

GEORGE MILLER
7TH DISTRICT, CALIFORNIA

2205 RAYBURN HOUSE OFFICE BUILDING
WASHINGTON, DC 20515-0507
(202) 225-2095

www.house.gov/georgemiller

DANIEL WEISS
CHIEF OF STAFF

COMMITTEE ON EDUCATION
AND THE WORKFORCE
SENIOR DEMOCRAT

COMMITTEE ON RESOURCES

DEMOCRATIC POLICY COMMITTEE
CHAIRMAN

Congress of the United States
House of Representatives
Washington, DC 20515-0507

CAROL HATCH
DISTRICT DIRECTOR

1333 WILLOW PASS ROAD
SUITE 203
CONCORD, CA 94520
(925) 602-1880

3220 BLUME DRIVE
SUITE 281
RICHMOND, CA 94806
(510) 262-6500

375 G STREET
SUITE #1
VALLEJO, CA 94592
(707) 645-1888

TTY (202) 225-1904

Via Fax, US Mail, and e-mail
August 31, 2004

Mr. Richard Stevenson
Bureau of Reclamation
2800 Cottage Way
MP-440
Sacramento CA 95825

RE: Comments on Proposed Central Valley Project Long-Term Water Contracts

Dear Mr. Stevenson:

As the chief sponsor of both the 1982 Reclamation Reform Act and the Central Valley Project Improvement Act of 1992 (CVPIA), and the chairman of the House Natural Resources Committee at the time of the latter's enactment, I am submitting the following comments on the proposed Central Valley Project (CVP) renewal contracts for the Sacramento River Division, the Shasta Division and the Trinity River Division pursuant to the Bureau of Reclamation's July 2, 2004 Notice. These comments specifically address the Bureau of Reclamation's renewal of CVP long-term water contracts, but I strongly urge you to adhere to these same principles when considering future actions that will impact the fair allocation of water in California.

The Congressional Budget Office's 1997 study on Western water use succinctly described the purposes of the Central Valley Project Improvement Act:

The act contains numerous provisions that encourage farmers who receive water from the Bureau of Reclamation's Central Valley Project to use less, that facilitate the movement of conserved water to higher-valued uses, and that protect and enhance fish and wildlife populations in California's Central Valley.

As I explain below, the proposed contracts available for comment this summer will severely undermine all three of these goals and therefore violate both the legislative intent and the specific letter of the law.

In June, I wrote to the Director of the Office of Management and Budget (OMB), expressing my concern that the terms of these contracts do not meet the objectives of the CVPIA, and that their scale and duration will obstruct the CVP from meeting the needs of California and its growing population. Earlier in August, I joined several of my

Mr. Richard Stevenson

August 31, 2004

Page 2

congressional colleagues in writing to the Bureau directly, requesting further explanation of economic impacts, the publication of statutorily required environmental analyses, and an extension of the public comment period. In short, we asked that the Bureau give the public a chance to fully evaluate the wide-ranging implications of these long-term contracts before closing the opportunity for public comment and making a federal decision.

Unfortunately, to date, I have received no response to either of these letters, and note with disappointment that officials in the Department of the Interior have failed to respond to these and other issues I have repeatedly brought to their attention for several years. As a result, the Department is proceeding with the finalization of contractual provisions that unquestionably violate congressional intent as well as the letter of the law. Far from providing California water users with the certainty that contracts are intended to offer, the current form of these contracts will likely result in well-justified challenges and lengthy delays in resolving the crucial issues of water allocation in the state.

Specifically, I urge the Bureau of Reclamation and the Department of the Interior to make further modifications to these proposed contracts to achieve the goals of the law:

1) Comply with the statute's requirements to reduce unwarranted subsidies and encourage water conservation

Reclamation law requires that all Capital costs be repaid, that all Operation and Maintenance costs be reassessed annually and fully recovered, and that pricing discretion be exercised to encourage water conservation. Since the 1930s, according to the Congressional Budget Office, the Central Valley Project has cost the federal government \$3.6 billion, of which agricultural water users (who receive over 80% of CVP water) must repay some 40%. But as of the most recent figures provided by the Bureau, barely 10% of these contractors' allocated costs have been repaid, leaving more than \$1.135 billion unpaid.

