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Ms. Betty Riley-Simpson
Mid-Pacific Region
Bureau of Reclamation
2800 Cottage Way
Sacramento, CA 95825-1898

Re: San Luis Water District's comments on the "Draft Central Valley Project M&I Water Shortage Policy - December 22, 2000".

Dear Ms. Riley-Simpson:

This office is general counsel to the San Luis Water District. The San Luis District's service area extends from the O'Neil Forebay, south along either side of Highway 5, to a point which is approximately due west of the City of Mendota. The northerly portion of the District, (which is over 50% of the District) is in Merced County while balance is in Fresno County. The Fresno County portion is all heavily farmed, and highly productive. The only source of water to the District is its water service agreement with the Bureau of Reclamation. The northerly portion of the District contains some lands which have been, in many of the recent years, tilled but not planted. The water allocated this land is often transferred to the more productive land in the southern portion of the District.

Large portions of the northern end of the San Luis Water District are anticipated to be converted to Municipal and Industrial uses in the foreseeable future. Larger and larger numbers of Bay Area commuters are buying homes in the Los Banos area already and it is thought that they will also purchase homes between the foot of Pacheco Pass and the City of Los Banos and that this development will naturally extend along Highway 5 to the South. At present, a sixty-five unit subdivision and a four hundred unit subdivision have each already been approved in the ID 3 area and each is in the process of obtaining financing to begin construction. There is a proposal before the County of Merced for a massive development which, under the last version which we have seen, proposes to construct another 15,962 residential units, (housing an estimated 42,380 new residents,) inside the San Luis Water District. We understand that this large project anticipates that the construction and sale of all of these units to take place over a fifteen year time period starting with the construction of the first residence. We are aware of another land owner who plans to develop an additional 1,920 residential units in the District.

The San Luis Water District has a water service agreement with the Bureau of Reclamation which allows the District to provide both agricultural and M&I water. Very little of the San Luis District's water was converted to an M&I use prior to September 30, 1994. We, therefore, anticipate that there will be significant demand among the owners of the property in Improvement District No. 3 to convert their agricultural allocation to M&I uses during the first 15 years of the District's new water service agreement. By the end of that 15 year time period, counting just those developments mentioned above, we could have nearly 46,000 additional people living in the San Luis Water District in houses which have not yet been constructed.

So long as the San Luis Water District is considered to be the water purveyor to these new developments, the County of Merced requires the land owners to obtain a "can-and-will-serve" letter from the District as a condition to discretionary planning entitlements being approved by the County. In addition, under the Costa bill, (now codified as Government Code Sections 65302, 65302.2, Public Resources Code Section 21151.9 and Water Code Section 10910 et seq.,) once a proposed project increases the number of residential units served by the District to more than 3,000 M&I connections, the District will be required to issue a letter for each proposed new development stating that there is a reliable long term supply of water available during a normal water year, a single dry year and multiple dry years. If the District cannot issue such a letter then the District is required under the Costa bill to issue a letter which discusses the District's plans for acquiring additional water supplies and which provides estimates of the total cost, financing method and permitting required to obtain supplies. The County will then decide whether the water supplies are sufficient to serve a new project.

During the last few years, the San Luis Water District has taken the position that new M&I development requires a firm, reliable supply of water in order for a can-and-will-serve letter to be issued, (even though the threshold for the Costa bill's application has not yet been reached). During the seven-year drought, as you may know, the District's agricultural allocation was reduced to as little as 25% of the District's contractual supply. The District has, therefore, adopted a policy of treating only 25% of any supply based on a Bureau water service contract as a firm, reliable supply of water for the purposes of M&I residential consumption. However, as you know, the District is located on the west side of the San Joaquin Valley and, since the implementation of the CVPIA provision requiring the diversion of 800,000 acre feet of CVP yield for environmental purposes, all water service contractors on the west side of the San Joaquin Valley have been advised by the Bureau that they can anticipate getting no more than 50% of their contractual supply to wet or normal water years and none of their contractual supply to critically dry water years. CalFed has promised an increase from the 50% level in wet and normal years to up to 65%.

