

*This document does not necessarily represent the views of the Administration, the Department of the Interior, or the Bureau of Reclamation. Rather this represents ideas under consideration as part of an ongoing deliberative process.*

February 15, 2007

## **Concepts for Collaboration Drainage Resolution**

The participants to the resolution would include:

**The United States Bureau of Reclamation**  
**Westlands Water District**  
**Panoche Water District**  
**Pacheco Water District**  
**San Luis Water District**  
**Broadview Water District**

**San Joaquin River Exchange Contractors Water Authority**  
**Santa Clara Valley Water District**  
**Firebaugh Canal Water District**  
**Central California Irrigation District**  
**San Luis & Delta-Mendota Water Authority**

The San Luis Unit of the Central Valley Project (CVP) is among the most productive agricultural regions in the United States. This region produces a wide variety of crops, with annual crop production exceeding more than one-billion dollars. However, the accumulation of salts, deposited in the soil by imported irrigation water, and water in the crop root zone puts at risk the continued productivity of large areas within the San Luis Unit and areas immediately adjacent to the Unit. In February 2000 the United States Court of Appeals for the Ninth Circuit ruled that the Secretary of the Interior (Secretary) has a statutory duty to provide drainage service to the San Luis Unit, and a subsequent district court order directed the Secretary to undertake the work necessary to provide such service. The purpose of drainage service would be to evacuate salts and water from the crop root zone and dispose of the salts in order to preserve the arability of the effected lands. In July 2006, the Bureau of Reclamation issued a final environmental impact statement that described alternative means of providing drainage service to the San Luis Unit. Preliminary feasibility estimates show identified alternatives costing greater than \$2.2 Billion with none of the alternatives being of net positive national benefit nor economically justified. In light of constraints on the federal budget there is doubt that Reclamation could obtain the necessary appropriations to implement the alternatives in a timely manner.

Given the uncertainty and timing of implementation of drainage service, the parties listed above began to explore creative alternatives to Reclamation providing drainage service.<sup>1</sup> Reclamation evaluated creative alternatives on the basis of the following criteria:

---

<sup>1</sup> . The California Department of Water Resources (DWR) also participated in the discussions, as an interested observer. DWR is the state agency responsible for the water resource planning, including issues related to agricultural drainage, and is the operator of the State Water Project

*This document does not necessarily represent the views of the Administration, the Department of the Interior, or the Bureau of Reclamation. Rather this represents ideas under consideration as part of an ongoing deliberative process.*

- Sustain agriculture in the San Joaquin Valley
- Provide a timely solution to the drainage problem
- Eliminate drainage liability to the United States
- Provide benefits to the environment
- Minimize the need for Federal funding
- Avoid redirected impacts to third parties
- Be compatible with State Water Project operations

Based on these criteria, the parties have developed the following preliminary concepts for further discussion and analyses. These concepts have not been endorsed by Reclamation or the Department of the Interior. Because the concepts contemplate, *inter alia*, relieving the Secretary of his duty to provide drainage service to the San Luis Unit, imposing the obligation to provide drainage service on the San Luis Unit irrigation contractors (Westlands Water District, San Luis Water District, Panoche Water District, Pachecho Water District, hereafter referred to as the SLU Irrigation Contractors), relieving the SLU Irrigation Contractors of the CVP irrigation capital repayment obligation, and transferring of title of certain CVP facilities, statutory authorization would have to be obtained to implement the concepts.

### **Concept 1: Assumption of Drainage Obligation**

Upon enactment of Federal legislation authorizing implementation of the concepts, each SL Irrigation Contractor would assume within its respective service area the duty to provide drainage service, and the Secretary of the Interior would be relieved, by amendment of section 1(a) of the San Luis Act, of any further obligation to provide drainage.

#### **Questions:**

##### **1. Would section 5 of the San Luis Act need to be addressed?**

**Response:** Section 5 authorizes the Secretary to permit the use of the San Luis drainage system and irrigation facilities by non-San Luis Unit contractors and to participate in construction and operation of drainage facilities to serve the general area. Inasmuch as the obligation to provide drainage service would be transferred to non-federal entities and, as outlined below, these concepts contemplate transfer of title of the San Luis Unit Joint-Use and Federal facilities, any proposed legislation to enact the concept should include provision to rescind Section 5 of the San Luis Unit Act. It should be noted, however, under these concepts it is the intent of the San Luis Unit Irrigation Contractors to provide drainage service to areas immediately adjacent to the San Luis Unit that have alleged injury resulting from the provision of water to the San Luis Unit without the provision of drainage. Because the programs that would be undertaken by the SLU Irrigation Contractors to provide drainage service would be designed and sized to collect, treat, and dispose of drain water within their own boundaries and within the boundaries of areas immediately adjacent to the San Luis Unit (the solution area identified in the EIS), it is unlikely that others would be able to avail themselves of such facilities.

