



January 25, 2016

By email and US Mail

David Murillo, Regional Director  
Mid Pacific Regional Office  
Federal Office Building  
2800 Cottage Way  
Sacramento CA 95825-1898

RE: Clarification of the Bureau of Reclamation's (Reclamation) funding agreements with the California Department of Water Resources (DWR) for the Planning and Design of the Delta Habitat Conservation and Conveyance Program (DHCCP), Bay Delta Conservation Plan (BDCP) and the CalFix [CWF] Delta water export tunnels. [Hereafter referred to as the Delta Tunnels Plan]

Dear Mr. Murillo;

On behalf of the following statewide non-profit organizations—the Planning and Conservation League, the Southern California Watershed Alliance, the Pacific Coast Federation of Fishermen's Associations and the California Water Impact Network—we are seeking your assistance in finding answers to some important questions with regard to the Reclamation's funding and federal assistance grants to the California Department of Water Resources (DWR) in support of the Delta Tunnels Plan (including all these various names associated with the plan: DHCCP, BDCCP and now the CWF Delta water export tunnels).<sup>1</sup>

Our questions arise from the Federal Assistance Agreements, FAA #1 signed in 2009 (amended 12 times) and a new agreement FAA #2 signed July 30, 2015<sup>2</sup> and the relationship of these agreements to the Advance Payment of Operations and Maintenance Costs agreements

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<sup>1</sup> See FAA #1-- Federal Assistance Grants and Cooperative Agreements with the California Department of Water Resources: 09FC200011, R10AC20897 (Completion date March 2013 extended to March 2014) for \$51,841,000. Agreement # R10AC20897 – FAA #2 ( Signed July 30, 2015 with a completion date December 31, 2016) for \$17,941,727.00. There is a third agreement the American Resource and Recovery Act (ARRA) Agreement # R10AC20R23 for \$3,950,372.00 signed on December 31, 2009 with extensions to be completed March 30, 2011.

<sup>2</sup> See Federal Assistance Grants and Cooperative Agreements with the California Department of Water Resources: Agreement number 09FC200011& R10AC20897 signed on March 13, 2009 with a completion date March 2013 extended to March 2014 with a funding increase now totaling \$51,841,000. And a 2nd Agreement # R10AC20897 signed July 30, 2015 with a completion date of December 31, 2016 for \$17,941,727.00.

between selected CVP contractors, such as Westlands Water District (WWD), and Reclamation's funding of the Delta Tunnels Plan.<sup>3</sup> In addition Mr. Jason Peltier, former WWD Deputy, runs a consortium of west side irrigators who signed similar agreements. Under FAA #1 and FAA #2, the program authority for the expenditure of funds stated in the grants to DWR is the Fish and Wildlife Coordination Act (16 U.S.C. 661-667e), even though DWR has indicated that the federal Habitat Conservation Plan permit and California Natural Communities Conservation Plan would no longer be sought under the proposed Delta Tunnels Plan.<sup>4</sup> Under FAA #2, signed July 30, 2015, the plan purpose and objective contains these 50 year permit objectives along with fish and wildlife restoration objectives despite being abandoned months before.<sup>5</sup>

In addition, Westlands Water District (WWD), one of the CVP San Luis Unit water contractors participating in the Delta Tunnels Plan, entered into an agreement with Reclamation to provide Advance O&M Funding<sup>6</sup> to pay their share of the plan. WWD reports that this agreement enables Reclamation to fund the Delta Tunnels Plan through the payment of Advance Operation and Maintenance Funding for *the DHCCP general planning requirements, including preliminary engineering and design and required environmental analysis and documentation for the BDCP process*. WWD further reports, these payments are "*partially recovered from Reclamation through O&M water purchase rate credits*"... with the balance "*to be used by Reclamation to pay part of the Districts' CVP O&M cost obligations.*"<sup>7</sup> Other west side irrigators that are participating in the advance payment agreement described it this way, "*these prepayments would be credited toward the O&M payments that would otherwise be made to USBR.*"<sup>8</sup>

The WWD Board of Director Minutes adopting Resolution 101-09 to enter into this Advance Payment of Operation and Maintenance Costs described it this way: "*Under an advanced O&M funding agreement with the Bureau of Reclamation, federal contractors would prepay O&M costs*

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<sup>3</sup> See for example Agreement No. 09-WC-20-3801 between the United States Department of Interior Bureau of Reclamation and Westlands Water District signed April 9, 2009.

