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**FISH AND WILDLIFE SERVICE**  
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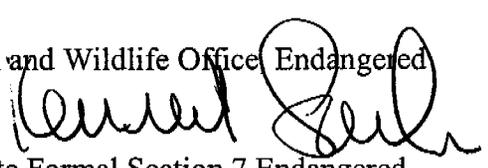


In reply refer to  
1-1-04-I-2958

22 November 2004

**Memorandum**

**To:** Chief, Resources Management Division, Bureau of Reclamation, South-Central California Area Office

**From:** Assistant Field Supervisor, Sacramento Fish and Wildlife Office, Endangered Species Division, Sacramento, California 

**Subject:** Request for Additional Information to Initiate Formal Section 7 Endangered Species Act (ESA) Consultation on Execution of Long-Term Water Service Contract Renewals between the United States and Eight Water Service Contractors of the Central Valley Project's San Luis Unit

This memorandum is in response to your September 14, 2004, memorandum, requesting initiation of formal consultation, pursuant to section 7(a) of the Endangered Species Act of 1973 (ESA), as amended (Act), on behalf of the Bureau of Reclamation (Reclamation) and eight Central Valley Project (CVP) co applicants: the California Department of Fish and Game, the cities of Avenal, Coalinga and Huron, Pacheco Water District, Panoche Water District, San Luis Water District, and Westlands Water District (Contractors). We received your memorandum on September 15, 2004. We provided a draft copy of this memo to Joe Thompson of your staff on October 13, 2004. We further discussed our concerns and information needs with you on a conference call on November 3, 2004. During that conference call, you requested that we finalize this memo.

Your Biological Assessment (BA) for Long-Term Water Service Contract Renewal of San Luis Unit (SLU) Contracts, dated September 14, 2004, concludes that the proposed action is not likely to adversely affect listed plants or wildlife, and would not result in changes to or alterations of habitat used by listed species either known to occur or with the potential to occur in the SLU service area. The BA bases this determination on the assumption that the environmental baseline for listed and proposed species and designated critical habitat potentially occurring within the action area would not change with the implementation of the

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proposed action of renewing the long-term water service and repayment contracts between Reclamation and the eight SLU contractors (page 95 of BA).

The Service has not received all of the information necessary to initiate formal consultation on this project as outlined in the regulations governing interagency consultations (50 CFR §402.14). The BA provides a description of the proposed action and an analysis of effects (separated out by Federal agency or local/private entity). However, the Service believes that the BA inadequately describes: the specific area that may be affected by the action, the manner in which the action may affect any listed species or critical habitat, the effects of related actions, and any cumulative effects. We are therefore not initiating consultation on this project until such a time as the information requested below is provided. Based on the information provided in your BA and in our files, we believe the proposed action has the potential to adversely affect listed species and their critical habitat as described in Table 6 of the BA, and attached to this memo and request that Reclamation provide the additional information requested to initiate formal consultation on this project. In addition to the species included in Table 6, we believe that water deliveries to SLU contractors may also affect groundwater and surface water quality outside of the SLU which could affect delta smelt downstream in the San Joaquin River and Delta.

## **Information Needs**

### Description of the Proposed Federal Action

As stated in the BA, "The proposed action is long-term water service contract renewals that will provide for the continued delivery of up to the same quantities of CVP water contract amounts to the same lands currently covered under the existing long-term water service contracts." We do not believe this comports with Reclamation's July 19, 2004 memorandum on CVP long-term contract renewal consultation parameters. In the July 19 memorandum, Reclamation stated that it is "requesting consultation on delivery of the full contractual entitlement of each CVP water service contractor". The memorandum further specifically distinguishes a difference between consultation on contractual entitlements (which we understand to include all contract assignments, in addition to the long-term contract), and the variable amounts that Reclamation is likely to actually deliver from one year to the next, and states that it wishes the long term contract renewal consultations to address the Federal entitlement rather than historical deliveries.

To the extent that the effects analysis in the BA is premised on effects of historic water deliveries rather than on effects of delivery of full contractual entitlements, the effects analysis in the BA is flawed and must be revised to reflect the effects of the proposed federal action. As an aside, Reclamation's contention in the BA that the next 25 to 40 years of water deliveries are likely to be the same as the past 25 years is also flawed in our view because it ignores programs, such as CalFed, with explicit goals to increase both the amount and reliability of Federal and State water deliveries, numerous projects in various states of

feasibility evaluation to carry out these goals, and actual proposed projects, such as the South Delta Improvement Project, designed primarily for this purpose. It also implicitly assumes that there will be no more opportunities for water conservation technologies to advance water use efficiencies that will help make the same amount of water usable by more people or more acres of crops.

