January 2, 2020

Brenda Burman
Commissioner
Bureau of Reclamation
1849 C Street NW
Washington DC 20240-0001

Via Email & US Mail

Re: Conservation, Fishing and Tribal Comments on Bureau of Reclamation Mid-Pacific Region December 2019 Central Valley Project Final Cost Allocation Study (CAS).

Dear Commissioner Burman,

There are four over-arching and fundamental flaws with the Bureau of Reclamation's CVP Final Cost Allocation Study:

1. **Reclamation's proposal makes a mockery of a Supreme Court determination about Reclamation's program.**[1] The Supreme Court, in 1958, in a well-known case involving the Reclamation

[1] Ivanhoe Irrigation Dist. v. McCracken, 357 U.S. 275 (1958)

program in California described the purpose of the Reclamation Act as providing, "*the greatest good to the greatest number of people*." The Bureau of Reclamation, in the pending Cost Allocation Study, inverted that principle and instead is providing the greatest financial good to a few people.

2. **Reclamation overturns the "user pays" principle pledged by water users.** Reclamation ignores the public pledge by water users that "beneficiaries pay." Instead, they design a cost allocation system that relieves water contractors (recipients of subsidized water from Reclamation's dams, reservoirs, pumping stations and canals) of substantial portions of the very costs they previously agreed to pay.

3. **Reclamation's proposal uses regulatory reform as a platform to impose hidden tax responsibilities on taxpayers in California and throughout the Nation.** The Bureau of Reclamation's pending Cost Allocation Study methodology is, in effect, a secret, undisclosed and unauthorized tax on everyone, but select California water users. The precise size of the "water tax" is unknown, but suffice to say, it involves potentially millions of dollars.

4. **Reclamation requests comments on a proposal, yet key portions are knowingly withheld during the comment period**. The Reclamation proposal is an administrative act of public deception. During the comment period, the Bureau of Reclamation has been withholding key documents, attachments, and supporting documentation essential to Study analysis. This undermines the integrity of this comment process. We are left with no choice, but to believe that your Agency is knowingly and willfully withholding – hiding – critical documentation, information and analysis.

We request that you order the withdrawal of this CVP Final Cost Allocation Study. Attached to this letter is a summary of previous and some additional detailed comments, including links to previous comment letters submitted by the signatory groups. Thank you for the opportunity to comment.

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OVERVIEW OF DETAILED COMMENTS/DISCUSSION RE: Final CVP CAS

For several years, the undersigned have provided comments and attended meetings regarding Reclamation's proposed new cost allocation.[2] On December 11, 2019, Reclamation announced by email that errors were found in the attached final draft (Regional Director's version) of the CVP CAS report, but claimed they were fixed. According to Reclamation "*we are completing this study in the very near future.*" To this day, the public has not been provided a final copy of the CVP cost allocation methodology nor a detailed response to comments.

The final result of the new CVP cost allocation proposal is that the taxpayers will pay more and the project beneficiaries will pay less. This outcome results from arbitrary changes for which the benefits have been misrepresented and the costs to the environment and costs of required mitigation have been arbitrarily and inappropriately shifted away from the irrigation contractors.

The latest cost allocation study also repeats other serious flaws: Reclamation has included inappropriate costs and made questionable estimates of project benefits and alternative costs. Moreover, no assurance is provided that repayment obligations and water quality obligations of the project will be met. Further, if the allocation of costs for any reimbursable purpose is too low, the annual rates necessary to ensure repayment of the full allocated amount by 2030 must increase each year and, if delayed, it is possible that irrigation water users will not have the ability to pay the high rates ultimately necessary to repay their

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[2] http://calsport.org/news/wp-content/uploads/Final-USBR-Cost-Allocation-Methodology-Cmt-Letter-6-4-2014-IFR-Coalition....pdf
http://calsport.org/news/wp-content/uploads/PCL-et.-al.-Cmts-Re-Draft-CVP-Cost-Allocation-Study-April-2019.highlight....pdf
http://calsport.org/news/wp-content/uploads/RE_-Meeting-Availability-for-Cost-Allocation-Study-listening-sessions-August-19-23-2019.pdf
http://calsport.org/news/wp-content/uploads/RE_-Meeting-Availability-for-Cost-Allocation-Study-Listening-Sessions-August-2019.pdf
http://calsport.org/news/wp-content/uploads/PCL-IFR-Coalition-CVP-Cost-Allocation-Completion-October-2019-Cmts.pdf

project costs by 2030. Under current reclamation law, shortfalls in irrigators' ability to pay are passed on to power users for ultimate repayment. [3]

In addition, more than 60 permanent CVP water contract conversions are pending in February 2020, for which the proposed cost allocation rules will lock in the water rates for these permanent contracts. We urge that any final adoption of these permanent water contract conversions should be preceded by an analysis of the environmental, economic, and management impacts of the new proposed cost allocations. Westlands Water District, with an expiring two year interim water contract on February 28, 2019, will be one of the largest beneficiaries of the new cost allocation methodology if adopted. The $2.6 billion dollars in drainage costs to be paid by Westlands and several other San Luis Unit contractors also are not addressed in the allocation proposal. Reduced or eliminated funding for CVP environmental mitigation and for implementing the Central Valley Project Improvement Act (CVPIA) requirements will be some of the biggest negative impacts. As a result, if this methodology is adopted, Federal taxpayers will be on the hook for millions in additional costs. And some costs, such as the $2.6 billion owed for drainage by the San Luis Unit contractors and the associated environmental water quality costs, are not addressed. Further dam safety along with amounts needed for operations, maintenance and replacement are also not included.

