preclude all active land uses except rural residential. Furthermore, they tend to be the lower-income areas of the county. These facts should be fully revealed and explored in the document. 43-25

b. *ACID Discussion.* Beyond the above outlined comments, the discussion concerning the Anderson-Cottonwood Irrigation District environmental setting (DEIR 3.4.1) appears to be generally accurate. It should be noted in the DEIR, however, that the proposed USBR petition, with respect to conformity between CVP permit and actual water deliveries, is needed in order to correct a mapping error since the commencement of CVP water contract deliveries to ACID. 43-26

c. *Bella Vista Water District (DEIR 3.4.4)* The environmental setting concerning BVWD appears to be outdated with respect to the last stated interim renewal contract date of January 1, 1995. BVWD has recently entered into another renewal contract for a two year duration. 43-27

d. *Mountain Gate CSD (DEIR Section 3.4.14)* The environmental setting discussion accurately describes the subcontract for water deliveries with SCWA in the amount of 5,600 acre feet annually. The DEIR is also accurate in its discussion of groundwater quality being "inadequate to meet the demands of the district." It should be noted, however, because of the relationship between the projects to be considered by SWRCB, that this discussion does not appear to be consistent with the generalizations concerning groundwater availability and quality in the SWRCB Draft EIR concerning Bay/Delta Water Quality Control Plan. 43-28

e. *Shasta CSD (DEIR 3.4.20)* Here the DEIR indicates that it is "unknown whether groundwater supply sources could meet the demands of future uses of lands outside of the authorized POU." (DEIR 3-129.) However this, too, does not appear to be entirely consistent with the assumptions used and resulting analysis in the Bay/Delta Water Quality Control Plan Draft EIR. 43-29

f. *CSA 8 (Jones Valley) (DEIR 3.4.21)* The DEIR indication that there is no current "alternative groundwater supply sources" (DEIR 3-133) is accurate, but is similarly inconsistent with the generalizations made in the Bay/Delta Draft EIR. 43-30

g. *CSA No. 25 (Kawick) (DEIR 3.4.22)* The environmental setting discussion indicates that CSA No. 25, both in identified encroachment and expansion areas, has been "historically supplied with groundwater." (DEIR 3-137) This is not an accurate description of the historical water supplies. Water supplies for this 43-31

43-25 The DEIR describes the land uses occurring within the boundaries of each CVP water service contractor. In addition, it notes where there are alternative water supplies available for use. The action pending before the Board would not effect the availability or presence of other services such as sewer, electricity, or other utilities and is therefore not relevant to the pending Board action. Exploring the income of residents located within each CVP water contractor service area would not provide relevant information to the Board regarding the environmental consequences of the pending petition.

43-26 Comment noted. No response required.

43-27 Based on the corrected POU boundary shown in the DEIR, this CVP water contractor is now located entirely within the authorized POU. Therefore, the pending petition no longer applies to this contractor and associated discussions have been eliminated from the Final EIR.

43-28 See response to Comment 43-27.

43-29 See response to Comment 43-27.

43-30 See response to Comment 43-27.

43-31 See response to Comment 43-27.

community have always been problematical due to heavy metal contamination of surface water supplies and lack of an underlying aquifer.

D. EFFECTS OF THE PROPOSED PROJECT AND ALTERNATIVES

1. Introduction (DEIR Section 4.1)

- a. The DEIR, in Section 4.1, indicates that additional local land use decisions will be needed for expansion area deliveries outside of existing places of use can occur, and therefore that "additional places and purposes for which CVP water would be used is not know at this time", except as restricted by water delivery contracts. In addition to failing to at least generally discuss likely increased or changed deliveries associated with the proposed project, the DEIR should also explain existing and anticipated foreseeable restrictions in existing water delivery contracts and those to be negotiated by USBR in upcoming months.
- b. The DEIR indicates that there will be no effect on the amount of water "specified to be appropriated" in the existing water rights permit, and further indicates that there will be no change to the amount of CVP water "currently contracted on a long-term basis." However, the DEIR does not clearly identify both the maximum appropriation and contract amounts. Moreover, and especially significant with respect to potential changes to existing conditions and circumstances, the DEIR does not identify the amount of CVP water actually delivered at the present time, both through interim renewal and long-term contracts.
- c. The DEIR discussion of proposed change No. 1, which is described as allowing USBR to use any water from the 16 existing permits for any of the seven purposes listed in Table 3-4, is said to present "no change in the volume of water to be appropriated or delivered via long-term contract, and therefore presents no potential physical changes to the environment.
- d. Discussion of proposed change 2 concerning "integrated deliveries" consolidation. The same "no physical change to the environment" assumptions and conclusions discussed above are made, again without discussion of actual deliveries.
- e. Discussion of proposed change 3, concerning expansion of authorized places of use to include existing contractor service areas. Although SCWA is supportive of change no. 3, in order to ensure that the environmental documentation for the proposed project, or alternatives including this proposed change, are sufficient, DEIR discussion of actual existing contract water deliveries would be appropriate, as outlined above.
- f. Concerning Alternative No. 1, the "No Project" alternative, the DEIR indicates that alternative water sources to address adverse impacts on Jones Valley, Mountain Gate, Shasta CSD and Silverthorn are unknown, but that water would be needed "regardless of costs". While it is true that a limitation of the "No Project" alternative would be disastrous to local Shasta County agencies from an economic perspective, the DEIR does not adequately analyze impacts on the physical

- 43-32 Table 3-1 in the DEIR identifies the type of use that water delivered through each CVP water service contract can used. The potential for increased or decreased CVP water deliveries is not a matter relevant to the petition pending before the Board.
- 43-33 Table 4-2 of the DEIR identifies the amount of CVP water currently contracted with Reclamation for each CVP water contractor. The volume of water allowed to be stored and diverted by Reclamation is presented in Appendix A for each water right permit issued to CVP facilities.
- 43-34 See response to Comment 43-15.
- 43-35 See response to Comment 43-15.
- 43-36 The DEIR does not speculate what alternative water sources would be developed to replace CVP water if the No Project Alternative is selected. While impacts may occur from the development of new storage and conveyance systems, potential impacts may be limited to air emissions and traffic associated with trucking alternative water supplies for use on lands outside the POU. The Final EIR will be revised to acknowledge that the development of alternative sources of water could potentially result in significant environmental effects.

environment associated with obtaining alternative surface water or groundwater, or conjunctive use of both. 43-36

- g. The DEIR discussion of Alternative No. 2, the "Existing Conditions" alternative, appears to adequately describe effects of continuing practices on water use.
- h. For comments concerning Alternative No. 3 (Permit Consolidation and Conformance) see comments concerning Alternative No. 1, the "No Project" alternative.
- i. In addressing the effects on river flow and reservoir conditions the DEIR indicates that the proposed project, and the alternatives that have been outlined, "would not significantly vary the volume of water delivered in accordance with existing CVP contracts." It is unclear, however, whether this discussion is based on actual contract deliveries or maximum contract deliveries, warranting clarification consistent with previous comments. 43-37

3. Effects on Land Use (DEIR Section 4.4)

- a. In discussing land use changes associated with the proposed project (Section 4.4.2) the DEIR indicates that "the availability of CVP water to (encroached expansion and outside lands served by other sources of water) would not induce a change to existing land use; however, its availability could accommodate future land uses that are planned by local land management agencies (DEIR, page 4-112) The DEIR appears to assume that existing land use designations by local agencies, whether they be for irrigated agriculture, M&I uses or otherwise, are at "built out" for purposes for water use, and that project approval and resulting potential additional water deliveries will not influence the rate of development in encroachment, expansion or "other" effected lands. This general approach to CEQA analysis, however meritorious the project may be, is questionable. 43-38
- b. In addressing land use impacts associated with the no project alternative (Section 4.4.3), the DEIR indicates that "many land management activities and land uses that have arrived on a delivery of CVP water may be jeopardized." (DEIR page 4-14) This statement grossly understates the obvious adverse impacts on all agencies currently receiving CVP contract water deliveries for use on so-called "encroachment lands", and having a reasonable expectation that deliveries can be used for future use on lands within their existing service areas based on past practices. 43-39
- c. The DEIR further indicates that historic deliveries "cannot be construed as a vested right for the continued delivery of water." (DEIR 4-14.) There is insufficient discussion and analysis of this assertion to allow a detailed response; however, local agencies may well have "vested rights" to continued CVP water deliveries, whether based on legal or equitable grounds. 43-40

- 43-37 As discussed in the DEIR, river flow and reservoir conditions would not significantly vary with implementation of the proposed project or alternatives. Because the proposed project and alternatives would not effect the volume of water delivered in accordance with existing CVP water service contracts, CVP operations would occur in a normal fashion according to hydrologic and other demand characteristics present each water year. The CVP is currently authorized to divert and store up to its maximum amount authorized in each water rights permit. Whether this amount is sufficient to meet all of Reclamation's contracted obligations is not relevant to the petition pending before the Board.
- 43-38 The DEIR does not assume that encroachment lands are "built out" as suggested in this comment. The DEIR only indicates where CVP water is currently delivered. The land uses discussed in the DEIR reflect those designations shown in the respective General Plans for the local community. Approval of the proposed project would not result in additional water deliveries to the CVP water contractors beyond the amount currently contracted with Reclamation.
- 43-39 The delivery of CVP water to lands outside the POU is not conducted in accordance with state law. The proposed project would enable Reclamation to deliver CVP water in accord with state law.
- 43-40 The existing delivery of CVP water to lands outside the POU is not in accordance with state law. Therefore, the Board has the discretion to forbid continued water delivery to these lands and enforce its decision on Reclamation's water rights permits. Legal action may taken by parties to continue the unauthorized delivery of CVP water, however, it is not a subject relevant to this environmental impact review process.

<p>to continue to support [existing "encroachment land"] land uses." There is insufficient analysis and documentation in support of alternative sources of water and related adverse impacts to the physical environment, absent new storage or mitigation allowing local agencies to make use of Bureau facilities associated with locally developed conjunctive use and water transfer programs.</p>	43-41
<p>e. Concerning land use changes associated with Alternative No. 2 (DEIR pg. 4-15) the DEIR discussion of land use impacts associated with existing conditions points out that 683,393 (82%) of affected lands outside of the authorized places of CVP contract water use "remain in an undeveloped conditions." This being the case, and based on DEIR recognition that the proposed project would eventually result in additional deliveries to the undeveloped land within existing contractor service areas, it seems that the DEIR conclusion that there will be no additional deliveries, and therefore environmental impacts, associated with the USBR petition is in need of further documentation. (See previous comments concerning the important distinction between maximum permit appropriation and contract delivery amounts, as compared to actual existing deliveries.)</p>	43-42
<p>f. With respect to land use changes associated with Alternative No. 3 - Permit Consolidation and Conformance (DEIR pg. 4-16) the DEIR indicates that if the project were to be limited to achieving permit consolidation and conformance there would be an elimination of deliveries to 56,543 acres of CVP irrigated agricultural lands and 60,121 acres of M&I land deliveries. "Accordingly", the DEIR indicates, "many existing land management activities and land uses may require an alternative water source." See comments concerning Alternative No. 1, Land Use Change Impacts.</p>	43-43
<p>4. Effects on Groundwater Resources (DEIR Section 4.9)</p>	
<p>a. The DEIR compares the proposed project with "permitted conditions," by indicating that the proposal "would annually increase the groundwater volume in the Redding basin by about .005%." (DEIR pg. 4-33) This assertion implies a level of understanding of the Redding Groundwater Basin, and of the impacts of the proposed project upon it, which appears to be at least four orders of magnitude in excess of our actual knowledge of the resource. Furthermore, the limited existing information does not appear to support this conclusion. From a groundwater recharge standpoint, the lands impacted by the proposed project lie beyond the Redding Groundwater Basin and there are no studies documenting hydrological interconnections between the affected lands and the Redding Groundwater Basin. In many cases, it would appear far more likely that the lands are hydrologically linked to Shasta Lake. There may be a connection in the future, if these lands come to rely upon supplies exported from the Redding Groundwater Basin to replace lost CVP supplies. Thus, the related DEIR indication that "this is not a measurable impact on the basin[s] groundwater [system]", is not a conclusion supported by available information.</p>	43-44
<p>b. <i>Effects on Alternative No. 2 "Existing Conditions".</i> (DEIR 4.9.3) The DEIR indicates that there will be "no annual change" in Redding. SCWA disagrees with</p>	43-45
<p>-10-</p>	

- 43-41 Identifying alternative sources of water is not the responsibility of this analysis. The DEIR states that alternative water supplies could be provided to support existing land uses; however, the cost to acquire and deliver such alternative supplies is not known.
- 43-42 This comment is incorrect. Page 4-15 addresses land use changes associated with implementing Alternative 2 (Existing Conditions). It notes that about 82 percent of the lands outside the POU remain in an undeveloped condition. Alternative 2 would not authorize these currently undeveloped lands (expansion lands) to receive CVP, therefore they would not be able to receive CVP water supplies in accordance with state law. The DEIR presents a detailed discussion of impacts that occurred with delivery of CVP water to the encroachment lands. Therefore, Alternative 2 is adequately discussed in the DEIR.
- 43-43 See response to Comment 43-41.
- 43-44 The statement on page 4-33 concludes that the Proposed Project would provide CVP water to land uses that would otherwise require groundwater as an alternative water source. Therefore, when compared to Permitted Conditions, it would increase the groundwater volume by about .005%. This small volume is relatively insignificant and subject to wide variation depending on the numerous factors mentioned in this comment. The Final EIR will reflect that groundwater variations, at the level of detail discussed, are estimates only and may be immeasurable.
- 43-45 Alternative 2 would authorize expanding the POU to those lands currently receiving CVP water. Therefore, no change to existing conditions would occur. If groundwater levels are changing, they would not change as a result of implementing Alternative 2.