<sup>4</sup> See SWP contractor, TCCWD, December 2014 minutes regarding DWR Director Cowin's announcement, reported January 2015: <http://tccwd.com/wp-content/uploads/January-21-20151.pdf> And Cowin's statement in April 2015, <http://www.latimes.com/local/lanow/la-me-ln-brown-delta-plan-20150430-story.html> and <http://www.latimes.com/local/la-me-delta-tunnels-20150404-story.html>

<sup>5</sup> Agreement No R15AC00052 page 2: Public Purpose of Support or Stimulation. "*Implementation of the proposed Habitat Conservation Plan and California Natural Community Conservation Plan alternatives within the Final Bay Delta Conservation Plan (BDCP) Environmental Impact Statement/Environmental Impact Report (EIR/EIS) document will lead to the conservation and rehabilitation of habitat to improve fish and wildlife populations and ultimately to a healthier Delta Ecosystem....*"

<sup>6</sup> See Agreement No. 09-WC-20-3801 Westlands Water District and USBR, April 9, 2009.

<sup>7</sup> See WWD Board of Director Minutes, January 7, 2009 and WWD Finance and Administration Committee Minutes August 13, 2009 and June 15, 2010.

<sup>8</sup> See San Luis & Delta Mendota Water Authority Board of Director October 9, 2008, meeting materials, "Delta Habitat Conservation and Conveyance Program Funding.

associated with the delivery of water **which would enable Reclamation to reallocate appropriated funds for the funding of their share of the DHCCP.** The District would receive a credit for what has been paid against future water rates." (emphasis added)<sup>9</sup>

With consideration of this background, we would appreciate your answers to the following questions to help us understand these complicated financial arrangements:

1. Of the \$73,733,099 of federal dollars granted to DWR for the Delta Tunnels Plan through FAA #1 and #2:
  - a) How much of the money actually was paid by the federal CVP contractors?
  - b) How much was paid specifically by Westlands Water District?
  - c) Of the federal dollars granted to fund the plan how much has resulted from a "redirection" of federal appropriations? If so how much and when, and which appropriation bills provided the funding?
  - d) How much of the federal funds granted to plan was appropriated by Congress for Fish and Wildlife Coordination Act (FWCA) activities? If so has DWR estimated the wildlife benefits or losses, including enhancement benefits, from the CWF and/or BDCP\_DHCCP?(See FWCA Sections 2(b) and 2(f))
  - e) Are the funds granted to plan reimbursable costs that will be paid for by the CVP water project contractors? How much is categorized as non-reimbursable and is therefore to be paid by the federal taxpayers?
  - f) How much of the federal funds granted to the plan was appropriated pursuant to the Cal Fed Delta Restoration appropriations? Please provide the years and amounts.
2. FAA #1 established a deliverable: *"Reclamation will, upon completion of the Program, have the documentation and engineering information to gain Congressional approval to move toward feasibility, design, and implementation of restoration projects to benefit fish and wildlife habitat."* [Emphasis added Cooperative Agreement 09FC200011 Page 3 of 32]

Does Reclamation anticipate submitting the documentation and feasibility report to Congress for the Delta Tunnels plan? If not, why not?

3. WWD reports in 2015 that 5 CVP contractors, including WWD, have paid a total of \$48,314,222 in advance operation and maintenance funds as of 2015, with WWD paying \$36,818,527.
  - a) How much of this funding has been credited to existing CVP operation and maintenance costs and expenses?
  - b) How much of this funding has been credited to existing capital water contract costs?
  - c) Has WWD been credited their full \$36,818, 527 to their existing CVP water costs or existing operation and maintenance costs?

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<sup>9</sup> Ibid. See WWD Board of Director Minutes, January 7, 2009.

4. How much "in-kind" costs has Reclamation incurred on the DHCCP-BDCP-CWF plan in addition to the federal grants and assistance?
5. How much funding for the DHCCP-BDCP-CWF has been appropriated to fund the Delta Tunnels Plan using the California Bay-Delta Restoration P.L. 108-361? If any, could you please provide the amounts for each fiscal year from FY 2009 to FY 2016?
6. Planning, design and engineering for the Delta Tunnels Plan has more than doubled since its inception, and now exceeds \$250 million dollars. DWR has indicated that more than \$1 billion dollars in additional funding is needed to keep the planning and design process going. Does Reclamation anticipate using the same agreements to fund this next, and much larger, installment for the federal 50% share?
7. The construction costs of the proposed project have been estimated in excess of \$20 billion dollars, with operation, maintenance, interest and additional costs approaching more than \$60 billion dollars. Does Reclamation anticipate the use of similar agreements to fund the construction of this project should it be approved?

Thank you in advance for your assistance in answering these important questions. The answers will assist these non-profit groups' participation in the public review of the tunnel plan. If you have any questions, please call 530-550-0219, Patricia Schifferle, Director, Pacific Advocates or by mail at 15652 Alder Creek Rd, Truckee CA 96161 phone. We look forward to hearing from you regarding these important pending policy decisions and federal expenditures.

Sincerely,



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CC: Interested Parties