*This document does not necessarily represent the views of the Administration, the Department of the Interior, or the Bureau of Reclamation. Rather this represents ideas under consideration as part of an ongoing deliberative process.*

**2. Would the SLU Irrigation Contractors satisfy the drainage obligations under section 1(a) or would the SLU Irrigation Contractors provide drainage in lieu of the drainage obligation under section 1(a)?**

**Response:** The SLU Irrigation Contractors would provide drainage service consistent with existing provisions of federal law and with the purpose underlying the imposition of that obligation on the Secretary. However, the obligation imposed on the SLU Irrigation Contractors would result from enactment of legislation authorizing implementation of these concepts, not section 1(a) of the San Luis Act.

## **Concept 2: Means of Providing Drainage**

The SLU Irrigation Contractors would provide drainage through the implementation of an in-valley solution that consists of five primary elements. As noted above, the program would be designed and constructed to collect and dispose of drain water within the boundaries of the SLU Irrigation Contractors. Within the Northerly Area of the Unit, the contractors would continue to implement the Westside Regional Drainage Program (WSRP), which consists of source control (the implementation of conservation measures) to reduce the quantity of drain water, reuse of drain water on salt tolerant crops, shallow groundwater pumping, and treatment of drain water. In lieu of Federal construction, this program would be duplicated in Westlands Water District (Westlands), at Westlands' expense. Westlands would implement three regional programs: in the northern, central and southern portions of the district. These programs would involve the construction of drainage collector systems, implementation of source control programs, reuse of drain water on salt tolerant crops utilizing land previously acquired by Westlands, pumping of shallow ground water, and treatment of drain water. An element of the source control program would be land retirement, to reduce the numbers of acres for which drainage service would be provided. The program would be implemented in a phased manner, and the districts would seek a cooperative agreement with DWR to ensure the drainage program is implemented in a manner consistent with the interests of the State, and the program would not involve the use of evaporation ponds. Rather, Westlands anticipates that evaporation would be accomplished through the use of sprinkler technology through DWR drainage programs.

The WSRP, which is currently being implemented in the Northerly Area, provides for flexibility to adapt to changes over the proposed 50 year planning and construction period. Following Congressional approval of the proposed concepts, the SLU Irrigation Contractors would immediately proceed to issue bonds, as necessary, to further implement and expand the WSRP. In the Northerly Area tile drains and collection systems are already installed, and drain water is currently discharged to the San Joaquin River. Under existing regulations, these discharges must cease by the end of 2009. In response to the installation of tile drains in fields by individual growers, the drainage quantity would increase gradually through the planning and construction period. Facility construction would begin with collection and reuse facilities, and treatment and disposal facilities would be built in two phases.

*This document does not necessarily represent the views of the Administration, the Department of the Interior, or the Bureau of Reclamation. Rather this represents ideas under consideration as part of an ongoing deliberative process.*

Exclusive of the Phase 2 Mitigation activities and assuming a 2009 start date, the below summarizes the projected staged construction completion dates for collection, conveyance, pumping plants, transmission lines, reverse osmosis, and selenium removal facilities by area:

Northerly	2014
Westlands Central	2018
Westlands North	2017
Westlands South	2017

### Concept 3: **Relief of Capital Obligations**

Upon enactment of the Legislation, the United States would relieve each of the SLU Irrigation Contractors from its respective obligation to repay capital costs for irrigation incurred by the United States for the development of the CVP, including power generating facilities.

#### **3. What is the book value of the outstanding irrigation capital costs that would be relieved?**

**Response:**

#### **Allocated Main Project Facilities, Irrigation Capital Costs, CVP (October 1, 2006)**

District	Delivery Point/Facility	Irrigation (\$1,000)
Westlands WD	Delta-Mendota Pool	3,015
	San Luis Canal	369,054
	9(d) Distribution System <sup>2</sup>	45,801
San Luis WD	Delta-Mendota Canal	5,391
	San Luis Canal	41,188
Pachecho WD	DMC	322
	San Luis Canal	1,085
Panoche WD	DMC	6,069
	San Luis Canal	17,741
<b>TOTAL</b>		<b>\$ 489,666</b>

<sup>2</sup> The amount cited here represents the financial status as of January 24, 2007. This entry is the only non-main project feature included in the table. Westlands WD is solely responsible for its repayment.