<p>this conclusion based on its recent evaluation of Redding area groundwater resources.</p>	43-45
<p>c. <i>Effects on Alternative No. 3 "Permit Consolidation and Conformance."</i> The DEIR conclusion that impacts on groundwater basins are not considered significant, is not supported by adequate analysis of local circumstances, at least in the Redding area basin.</p>	43-46
<p>5. Effects on Local Land Use Policies (DEIR Section 4.12)</p>	
<p>a. Section 4.12.2, concerning effects of Alternative 1 (No Project), provides in the first paragraph of Page 4-42: "Obtaining another source of water may be difficult or expensive; however, no change in land use is expected if Alternative 1 is implemented." As explained in these SCWA comments, most of the encroachment areas within Shasta County are low income areas with no alternative source of water, except by truck. None of these areas overlie groundwater basins.</p>	43-47
<p>For example, Silverthorn is situated on a small, rocky peninsula in Shasta Lake, 10 miles from a viable source for trucking. Keswick is traversed by many small surface streams, but they are contaminated by heavy metals from the Iron Mountain Mine superfund site. Loss of CVP Project Water would effectively deny water to these residents. Some of the residences may be supplied by trucking and on-site storage of water for minimal domestic use, with associated impacts on traffic, air pollution, etc. This is already done with many of the adjoining parcels lying outside of the Silverthorn and Jones Valley service areas. However, most permanent occupation would end, thereby drastically changing existing land uses.</p>	43-47
<p>b. The preceding comment also applies to Section 4.12.3, concerning the effects of Alternative 3 (Existing Conditions).</p>	
<p>c. Concerning Section 4.12, Jones Valley should be added to each of the lists of CVP water contractors that have relied to some degree on CVP water to support development of rural residential lands.</p>	43-48
<p>6. Effects on Recreation (DEIR Section 4.13)</p>	
<p>Concerning Section 4.13, addressing effects on recreation and visual resources, it should be noted that discontinuation of CVP Project water deliveries to Jones Valley/Silverthorn would also have the effect of denying water to the USFS Jones Valley Campground. The associated boat ramp is one of only six boat ramps providing access onto Shasta Lake, and is widely regarded as one of the best.</p>	43-49
<p>-11-</p>	

- 43-46 Implementation of Alternative 3 would have similar effects on groundwater as the Proposed Project. Expanding the authorized POU would not increase reliance on local groundwater supplies, therefore would not result in significant impacts to the basin's groundwater system.
- 43-47 Comment noted. Trucking of replacement water is an expensive alternative water supply available to land outside the POU.
- 43-48 Based on the revised POU boundary, Jones Valley is located entirely within the POU and eliminated from further discussion in the Final EIR.
- 43-49 The USFS Jones Valley Campground is not one of the 26 CVP water contractors (currently 19 CVP water contractors) that would be affected by the pending petition. The continued availability of CVP water supplies to this federal facility is not known.

	<p>7. Economic Effects (DEIR Section 4.14)</p> <p>a. Generally, the DEIR indicates that CEQA does not require discussion of this issue. (DEIR pg. 4-44) However, if identified economic impacts would result in physical changes to the environment and evaluation of associated impacts, and feasible mitigation measures, is required. Table 4-10, which summarizes the suggested economic effects of implementing the alternatives, is helpful but represents an incomplete analysis of economic impacts associated with the proposed project, and project alternatives. Economic impacts associated with potential changes to existing authorized CVP water deliveries, as well as maximum amounts permitted by existing permit appropriations and CVP contracts, would more fully analyze economic impacts associated with the project and alternatives.</p> <p>b. Table 4-10, located at DEIR page 4-46 is misleading. For all eight Shasta County CVP Water Contractors, all of the economic effects of implementing each the various alternatives is shown as "none." However, the third paragraph of Page 4-45 properly indicates: "The analysis does not quantify economic effects resulting from changes to M&I land use." Additionally, M&I costs associated obtaining alternative local supplies have been neglected.</p> <p>All of the impacts within Shasta County will result from changes to M&I land use. Also, as explained above, alternative water supply sources generally do not exist for these areas. Hence, the "no impacts" characterization fails to properly describe the situation. A more accurate description of effects would be "substantial but unquantified."</p> <p>c. On DEIR page 4-49, Keswick (CSA 25), Jones Valley (CSA 6) and the City of Shasta Lake should be added to the list of areas without identified alternative water sources.</p> <p>d. Economic impacts in this chapter fail to take into account the limited ability of the residents of Shasta County's encroachment and expansion areas to pay for water. In a situation where residents lack an ability to pay, changes in land use and other impacts may occur at a very low threshold. Per the 1990 census, a third of the households in Jones Valley and Silverthorn make less than \$12,500 per year. Conditions within the other encroachment and expansion areas are similar. By overlooking the relative ability of these customers to pay for alternative supplies, the economic impacts have been understated.</p> <p>8. MITIGATION MEASURES (DEIR Section 5)</p> <p>1. Mitigation Needs for Impacts on Encroachment Lands (DEIR Section 5.1)</p> <p>There is inadequate presentation of even 'program level' mitigation. The report appears to defer all impact mitigation to later project-specific times, in apparent non-compliance with CEQA.</p>	<p>43-50</p> <p>43-51</p> <p>43-52</p> <p>43-53</p> <p>43-54</p> <p>43-55</p> <p>43-56</p>
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- 43-50 Table 4-10 describes the expected economic changes to gross farm income, net annual earnings, and employment that would occur with implementation of each alternative. It provides a complete analysis for the variables selected.
- 43-51 See response to Comment 43-37.
- 43-52 Comment noted. Table 4-10 will be revised in the Final EIR to show no estimate was made for M&I water users, rather than "None" as currently shown.
- 43-53 Comment noted. It is not known that replacement of CVP water supplies to users in Shasta County would result in substantial economic cost.
- 43-54 Comment noted. Based on the POU boundary as corrected in the Final EIR, these three CVP water contractors are located entirely within the POU and have been eliminated from further discussion in the Final EIR.
- 43-55 The DEIR did not address the ability to pay for replacement water supplies if CVP water delivery is terminated to lands outside the POU. Such an impact is not considered an environmental impact as defined by the CEQA Guidelines. While economic hardship may occur, such an analysis is not required as part this environmental document.
- 43-56 Section 5 of the DEIR identifies several methods to mitigate impacts to biological resources that have been adversely affected by delivery of CVP water to the encroachment areas. The discussion also explains several existing programs which are available to implement these methods. As discussed in this section, a process will be developed by the Board and Reclamation to assess the suitability of these methods for offsetting impacts associated with delivering water outside the POU. The mitigation of these impacts have not been deferred to later project-specific times.

2. **Mitigation For the Expansion Areas (DEIR Section 5.2)**

The DEIR provides that: "The SWRCB will be a responsible agency under CEQA with respect to project-specific CEQA documents and will make its final decision at that time whether to allow delivery of CVP water to specific expansion areas." Most of the parcels in the expansion areas within Shasta County are very small rural residential parcels, less than an acre in size, with low land values. Currently, only land division, use permits and similar changes in land use require the preparation of a CEQA document. The issuance of a building permit and the provision of water service to these existing parcels are considered to be ministerial functions, not triggering CEQA.

The preparation of a CEQA document and the involvement and concurrence of the Bureau and the SWRCB prior to the provision of water to each and every vacant residential parcel within the expansion areas would appear to be impractical from an administrative standpoint, and cost-prohibitive for the affected property owners. Accordingly, this would effectively thwart the future development of most of these existing parcels. Development would probably be redirected from infilling of the existing, vacant parcels within the expansion areas to the creation of new parcels on vacant land elsewhere within the County.

For example, there are about 260 vacant residential parcels scattered throughout Jones Valley. These parcels are randomly interspersed between approximately 250 developed lots. Most of these lots front on existing paved roads and are well under an acre in size. They typically have assessed values of less than \$10,000 apiece. Also, they are burdened by bonds for water system improvements amounting to several thousand dollars apiece. Any significant uncertainty about the availability of water on these parcels, or any substantial regulatory cost to obtain it, would seemingly make them worthless.

3. **Mitigation Monitoring Plan (DEIR Section 5.3)**

Absent adequate impacts analysis and mitigation, the mitigation monitoring requirements of Public Resources Code 21081.6 can not be adequately met. Thus, until the deficiencies noted above are rectified, the proposed monitoring plan will be inadequate.

F. **CUMMULATIVE EFFECTS (DEIR SECTION 6)**

1. **Past Land and Water Development**

2. **Other Projects and Reasonably Foreseeable Actions**

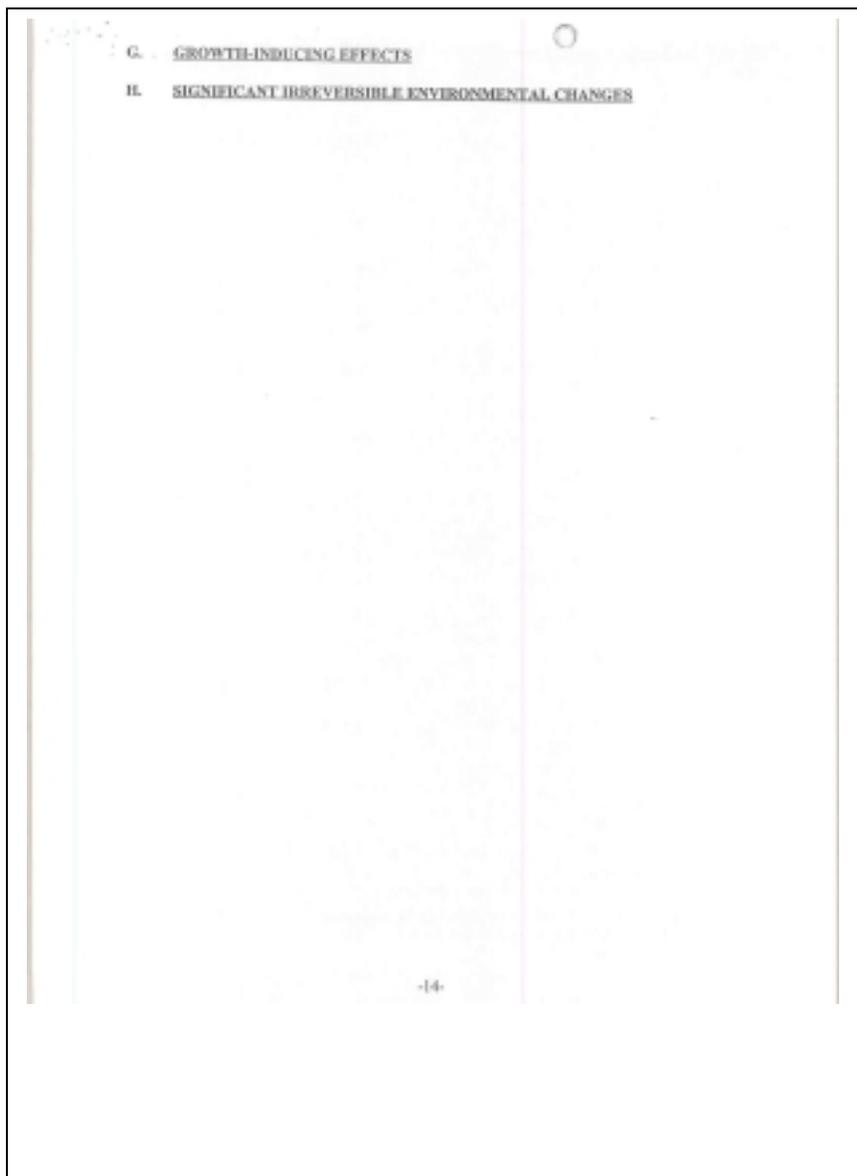
3. **Analysis of Cumulative Effects (DEIR Section 6.4)**

Section 6.4.3, provides as follows: "Future development on CVP-served lands outside the authorized POU would not need to rely on local surface or groundwater if the proposed project is implemented." This neglects to address development-related impacts redirected from the expansion areas to other areas having reliable surface and groundwater supplies, but not burdened by the uncertainties and regulatory burdens imposed within the expansion areas.