Against this background we are now faced with the proposed M&I shortage policy which says that all agricultural water converted to M&I uses after September 30, 1994, will be subject to agricultural water shortages. The San Luis Water District is primarily an agricultural district at this time. The southern portion of it will probably always remain in agricultural production. We understand that there is only a limited volume of water which the Bureau of Reclamation's current policies will allow to be pumped south of the Delta. In times of water shortage, we have no desire to reduce the water available for agricultural uses even further by diverting a larger percentage of our water to M&I development. However, we are caught in a dilemma. It is clear that at some point in the future there will be significant M&I development in the District. For health and welfare reasons, once these homes are built and occupied, we cannot reduce their water below a certain level. We anticipate that the Bureau's M&I Water Shortage Policy making their M&I water less sacrosanct than M&I water which was converted before September 30, 1994, will become increasingly intolerable.[1] However, we are encouraged by the fact that the Bureau has not enshrined this policy in its form of contract since it is clear to us that this policy will have to change in some fashion long before the end of the 25 year term of the new water service agreements. We would suggest moving toward a policy which uses some portion of the refuge water, some portion of the 800,000 acre feet of "b,2" water and some portion of the "b,1" water to address the hardship faced by homeowners whose homes were built in reliance on M&I water converted after September 30, 1994.

We anticipate that a number of our critics might suggest that the District could avoid this anticipated problem simply by refusing to approve new development. Unfortunately it is not as simple as that. Legally, if the District is to be the water purveyor, it has no choice when asked to issue a can-and-will-serve letter but to issue the letter if the water is available. As noted above, for projects under the Costa bill, if the District determines that the water is not available it must recite how the District intends to find the water to serve future projects, and how much that will cost. The District is not a planning jurisdiction and has no other real control over development. However, a question which we have asked is what would happen if the District did refuse to approve new development and did refuse to issue new can-and-will-serve letters because of the lack of a firm, reliable supply of water. In order to answer the question, we need to discuss a little more of the District's present situation.

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[1]We find ludicrous the suggestion we understand was made at one workshop on this policy by a Bureau official that there may not be hardship water available when the next drought hits and the San Luis Water District has thousands of home owners with no source of water other than the District's contractual supply which was converted from agricultural use after September 30,1994. We believe that this suggestion, if it takes place, would constitute an intolerable abdication by the Bureau of its responsibility for a disaster which this policy will have created.

The Santa Nella County Water District is a separate special purpose district, approximately 90% of the service area of which is contained within the San Luis Water District. The remainder of the Santa Nella County Water District is contained within the Del Puerto Water District, which is, generally, to the north of the San Luis District. The San Luis Water District delivers raw water to the Santa Nella County Water District but the Santa Nella District operates and maintains its own water treatment and delivery system. There is a proposal before the County of Merced to greatly expand the potential boundaries of the Santa Nella County Water District both further into the San Luis District but also into both the Del Puerto District and Central California Irrigation District. If this project goes ahead, we can anticipate another 6,500 residential units housing an additional 18,000 people.

There was a time when new development in Santa Nella was required by the County of Merced to obtain a can-and-will-serve letter only from the Santa Nella District since the Santa Nella District is the retail purveyor of treated water. During the last few years, as the result of much negotiation with the County, on an on-going basis, new development in that portion of the Santa Nella District which is contained within the San Luis District is required to obtain two can-and-will-serve letters for water service: one from the Santa Nella District with regard to capacity for the treatment and delivery of the water and the other from the San Luis District for volume of raw water. With the new proposed development, the San Luis District has been told by the County that some of the development will take place inside the San Luis District's boundaries but may use water from other sources and that development will not be required to obtain a can-and-will-serve letter from the San Luis Water District.

We have had developers in other parts of the District, who did not like the District's current policy with regard to the 25% reliability of CVP water, threaten to form their own community services district or county water district on their land and issue can-and-will-serve letters based on the assumption that the full contractual supply will be delivered every year. Obviously the developers who formed such districts would have sold out their interests long before a drought. The San Luis District, as the public agency with jurisdiction over the area which also has a source of water, would then, in all probability, be compelled to supply water to the development in a level adequate do address health and safety concerns. We take these threats extremely seriously because of our experience in Santa Nella. So far, we have managed to avert this from occurring. However, if we as a District take what is interpreted by the development community (and the County government) as a no-growth posture by refusing to issue any new can-and-will-serve letters, we anticipate that new special purpose districts will be formed within the boundaries of the San Luis Water District, (and over our objections) which will then issue can-and-will-serve letters based on invalid assumptions. In short, the San Luis Water District will lose what influence it has been exerting to put a brake on growth because of the lack of a reliable

water supply and the development will occur anyway. This loss of influence could result in unrestrained growth, which, in our opinion, is in no one's best interests in the long run.

Therefore, we urge you to find another solution to the problem of M&I shortages which does not unduly damage agricultural interests south of the Delta but which allows us to continue to manage the pressure to approve new residential development at least as well as we have been.

Very truly yours,

LINNEMAN, BURGESS, TELLES,
VAN ATTA & VIERRA

By
Thomas J. Keene

cc. David Coxey, San Luis Water District