As you know, the 1986 federal law authorizing the Coordinated Operations Agreement, Public Law 99-546, terminated the Bureau's questionable practice of endlessly extending the capital repayment period for the CVP, and instead mandated a final repayment deadline of 2030 for all CVP facilities located within the Sacramento-San Joaquin Valleys. Since most of the contracts currently under review will go into effect in 2005 with a 25 year term (i.e. ending in 2030), these contracts **must** be the vehicle to carry out this repayment obligation. It is imperative that all Bureau of Reclamation contracts set rates that ensure complete CVP capital repayment in a timely manner. Yet it is not at all clear that these new contracts will recapture those costs; rather, they will perpetuate the *status quo* pricing that has failed to recoup costs over the past 50 years.

My letter of June, 2004 asked for a comparison between the prices in these proposed contracts and the prices being charged in California's State Water Project, as well as comparisons to such other market examples as the Bureau's sale of Colorado River water to San Diego as a result of the Imperial I.D. transfer. Without such a comparison, it is

Mr. Richard Stevenson

August 31, 2004

Page 3

extremely difficult to judge whether the Bureau has reformed its water pricing terms in response to the water policy reforms of the last several decades, especially as the new CVP water contracts appear to continue the tradition of below-market (even below-cost) prices for water that the Bureau is otherwise telling the public is scarce, valuable, and must be conserved.

2) Comply with statute's 25 year term for long-term water contracts in order to protect the ability to respond to changing priorities in the future

The CVPIA granted current contractors a single renewal contract for a maximum 25-year term in order to assure flexibility in future water allocations in light of changing conditions and priorities. The law states that the Secretary of the Interior, at her discretion, *may* negotiate additional contracts for no more than 25 years, at the expiration of the original renewal contract. Such an option is discretionary with the Secretary, not a right provided to the contractors, and can only be decided properly when the contractor's performance, and the changing requirements for other authorized purposes, are fully evaluated. The goal of this provision was to provide a reliable water supply for a contractor for a reasonable period of time while still preserving the Secretary's ability – as conditions, demographics, economics, and environmental considerations evolved – to consider renewals in the overall context of CVP and California's overall needs.

These contract provisions are among the most crucial provisions of the CVPIA because they provide the Secretary with the ability to address changing priorities and needs in the State. Any contract beyond the initial 25-year extension should be the judgment of the Secretary **at the time the initial extended contract expires**, and no sooner, since the actual circumstances cannot be known until that time. The language of the proposed CVP renewal contracts, however, states that if certain terms are met, any given contract “**shall** be renewed for a period of 25 years.” This guarantee is inconsistent with the plain language and clear intent of the CVPIA, and cannot be justified or sustained.

In short, the current Secretary is establishing the terms for extending a contract a quarter-century in the future, ignoring the very real possibility that California's demographic, financial, and environmental pressures will continue to change as Congress envisioned. Without allowing for the flexibility of a real contract renewal process, the Bureau is denying future generations the ability to refine and reconsider water allocations as necessary. This policy does not conform to the intent of the CVPIA and will, in my view, warrant legal challenge if it is not modified to comport with the terms of the law.

3) Ensure that public water is not the source of private profit

Under certain conditions, the CVPIA allows for contractors to resell public water. In combination with the 25-year limitation on contracts, this provision was designed to allow the marketplace to assist in the proper allocation of a scarce resource. But by granting extended renewal of highly subsidized contracts that assure contractors of more water than they require, the Bureau is opening the door for water districts to resell a publicly owned resource, developed at publicly subsidized expense, at rapidly increasing prices to municipal, industrial, and other users. Moreover, the Bureau's increasing use of

Mr. Richard Stevenson

August 31, 2004

Page 4

questionable “assignments” of contracts to evade the CVPIA’s clear rules governing water transfers negates even the minimal protections in federal law on market transfers.