*This document does not necessarily represent the views of the Administration, the Department of the Interior, or the Bureau of Reclamation. Rather this represents ideas under consideration as part of an ongoing deliberative process.*

**4. What, if any, future capital costs would be borne by the SLU Irrigation Contractors? Who would determine whether future capital CVP expenditures for new or improved facilities are of benefit to the SLU Irrigation Contractors?**

**Response:** To the extent a SLU Irrigation Contractor continues to receive CVP municipal and industrial (M&I) water under a water service contract, future capital costs would continue to be an element of the rate for M&I water delivered under the contract. Consistent with the then M&I ratesetting policy, Reclamation would recalculate each SLU contractor's share of the outstanding capital, including that associated with any new capital costs.

With respect to irrigation water appropriated under Water Rights Permit No. 12860, the SLU Irrigation Contractors would not pay any existing capital costs, but would in the future be responsible for payment of a proportionate share of future capital CVP expenditures for new, modified or improved facilities if such expenditures benefit the SLU Irrigation Contractors [e.g., capital expenditures for the C.W. "Bill" Jones (formerly Tracy) Pumping Plant (PP), South Delta operable gates]. It is anticipated that the sharing and allocation of future CVP capital costs benefiting the SLU Irrigation Contractors relative to Water Rights Permit No. 12860 Water would be allocated between the United States and the SLU Irrigation Contractors consistent with the then CVP ratesetting policies based upon projected deliveries.

Reclamation law requires that Reclamation water contractors execute repayment or water service contracts providing for repayment prior to initiation of construction or improvements intended to serve Reclamation water contractors. Consistent with that concept, Reclamation would pursue formal agreement with the benefiting parties consistent with the CVP ratesetting policies prior to initiation of construction or improvements.

**5. What effect would these Concepts have on the financial obligation of other CVP contractors (cost shifting)?**

**Response:** It is the intent of the parties to develop these concepts so that there are no redirected capital or O&M cost impacts to the remaining CVP water service and power contractors as a result of relieving the SLU Irrigation Contractors from payment of CVP irrigation capital or planned construction. The parties anticipate that currently-unplanned future CVP construction or improvements would be the responsibility of the remaining CVP contractors unless those efforts are expected to benefit the SLU Irrigation Contractors. In the event of the latter, the SLU irrigation contractors would be responsible for payment of a proportionate share of those expenditures. Similarly any new construction or improvements made relative to the transferred San Luis Unit facilities would be the financial responsibility of the SLU Irrigation Contractors.

**6. Is it appropriate to relieve the SLU Irrigation Contractors of capital costs associated with the Delta-Mendota Canal (CVP conveyance) when they would continue to be utilizing it to convey water under the proposed concepts?**

**Response:** The Concepts are predicated upon mutual considerations. Briefly, the SLU Irrigation Contractors propose to use revenues that otherwise would be used to repay their

*This document does not necessarily represent the views of the Administration, the Department of the Interior, or the Bureau of Reclamation. Rather this represents ideas under consideration as part of an ongoing deliberative process.*

capital obligation to assist in the financing of the obligation to provide drainage currently held by the U. S. Reclamation estimates that the costs of the federal alternative would greatly exceed the amount of proposed financial relief. Under the proposed concepts, the SLU Irrigation Contractors would continue to enjoy access to pumping at the CVP's Jones PP in exchange for payment of the associated O&M costs and the provision of storage services for CVP Water at San Luis Reservoir in accordance with the Concepts put forth above. Of course, Reclamation must evaluate all aspects of any proposed drainage alternative developed pursuant to this process to determine whether or not any final proposed concept is in total consistent with federal interests.

#### **Concept 4: United States Relieved of Liability**

Each of the SLU Irrigation contractors, Firebaugh Canal Water District, and Central California Irrigation District on its behalf and on behalf of its landowners would release, waive and abandon any and all existing or future claims, demands, rights, or causes of action against the United States arising from the performance or non-performance by the United States of the drainage obligations imposed on the United States under section 1(a) of the San Luis Act.

Each of the SL Irrigation Contractors would agree to indemnify, defend, and hold harmless the United States from any and all existing or future claims, demands, rights, or causes of action against the United States arising from the performance or non-performance by the United States of the drainage obligations imposed on the United States under section 1(a) of the San Luis Act. Firebaugh Canal Water District and Central California Irrigation District would agree to indemnify, defend, and hold harmless the United States from any and all existing or future claims, demands, rights, or causes of action against the United States arising from the provision of subsurface drainage or lack thereof within the boundaries of the Firebaugh Canal Water District and the Camp 13 area of Central California Irrigation District.

#### **7. What would be the full scope of the defense/indemnification provision?**

**Response:** The scope has not yet been defined to the satisfaction of all parties and is an outstanding issue to be addressed. The SLU Irrigation Contractors understand it is Reclamation's position that the United States would have no further liability for existing or potential claims related to the provision of irrigation water to the San Luis Unit without the provision of drainage. The SLU Irrigation Contractors further understand that the ultimate approval of these concepts would be contingent on the parties' willingness to undertake the duty to defend and indemnify the United States described above.