**Information Need #1:** Reclamation needs to rectify the discrepancy in the proposed Federal action between the BA and the July 19, 2004 memorandum, and provide an effects analysis commensurate with the project description.

Contract Service Area Discrepancies

There is significant discrepancy between the acreages of the Contract Service Areas depicted in Table 1 of the BA and Attachment C of the BA. Below is a Table which highlights those acreage discrepancies:

Contractor	Contract Quantity	Contract Type	Area (acres) From Table 1	Area (acres) From Attchmt C
City of Avenal	3,500 afy	M&I	13,120	46,347
City of Coalinga	10,000 afy	M&I	5,248	106,618
City of Huron	3,000 afy	M&I	994	771
Pacheco WD	10,080 afy	Ag	10,080	4,531
Panoche WD	94,000 afy	Ag	39,936	39,952
San Luis WD	125,080 afy	Ag/M&I	66,458	66,267
Westlands WD	1,150,000 afy	Ag	605,422	605,555

Page 28 of the BA notes that, "The San Luis Unit action area includes the water service areas of the eight San Luis Unit contractors as shown in Figure 1. Note that Figure 1 boundaries coincide with boundaries of Districts depicted in Attachment C to the BA, not the area depicted in Table 1.

**Information Need # 2:** Reclamation needs to reconcile the acreages of the contract service area boundaries and provide the maps of service areas that are actually attached to each of the SLU contracts. We realize that Reclamation has provided our office with GIS coverage of water district boundaries; however, we have discovered discrepancies between these maps and maps attached to the contracts in other CVP Divisions. For this reason, we would like to see the maps of water district boundaries that Reclamation will attach to the contract.

Is Providing CVP Water to Expansion Lands Part of the Proposed Federal Action?

The State Water Resources Control Board (SWRCB) issued a Final EIR for the CVP Consolidated and Conformed Place of Use (CPOU) and a Revised Water Right Decision 1641, dated March 15, 2000 (part of which pertained to the Petition to Change and

Consolidate Places of Use and Purposes of Use of Water Under Certain Permits of the CVP). The SWRCB opted not to amend Reclamation's permit to include expansion lands with the CVP districts (lands within CVP districts not having received CVP water and outside the State permitted place of Use). See following language from Decision 1641: "Accordingly, the expansion areas cannot be added to the CVP place of use at this time. Expansion areas can be added on a case-by-case basis in the future, subject to appropriate CEQA documentation and the approval of the SWRCB under Water Code section 1700, et seq., or other provisions of the Water Code." Further the Final EIR for CPOU noted regarding expansion lands, "Potential impacts in expansion areas were discussed at a programmatic level because future land and water uses cannot be determined at this time. **Mitigation will be developed as part of the site-specific environmental documents to be written for the renewal of CVP water service contracts.**"- *emphasis added*. Expansion lands identified in the Final EIR for CPOU within the SLU were as follows:

City of Coalinga: 98,289 acres;

City of Avenal: 30,257 acres (includes 232 acres of habitat that overlap with Westlands Water District: Westlands Water District: 9,417 acres.

A cursory comparison of the maps in the CPOU Final EIR with the BA (Attachment C) and BA Figure 1 shows that the expansion areas are indeed included in the maps provided of the service area boundaries. Because expansion lands are not currently within the CVP POU, we are uncertain as to Reclamation's intent for including them in maps of water district service areas for this consultation. Does Reclamation anticipate federal water deliveries to these lands, or is Reclamation defining the action area to include expansion lands because commingled water supplies enable a larger area to be irrigated, including areas adjacent to but outside of the CVP POU, although CVP water is not technically delivered to those areas? The delivery of supplemental Federal water expands the extent, duration, or intensity of activities that take place not just within the actual CVP POU, but also within the entire water district that uses Federal water as part of its water supply. In our view this extends the effects of Federal water deliveries outside of the actual CVP POU to adjacent lands, such as expansion lands, that are within the water district and which would not be irrigated or developed to the same extent, duration, or intensity absent the supplemental Federal water supply.

