A Different Perspective on Update to Central Valley Project Improvement Act Business Practice Guidelines

For more than five years, Grassland Water District ("GWD") has engaged with the Bureau of Reclamation ("Reclamation") and other Central Valley Project ("CVP") water and power contractors regarding an update to the accounting guidelines for the Central Valley Project Improvement Act ("CVPIA"). To our alarm, in August, Reclamation gave two presentations on new and drastic changes to the draft guidelines. These last-minute changes drew pointed criticism from GWD, tribes, and dozens of environmental organizations in California, none of whom previously opposed the update.

One aspect of the guidelines update is a CVPIA "true up" that addresses which CVPIA activities are reimbursable or non-reimbursable by contractors. Despite the fact that Congress designated three core CVPIA programs as fully reimbursable, a late change to the guidelines now casts *all* reimbursable costs as only "partially" reimbursable. We believe that this change creates significant legal exposure for Reclamation. It will unduly shift millions of dollars in CVP mitigation expenses to federal taxpayers. Retaining the correct interpretation would not significantly change the large benefits that water and power users will otherwise receive under the guidelines.

The guidelines also determine "proportionality" in collections between water and power users. This is in spite of the fact that the *NCPA v. United States* case is now in the remedy phase, and confidential settlement discussions are underway. In August, Reclamation announced that it would calculate power collections based on a single year of previous water collections (on a two-year lag). This sets up the potential for a worst-case scenario, where only two dry years could see collections cut by more than 50%, halting restoration projects and leaving Reclamation with the difficult choice whether to violate its legal and contractual obligations to the environment, ask Congress for emergency relief, or divert funds from other water and power accounts. Acknowledging this, Reclamation still refuses to consider ways to smooth out collections from power contractors, for instance by using a five-year average rather than a single year of water collections to calculate proportionality. This reasonable approach would not affect the total amount that power contractors will pay over time.

The surprise changes in August also included a decision by Reclamation not to follow its adopted Cost Allocation Study when calculating proportionality. Power contractors will receive an additional boon, to the tune of $1 million per year, even though the guidelines already provide them with $10 million in relief and CVP power rates remain far below the power market. This change harms all other CVP stakeholders.

Other last-minute changes have significant financial implications, but Reclamation will not disclose their overall effect. For example, a new decision to consider fish restoration projects on “non-CVP facilities and streams” as non-reimbursable federal expenditures could add hundreds of millions of dollars to the federal obligation. In August, Reclamation estimated that water and power contractors will receive approximately $250 million in payment credits under the proposed guidelines. Now, water contractors expect that the credits will grow to $400 million, yet nothing was disclosed to the public.

Not all stakeholders have received equitable engagement and transparency in this final rushed process. To be sure, the guidelines will adversely affect Reclamation’s ability to comply with the provisions of CVPIA section 3406, particularly the acquisition of Incremental Level 4 refuge water supplies and the Anadromous Fish Restoration Program. Overly reducing collections to the Restoration Fund also hamstrings Reclamation’s ability to comply with the recently adopted Biological Opinions for the Long-term Operation of the CVP, which in turn affects water supply availability.

After Reclamation’s presentations in August, stakeholders were given little to no opportunity to have meaningful discussions. To our knowledge, all of the last-minute changes will remain in the guidelines. Ironically, we are in an era where many members of the California water community recognize the need for *more* environmental restoration to increase water and power supply reliability. The August changes to the guidelines, including the extreme variability in annual funding that will result, are unsustainable for ensuring future reliability, for the federal treasury, and for the environment.