



EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
WASHINGTON, D. C. 20503

September 13, 2004

THE DEPUTY DIRECTOR

The Honorable George Miller
U.S. House of Representatives
Washington, DC 20515

Dear Representative Miller:

Thank you for your letter to Director Bolten of June 24, 2004, requesting an update on our involvement in the ongoing negotiations for renewal of Central Valley Project (CVP) water contracts, and what role the Office of Management and Budget (OMB) is playing in evaluating these new contracts. Director Bolten has asked that I respond on his behalf.

OMB is working with the Department of the Interior (DOI) to evaluate these contracts in a manner consistent with our review of other federal actions: to ensure compliance with the law; consistency with Administration policies and the tenets of good government; and that the best interests of the taxpayers are being served. Most significantly with respect to these contracts, OMB is working with the White House Council on Environmental Quality (CEQ) and DOI to ensure that DOI complies with the National Environmental Policy Act (NEPA), the Endangered Species Act, and the California Environmental Quality Act, as well as both the spirit and the letter of the Central Valley Project Improvement Act (CVPIA). Additionally, we are evaluating these contracts from the perspective of their compliance with state water law, as well as the linkage they represent between water use and repayment of both the capital and the operations and maintenance (O&M) costs of the CVP. DOI has pledged its full cooperation with OMB in ensuring that it meets its legal obligations in renewing and carrying out these contracts.

The negotiation of the details of such contracts is largely left to the discretion of the Federal agency that is legally responsible for their execution, which in this case is DOI. Consistent with this level of review, OMB will not be dictating specific rates for these contracts or other contractual details that are subject to negotiation. Such specifics are appropriately left within the purview of DOI.

Your letter points out that 'contractors' may re-sell their water for substantial sums, and you ask whether OMB is reviewing the contracts from the perspective of this type of profiteering from the resale of public resources. The water in question is not a federally-owned public resource. Rather, DOI has a state water right to CVP water, which it disburses to water contractors based on their identified needs and water availability. Second, CVP contracts are not water sales or resales but, rather, agreements to deliver water through federal infrastructure where users, through these contracts, are obligated to repay the costs of building, operating, and maintaining the infrastructure. We would be interested in any evidence that would suggest the transfer of water that is not owned by the DOI or any other federal entity can and should be used to meet this repayment obligation.

Although the Administration is constantly monitoring CVP operational impacts on program performance and budgeting, there are five specific issues OMB and CEQ are looking into:

- The linkage between scheduled water deliveries and repayment of the capital and O&M costs of the CVP within the Congressionally-mandated timeframe.
- Are contractors that DOI determines have no ability to pay (and thus receive their water for free) profiting from re-selling their water, without meeting their repayment obligations?
- What are the implications for repayment of CVP costs when those costs are referred to and paid by the Western Area Power Administration, which then schedules those costs for repayment after they have met their other repayment obligations (which could put the repayment past the stated target of 2030)?
- How does DOI's assessments of water needs relate to historical water deliveries, potential system capacity, and the implementation of the CVPIA's tiered pricing provisions?
- We are also reviewing DOI's execution of its NEPA responsibilities for individual CVP contracts, both for compliance with the law, and for consistency with 1989 guidance from CEQ on application of NEPA specifically to CVP water contracts.

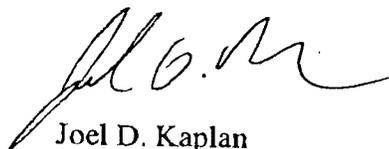
Your letter also requested the following data:

- Comparison of proposed prices for CVP contracts with prices for the State Water Project; and,
- Comparison of proposed prices for CVP contracts with prices for recent 'market' transactions including the price the Bureau of Reclamation has paid as part of its water acquisition program.

OMB does not have direct access to this information except through DOI. Consequently, we have asked DOI to provide this information directly to you.

Thank you again for your continued interest in this matter, and for taking the time to communicate your views.

Sincerely,



Joel D. Kaplan
Deputy Director