The BA does include goals and objectives of local land use planning documents (e.g., general plans for cities/counties). However, most of these planning documents are significantly dated, and do not provide the mechanisms to ensure that listed species habitats are protected. The BA does not discuss habitat types present within water districts or on expansion lands or the conservation value of these areas for federally listed species, nor does it discuss measures that will minimize the effect of land use changes anticipated over the life of these contracts within water districts or on expansion lands.

**Information Need #3:** Reclamation needs to clarify the reason that expansion lands have been included in maps of water district service areas and the relationship of these lands to the proposed federal action. It is unclear how the BA for this project addresses impacts of future land and water uses within the expansion areas since no conservation measures are described in the BA for effects associated with 25 to 40 years of water deliveries to these lands. We ask Reclamation to specifically identify mitigation measures that will satisfy SWRCB requirements highlighted in D-1641 and the CPOU EIR and that adequately address listed species habitat losses in the expansion areas. We further request any documentation that shows that the SWRCB has allowed these expansion lands to be included as part of the CPOU.

#### Mitigation for Encroachment Lands

The Final EIR for CPOU (SWRCB November 1999) identified and analyzed impacts associated with CVP deliveries to encroachment lands (lands within the boundaries of CVP water contractor service areas that have already received CVP water but are located outside the authorized CVP Place of Use). Of the 45,390 acres of encroachment lands that served CVP water for agricultural purposes, the following encroachment was identified in the SLU:

<u>San Luis WD</u>	789 acres of alkali scrub
	7,847 acres of annual grassland
	2,032 acres of valley-foothill riparian/fresh emergent wetland
<u>Westlands WD</u>	1,611 acres of valley-foothill riparian/fresh emergent wetland
	6,653 acres of annual grassland
	22,343 acres of alkali scrub

The Final EIR for CPOU (from page 2-91, Section 2.4.2.4 Integration of Encroachment Land Mitigation Needs Into Ongoing Reclamation Programs) stated that, "Reclamation shall be required to develop a schedule for feasible implementation and monitoring of mitigation or restoration actions subject to approval of the SWRCB. In addition, the SWRCB will also compare each mitigation or restoration project's environmental/habitat benefits with a set of criteria to be developed jointly by Reclamation and the U.S. Fish and Wildlife Service, that will assign environmental/habitat target values that need to be restored or mitigated for, pursuant to the approval of the petition to change the POU focusing primarily on listed species habitats lost on encroachment lands as identified in Table 2-36 found on page 2-79."

The Final EIR for CPOU also identified encroachment lands that served CVP water for municipal or industrial purposes. On page ES-2 of the Final EIR for CPOU it is noted that, "Encroached lands that are served CVP water for municipal or industrial purposes are not analyzed in detail because projects associated with these land uses have already been evaluated in previously prepared CEQA documents by other local land management

agencies.” Encroachment lands that served CVP water for municipal or industrial purposes in the SLU were identified in the Final EIR for CPOU as follows:

<u>City of Avenal</u>	2,207 acres of annual grassland
	273 acres of valley-foothill riparian/fresh emergent wetland

**Information Need #4:** The Service is unaware of the progress of mitigation for encroachment lands associated with CVP water deliveries as required from the Final EIR for CPOU and D-1641 of the SWRCB. No mitigation measures for CPOU encroachment lands were provided with the BA or its attachments to assist us with evaluating the environmental baseline for listed species in the SLU. Such mitigation measures, specific to the affected habitats related to SLU CVP deliveries should be provided in the initiation materials provided for this formal consultation. Further, information on any CEQA documents related to encroachment of lands in the SLU for municipal or industrial purposes needs to be incorporated into the baseline of the BA for this consultation.

Contract Provision: Drainage Service- Insufficient Information on Drainage Plan

As described in Table 3 on page 17 of the BA, “For specified contractors, drainage service shall be provided when it becomes available at rates established in then-existing rate-setting policy for irrigation water .” Table 11 of the BA provides a breakdown of Contract Provisions and a summary Effects Analysis. For Drainage Service – Contractor-Specific Provision (Page 81), the BA makes the following determination, “Continues authorization of specified contractors to receive drainage service pursuant to San Luis Act; actual drainage service will not become available until completion of separate EIS and appropriate consultation; ...failure to require drainage service via San Luis Drain could be a positive effect on listed species but because any such service has not been provided, such effect is not properly analyzed through these documents.” Procedurally, this effects determination is problematic and inconsistent with the proposed action: ESA review of execution of long term contracts for the SLU.