Our comments have consistently raised the following fundamental flaws, which still have not been addressed:

1. The without-CVP scenario assumes and fabricates more than 13 million acre-feet of water, which depresses the annual economic benefits assigned to irrigation contractors. The concept that there is 13 million non-CVP surface water acre-feet available to CVP agricultural water contractors is simply not plausible and not supported by facts or data.
2. Further, the methodology is also tainted by the assumption that in the absence of CVP surface water, groundwater pumping acre-feet per year would only rise by 1%. This is not plausible nor supported by data on actual practices.
3. The assumption that 800,000+ annual acre-feet used for CVPIA(b)2 water generates $5,000,000 in economic benefits, while an average of less than 200,000 acre-feet per year for the Water Quality project purpose generates approximately $88,000,000 in average annual benefits is also not plausible. This arbitrary manipulation is especially egregious because the nature of these project purposes and the source through which these assets are acquired are so similar. At these economic benefit levels, the (b)2 benefits per acre-foot are approximately $6.25, while the economic benefits for Water Quality per acre-foot are more than $440.00 per acre-foot. How is this even remotely realistic, especially when the (b)2 water covers a wider geographic area and provides more authorized benefits?
4. The calculations claim economic benefits of 7% for CVP versus 16% for without-CVP but the differential is implausible and not supported by data.
5. The use of the CalSim2 Model used for the CAS methodology has been faulted by government scientists and others that found there are significant spatial and temporal scaling issues and input issues that impact its accuracy for use as a simulation model.[4]

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[3] https://www.usbr.gov/mp/cvp/docs/pl_99-546.pdf

[4] See 12-8-15 USFWS FOIA Request FWS-2016-000259 response --Description of CalSim II Modeling.docx: *There are significant spatial and temporal scaling issues.... The model is actually an optimization model, not a simulation model, so the user specifies what's desirable and what's required and then the solver figures out what the "best" set of reservoir releases are..Climate Change.....*

c) *Not revised FC diagrams (Folsom's taking forever to revise)*

d) *Not changed land use, a.k.a. Level of Development (LOD)*

We share the concern raised by the Inspector General in 2004 and 2012[5], that once again the cost allocations will not generate water rates sufficient to repay project capital costs by 2030 as required. Project costs currently allocated to reimbursable purposes are understated and the latest methodology will result in the federal government recouping even less of its capital investment. Highly questionable assumptions are used, inappropriate costs are included, and Reclamation has made questionable estimates of project benefits and costs. Bowing to irrigators and power contractors, Reclamation's methodology will likely have significant economic and environmental impacts and pass on costs to taxpayers. These impacts have not been addressed.

These reductions in costs to CVP contractors arrive at the exact moment when roughly 66 CVP contractors are seeking permanent water contracts that will lock in these reduced water rates and lack of adequate mitigation costs as required under Reclamation policy and laws.

According to Reclamation, during the last attempt to update the CVP cost allocation methodology, U.S. Fish and Wildlife Service (USFWS) did not participate in the study, but USFWS stated that it is inappropriate to assign any project benefits to fish and wildlife purposes considering the negative impact that the CVP has had on fish and wildlife. In the proposed methodology, Reclamation reduces costs to irrigators further by claiming 'enhanced fish and wildlife benefits.' The Bureau has included benefits that are not applicable to the project, while excluding others that are. The purpose, at least the effect, appears to be to simply reduce cost allocations for irrigators and power contractors while increasing the costs to taxpayers and under-collecting revenue sufficient to pay for the restoration of fish and wildlife habitats that the CVP has disrupted and damaged.

We urge you to not adopt this proposed cost allocation methodology. Federal law requires return to the United States "*revenues at least sufficient to cover an appropriate share of the annual operation and maintenance costs and an appropriate share of such fixed charges...due consideration being given to that part of the cost of construction of works connected with water supply and allocated to irrigation."*[6] The proposed cost allocation methodology is not consistent with Reclamation policy and law. It appears Reclamation is simply walking through a charade of soliciting public input so that they can say that they consulted with stakeholders; however, they have not made any changes other than those that support the predetermined amounts that shift costs to taxpayers and the environment. Please provide us with a copy of the final document that supposedly has been approved by Reclamation and forwarded to you for approval.

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 i) *No change in the types of crops*
 ii) *No change in the relative acreages of various crops*

e) *Not changed Ag or Urban water use efficiency*
f) *Sea level at the Golden Gate Bridge – X, X+6" (15cm), X+18"(45cm) which affects ANN salinity-flow relationships.*

[5] https://www.doioig.gov/sites/doioig.gov/files/WR-EV-BOR-0003-2012Public.pdf and US OIG Report Number W-IN-BOR-0016-2204 Central Valley Project Contract Renewal Process August 2004.

[6] Ivanhoe Irrigation Dist. v. McCracken, 357 U.S. 275 (1958)