43-57 In this particular case, even though the local land agency may not take an action that invokes CEQA, the installation of a water delivery system by the CVP water contractor may require a CEQA analysis. The CVP water contractor may become the lead CEQA agency if new CVP water distribution systems are constructed. The delivery of CVP water to new users must also comply with provisions of the CVP water service contract. These contracts also assign obligations on the water contractor for delivering CVP water supplies, which result in land use changes.

43-58 It is not the intent for Reclamation or the Board to review and approve providing CVP water to each and every vacant residential parcel on lands in the expansion area. It is envisioned that Board environmental review of expansion land additions to the POU could be achieved in several ways. The first way would be to submit the local government's land use plan and CEQA documentation to the Board for review. Such plans may cover all or parts of the particular expansion area. The Board would then provide comments regarding the adequacy of mitigation for environmental impacts being imposed on future projects. As a second way, the local government could consult with the Board during land use plan development or during preparation of CEQA documents to ensure that the Board's comments are incorporated into the respective analyses. Neither of these approaches would place an undue administrative burden on the Board, local government or individual landowners. Any change in the POU would require approval of a water right change petition.

43-59 Comment noted. Section 5 of the DEIR presents a Mitigation Monitoring Plan to ensure that impacts are adequately mitigated.



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Prejudgment of Future Water Rights Issues in the Present Water Quality Rulemaking," dated March 10, 1995, and exhibits thereto; (4) "Policy Statement on Bureau of Reclamation Petition to Modify Conditions and to Add Points of Diversion and Rediversion in Central Valley Project Water Right Permits" submitted at the April 18, 1995 hearing and the exhibits thereto; (6) Closing Statement of Certain Area I Representatives and Area I Landowners, dated May 1, 1995; and (7) Certain Area I Representatives and Other Area I Landowners' Petition for Reconsideration and Clarification and Points and Authorities and exhibits in support thereof, dated July 6, 1995.

These materials, among other things, set forth in detail the sources of the Area I landowners' rights to water. They show that under the federal reclamation laws, the government shall proceed in conformity with state water rights laws, 43 U.S.C. §§ 372, 383, 485h-4, and that the Supreme Court has held that reclamation irrigators have appropriative rights. *Lockes v. Fox*, 300 U.S. 82, 94-96 (1937); *Nebraska v. Wyoming*, 325 U.S. 589, 614 (1944); *Arizona v. California*, 283 U.S. 423, 459 (1930); *Nevada v. U.S.*, 463 U.S. 110, 126 (1983). This is also the law of California. *Ivanhoe Irrigation District v. All Parties*, 47 Cal.2d 595, 627-29 (1957).

The referenced materials also show that the Board has long recognized the Area I landowners' water rights. D-935 states that it is "settled law" that the CVP water right is "appurtenant" to the land irrigated and, therefore, continues in "perpetuity." 1959 WL 5685 (SNRCD) at 45. It notes that Section 8 of the 1902 Act, 43 U.S.C. §§ 372, 383, is to the same effect. *Id.* at 46-47. D-935 quotes the definition of an appropriative right in *Arizona*. *Id.* at 47. It also quotes the description of the water right in *Nebraska*. *Id.* It states that the right "vests by application of the water to beneficial use upon the land." *Id.*

D-990, the first of two decisions under which permits governing Area I water use were issued, reaffirmed the conclusions of D-935. D-990 provides (at 77-78) as follows:

"In Decision D 935, the Board [concluded] that by force of applicable state and federal law, the United States holds all water rights acquired for project purposes in trust for the project beneficiaries who by use of the

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water on the land will become the true owners of the perpetual right to continue such use and to observance of any and all contractual commitments to the United States. Upon the premise of this 'trust theory' the permits issued to the United States were conditioned so as to express the 'permanent and appurtenant' concept. In further support of its view, this Board invited attention to the Congressional Act of July 2, 1956 [43 U.S.C. 485h-4] which reaffirmed Section 8 of the Reclamation Act of 1902 containing the proviso reading as follows:

"That the right to the use of water acquired under the provisions of this act shall be appurtenant to the land irrigated and beneficial use shall be the basis, the measure, and the limit of the right."

The views thus expressed in Decision D 935 are reaffirmed, and the permits to be issued pursuant to those applications which include irrigation as the purpose of use will provide in substance that rights to be acquired thereunder will be appurtenant to the land on which the water shall be applied and that such rights shall continue in perpetuity."

D-1020, the second decision concerning the Area I water permits, (at 11) "adopts" D-990 as to the matter of appropriative rights. It orders (at 20) that a permit be issued "subject to vested rights" and to certain conditions, which include (at 23) the "appurtenant[cy]" and "perpetuity" conditions.

The previously submitted materials show that as recently as 1989 the Solicitor of the Department of Interior published a formal opinion containing "an overview of water rights generally and specifically with respect to reclamation projects." Sol.Op. M-36966, 97 I.D. No. 3 (July 6, 1989) at 21. Solicitor Tarr noted that under state law "one is entitled to receive . . . that amount of water that is actually put to a use . . ." *Id.* at 22. "[T]he water users are entitled to a perpetual right to receive the amount put to beneficial use; this

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right is in addition to any contractual rights" Id. at 23. He ruled that Ickes, Nebraska, and Nevada affirm that "beneficial ownership of a reclamation project water right is in the water users who put the water to beneficial use." Id. at 27.

Comments:

1. The DEIR incorrectly assesses the validity and finality of the Bay/Delta Water Quality Control Plan. In their March 10, 1995 papers, the Area I landowners argued (at 16-26) that the Bay/Delta Plan cannot contain flow or operational restrictions which affect the quantity of water capable of being delivered to the Area I landowners. The inclusion of such restrictions, either as water quality objectives or otherwise, is not authorized under the Porter-Cologne Act, the Water Commission Act or any other authorities. The arguments were never effectively rebutted.

In their March 10, 1995 document, The Area I landowners requested (at 3-4) that the Board make it clear that the Bay/Delta Plan was not final with respect to its flow and operational restrictions and did not constitute an indirect adjudication of water rights. The Board did so. In the Bay/Delta Plan (at 4) it stated that "[i]f necessary after the water rights proceeding, this plan could be amended to reflect any changes that may be needed to ensure consistency between the plan and the water right decision."

The DEIR is defective because it does not take into account changes to the Bay/Delta Plan made necessary pursuant to the upcoming water right adjudication. The Bay/Delta Plan specifically did not address the Area I landowners' water rights. The Bay/Delta Plan must be periodically reviewed and revised. NC 55 13143. Now, in the current water right proceeding, Area I landowners' water rights cannot be ignored. Because the DEIR fails to set forth any alternative that is consistent with the honoring of the Area I landowners' water rights, and because the "project" is not accurately defined, the DEIR is defective under CEQA. County of Inyo v. City of Los Angeles, 71 Cal. App. 3d 185, 199 (1977); Laurel Heights Improvement Ass'n v. Regents of the University of California, 47 Cal. 3d 376 (1988); County of Inyo v. City of Los Angeles, 124 Cal. App. 3d 1, 7 (1981).

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2. The baseline for the DEIR should be no later than D-1485, unaltered by any subsequent action of any other party. The DEIR (at II-13 to II-14) refers to the Bay/Delta Plan ER and states that the "base case" for the DEIR is "the regulatory requirements in D-1485 and the Biological Opinion for winter-run chinook salmon." The ER (at VII-5) lists D-1485 and six post D-1485 conditions (including the winter-run chinook salmon requirements) to define the "base case."

The present proceeding is a water right proceeding, pursuant to which the Board will determine whether, and to what extent, it will modify the water right permits under which Area I landowners, and other water users, receive and beneficially use water. Except as set forth in the DEIR (at I-5) the Board has made no decision altering water rights since D-1485. The starting point of any new action by the Board concerning water rights should be no later than D-1485. To the extent that any governmental entity, or any person, has taken any action that interferes with such water rights, whether or not such action was valid or justified, such action may not be included as part of the D-1485 baseline. 14 Cal. Code Regs § 15125.

3. For the government's proposed change (no. 1) of the purposes of use of the CVP permits, the DEIR fails to (a) adequately describe the "project," (b) consider the environmental and other impacts of such proposed change, (c) set forth any mitigation measures, and (d) set forth all reasonable alternatives to the proposed change.

The DEIR describes (at 1-3) the government's change no. 1 as follows:

"Conform the purposes of use in the individual permits so that the 16 existing permits authorize use of water for the 11 purposes shown in Table 3-2 in Section 3 of this EIR."

44-1

Neither this description, nor any other provision in the DEIR, describes the effect of this change with respect to the Area I landowners' water rights. The "project" description is inadequate. *County of Inyo*, 71 Cal. App. 3d at 199-401.

Although it is nowhere referred to in the DEIR, the Area I landowners speculate that the government is seeking change

44-2

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44-1 The text cited in this comment (page 1-3 of the DEIR) is a general introduction to the document and is not intended to provide a detailed description of the proposed project and alternatives being addressed in the document. Section 2, found on pages 2-1 through 2-6 of the DEIR, presents a detailed description of the proposed project and alternatives.

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no. 1 as a prerequisite to reallocation under CVPIA § 3411 (P.L. 102-575) which provides as follows:

"Notwithstanding any other provision of this title, the Secretary shall, prior to the reallocation of water from any purpose of use or place of use specified within applicable Central Valley Project water rights permits and licenses to a purpose of use or place of use not specified within said permits or licenses, obtain a modification in those permits and licenses, in a manner consistent with the provisions of applicable State law, to allow such change in purpose of use or place of use."

44-2

The DPEIR is defective because it fails to address any such reallocation. The DPEIS provides (at 4-6) that the government's change no. 1 would not alter the "volume of water appropriated, the volume of CVP water supplies currently contracted, or the location where CVP water supplies are used." However, the DPEIS does not address any potential government reallocation among water users, to the possible detriment of the Area I landowners' water rights. Nor does the DPEIS analyze the environmental and other effects any such reallocation might have, and, therefore, it violates CEQA.

4. For the government's proposed change no. 2 to consolidate the authorized places of use specified in the CVP permits, the DPEIR fails to (a) adequately describe the "project," (b) consider the environment and other impacts of such proposed change, (c) set forth any mitigation measures, and (d) set forth all reasonable alternatives to the proposed change.

44-3

As set forth in comment 3 above, the DPEIS does not analyze the government's proposed CVPIA reallocation in connection with change no. 2, and therefore violates CEQA.

5. For the government's proposed change no. 3, to increase the CVP authorized place of use by including encroachment and expansion lands, the DPEIR fails to provide any analysis regarding impacts within the current authorized places of use. For example, the DPEIR discusses (at 4-6 to 4-29) water use changes only as they relate to encroachment and expansion lands, not lands already within an authorized place of use. There is no assurance given in the DPEIS, or anywhere else, that

44-4

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- 44-2 This comment is not correct. The petition pending before the Board was submitted in 1986 (See Appendix A of the DEIR), many years prior to the passage of the CVPIA. There are no components to the petition that reallocates water among the various CVP water contractors or uses that rely on CVP water supplies.
- 44-3 This comment only provides general and vague criticisms of the DEIR and provides no substantive examples of deficiencies in the document. As noted in the response to Comment 44-2, the pending petition before the Board does not reallocate CVP water supplies.
- 44-4 The DEIR addresses potential impacts of expanding the POU from its existing location. It does not address future decisions by individual CVP water contractors to redistribute waters within the districts' boundaries. Such distribution and management of water within the water districts would be speculative at this time. The individual CVP water contractors acquire the use of the CVP water through contracts with Reclamation. Any contract disputes are beyond the scope of this EIR.

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the Area I landowners' water rights will not be adversely impacted by adoption of the government's proposed change no. 3. Nor is there any discussion regarding any CEQA subjects to the extent such water rights are so impacted.

44-4

6. Without the Board's recognition that the Area I landowners' water rights, and the water rights of others, must remain well-defined, enforced and secure, the DEIR and DPEIR reliance on water transfers as a means of mitigation is improper.

44-5

The DEIS (at VI-123 to 125) provides that water transfers act as a mitigation measure for ground water overdraft and decreased agricultural productivity. It states (at XII-36) that "water transfers are the most promising way of closing the gap between water demands and dependable water supplies over the next ten years." However, such promise will not be fulfilled unless water rights, including the Area I landowners' water rights, are vigorously protected and preserved.

A permit gives the right to take and use water to the extent and for the purpose therein. Water Code at §§ 1381, 1445. The Board shall take "vigorous action" to enforce the terms and conditions of existing permits and to prevent unlawful diversion. *Id.* at § 1825.

A recent book by a leading natural resource economist shows why the Board must protect water rights. Terry L. Anderson, *Water Crisis: Ending The Policy Drought* (1983). Professor Anderson demonstrates that ". . . property rights must be well-defined, enforced, and transferable." *Id.* at 18. He argues:

"The belief that the doctrine of appropriation contains a great deal of potential for market failure appears to be unfounded. . . . [A] system of well-established and transferable property rights generally promotes efficient water allocation. The allocation problems in many Western states are not the fault of the doctrine of appropriation as such as they are the fault of restrictions placed on water markets. Administrative agencies and courts continually interfere with what constitutes a water right and, hence, with the definition

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44-5 The mitigation discussed in the DEIR does not rely on water transfers as a means for mitigation.