Page 73 of the BA specifically identifies what is requested from this ESA consultation,”... the task here is to assess whether any changes to the legal relationship between Reclamation and the SLU contractors that result from the contract renewal would result in changes to the physical environment that may affect a listed species or its critical habitat.” We strongly disagree with this overly narrow characterization of the scope of analysis for this consultation. The scope of this consultation as we understand it is the effects of delivery of the full Federal water entitlement for 25 years (or 40 years for M&I only contracts), starting from the date upon which Reclamation signs new contracts. CVP water applied to some lands within the SLU results in contaminated irrigation drainage, not all of which is captured in existing facilities. To the extent that the BA does not describe the effects of this contaminated irrigation drainage on listed species, from the point of application through its

entry into subsurface drainage and wherever it goes from there, then the effects analysis in the BA fails to address the effects of the Federal action.

Future implementation of a drainage plan for the SLU likely will include implementation of a suite of management options, including various forms of treatment, reuse areas, and evaporation ponds. All of these options would result in changes to the physical environment, and some of these land use changes may affect listed species. The Service is tasked with completing a consultation on the execution of long term contracts for the SLU, some of which include the provision that Reclamation will implement drainage service. A long term plan for such drainage service has not yet been completed or subject to public review and feasibility analysis. Effects of drainage service are a direct effect of long term water deliveries to SLU districts that have a drainage problem. Therefore, the Service does not have sufficient information to analyze the full effect of execution of long term contracts, for those contractors that include the provision of drainage service.

**Information Need # 5:** If Reclamation wishes to renew long term contracts for the SLU prior to proposing or establishing a drainage plan, then Reclamation needs to describe the effects of drainage resulting from the lack of drainage service. Absent a proposal from Reclamation, we would assume for the purposes of such a consultation that the status quo would exist through the term of the contract. Since drainage is an effect of use of CVP water, we would expect Reclamation to reinitiate consultation on the SLU contracts when a drainage plan has been formulated. Alternatively, the SLU long term contracts may not be ripe for consultation because of unresolved issues related to drainage. Reclamation should consider informally consulting with the Service on the effects of long term contract renewal in the context of alternatives it is considering for drainage service. Reclamation could then provide the Service with all information and associated effects related to a completed drainage plan to be implemented for those SLU Contractors that have contracts that include provision of drainage service. Such a plan for drainage service is expected to be submitted for ESA consultation sometime in early 2005.

Contract Provision: Drainage Service-Pacheco WD

Page 55 of the BA identifies Panoche, San Luis, and Westland's Water Districts as being entitled to receive drainage service under the terms of their existing contracts (page 55 of BA). However, the San Luis Drainage Feature Re-evaluation is including drainage service for Pacheco WD as well. It is unclear whether the long term water service contract for Pacheco WD would include a provision for drainage service.

**Information Need # 6:** The Service requests that draft contracts for all SLU Contractors be provided to the Service for this formal consultation so that we may review all of the provisions that may influence the nature, scope, and duration of effects to listed species when contracts are executed.

Contract Provision: Drainage Service - Effects

Page 28 of the BA notes: "...CVP water put to beneficial use in the San Luis Unit action area could not reasonably be expected to affect fishery resources outside the action area." Also on Page 56, Westlands WD and the balance of the San Luis WD "do not have systems that discharge subsurface drainage outside their boundaries." Although this factually correct, it is misleading in that there is a proportion of this agricultural drainage that does leave the district(s) by means of subsurface flow (as was described for Broadview Water District in the January 2004 EIR for the Broadview Water Contract Assignment Project, SCH. No. 2003092098, prepared for Pajaro Valley Water Management Agency by Environmental Science Associates). As noted on page 54 of the BA, the Central California Irrigation District (CCID) and Firebaugh Canal Water District (FCWD) resumed litigation against Department of Interior (DOI), which stipulates that Reclamation is utilizing an "informal, in-valley drainage disposal system" that disposes of drainage via subsurface flow from Westlands and causes nuisance and trespass to CCID and FCWD (Third Amended complaint and Demand for Jury Trial, Filed February 10, 2003, CIV-F-88-634-OWW).

