BAY-DELTA URBAN COALITION

July 26, 1996

Mr. Roger Patterson
Regional Director, Mid-Pacific Region
U.S. Bureau of Reclamation
2800 Cottage Way
Sacramento, CA 95825

SUBJECT: Draft Administrative Proposal for Urban Water Supply Reliability, Central Valley Project Improvement Act

Dear Mr. Patterson:

The Bay-Delta Urban Coalition[1] remains committed to resolving as many CVPIA implementation issues as possible through the administrative process. The following comments are provided on the draft administrative proposal for urban water supply reliability, dated June 14, 1996. Please let us know if any of our comments need clarification. We look forward to working with you to refine and add substance to this and other administrative proposals before September 16th.

INTRODUCTION

The discussion of the water supply contingency planning requirements contained in the California Act of October 12, 1995, should be more clearly connected to Reclamation's urban water supply reliability policy. We presume that the discussion is provided to show the need for Reclamation to clarify the reliability of CVP municipal and industrial (M&I) supplies, in order that CVP M&I contractors can prepare the contingency analyses required by the California Act.

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[1]The Bay-Delta Urban Coalition represents eleven agencies in Northern and Southern California who collectively supply water to approximately 22 million people, and support urban economies which generate over three-fourths of the state's $800 billion gross annual product.

Historical CVP M&I deliveries in 1994 and estimated deliveries in the year 2022 are provided as background. However, the percentages of "total CVP water deliveries" used to describe these historic and estimated M&I deliveries are not appropriately calculated. "Total CVP water deliveries" should include San Joaquin River Water Rights Exchange deliveries, Friant Division deliveries, refuge water deliveries, and other environmental water deliveries which are part of "total CVP water deliveries". The Urban Coalition believes that the purpose of this paragraph should be to put CVP M&I deliveries in context with all other Project purposes; and then to discuss relevant constraints in the allocations to each purpose. As currently written, anyone unfamiliar with the Project would have a distorted picture of the true delivery capabilities of the Project, and the magnitude of M&I deliveries relative to other Project deliveries.

ISSUES

Minimum Level of Reliability: The Urban Coalition generally agrees with Reclamation's proposal to provide a minimum level of reliability equal to 75 percent of historic deliveries, adjusted for growth. However, there is substantial concern that a policy based on historic use has some drawbacks. While the Urban Coalition agrees that urban contractors must implement best management water conservation practices, urban contractors should not be allocated less water during dry years as their conservation programs become more effective. Such reductions in allocations, along with the "hardening of demand" associated with effective conservation programs, could produce substantial levels of hardship. Contractors should receive dry year allocation "credit" for the conserved water, i.e. there should be a "one-way ratchet" which recognizes increases but not decreases of CVP M&I historic use for purposes of shortage allocations. This policy would be consistent with state law which provides that conservation constitutes a beneficial use of water, and rights to the water are not lost due to conservation.

Some contractors, such as the East Bay Municipal Utility District (EBMUD), have existing contracts with a "25 percent preference" for M&I, and it is assumed that the terms and conditions of these existing contracts will continue to be honored until amendment or renewal. However, as allocations are reduced, the "25 percent preference" allocation will eventually reach a minimum allocation of 75% of "historic use". EBMUD has been making contractual payments in anticipation of using the CVP as a supplemental source of supply, but has not yet taken deliveries. The Urban Coalition believes that it would be reasonable to consider the quantity paid for according to the contract prior to passage of the CVPIA (October 1992) as a suitable starting point for "historic use" for the purposes of a minimum allocation (recognizing that "historic use" will build up over time). Legal constraints may prevent EBMUD from taking their dry year allocations from the Folsom South Canal, but this should not affect Reclamation's allocations in accordance with their contract or in accordance with an urban water supply reliability policy. Specifying that the basis for "historic use" is M&I contract payments made prior to October 1992 would prevent any contractor in a similar situation from beginning to pay for water in order to develop a record of use for a "paper water" transfer.

The potential administrative solution discusses Reclamation performing an analysis of impacts to agricultural contractors and possible mitigation measures, but it is unclear what Reclamation is considering here. Reclamation should acknowledge in this discussion that CVP M&I contractors are already providing mitigation in at least two ways: (1) M&I contractors pay a proportionally greater share of Project costs; and (2) Reclamation's historic practice of providing a "25 percent preference" in the majority of CVP M&I contracts is being abandoned. By removing the "25 percent preference" term from new, renewed or amended M&I contracts, more water is generally available from the Project for agricultural water service contractors in normal and wet years. In the discussion of mitigation, Reclamation should state its support for the development of water banking and other agreements among contractors to efficiently manage limited supplies and more frequent shortages.

Consideration and Protection of Other Water Supplies: Reclamation needs to state much more clearly its intent to treat M&I contractors equitably. Except in years of critical water supply availability, similarly situated M&I contractors within the same operational area should be able to expect the same allocation from Reclamation, regardless of what other sources of supply individual contractors may have. The Urban Coalition recognizes that there are critical Project water supply conditions when all water users--agricultural, environmental and urban--should have to justify their need for CVP water, and in this situation, other available supplies are fairly considered. But apart from this rare occurrence, it is not acceptable for Reclamation to propose that "the availability of other water supplies is part of the decision making process."

The first priority of Reclamation policy in this area should be not to penalize contractors who have taken the initiative to invest in alternative sources of supply, nor should Reclamation policy create a disincentive for contractors who are considering the development of alternative supplies. These objectives can be accomplished by providing an assurance that the "historic use" which forms the basis of CVP M&I water shortage allocations will not be reduced if other supplies are substituted, i.e. there should be a one-way ratchet on CVP M&I "historic use" for purposes of shortage allocations. This would ensure some net benefit to the contractor from investments in water recycling, transfers, and other supplemental water projects which generally improve water supply availability for other Project uses.

Regarding the proposal for a "two-tier" level of reliability, it is unclear why this program would be tied to whether or not a contractor has other sources of supply. It is also unclear how this concept relates to the tiered pricing already required by the CVPIA, or where the increased revenues would be credited. Nevertheless, if it is intended that the first tier equal 75 percent, and the second tier equal 75 to 100 percent, then the concept may merit further discussion. For example, the increased pricing in the second tier during drought years could provide a suitable disincentive for contractors to rely on "hardship" water from the CVP. However, we also recognize that not all M&I water users have the financial ability to develop alternative supplies, particularly during prolonged droughts, and some "ability to pay" analysis for the increased price

of "hardship" water may be appropriate. The two-tier level of reliability concept also has merit as a potential mechanism to resolve Delta Protection Act issues raised by some CVP contractors.

Reliability of Water Converted or Transferred from Irrigation to M&I Use: This was a main point of consensus among the workgroup. The Urban Coalition agrees with the proposed administrative solution that water transferred or converted to M&I use should retain its original shortage criteria, however at least two points of clarification are needed: (1) CVP water that is given the M&I level of reliability should be defined as that portion of a contract supply shown in the 1992 M&I Rate Books as the build-out amount on the 50-year delivery schedule. The rationale is that capital costs including capital interest are being allocated to the M&I purpose based on those 50-year delivery schedules. A contractor that has historically been paying for an expected build-up of M&I deliveries should also be able to expect that those deliveries will have M&I reliability. (2) For a permanent transfer or assignment of CVP water from agricultural to M&I purposes, the transferee should be able to request a permanent conversion from agricultural to M&I reliability. This conversion should be accomplished in such a way that there is no water supply or financial impact on other agricultural or M&I contractors.

Sincerely,

BAY-DELTA URBAN COALITION STEERING COMMITTEE*

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