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and enforcement of those rights. . . ." *Id.*
 at 70.

Professor Anderson further writes:

"In general, market failure refers to situations where property rights are not well-defined, enforced, or transferable. Since the task of defining and enforcing property rights is largely governmental, it is odd that an insufficient property rights structure is referred to as market failure. It is more appropriate to refer to situations where property rights are not well specified as cases of governmental or institutional failure." (Emphasis in original.) *Id.* at 80.

A second important work collects articles by leading scholars about the importance of protecting water rights. Terry L. Anderson, ed., Water Rights: Scarce Resource Allocation, Bureaucracy, And The Environment (1983). In his foreword,

Professor Jack Hirshleifer explains:

". . . [W]ater rights should be well-defined, exclusive, secure, and transferable if the market is to function effectively in redirecting the resource to its most valuable uses. . . . [T]he solution to be feared is subjecting all uses to the whim of a supervisory agency rather than to the even-handed enforcement of carefully defined property rights. When commissions or courts license only temporary uses, with tenure contingent upon 'good behavior' according to some ill-defined notion such as serving the public good, the result is a grossly inefficient allocation of water resources. . . ." *Id.* at xix-xx.

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In his chapter entitled "Instream Water Use: Public And Private Alternatives," Professor James Huffman states that

". . . Instream water uses can be privately supplied if private rights in water are clearly defined, enforced, and transferable through appropriate institutional changes." *Id.* at 274.

Professor Huffman argues:

". . . [T]he designated public officials are in no position to make such allocational decisions with respect to the objective of allocational efficiency. . . . [T]he decisionmakers have very little information about the relative values of the water for the competing uses. . . . [T]he hard truth of the matter is that the delegation of any issue such as water use to a state agency will result in a decision based upon distributional rather than allocational considerations. . . . [P]ublic officials will decide on the basis of who benefits from water use rather than on which water uses will produce the most net benefits. . . .

". . . The fact that a stream is a good habitat for trout in no way is determinative of whether the stream should be maintained as trout habitat. That issue can only be resolved in the context of the possible alternative uses of the water in the particular stream at a particular time." *Id.* at 268-69.

These ideas have been explicated in an important recent work. Terry L. Anderson, Donald R. Lease, Free Market Environmentalism (1991). Professors Anderson and Leal conclude:

"In order to reap the advantages of the market, policy makers must find ways to define property rights in water, enforce

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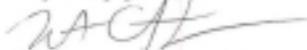
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them, and make them transferable -- and then guard against doctrines that erode these principles. The prior appropriation doctrine supports these principles, but the public trust doctrine is eroding them. By limiting the application of the public trust doctrine, by extending the application of the prior appropriation doctrine to instream flows, . . . and by reducing the impediments to exchange, policy makers could vastly improve the nation's water allocation system. The development of coalitions that could bring about the necessary institutional reforms would be enhanced by the realization that efficient water markets could reduce not only environmental degradation but also . . . the role of government. *Id.*, at 118.

Unless and until it is recognized that water rights, including the Area I landowners' water rights, are protected from governmental involuntary reallocation, a market for water will not exist.

7. Finally, the DEIR and DPRIR analyze alternatives that necessarily result in the illegal involuntary reallocation of water from Area I landowners, and do not analyze alternatives that fully honor Area I landowners' water rights. However, CEQA requires that the alternatives analyzed be "legal." 14 Cal Code Regs § 15364; Sequoiah Hills Homeowners Ass'n v. City of Oakland, 23 Cal. App. 4th 704 (1993); Kenneth Mabana Ranches v. Superior Court, 10 Cal. App. 4th 276, 291 (1992). The DEIR and DPRIR should be amended in order to fully analyze the legal alternative of fully honoring the Area I landowners' water rights.

Very truly yours,



Theodore A. Chester, Jr.

TAC:rad

cc: Clients
 Kenneth L. Khachigian, Esq.

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44-6

The DEIR address the consequences of implementing the pending petition and alternatives. The petition requests three specific changes be made to the existing water rights permits addressing the operation of the CVP. The petition does not request any reallocation of water among CVP water users. Therefore, the request made in this comment is beyond the scope of the DEIR.

44-6

Responses to Comment Letter 45

- 45-1 This DEIR addresses the consequences of expanding the POU to correspond to the CVP contract service areas currently recognized by Reclamation. Changes to this CVP contract service boundary are not the subject of the pending petition or this DEIR.
- 45-2 See response to Comment 45-1.

LETTER 45 MF

Thursday, February 19, '98

To:
State Water Resource Control Board
P.O. Box 2000
Sacramento, California 95812

Dear State Water Resource Control Board,

In your Environmental Impact Report released in December 1997 you identify "Consolidated and Conformed Places of Use".

Please revise your "Consolidated and Conformed Places of Use" to include the Spring Valley area 8 miles southwest of Williams, California. 45-1

We own a ranch on Spring Valley Road, known as Salt Creek Ranch consisting of 850 acres and has been historically dryland farmed. This entire ranch is in the Sacramento Basin. It has always been the intent and policy of the Bureau of Reclamation to provide irrigation waters to properties in the Sacramento Basin. We are in the Sacramento Basin. The service area identified in your EIR leaves my property without Bureau water!

We object strongly to this area being left outside of the Service area identified in your December 1997 EIR!

Please consider "Area of Origin". We should get water in our area before Los Angeles, or anyone else outside the Sacramento Valley gets Sacramento Valley water. 45-2

The Salt Creek Ranch is perfect for planting grapes and almonds. We have been working with Westside Water District to get water. We are very close to getting CVP Water to irrigate. Under the places of use in your EIR we will never get water.

Please correct this oversight and put us back in the service area!!!!

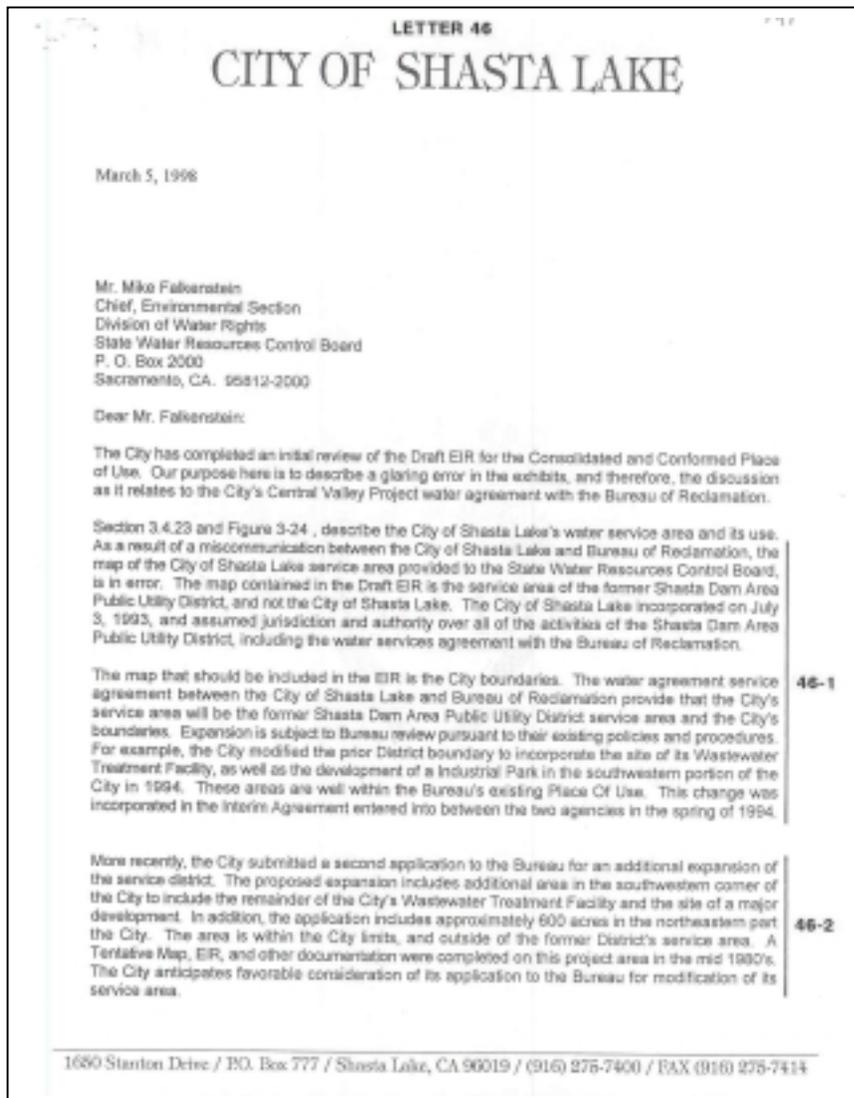
Sincerely,

Vic LaGrande

Salt Creek Ranch,
Vic LaGrande, partner
Tel: 800-473-2305
530

Responses to Comment Letter 46

- 46-1 Comment noted. Based on the corrected POU boundary, the City of Shasta Lake is located entirely within the POU. The City of Shasta Lake has been eliminated from further discussion in the Final EIR.
- 46-2 Based on the corrected POU boundary, the City of Shasta Lake is located entirely within the POU. The City of Shasta Lake has been eliminated from further discussion in the Final EIR.



Mr. Mike Falkenstein
March 5, 1998
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The revision to the service area would impact the EIR analysis. Some area involved is outside of the existing Bureau Place of Use. This change would therefore, involve some rewording of the text, as well as of the exhibits, to ensure consistency with the City's service area responsibilities. 46-2

The City intends to provide additional comments to the Board prior to the expiration of the comment period. These additional comments will address the DEIR's assumptions and conclusions.

Thank you for your consideration. If you have any questions, please don't hesitate to contact me.

Sincerely yours,


ALUMN HARNEY
City Manager

ANH:m

cc: Mayor and Council
Cliff Faith, Public Service Director
Bob Stackhouse, Bureau of Reclamation

Responses to Comment Letter 47

- 47-1 Comment noted. Based on the corrected POU boundary, the City of Shasta Lake is located entirely within the POU. The City of Shasta Lake has been eliminated from further discussion in the Final EIR.

LETTER 47 AU

CITY OF SHASTA LAKE

March 6, 1998

Mr. Bob Stackhouse (MP-400)
Bureau of Reclamation
Mid-Pacific Regional Office
2000 Cottage Way
Sacramento, CA. 95825-1898

Dear Bob:

I have been advised to request a change to the description of the City's service area boundary in the Water Resources Control Board prepared DEIR entitled the "Consolidated and Conformed Place of Use".

The text and exhibits found in Section 3.4.23 and Figure 3-24 of the DEIR erroneously describes the service area of the former Shasta Dam Area Public Utility District. The District was replaced by the City of Shasta Lake when it incorporated in July 1993. The CvP Water Contract provided that the service area would be the City's Corporate boundaries, an area significantly larger than the Shasta Dam Area Public Utility District service area. The agreement provided that extension of services in the area between the former District service area and the City's, must be reviewed and approved by the Bureau. For example, an area that included the City's Wastewater Treatment Facility and an Industrial Park that was outside the former District's boundaries and within the City's corporate limits, was approved by the Bureau in the service agreement effective in March 1994. 47-1

A communications failure by the City resulted in the Bureau's submittal of an erroneous service area for the City of Shasta Lake. The City's Bureau Contract has always recognized the City's corporate limits as the ultimate service boundary. We request the Bureau to advise the State Water Resources Control Board of this situation, and request that the DEIR be corrected to reflect the change in circumstances applicable to this revision.