Sumps and check drains may discharge some of SLU drainage into the Delta Mendota Canal (as stipulated in the civil case between CCID and FCWD against DOI cited above). The BA on page 60 noted that Reclamation data indicate that the concentration of selenium in water delivered to the Mendota Pool has met the 2 ug/L monthly mean objective in Mendota Pool since July 2002. However, Reclamation data also identify that of the added load of selenium (added to the Delta Mendota Canal from O'Neil Forebay to Mendota Pool) about half is from the Delta Mendota Canal Sumps and the other half is from unidentified sources (e.g. leakage from cracks, contributions from Delta Mendota Canal check drains along the upslope side of the canal). Annual exceedences of selenium objectives in the Grasslands wetland supply channels are an ongoing concern to the Service. Impounded wetland systems like those on refuges are very susceptible to adverse effects from moderately elevated concentrations of selenium in their water supply, and listed species that depend on these wetlands, such as giant garter snake, are vulnerable to sub-lethal effects of contamination.

**Information Need #7:** The BA should discuss all effects associated with seleniferous agricultural drainage created within the SLU that is either discharged via surface means or leaves the SLU districts by means of subsurface flows. Such effects include discharges into the Delta Mendota Canal both from the sumps and the unregulated check drains.

Contract Provision: Drainage Service – Sources of Selenium Study

Page 61 of the BA includes a description of the "Sources of Selenium Study." Because the results of this study are relevant to several ongoing and future consultations (e.g., SLU and Delta Mendota Canal Long Term Contract Renewals, South Central California Area Office Operations and Maintenance and San Luis Drainage Feature Re-evaluation consultations) the Service is requesting a copy of this report, even if it still remains in draft form.

**Information Need #8:** The Service would like to be provided with any reports pertaining to the following study: U.S. Geological Survey, March 2004. Estimation of a Water Budget of 1972-2000 for the Grasslands Area, Central Part of the Western San Joaquin Valley, California. Draft report prepared for Reclamation.

Reliability of CVP Contract Deliveries to SLU (e.g., quantity of water delivered to the contractor)

The BA is inconsistent in its description of the reliability of water delivered to the SLU. As an example the BA on page 27 notes, "During the term of the contract, it is expected that the yield of the CVP will increase to better meet the competing demands for CVP water." Further, the BA on page 31 stipulates, "...lands would be brought back into production as "drainage service is provided and the Westlands Water District's water supply increases." This is contradicted however, by the BA on page 85 which notes, "Depending on the effects of other contract provisions, the amount of CVP water used by irrigation and M&I users may decrease as a result of the renewed contracts..." We also note that the statement on page 27 anticipates effects of a future action that Reclamation has not yet proposed and, as such, is inconsistent with the federal action for which Reclamation is requesting consultation.

Although the contract total for each SLU contractor would not change (BA page 74) it is incorrect to assume that, "...there would be no change from the contract water supply in the existing [SLU] contracts." The issue of reliability of contract supply is a complicated issue, being influenced by numerous factors, including water year type, M&I demands, pumping constraints in the Delta as defined by SWRCB D-1641, operational constraints to protect federally listed fish, carryover storage, increased pumping in the Delta (as part of South Delta Improvement Project (SDIP)), exchange agreements, State Water Project/CVP intertie, changes in San Luis Reservoir low point, Reclamation's M&I shortage policy, assignments/transfers/exchanges, etc. Reclamation did however, for the purposes of their Operations Criteria and Plan (OCAP) consultation assume a % reliability of contract deliveries south of Delta. The information in the BA for this project should be consistent with assumptions in reliability projected in the OCAP BA.

**Information Need #9:** Reclamation needs to revise the BA to ensure consistency on discussions of reliability. Further, Reclamation will ensure that the information in the BA for this project is consistent with reliability of water deliveries to south of Delta contractors projected in the OCAP BA. Reclamation also needs to describe the water assignments that have been approved since the execution of the current contracts, and which it is proposing to approve, and the effects of delivery of these full contract amounts, in accordance with Reclamation's July 19, 2004 memorandum on consultation parameters for the long term water service contract consultations.

Reliability of CVP Contract Deliveries to SLU – Recent Historic Average Deliveries

As noted on page 74 of the BA, “As a result of the federal action, the San Luis Unit contractors would continue to receive CVP water supplied in quantities **that do not exceed contract amounts...**” *emphasis added*. The recent historic average deliveries, which most accurately depict the on the ground effects of CVP water deliveries in the SLU, are significantly lower than the full contract amounts which are the subject of this consultation.