The resale authority was intended for the short term, and should not be abused – excessive water volumes in many of the new CVP renewal contracts will allow some contractors to reap substantial profits from selling a subsidized public resource, whether to private investors or back to the public itself. Indeed, the Bureau has stated that this set of “long-term contracts will not change contract water quantities from the quantities in existing contracts,” which raises important questions about the agency’s ability to adjust to our state’s evolving needs.

The purpose of the CVPIA was not to create a permanent annuity for a few contractors who become re-sale agents of a public resource, with the profit going into private pockets. Indeed, given the rate of change in areas of the Central Valley, it is highly likely that some water districts will find it more profitable to market CVP water than to use it to grow crops – the only reason they were granted the subsidized water contracts in the first place. New CVP contracts must protect taxpayers’ interests and ensure that some users do not take advantage of over-allocated water and convert it into profit at the taxpayers’ expense.

4) Stop waiving all capital repayment obligations for favored agricultural customers

As if the practice of indefinitely extending interest-free loans to Bureau customers were not problematic enough, the new contracts designate a select group of districts that will be forgiven their repayment obligations (and associated environmental mitigation costs) altogether. The burden of their repayment, in effect, is passed to the taxpayers who were told, at the time of project authorization, that beneficiaries would shoulder the burden of repayment. Given the Bureau’s recent commitment to the CALFED principle of “beneficiary pays,” and the “Water 2025” initiative’s emphasis on conservation and efficiency, this backward policy of giving away California’s precious water supplies has no justification.

The Bureau must open up its books on these questionable “ability to pay” determinations, hold public hearings on the appropriateness of its underlying policy and on the determinations themselves, and explain how such a continuation of this “triple subsidy” can possibly be justified when the Bureau is contending with a western drought, encouraging other farmers to become more efficient, and promising the State of California that all new CVP facilities will be fully paid by their beneficiaries.

5) Comply with the core CVPIA purpose of protecting fish and wildlife

This summer, the Bureau set final comment deadlines for several groups of proposed CVP contracts, including up to 322,000 acre-feet of water to users in the Sacramento River Division and over 2,000,000 acre-feet in other contracts. These comment deadlines, however, are before the National Marine Fisheries Service (NMFS) has completed its analysis of potential impacts on endangered salmon. As of this writing, this NMFS analysis has still not been made public.

Mr. Richard Stevenson

August 31, 2004

Page 5

As I and other interested parties – including fishing groups and environmental advocates – have made clear to you, the ability to comment on these proposed contracts should not end before the public has adequate time to review and evaluate the government's own analysis of likely impacts to endangered species and their habitat. By rushing ahead with the contracts without adequate environmental review, the Bureau has disregarded Congress' clear intent in enacting the CVPIA and invites further delays and uncertainties.

Over the last several decades, Congress has debated the issue of equitable water policy, and has weighed in with specific reforms designed to ensure that water is appropriately distributed among California's diverse needs. As the author of several of these acts, is my firm belief that in several specific respects, these long-term water contracts fall far short of Congress' intent. Instead of reinforcing the outmoded status quo as these contracts do, Central Valley Project water contracts must be written in a way that ensures that water is available for all Californians in accordance with the letter and spirit of federal law. I strongly urge the Bureau of Reclamation and the Department of the Interior to reconsider the terms of these contracts.

Sincerely,

A handwritten signature in black ink that reads "George Miller". The signature is written in a cursive style with a large, looping initial "G".

GEORGE MILLER
Member of Congress

CC: Hon. Gale Norton, Secretary of the Interior
Hon. John Keys, Commissioner, Bureau of Reclamation
Mr. Kirk Rogers, Regional Director, Mid-Pacific Region