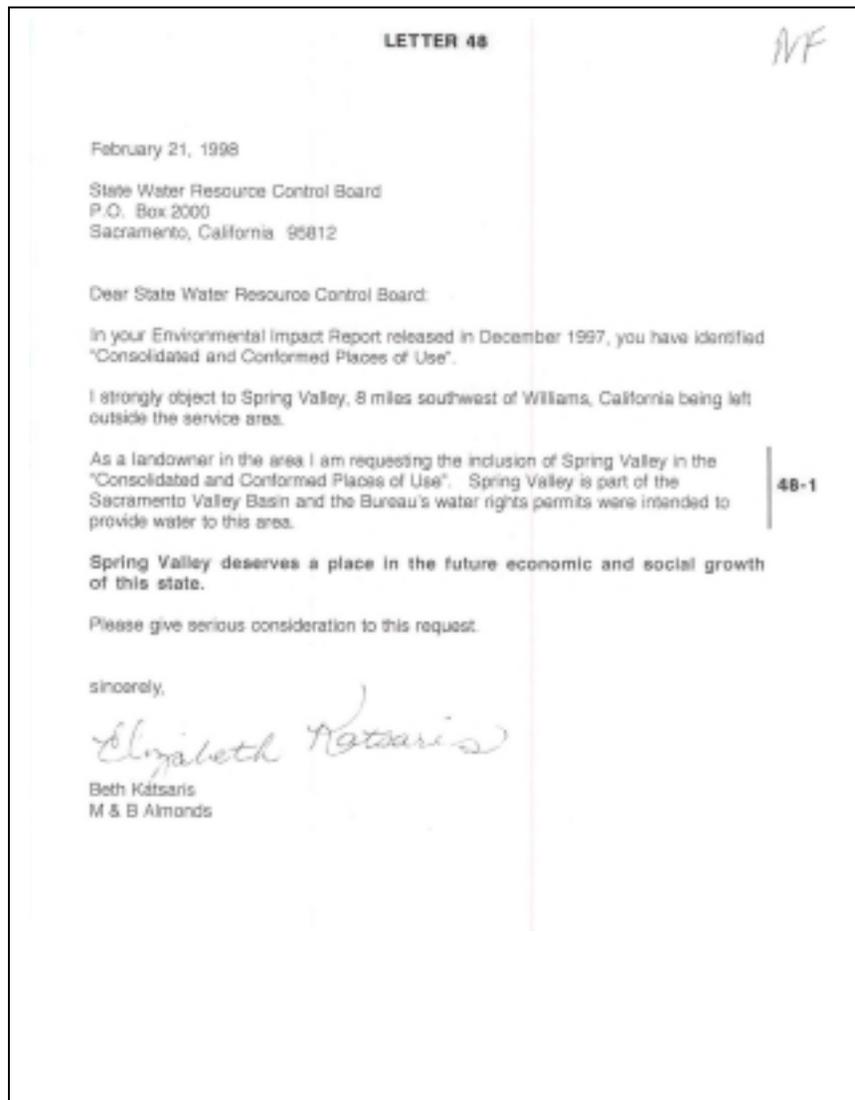
We appreciate your cooperation and assistance. If you have any questions, please don't hesitate to contact me.

Sincerely yours,

ALAN H. HARVEY
City Manager

ANH:rn
cc: Mayor and Council
Mike Ryan, Area Manager
Don Butera, Bureau of Reclamation, Willows
Mike Fulkenshein, State Water Resources Control Board

1650 Stanton Drive / P.O. Box 777 / Shasta Lake, CA 96019 / (916) 275-7400 / FAX (916) 275-7414

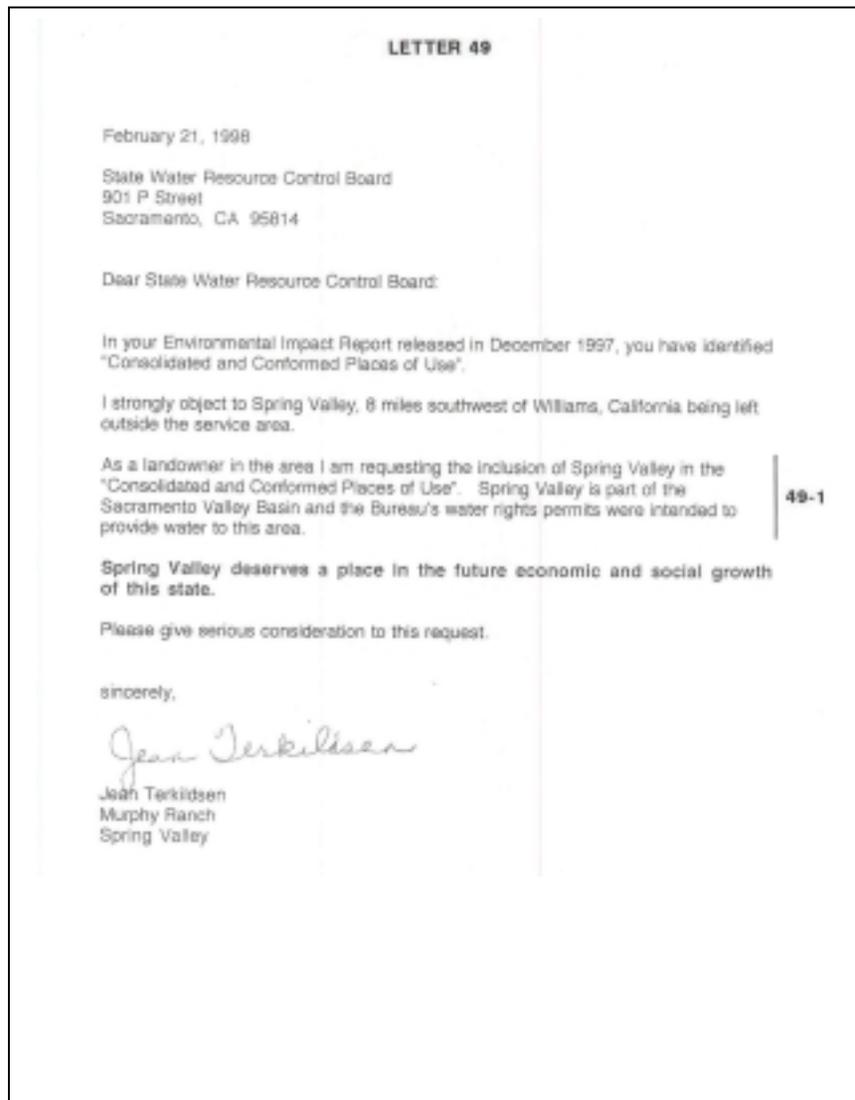


Responses to Comment Letter 48

- 48-1 This DEIR addresses the consequences of expanding the POU to correspond to the CVP contract service areas currently recognized by Reclamation. Changes to this CVP contract service boundary are not the subject of the pending petition or this DEIR.

Responses to Comment Letter 49

- 49-1 This DEIR addresses the consequences of expanding the POU to correspond to the CVP contract service areas currently recognized by Reclamation. Changes to this CVP contract service boundary are not the subject of the pending petition or this DEIR.





Responses to Comment Letter 50

50-1 Comment noted. No response required.

Responses to Comment Letter 51

FROM: JOHN HERRICK PHONE NO.: 209 956 0154 Rev. 01 1998 02-0479 P1

*MF
Original*

LETTER 51

SOUTH DELTA WATER AGENCY
3631 West March Lane, Suite 332 East
Post Office Box 70392
Stockton, CA 95267
(209) 956-0150
FAX (209) 956-0154
Email: jherrick@swa.com

FAX COVER SHEET

TO: MIKE FALKENSTEIN, CHIEF

FAX NO. 506-671-0465

MAITER: SDWA

FROM: JOHN HERRICK, ESQ.

MESSAGE

SOUTH DELTA WATER AGENCY'S COMMENTS TO ENVIRONMENTAL IMPACT REPORT FOR THE CONSOLIDATED AND CONFORMED PLACE OF USE ~~will follow~~. They have also been sent attached to SOUTH DELTA WATER AGENCY'S COMMENTS TO DRAFT ENVIRONMENTAL IMPACT REPORT FOR IMPLEMENTATION OF THE 1995 BAY DELTA WATER QUALITY CONTROL PLAN to Victoria Whitney via Fax and will also be mailed out today.

Number of pages (including a cover page) 3 Date Sent 4-1-98 Time Sent 2:50 p.m.

Original WILL NOT follow Original WILL follow by:
 U.S. Mail
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FROM : JOHN HERRICK PHONE NO. : 209 956 8154 Rev. 01 1998 03:05PM P2

**COMMENTS TO ENVIRONMENTAL IMPACT REPORT
FOR THE CONSOLIDATED AND CONFORMED PLACE OF USE**

SDWA submits the following comments to the Bureau of Reclamation's request to consolidate and conform the places of use of some of its permits as will be considered during the water rights phase to implement the 1995 Water Quality Control Plan.

It appears that the purpose in part of the request to consolidate and conform places of use is in part to validate current violations of the CVP permits as to place and purpose of use. It is difficult to remove deliveries from those who have become dependent on them, but if violations routinely lead to a modification of permits, the permit process becomes meaningless.

Part of the purpose of the proposal is to establish a potential for delivering water to areas now beyond current deliveries and beyond the permits in place or purpose of use. The additional water for those areas is not intended to be taken from other CVP contractors. It will, therefore, be taken from non-CVP water users. If it is not taken from other water users, it will not be delivered, and the expansion of place and purpose of use merely raises false expectations. **51-1**

Since the existing permits are for diversion rather than consumption, the potential impact on non-CVP contractors should be based on watershed analysis of available water for all purposes. **51-2**

During all of some water years and most of many water years, the water yield of the entire Delta watershed is already over-committed. It is all used for consumptive use in the Central Valley, plus committed exports from the Valley, plus the Delta outflow requirements required by the SWRCB's Water Quality Control Plan. Excess water is only available when the mandated Delta outflow is exceeded. At all other times, a delivery of water to new areas and purposes of use can only occur at the expense of other uses: either a reduction in the use of return flows and replenished groundwater for consumptive use by wetlands and agricultural lands, or a reduction in existing exports. The latter is not what the Bureau intends.

The Bureau can typically only extend its places and purposes of use of water by depriving non-CVP water users at some place and time in the watershed. The EIR fails to examine this potential impact on non-CVP water users. The EIR is, therefore, inadequate; and the SWRCB should not grant the changes in place and purpose of use **51-3**

COMMENTS TO EIR Page - 1 -

- 51-1 The petition pending before the Board does not affect the volume of CVP water delivered in accordance with water service contracts with Reclamation. The use of non-CVP water sources on lands outside the POU is not a subject of this petition or alternatives.
- 51-2 The petition pending before the Board would not impact non-CVP water users. A watershed analysis of available water is not needed to adequately discuss the impacts of the proposed project and alternatives.
- 51-3 The petition pending before the Board will not alter the amount of CVP water contract to individual water contractors. The petition only requests that the POU be expanded to correspond to the boundaries of the individual CVP water contractors that have or could deliver CVP water to lands outside the POU.

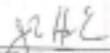
FROM : JOHN HERRICK

PHONE NO. : 209 966 8154

Apr. 01 1998 03:05PM '98

that will lead either to false hopes, or to deliveries to expanded portions of the CVP permit area at the expense of third parties. It is unlikely that these third parties typically have water rights inferior to CVP water rights. In any event, the impacts must be addressed and not ignored. **S1-3**

Dated: April 1, 1998

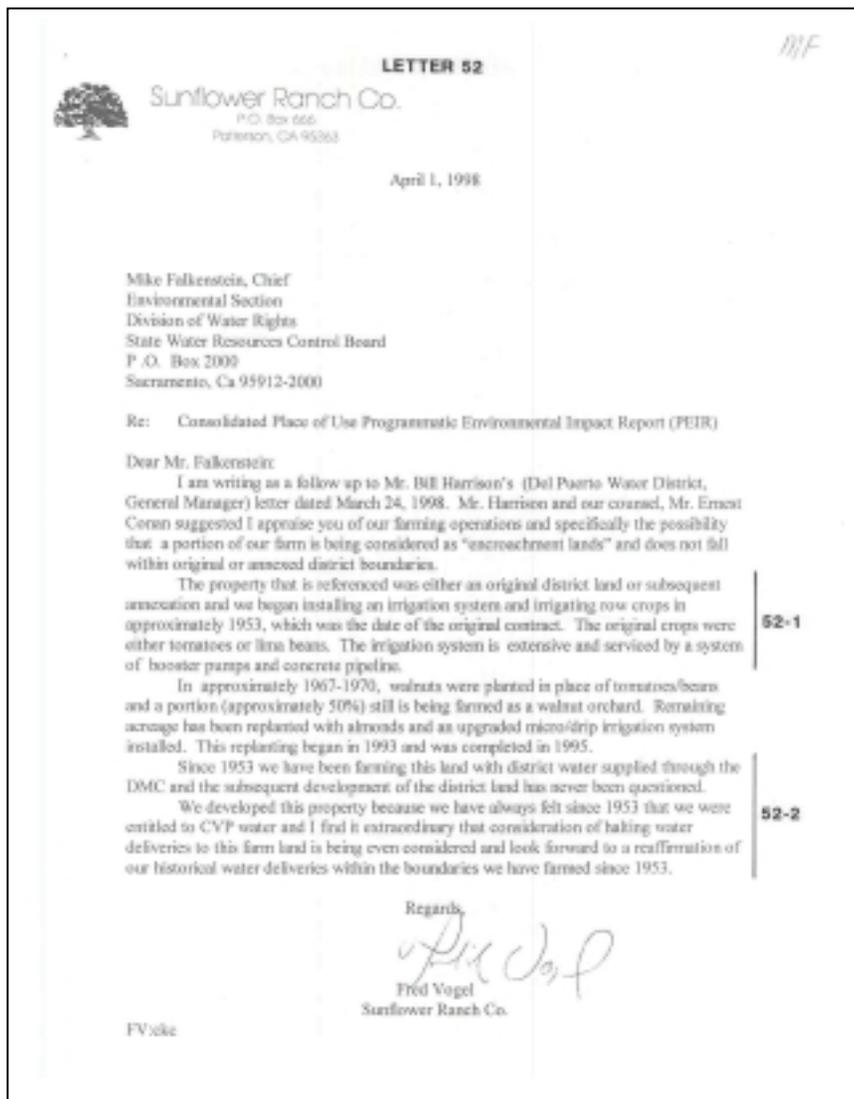


JOHN HERRICK, Attorney for
SOUTH DELTA WATER AGENCY

CHDPA/Comment SA Page of Six

COMMENTS TO EIR

Page 3



Responses to Comment Letter 52

- 52-1 Comment noted. As noted in Table 3-21 of the DEIR, those lands outside the Del Puerto Water District that receive CVP water supplies were originally supplied by other water sources. CVP water delivery to encroachment lands did not induce environmental changes to this area.
- 52-2 This DEIR addresses the consequences of expanding the POU to correspond to the CVP contract service areas currently recognized by Reclamation. Changes to this CVP contract service boundary are not the subject of the pending petition or this DEIR.