It would be helpful to know what the actual breakdown of water supply was for each district (e.g. CVP deliveries, State Water Project (SWP) deliveries (if any), groundwater, transfers, exchanges, and other types of agreements (reallocation agreement with Santa Clara Valley WD and Delta Mendota Water Users Authority, and forbearance agreements). What has been assumed in other analyses (e.g., OCAP) for future deliveries to the SLU (60%? 70%? etc.). How would such improvements in water quantities delivered to the districts result in changes to land use (e.g., the acreage of irrigated agriculture)?

**Information Need #10:** In order to adequately assess effects, including cumulative effects and the effects of interrelated or interdependent actions, Reclamation should provide information in the BA on land use changes that are anticipated with full contract deliveries (e.g., changes in irrigated acreage, urban development, etc.). Further, Reclamation shall provide an actual breakdown of recent historic water supplies for each SLU contractors (e.g., CVP deliveries, SWP deliveries (if any), groundwater, transfers, exchanges, and other types of agreements (reallocation agreement with Santa Clara and Delta Mendota Canal Authority, and forbearance agreements).

Water Assignments to SLU Contractors

Water Assignments already executed or reasonably expected to be executed during the life of these long term water contracts were not included in the contract total for SLU contractors. Page 71 notes that in 2002, “Mercy Springs Water District assignment up to 4,198 acre-feet per year, a portion of their entitlement to Westlands Water district No. 2. An Environmental Assessment was prepared by Reclamation in September 2000 and the assignment is not further analyzed in this document.” Since this assignment has been completed and executed, why then is it not included in the full contract quantity for Westlands and analyzed in this BA? Our understanding of Reclamation’s July 19, 2004 memorandum on consultation parameters was that they wish to consult on the full contractual entitlement, which, we understand, includes contract assignments. Further, a number of future water assignments are expected to be executed in the near future that involve SLU contractors:

Centinella WD to WWD  
Widren WD to WWD  
Broadview WD to WWD  
San Luis WD to city of Santa Nella.

We were of the understanding, based on discussions with the South Central Area Office and the July 19, 2004 memorandum, that such assignments would be part of the consultation on execution of long term water service contracts. Whether or not Reclamation chooses to combine the separate contracts that may be accumulated by a given contractor through execution of CVP water assignments, the net effect of the assignments is an increased federal water entitlement for that contractor, and, even with shortages, the potential for more water to be delivered. We are unable to identify a discussion of these assignments in the BA, and note an overall inconsistency between the accumulation of contract assignments by some contractors, the ease with which water can be transferred and exchanged under the CVPIA (and projected population growth in some of the SLU contract service areas as noted in Table 2 of BA, page 11]) as facilitated by new projects (e.g., SDIP and the SWP/CVP intertie), and Reclamation's conclusion that, during the next 25 to 40 years, nothing will change within water districts because the same amount of water will be delivered to the same places. The water needs assessments for at least some of the contractors (e.g., cities of Avenal and Coalinga) project full contract deliveries to meet M&I demands in 2025, whereas recent historic deliveries were well below maximum contract quantities.

**Information Need #11:** Reclamation needs to clarify issues related to water assignments in the BA. Our understanding is that Reclamation will examine the effects of water assignments to listed species as both an increase in the contractual entitlement of the receiving water district, and as a corresponding decrease in the contractual entitlement of the district which will no longer receive that water. Reclamation should include all reasonably foreseeable assignments in the full contract quantities of this consultation, and analyze these increases in contract quantities in the effects analysis of the BA.

Contract Provision: Groundwater Replenishment

The existing long-term water service contract for Westlands Water District includes a provision that CVP supply may be used either directly or indirectly to replenish depleted groundwater (Pg 53 of BA). However this appears inconsistent with the statement (on page 13 of BA) regarding the Water Needs Assessments that states, "Reclamation did not include any deep percolation from fields as recharge." Will the new contracts for Westlands (and any other SLU contractor) have such a recharge provision? Where would recharge areas be placed? Would they likely be placed in areas that have never been cultivated or outside the CVP POU? Would this result in impacts to listed species?

**Information Need #12:** Reclamation will provide information on which contracts include the contract provision of groundwater replenishment. Further, Reclamation shall analyze potential effects of this recharge provision on listed species and provide that information to the Service. Effects should be analyzed based on the extent of the entire groundwater basin, not just CVP water districts.