LETTER 53 MF



TRINITY COUNTY
BOARD OF SUPERVISORS
P.O. Drawer 1813 (530) 623-1217
WEAVERVILLE, CALIFORNIA 96093
Dore A. Portland, Clerk
Jerrisa Nix-Temple, County Administrative Officer

March 17, 1998

Mike Falkenstein, Chief
Environmental Section, Division of Water Rights
State Water Resources Control Board
P.O. Box 2000
Sacramento, CA 95812-2000

Dear Mr. Falkenstein,

This letter is Trinity County's comment on the Draft Program Environmental Impact Report (PEIR) for the U.S. Bureau of Reclamation Petition to Consolidate and Conform the Place of Use for 16 of its Central Valley Project Water Rights Permits.

For your information, Trinity County protested this application in 1987 and has yet to receive a response to our protest.

The draft PEIR analyzes environmental effects of Central Valley Project operations on areas of water delivery, but ignores impacts in the areas of water origin. Discussion of the latter impacts is required to appear at least in the "Cumulative Effects" and "Cumulative Effects of Past Land and Water Development" sections, but these sections neglect the subject entirely. Readers of the PEIR might conclude that Central Valley Project operations have had no appreciable impact on the areas of water origin, including the Trinity River Basin. 53-1

In fact, however, the diversion by the CVP of most of the water from the Trinity River has had profound adverse environmental and economic effects in the Trinity River watershed, signified by inclusion of the Trinity River as an "Impaired Waterbody" under the Clean Water Act. Failure of the PEIR to disclose and discuss these effects when evaluating a proposal to legitimize and expand existing extra-legal uses of CVP water (including Trinity water) limits the ability of the SWRCB to determine the relative benefits of various water uses and make an informed decision.

We request that no action be taken to expand the legal CVP delivery area before the legally mandated decision to restore adequate instream flows to the Trinity River is implemented. 53-2

The PEIR should also disclose the reason for and impacts from enlarging the CVP place of use around Trinity Lake. Will such an enlargement of the CVP service area allow for increased water exports from the Trinity River basin such as groundwater pumping? 53-3

We believe it is SWRCB's responsibility to analyze in the PEIR whether the diversion of water from the Trinity basin, through the Delta, and to areas with arid/semiarid soils or adverse CVP-induced impacts is a wasteful and unreasonable use of water within the meaning of Article X, Section 2 of the California Constitution in light of the substantial associated environmental

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STEP NORMAN JIM FACELLE RALPH MORGAN RAYMOND L. HOFFER ROBERT W. HUI

Responses to Comment Letter 53

- 53-1 This DEIR is not intended to address the impacts of past CVP operations on areas in California, except those lands outside the POU that have received or could receive CVP water.
- 53-2 Comment noted. The petition pending before the Board has no relation to a decision to restore instream flows to the Trinity River.
- 53-3 No changes to the POU surrounding Trinity Lake are proposed as part of the pending petition. The petition only proposes to expand the POU in locations where 26 water contractor service areas extend beyond the existing POU boundary. (Note: Based on the revised POU boundary, the pending petition only affects 19 CVP water contractors with lands located outside the POU.)

problems which have been documented at each step of the arrangement.

We are also incorporating by reference our comments to Victoria Whitney on the draft EIR for implementation of the 1995 Bay-Delta Water Quality Control Plan. All comments on that DEIR are applicable to the CVP consolidated and conformed places of use PEIR.

If you have any questions regarding our comments, please contact Tom Stokely of our Natural Resources Division at (530) 628-5949.

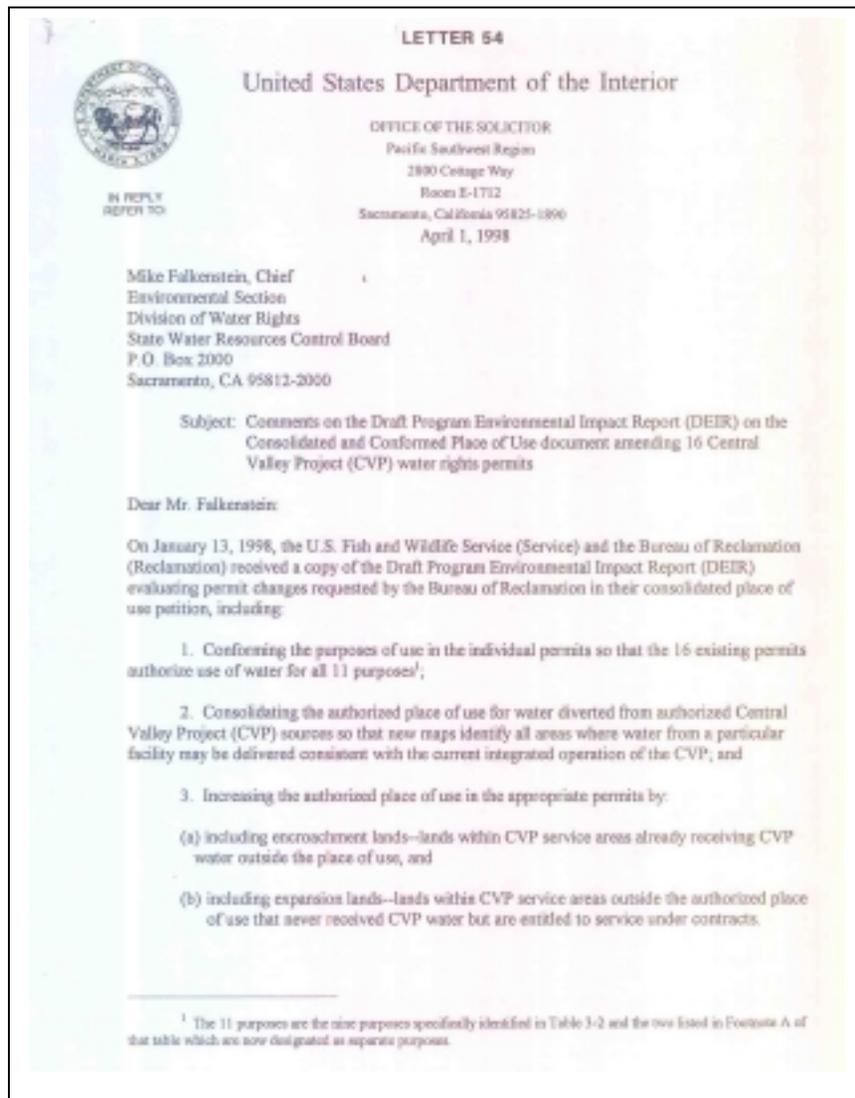
Sincerely,

TRINITY COUNTY BOARD OF SUPERVISORS

A handwritten signature in cursive script that reads "Ralph Modine".

Ralph Modine, Chairman

Responses to Comment Letter 54



Mr. Mike Falkenstein

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The following comments, both general and specific, are on this document from the perspective of evaluating program-level impacts to fish, wildlife, and their associated habitats. The Service and Reclamation have provided recommendations to the General Comment section as applicable.

GENERAL COMMENTS

1. The DEIR identifies the 26 districts that presently include lands which are outside of the place of use line drawn on the GIS map prepared by Reclamation. When Reclamation amended its change petition to only conform to present contract service area boundaries, the appropriate environmental analysis should have been to analyze the areas which were not authorized through the various conditions in the CVP permits. The place of use line on the GIS map should have been changed to recognize the original contract service area boundaries and include the areas which were authorized for water delivery without a requirement for a change petition and approval by the SWRCB.

Reclamation has examined its CVP contractors' original and existing service areas and found that only six of the 26 districts identified in the DEIR have annexed additional lands which would have necessitated the filing of a change petition with the SWRCB. That reduces the total acreage for environmental analysis of encroachment and expansion lands to 46,948 acres, which replaces the 834,667 acres addressed in the DEIR. The six districts are: the City of Avenal, the City of Coalinga, Del Puerto Water District, El Dorado Irrigation District, San Luis Water District and Westlands Water District. The information in the DEIR can be used to analyze the environmental impacts of providing CVP water to the reduced acres because it is a subset of the present analysis.

Consequently, Reclamation has concerns with respect to the need for mitigation requirements relating to the inclusion of the "expansion lands." These lands do not presently receive CVP water even though they are currently within the boundaries of various CVP contractors. However, Reclamation's change petition does not allow for any increases in the amounts of CVP water delivered to CVP contractors nor does it envision any changes in the current distribution of CVP water within the CVP contractors' respective service areas. Therefore, the SWRCB as a water management agency should not withhold approval pending future environmental documentation. As explained above, the gross place of use for CVP water has traditionally included the cumulative service areas of CVP contractors. Water delivery impacts have always been analyzed according to the net acreage within a gross area. This petition does not increase the net acreage for the CVP. It only modifies the gross boundary to conform with the present legal service areas of those districts which have entered into water service contracts with Reclamation.

Recommendation - Reclamation recommends that the analysis be revised to only include those CVP contractors' service areas which have been annexed since the original contracts were signed and which required SWRCB approval to be within the authorized place of use. In addition,

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Reclamation recommends that inclusion of the expansion lands in the authorized place of use not be withheld pending future environmental documentation.

2. The original petition Reclamation filed in 1985 was for about four million acres of expansion lands. This DEIR includes only 834,667 acres.

Recommendation - The Service recommends providing a more complete explanation of the reason(s) why the additional ~3.1 million acres of expansion area were not included in this process.

3. As defined in section 15126 (d)(1) of the California Environmental Quality Act (CEQA), understanding the "project objective(s)" is essential to "discuss the alternatives to the project or its location which are capable of avoiding or substantially lessening any significant effects of the project [on the environment], even if these alternatives would impede to some degree the attainment of [these] project objectives . . ." No identification of "purpose" can be found within this EIR document. The most obvious purpose might be to bring the Central Valley Project into legal conformity under its existing State permit(s).

Recommendation - [Clearly identify the purpose of Reclamation's petition.

4. The DEIR provides on pages 2-3 and 5-8 that future SWRCB approval will be necessary before CVP water can be delivered to the expansion areas.

Recommendation - Reclamation recommends that further SWRCB approval is not necessary for this permit process and should be deleted. The impacts of the delivery of CVP water to the expansion areas will be addressed in National Environmental Policy Act (NEPA) documentation and consultation consistent with the Federal Endangered Species Act (ESA) that must precede the long-term renewal of all existing CVP water service contracts. See also General Comment 8.1 and the related Recommendation.

5. Conformed Purpose of Use

There is no discussion of potential impacts of changing the permits to allow all 11 beneficial uses of water within the existing and proposed Places of Use.

Recommendation - Explain in the DEIR that this subject is not discussed in detail because the possible changes in the types of use of CVP water within the CVP contractors' respective service areas will be addressed in the NEPA documentation and ESA consultation that must precede the long-term renewal of CVP contracts.

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6. Consolidated Authorized Place of Use

The DEIR does not include an analysis of the impact of the consolidation of the authorized places of use under the various permits.

Recommendation - Reclamation recommends that the DEIR explain that such an analysis was not included because consolidation of the authorized CVP places of use will not result in any increases in the supply of CVP water provided to CVP contractors; will not result in any changes to the points of diversion and redirection specified in the CVP water right permits; will not change the distribution of CVP water; and will not result in the expansion of the CVP authorized places of use. Therefore, such consolidation merely recognizes the integrated nature of Central Valley Project operations by having the place of use map for a facility reflect where the water can physically be delivered.

7. Increasing the Place of Use

The DEIR's analysis of effects on habitat is uneven. For example, some tables look at habitats singularly, while others combine habitats (i.e., alkali scrub/grasslands).

Recommendation - The Service recommends that the information in the tables be more accurately delineated, especially if the SWRCB requires specific mitigation.

8. Endangered Species Issues

8.1 The DEIR proposes to condition inclusion of expansion lands in the place of use contingent on future approvals of the SWRCB.

Recommendation - The DEIR should be amended by replacing this requirement with the following:

"The proposed project would add expansion lands to the existing place of use and increase acreage for CVP water delivery. This water could be delivered under the proposed project, could provide for additional land conversions, and has not been delivered as yet. Reclamation will consult, consistent with requirements of the ESA, with the Service on these actions (e.g. additional native land conversions) for impacts to listed species. Reclamation and the Service are currently in ESA programmatic consultation on implementation of the Central Valley Project Improvement Act (CVPIA); the consultation includes CVPIA-related actions, operation of the CVP, and a process for addressing future endangered species impacts." See also General Comment 4 and the related Recommendation.

54-1

8.2 Table 4-1, and the tables included in Appendix D are inconsistent with Service records regarding the quantity of special status species associated with the expansion lands.

54-2

54-1 Further expansion of the POU to lands that do not currently receive CVP water requires additional CEQA compliance at the time specific projects are proposed to be developed on the expansion lands. Therefore, the Board cannot take a final action to approve expanding the POU until CEQA requirements for the delivery has been completed.

54-2 Table 4-1 only addresses encroachment lands that have historically received CVP water supplies. It does not address expansion lands as noted in this comment.

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<i>Recommendation</i> - The Service recommends the SWRCB obtain accurate species lists from the Service (see attachment 1).	54-2
9. Data Accuracy	
The Service feels it is unclear what data sources were used to produce the land use maps in the DEIR. Some of these maps do not align with current land uses identified in California GAP GIS data from 1990, or with data collected from ongoing CVPIA processes such as the Ducks Unlimited mapping processes (1994-95). No discussion exists as to the accuracy of scale, and sources of the GIS data. In addition, no discussion exists on how the data interrelates based on the similarity or discrepancy of scale. Care should be taken to accurately explain and display the historic location of the place of use in relation to encroachment areas as it's difficult to understand how the process to evaluate areas outside that line was performed given the line may actually be miles wide as a result of the level of uncertainties.	54-3
<i>Recommendation</i> - Should the SWRCB require further mitigation, the Service recommends this data in the DEIR be updated. The tables in section 3 provide estimates of the types of native habitat existing within specific service areas; therefore, associated maps should also identify these individual habitat areas (e.g., riparian, grassland, etc.). The most accurate and up-to-date information should be used on the maps and calculations of habitat types. Aerial photo information and GIS databases are available.	
10. Mitigation	
10.1 The DEIR states that Reclamation and the SWRCB will work jointly to "develop criteria for evaluating the effectiveness of future environmental restoration or mitigation projects in restoring the appropriate environmental/habitat values needed to mitigate encroachment land impacts." Because the Service and Reclamation are joint lead agencies on many of the programs mentioned in section 5.1.1 (Mitigation for Encroachment Land Impacts), and the Service routinely establishes and/or reviews habitat mitigation programs, the Service feels it must be included as part of this effort.	54-4
<i>Recommendation</i> - Change the language in DEIR to reflect that the Service will be included in this process.	
10.2 The DEIR stresses "environmental values" or "habitat values" to replace habitat losses within encroachment areas.	54-5
<i>Recommendation</i> - Provide an explanation of how lost environmental values or habitat values will be calculated.	
10.3 Mitigating for Encroachment Areas - Because this is mitigation of past CVP effects, and the CVPIA was signed into laws specifically to provide mitigation for the CVP, benefits	54-6

54-3 Habitats and land uses found in CVP water contractor service areas outside the authorized POU were identified from several sources including: California Department of Water Resources land use maps, discussions with water contractor representatives, and on-site field observations of selected areas.

The precise location of the authorized POU boundary is subject to questions because of the general methods originally used to place it on maps. Corrected GIS POU boundary maps have been drawn according to specific rules and consistent methodology. These revised maps are presented in the Final EIR.

Mitigation for encroachment land impacts will be achieved through ongoing programs being undertaken by Reclamation and other agencies. With the participation of SWRCB staff in these programs, Reclamation's activities can be focused to specifically address those environmental/habitat values affected by the delivery of CVP to encroachment lands.

As noted in Section 5.2 of the DEIR, prior to the delivery of CVP water to expansion lands, additional CEQA review will need to be performed to assess potential site-specific impacts of water delivery. At that time, additional site-specific habitat and species data can be developed or updated if needed to accurately characterize environmental conditions.

54-4 The Board does not object to the USFWS participating with Reclamation in the joint development of criteria for evaluating the effectiveness of future restoration/mitigation needed to mitigate encroachment land impacts, however as lead CEQA agency, it is the Board's responsibility to make the final determination regarding the adequacy of measures to mitigate significant impacts on the environment.

54-5 The type and extent of identified habitats on specific encroachment lands; the estimated ability of these land to support historic species populations; the proximity of specific lands to other associated habitats; the ability of these lands to support single or multiple target species; and, the uniqueness of specific habitats in relation to other lands remaining in the Central Valley are possible examples of methods for calculating habitat values.

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associated with implementation of the CVPIA can be used to help reduce mitigation needs for this Consolidated and Confirmed Place of Use process. These CVPIA programs, as provided in the DEIR, will include actions to restore anadromous fish species, wetlands and associated species, and other species and habitats not specifically enumerated in the CVPIA, (b)(1) "Other" Program. Although the (b)(1) "Other" Program currently focuses on meeting the needs of identified special-status species, it will eventually focus on providing mitigation for all CVP impacts not specifically enumerated in the CVPIA.

54-6

10.4 Mitigation for Future Impacts within Expansion Areas - The ongoing comprehensive consultation process between Reclamation and the Service for continued operations of the CVP, including the implementation of the CVPIA, will deal with future land conversions in all areas affected by delivery of CVP water including these expansion areas.

11. Contaminant Issues

11.1 In the section pertaining to soil and groundwater resources in the proposed place of use area on the west side of the Westlands Water District (page 3-151, Section 3.4.25.5) contaminant issues are not adequately addressed.

Recommendation: The Service suggests the following wording replace the existing wording in this section:

Elevated selenium concentrations are found in soils throughout Westlands Water District (Tidball et al., 1986). Highest soil concentrations are located primarily along the western boundary of the district. A significant amount of the proposed expansion lands are located between the Panoche and Carrua Creeks where the greatest concentration of selenium is found in the soil.

Although tile drainage systems are not necessary to farm these lands on the western boundary of Westlands, application of irrigation water can mobilize selenium from these lands (See Gilliom, Robert J. 1991. Overview of sources, distribution, and mobility of selenium in the San Joaquin Valley, California. In, *The Economics and Management of Water and Drainage in Agriculture*. Edited by Ariel Dinar and David Zilberman. Kluwer Academic Publishers, and Presser, T.S., W.C. Swain, R.R. Tidball, and R.C. Severson. 1990. *Geologic sources, mobilization, and transport of selenium from the California Coast Ranges to the western San Joaquin Valley: A reconnaissance Study*. U.S. Geological Survey, Water- Resources Investigation Report 90-4070. Menlo Park, CA.) Applied irrigation water may drain naturally into the Panoche and Carrua Creeks via surface and groundwater and could potentially contaminate aquatic systems downslope. There is the potential of increased mass wasting and erosion while borrow ditches or drainage systems along Interstate 5 may intercept water applied to this land. Prior to expansion onto these lands, further assessment of the irrigation practices, drainage potential, selenium concentrations in soil, potential for and degree of selenium mobilization from these lands with irrigation, and groundwater movement will be needed.

54-7

54-6 Comment noted. With SWRCB staff participation in the implementation of ongoing programs to mitigate and restore habitats affected by the CVP, such mitigation can be directed to focus on habitats historically located in encroachment lands.

54-7 As noted on page 3-148 of the DEIR, soils containing selenium concentrations above the US-national median are found in the west side of the San Joaquin Valley. The requirement to prepare project-specific CEQA analyses addressing the delivery of CVP water to expansion lands would provide for further opportunity to address the consequences of delivering CVP water to lands of concern within the Westlands Water.

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In 1990 a Federal-State task force, the San Joaquin Valley Drainage Program (SJVDP), published its recommendations for in-valley management of subsurface agricultural drainage problems (SJVDP Recommended Plan). The SJVDP Recommended Plan identified the following measures for in-valley management of drainage problems in the San Joaquin Valley: source control, treatment, reuse, disposal, land retirement, ground-water management, fish and wildlife measures, and institutional changes. Under the source control component, several management recommendations were made including water conservation, drainage management, crop management, and alternative land uses. Specifically, the SJVDP Recommended Plan determined that land (including new lands) with elevated trace element concentrations (e.g., selenium) should not receive irrigation. In December 1991, four federal (Bureau of Reclamation, Fish and Wildlife Service, Natural Resource Conservation Service, Geological Survey) and four State agencies (Department of Water Resources, Department of Fish and Game, Department of Food and Agriculture, and the State Water Resources Control Board) signed a Memorandum of Understanding that identified the following purpose, "All parties to this MOU will use the management plan described in the September 1990 final report of the San Joaquin Valley Drainage Program (SJVDP Recommended Plan) as the principal guide for remedying subsurface agricultural drainage and related problems."

54-7

11.2 The DEIR identifies lands on the west side San Joaquin Valley (e.g., see Westlands Water District maps) that have been already encroached upon, and are proposed for future agricultural land expansion. The Service notes that many of the lands in this area have been identified as containing elevated concentrations of trace elements such as selenium. The Service believes that permitting the possible use of CVP water on land with elevated soil selenium levels is contrary to previous and current planning efforts (see 11.1 above), may constitute wasteful and unreasonable use of water (Article X, Section 2, California Constitution), and could further exacerbate the loading of selenium into down slope aquatic environments.

54-8

Recommendation - The Service recommends that the SWRCB fully evaluate potential impacts of selenium on fish and wildlife resources, surface water, and groundwater, as recommended in the SJVDP Recommended Plan.

12. Land Retirement

The DEIR does not recognize that the true benefit to wildlife from land retirement is variable, depending on surrounding land use, condition of the land (laser-leveled or not), contaminants (such as selenium in the San Joaquin Valley), amount of actual restoration that is performed on the land, and available corridors for wildlife to move into the area.

54-9

Recommendation - The Service recommends that the 1997 Draft Recovery Plan for Upland Species of the San Joaquin Valley be used when considering the value of benefits to wildlife species from land retirement.

- 54-8 Impact of delivering CVP water to expansion lands will require site-specific environmental impact analysis prior to approval by the Board. At such time, additional CEQA analysis evaluating potential impacts of selenium transportation would be performed if appropriate.
- 54-9 Comment noted. Previous studies and plans, in addition to others that may be completed in the future, can contribute to restoring habitats to achieve desired goals and values.

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SPECIFIC COMMENTS	
1. Page 1-3, Paragraph 3. Encroachment impacts associated with municipal and industrial areas were not evaluated in this document because "impacts caused by these land use developments have already been evaluated in CEQA documents prepared by other local land management authorities." A listing of some or all of the CEQA documents to which reference is being made would benefit the reader.	54-10
2. Page 2-7 thru 2-11. The place of use maps for Trinity, Polson, Shasta and the Delta-Mendocino Canal should be corrected to include the land approved for the place of use in the Agua Fria change petition which was approved by the SWRCB in 1997. Corrected maps are attached (attachment 2).	54-11
3. Page 3-7 and 3-8, Table 3-2. The table should be revised to clarify that "frost protection" and "heat control" are permitted purposes of use.	54-12
4. Page 3-18 and 3-20, section 3.3.6.5. and 3.3.6.6. These pages and sections describe valley-footfill hardwood and montane hardwood habitats, yet the tables within the remainder of the Environmental Setting section refer to acres of "valley-footfill hardwood-conifer." Similarly, fresh emergent wetlands (3.3.6.1) and riparian (3.3.6.7) habitats and grassland (3.3.6.2) and shrub scrub (3.3.6.3) habitats were combined in some way. See also General Comments 7 and 9 and the related Recommendations.	54-13
5. Page 3-19 and 3-20. No discussion of habitat value can be found within the provided definitions, which will be a necessary part of any future mitigation evaluation process. [The existence of State and Federal special-status species should be at least considered as one measuring tool to determine habitat value in any given geographic area. Any additional mitigation would require a process for calculating environmental or habitat value.	54-14
6. Page 3-23, Table 3-7. Two problems occur in this table: 1) the table appears to interchange agricultural and natural land uses. As an example, 230 acres are identified as Agricultural lands for the Anderson-Cottonwood Irrigation District on Table 3-7, while on page 3-25, the 230 acres are defined as valley-footfill hardwood-conifer, valley-footfill riparian/fresh emergent wetland, and annual grasslands; and 2) aggregating expansion lands on the tables in section 3 is confusing. The column "Acres in Expansion Area" should be split into two columns: one totaling all lands already developed using non-CVP sources, the other totaling undeveloped habitat within the expansion areas.	54-15
7. Page 3-58. The map has blank areas within service area boundaries outside the place of use, which should be explained.	54-16
8. Page 3-81, Paragraph 2. The paragraph states EID's service area covers 22,578 acres. Actually, EID's service area covers 118,851 acres. The portion of EID's service area in this	54-17

- 54-10 A list of some or all of other CEQA documents that have been prepared by other local land management authorities will not contribute to a better understanding of impacts associated with the pending petition. Therefore, preparing such a list is not warranted.
- 54-11 A corrected POU map showing the changes associated with approving the Agua Caliente petition will be presented in the Final EIR.
- 54-12 Reference to frost protection and heat control as permitted uses is noted as a footnote in Table 3-2. No additional modification to this table is needed.
- 54-13 Comment noted. The DEIR addresses each of these habitats as discrete habitat types in the discussion presented on page 3-18 through 3-20. However, the tables addressing each CVP water contractor combined associated habitats or those that could not be precisely defined using the level of analysis employed for this document. These tables, however, do provide a reasonable estimate of the habitats that are expected to have been present in the encroachment areas as well as those found in the expansion lands.
- 54-14 Comment noted. Section 5.1.2 of the DEIR states that SWRCB and Reclamation staff will jointly develop criteria for estimating habitat values that need to be restored or mitigated. The process for establishing this criteria, including assigning habitat value, will be developed as part of this effort.
- 54-15 Comment noted. The purpose of Table 3-7 is to summarize existing land uses in each affected CVP water contractor service area. As shown in the case of the Anderson-Cottonwood Irrigation District, the 230 acres outside the POU are expansion lands. In other words, they currently do not receive CVP water supplies. However, as shown, they are in an agricultural land use. Therefore, they must receive water from sources other than the CVP.
- On the other hand, as noted on page 3-35, Table 3-8 shows the habitats that are currently or were historically found in the Anderson-Cottonwood Irrigation District service area. Because the 230 acres have already been converted to an agricultural land use, with non-CVP water sources, these habitat were historically found in this area.
- 54-16 The Final EIR will present a revised Colusa County Water District map that illustrates the land uses.