Water Needs Assessments

We note that the water needs for Pacheco, Panoche and Westlands WD's based on 1989 water needs whereas the water needs assessments of other contractors in the SLU are based on late 1990's water usage. Isn't there more recent data for these 3 districts that more accurately depicts their current water usage and incorporates more recent changes in land use (e.g., changes from row crops to permanent crops, land retirement, etc.)?

It is our understanding that justification for increases to CVP contract allocations (e.g., via CVP water assignments) are based on a water needs analysis and that such an analysis has been completed for Westlands Water District. However, according to Tracy Slavin of Reclamation's Regional office in Sacramento, the water needs analysis for Westlands Water District is 2.5 years old and does not include any permanent retirement of land from irrigation that has taken place in Westlands since the water needs analysis was completed (pers. comm. Tracy Slavin, U.S. Bureau of Reclamation, Sacramento, April 27, 2004). At the UC Salinity Drainage Task Force Meeting in Sacramento on March 25, 2004, Thaddeus Bettner (Deputy General Manager – Resources, Westlands Water District) noted that at the end of 2004, Westlands Water District will have acquired 102,878 acres of agricultural lands within the district to be retired from irrigation. The Service therefore requests that Reclamation update the water needs assessment for Westlands Water District to reflect the reduced irrigated acreage within the District, and provide such water needs assessment to the Service with a request for formal consultation on this project.

**Information Need #13:** Reclamation should revise the water needs assessments for Pacheco, Panoche and Westlands WD's to reflect a more recent baseline of water usage within these districts. Reclamation should further revise the water needs assessment for WWD to include a reduction in irrigated acreage as a result of permanent land retirement within the district.

Attachment E.11. Land Retirement Proposal – WWD

Attachment E of the BA includes a 2-page document on proposed land retirement in WWD. This document notes that, "...the United States would purchase up to 200,000 acres of drainage-impacted lands at fair market prices from willing sellers and agree to provide Westlands a reduced but more reliable CVP water supply. In return, Westlands would relieve the United States of its obligation to provide drainage and dismiss its application now pending with the State Water Resources Control Board to appropriate water from the San Joaquin River."

It is unclear if this attachment is meant to be integrated into the project description of this BA. Further, the attachment does not provide specifics to exactly what the reduced contract quantity is or what the improved reliability would be. Lastly, if this proposal were adopted, it is unclear how this would affect the outcome of the ongoing consultation and what process would need to be implemented to ensure NEPA and ESA compliance.

**Information Need #14:** Reclamation needs to clarify how this proposal pertains to the existing consultation of SLU long term contract renewals. Further, if this proposal is implemented, Reclamation should identify the process which would be followed to ensure adequate NEPA and ESA compliance.

Consistency with Municipal and Industrial Water Shortage Policy

Page 91, 3<sup>rd</sup> paragraph of the BA is inconsistent with existing/proposed Reclamation M&I shortage policy. As the BA notes, "A related concern if CVP water is converted from irrigation purposes to M&I proposed in the San Luis Unit is that the water used for M&I purposes would be accorded a higher priority for reliability of delivery than the water delivered from irrigation." This is inconsistent with the M&I shortage policy analyzed in the CVPIA PEIS (based on the June 9, 1997 CVPIA Administrative Proposal on Urban Water Supply Reliability) and the M&I Water Shortage Policy administrative draft EA which we received on September 30, 2004. These M&I shortage policy documents assume that contracts that change purpose of use after 1994 from irrigation to M&I maintain agricultural shortage provisions (based upon M&I contract amounts as determined as of September 30, 1994 and first published in Schedule A-12 of the 1996 M&I Ratebook, or contract amounts in Public Law 101-514, or contract amounts in amendatory contracts completed since 1994).

**Information Need #15:** Reclamation should rewrite this paragraph to ensure consistency with the existing M&I Water Shortage Policy described in the 1997 CVPIA Administrative Proposal on Urban Water Supply Reliability and/or and the M&I Water Shortage Policy administrative draft EA which we received on September 30, 2004.