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permit process totals only 22,578 acres and should be identified as the portion of EID to which CVP water from Folsom Lake is delivered.	54-17
9. Page 3-81, Paragraph 4. The paragraph states that there are 18,945 acres of encroachment lands outside the place of use, while Table 3-7 states 18,495. The correct acreage is 18,495.	54-18
10. Page 3-95, paragraph 5. Change "Approximately" to "Approximately".	54-19
11. Page 4-1, paragraph 3, line 3. Place "1" after the word "Alternative."	54-20
12. Page 4-3, paragraph 3. A listing is provided here of all habitats impacted by the CVP within encroachment lands and is broken down by singular habitat types. However, within section 3, many of these numbers are presented as habitat combinations. See also General Comments 7 and 9 and the related Recommendations.	54-21
13. Page 4-5, Section 4.2.2.1. " 21,678 " should be "21,678".	54-22
14. Page 4-10, paragraphs 2 and 3, and page 4-11, bullets 1 and 2. These sections of the document state that because the volume of water delivered is in accordance with CVP contracts and contracted volume would not change, there would be no effect on river flow or CVP reservoir levels. This does not take into account potential changes in diversion deficiencies and timing associated with a conversion from agricultural supplies to municipal and industrial supplies, a potential constituent of Change 1, or changes as might be initiated as a result of meeting any additional needs of the 21,678 acres of additional expansion lands brought into service as a result of the proposed project. See also General Comments 7 and 9 and related Recommendations.	54-23
15. Page 4-12, paragraph 1, line 6. Place "(expansion lands)" after "other sources."	54-24
16. Page 4-14, paragraph 2, line 4. Change "agricultural" to "agriculture."	54-25
17. Page 4-17, paragraph 5. The DEIR acknowledges that large tracts are important to common wildlife and dismisses the importance of small tracts to common wildlife, but does not indicate how small tracts may be important to listed species. Small tracts may be important to severely restricted endangered species, especially if the tract holds one of a few remaining populations (such as might occur with several endangered plants). Small tracts may also function as important corridors for wildlife. Also, page 4-20, paragraph 1 states that "small and isolated tracts, contain varied habitat quality, and are geographically dispersed" and that "the impact on common wildlife species is considered inconsequential" does not match similar statements made on page 4-21 in paragraph 6 addressing M&I impacts in delivery areas that are small in size. Here, the statement is made that, "Although these habitats are not considered to be large tracts of land, their loss is considered to be a significant impact because of their value to associated vegetation and wildlife species that are dependent on this habitat."	54-26

- 54-17 The EID service area associated with the CVP water service contract that allows water to be delivered from Folsom Lake equals 23,578 acres. The EID boundary encompasses a much larger area of which a portion can be served from Folsom Lake and another portion from Sly Park. The Sly Park service area is addressed in another water service contract that is not part of the pending petition.
- The Final EIR will clarify that the EID water service contract addressed in the pending petition only serves 23, 578 acres of the larger EID boundary.
- 54-18 Comment noted. The Final EIR will show the correct value of 18,495 acres on page 3-81.
- 54-19 Comment noted. The Final EIR will correct the word "Approximately."
- 54-20 Comment noted. The Final EIR will designate Alternative 1 on this page.
- 54-21 See response to Comment 55-13.
- 54-22 Comment noted. The Final EIR will show the correct value of 21,678 acres on page 4-5.
- 54-23 The pending petition would not change the use of CVP water delivered to each water contractor from that allowed under their respective water service contract. In addition, it would be speculative to estimate the volume of water that could be applied to agricultural uses and M&I uses in the expansion area because no specific projects are currently proposed.
- When CVP water delivery to the expansion areas are proposed, additional site-specific CEQA assessment would need to address potential changes to water deliveries that may alter river flows or CVP reservoirs.
- 54-24 Comment noted. The Final EIR will include the term "(expansion lands)" on page 4-12.
- 54-25 Comment noted. The Final EIR will change the term "agriculture" on page 4-14.
- 54-26 Comment noted. The statement on page 4-21 refers to specific riparian habitat found in the Kanawha Water District, San Luis Water District and Westlands Water District. Because riparian habitat is considered a special management habitat (i.e., wetlands), impacts to this habitat type were specifically identified as significant regardless of size.

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18. Page 4-17, paragraph 6. The paragraph states that the proposed project would not jeopardize the long-term existence of wildlife presented in Table D-1 (common wildlife). Because the proposed action includes expansion into previously undeveloped areas, it cannot be known whether the project will jeopardize the continued existence of species, including endangered or threatened species, in the area. Species listed in Table D-2 may occur within these 21,678 acres of expansion land areas. A jeopardy determination on the long-term existence of regional populations or communities of species would be made by the California Department of Fish and Game for California Endangered Species Act (CESA) and/or the Service for the federal ESA.	54-27
19. Page 4-18, Table 4-6. This table treats habitat categories (such as Valley foothill riparian, fresh emergent wetland, annual grassland, and alkali scrub) differently than tables in the rest of the document. See also General Comments 7 and 9 and related Recommendations.	54-28
20. Page 4-19, Table 4-7. Tables throughout section 3 provide a total of 140 acres of riparian/fresh emergent wetland habitats and 58 acres of fresh emergent wetland habitat encroached by CVP water supplies. Table 4-7 combines these totals under the combined title. See also General Comments 7 and 9 and related Recommendations.	54-29
21. Page 4-19, paragraph 4. Remove second "value to" on line 3.	54-30
22. Pages 4-30 to 4-32, Sections 4.8.1 and 4.8.2. The conclusions in the water quality sections lack detailed assessment of potential impacts on water volumes, water quality, and future water use, demand, and availability. In terms of non-point source pollution many small scale actions cause large scale impacts. Individually the impacts may appear small but added together there may be a significant impact.	54-31
23. Page 5-2, Table 5-1. The table needs to be updated to include all threatened and endangered species, as well as special status species. As mentioned earlier, these special-status species lists by contractor area may be smaller than prudent given that they should include potentially occurring special-status species, and Service records show many more listed species meet this definition than provided.	54-32
24. Page 6-1, paragraph 1. The statement that, "... because there have been many projects in the Central Valley that have been implemented by federal, state, local, and private entities, it is not possible to assign responsibility for historical impacts on the physical and biological resources of the region to any single entity or group of entities" is not consistent with the analysis provided for encroachment areas in this document.	54-33
25. Page 6-2, Figure 6-1. More explanation is required for this table. From the information provided, it appears that Figure 6-1 compares CVP irrigated lands on the Valley floor with irrigated lands and farm areas both within and outside the Valley floor. The term "Valley floor" is a general geographic term and should be better defined. Referring to "outside the Valley floor" is vague; it is not clear how far removed from the Valley floor this analysis goes. An explanation of	54-34

- 54-27 Because the expansion lands affected by the proposed project are relatively small in extent, isolated from one another, and there is only enough CVP water supplies to serve an estimated 21,678 acres of expansion lands, the delivery of CVP water to these lands would not jeopardize the long-term existence of regional populations or communities of common wildlife species that may be found in those areas. Because of the abundance and wide distribution of these common species, the limited impact of expanding the POU would not result in alterations of habitat to the extent that associated common species would be significantly affected. This conclusion, however, does not apply to uncommon species including those designated as threatened or endangered.
- When future water delivery projects are proposed that would deliver CVP water to expansion lands, additional CEQA review would be needed. If determined that the future project could potentially impact endangered or threatened species, as listed in Table D-2, the USFWS and/or the California Department of Fish and Game would need to determine if the future project would jeopardize such species.
- 54-28 See response to Comment 5-13.
- 54-29 Comment noted. No response required.
- 54-30 Comment noted. The Final EIR will remove the unneeded text from page 4-19.
- 54-31 Comment noted. The proposed project would not change the volume of wastewater generated from either point or non-point sources. Future land development that could potentially occur in the expansion areas would need to be analyzed in accordance with CEQA prior to implementation. At that time, appropriate measures could be identified to mitigate future increases in wastewater generation, if found to be needed.
- 54-32 Comment noted. See response to Comment 55-2.
- 54-33 This section of the DEIR addresses cumulative effects associated with implementing the proposed project and other past, current, and reasonably foreseeable future projects. In this regards, the statement referenced in this comment refers to other past projects that have contributed, in a cumulative manner, to impacts on the environment.
- 54-34 The term "Includes Lands Outside the Valley Floor" referenced on Figure 6-1, notes that the statistics used reflect county-wide total acreage. In several cases, the specific county boundaries include lands that extend to higher elevations above the valley floor. For instance, Fresno County includes farms located in the Sierra Nevada Foothills that are included in this total.



54-34 (Cont.) The purpose of this figure was not to compare the totals of CVP irrigated land with lands receiving other water supplies. The purpose of this figure was to illustrate trend in irrigated acreage served by CVP facilities and the trend of agricultural development served by other sources.

While a comparison of converting agricultural lands to M&I land uses would be interesting, such a conversion is not proposed as part of the pending petition. Therefore, such an analysis would not contribute to understanding impacts associated with the pending petition.

Species List Requests



New Service Areas!

US Fish & Wildlife Service
3310 El Camino Avenue, Room 130
Sacramento, California 95821-6340

Counties

The Sacramento Fish and Wildlife Office can supply lists for locations within the following counties:

Alameda	Nevada
Alpine	Placer
Amador	Flume
Bates	Sacramento
Calaveras	Santa Clara
Contra Costa	San Francisco
Colusa	Shasta
El Dorado	San Joaquin
Fresno	San Mateo
Gleason	Solano
Kings	Sonoma
Lake	Stanislaus
Lassen	Sutter
Madera	Tehama
Merced	Tulare
Monterey	Tuolumne
Mariposa	Yuba
Matin	
Napa	

Mendocino - Russian River basin only

Mono - north of Mono Lake

Kern - north of the Tehachapi crest and west of the Sierra crest

San Luis Obispo - Carrizo Plain only

Siskiyou - Sacramento River basin only

Field Office Jurisdiction

The Sacramento Fish and Wildlife Office has jurisdiction over the Central Valley, the coast from San Mateo County through Sonoma County, the Russian River basin, the western slope of the Sierras and the eastern slope of the Sierras from just above Mono Lake through Lassen County. The remaining of the state are administered by the Vanzara, Carlsbad, Arcata and Klamath Falls, Oregon, offices.



Requesting a List

To obtain a species list for projects in areas under the administration of the Sacramento Fish and Wildlife Office, submit a request in writing to the address on the cover of this pamphlet. Send the request Attn: Section 7 Office Assistant.

You may fax the request to us at (916) 979-2723.

Include the name or number of the U.S.G.S. quad, if you know it. Otherwise, provide a map or detailed description of the location. You may use township and range descriptions. If you want a county list, just give us the name of the county.

If you want information on more than one quad, specify whether you want separate lists or one combined list.

Official lists can take up to 30 working days to prepare. Often they are prepared more quickly. An unofficial list may be obtained on shorter notice, however it cannot be used as the official list for projects that could affect endangered or threatened species.

For more information call (916) 979-2751.
Ask for the Section 7 Office Assistant.

Arcois	(707) 822-3201
Carlsbad	(519) 431-6648
Klamath Falls	(541) 885-8481
Ventura	(805) 644-1766

Available Services

The Sacramento Fish and Wildlife Office can provide lists of endangered and threatened species known to occur in the Central Valley, Sacramento-San Joaquin Delta, and San Francisco Bay regions of California.

All species officially listed, proposed for listing or candidates for listing by the U.S. Fish and Wildlife Service or National Marine Fisheries Service as threatened or endangered are included. Species that have been listed only by the State of California are not included.

Lists can be provided by county or by U.S. Geological Survey 7.5 minute quads. These are geographical units approximately the size of the city of San Francisco.

There is no charge for species lists.