Inconsistency between Land Uses Described in BA and Land Use Maps in Attachment C

Attachment C of the BA includes figures showing land use and natural community types for SLU Contractors. Of particular note are the land use maps for the cities of Avenal and Coalinga. For example, land and water usage within the City of Avenal is described on page 47, "...encompasses 19.5 square miles of which 2.5 miles are urbanized. The City's sphere of influence contains an additional 20.5 square miles. The City's planning area, both the lands within the city limits and its sphere of influence, uses all of its CVP water supply for M&I uses...Avenal does not pump any groundwater. The poor quality of the groundwater and its high concentrations of sulfate, nitrates, and sodium preclude its use for domestic purposes." However, the maps in Attachment C of the BA show a significant portion of the City of Avenal's service area as being in agricultural uses. A similar description is found on page 48 of the BA on the City of Coalinga which notes that the sole source of water for the city of Coalinga is their CVP allocation. How does the land use discussion in the BA agree with land use maps in Attachment C which show significant portions of these cities service areas as being in agriculture?

**Information Need # 16:** The description of the land and water uses in the body of the BA should be consistent with the land use maps in Attachment C of the BA. The BA should explain how a significant portion of both the city of Coalinga and Avenal service areas include agricultural land uses, even though the sole source of water to these service areas are for M&I uses.

Thank you for taking time on November 3, 2004 to discuss with us the information we have requested in this memorandum. We look forward to working with you to develop information we need to initiate consultation on long term water service contracts for the SLU. Until we receive the above requested information, we will not begin the formal consultation process. As we discussed on November 3, 2004 we will continue to prioritize the consultations on long term contract renewal for City of Fresno, Delta Mendota Canal Unit, Contra Costa Water district, and the O&M consultation on water conveyance facilities, while working with you to develop information for the consultation on the SLU contracts. We appreciate the assistance we have received from the Fresno Office during the consultation process.

If you have any questions or concerns about this consultation or the consultation process in general, please contact Jan Knight, Susan Jones or Joy Winckel of my staff at the letterhead address or at (916) 414-6600.

Attachment

**Table 6**  
**Listed and Proposed Species with the Potential to Occur in the San Luis Unit Action Area**

Species	Federal Status	Likelihood to Occur In the Action Area	Critical Habitat Designated*
<b>Plants</b>			
California jewelflower ( <i>Caulanthus californicus</i> )	Endangered	Low	No
Palmate-bracted bird's beak ( <i>Cordylanthus palmatus</i> )	Endangered	Low	No
San Joaquin woolly-threads ( <i>Monolopia congdonii</i> )	Endangered	High	No
<b>Mammals</b>			
Giant kangaroo rat ( <i>Dipodomys ingens</i> )	Endangered	High	No
Fresno kangaroo rat ( <i>Dipodomys nitratooides exilis</i> )	Endangered	Low	Yes
Tipton kangaroo rat ( <i>Dipodomys nitratooides nitratooides</i> )	Endangered	Moderate	No
Riparian woodrat ( <i>Neotoma fuscipes riparia</i> )	Endangered	Low	No
Buena Vista Lake shrew ( <i>Sorex ornatus relictus</i> )	Endangered	Unknown	No
Riparian brush rabbit ( <i>Sylvilagus bachmani riparius</i> )	Endangered	Low	No
San Joaquin kit fox ( <i>Vulpes macrotis mutica</i> )	Endangered	High	No
<b>Birds</b>			
Bald eagle ( <i>Haliaeetus leucocephalus</i> )	Threatened	Low	No
California condor ( <i>Gymnogyps californianus</i> )	Endangered	Low	No
<b>Reptiles</b>			
Blunt-nosed leopard lizard ( <i>Gambelia sila</i> )	Endangered	High	No
Giant garter snake ( <i>Thamnophis gigas</i> )	Threatened	Moderate	No
<b>Amphibians</b>			
California tiger salamander ( <i>Ambystoma californiense</i> , Central California Distinct Population Segment)	Proposed Threatened	Low	No
California red-legged frog ( <i>Rana aurora draytonii</i> )	Threatened	Moderate	No
<b>Invertebrates</b>			
Valley elderberry longhorn beetle ( <i>Desmocerus californicus dimorphus</i> )	Threatened	Low	No
Longhorn fairy shrimp ( <i>Branchinecta longiantenna</i> )	Endangered	Low	No
Vernal pool fairy shrimp ( <i>Branchinecta lynchi</i> )	Threatened	Low	Yes
Vernal pool tadpole shrimp ( <i>Lepidurus packardii</i> )	Endangered	Low	Yes

\* Indicates that critical habitat has been designated for these species; however, no critical habitat is located within the San Luis Unit action area.