#### **8. Would there be a need for a contribution agreement between the SLU Irrigation Contractors and the Exchange Contractors relative to the defense/indemnification provision?**

**Response:** Following resolution of the issue discussed under Question 7 above, the parties anticipate the SLU Irrigation Contractors and the Firebaugh Canal Water District and Central California Irrigation District would consult on this matter.

*This document does not necessarily represent the views of the Administration, the Department of the Interior, or the Bureau of Reclamation. Rather this represents ideas under consideration as part of an ongoing deliberative process.*

### **Concept 5: TRANSFER OF SAN LUIS FACILITIES.**

With the possible exception of the San Luis Reservoir pump-generating facility, the Federal legislation would authorize and direct the Secretary of the Interior to transfer to the State of California and a Joint Powers Authority to be comprised of SL Irrigation Contractors and San Felipe Unit Contractors (“San Luis Facilities JPA”) title to the San Luis Unit Joint-Use and Federal-Only Main Project Facilities. The State and the San Luis Facilities JPA would assume responsibility for the operation and maintenance (O&M) of said facilities, but it is assumed that DWR would continue its operation of the Joint-Use facilities, and the O’Neill Pumping Plant would continue to be operated by the San Luis & Delta-Mendota Water Authority. Notwithstanding this transfer, Reclamation would be entitled to store in the unused capacity in San Luis Reservoir CVP Water for CVP purposes. CVP Water stored in San Luis Reservoir would spill or be lost under agreed upon criteria.

The United States would transfer to each SLU Irrigation Contractor title to the Federal-only canal-side pumping plants and water distribution systems, including all rights-of-way, within their respective service areas. The Federal-only Coalinga Canal and Coalinga Pumping Plant would be transferred to the Westlands Water District. Each SLU Irrigation Contractor would assume O&M responsibility for the facilities transferred directly to it by the United States.

Upon repayment of the obligations under the San Felipe Division contracts and acceptance by each San Felipe contractor, the United States would transfer to the San Felipe contractors title to the San Felipe Division Facilities, provided the San Felipe contractors assume responsibility for O&M of such facilities. Reach 1 of the San Felipe Division Facilities would be held jointly by the San Felipe contractors, Reaches 2 and 3 of the San Felipe Division Facilities would be held by the Santa Clara Valley Water District, and the Hollister Conduit would be held by the San Benito County Water District.

#### **9. How would the JPA and the State hold title to the San Luis Facilities?**

**Response:** The parties intend that title would be held jointly by the State of California and by the San Luis Unit Facilities JPA.

#### **10. How would the existing contractual obligations of the United States related to San Luis Facilities be transferred?**

**Response:** The agreements and proposed mechanisms are:

- a. The U. S. and State of California Agreement for the Construction and O&M of the San Luis Joint-Use Facilities. Reclamation anticipates that most --if not all -- of the obligations held by the U. S. relative to the joint-use facilities would be transferred to the San Luis Unit Facilities JPA, possibly through a contract assignment. Alternatively the parties, including DWR, may elect to re-negotiate some of Joint-Use Facilities provisions in order to update the agreement to current practices or to further the efficient operation of the joint facilities prior to the assumption of any duties by the San Luis Unit Facilities JPA. Any assignment or contract amendment would

*This document does not necessarily represent the views of the Administration, the Department of the Interior, or the Bureau of Reclamation. Rather this represents ideas under consideration as part of an ongoing deliberative process.*

- require the full agreement of DWR and would be constructed so as to maintain the operational efficiency of the State Water Project.
- b. The Supplemental Agreement Between the United States of America and the State of California for the Operation of the San Luis Unit. This supplemental agreement addresses various details relating to the O&M of the San Luis Unit Joint-Use facilities. The parties anticipate the Supplemental Agreement would be reviewed and revised by the parties to memorialize current operational practices not captured in the existing Supplemental Agreement before transfer of title of San Luis Unit Joint-Use facilities. Such revisions would be predicated upon preserving the rights and benefits of the State of California relative to the State Water Project and in furtherance of improved efficiency in water resource and power management.
  - c. San Felipe Division Contracts. The SLU Irrigation Contractors and Reclamation anticipate that the San Luis Unit Facilities JPA and the United States would enter into a wheeling agreement that would provide for the conveyance by the San Luis Unit Facilities JPA of CVP water from the federal point of delivery at Delta-Mendota Canal Check 13 (or other alternative location as may be agreed near O'Neill) to the San Felipe Division Contractors' Pachecho Tunnel diversion point at San Luis Reservoir. The amount of water to be delivered by the United States to Delta Mendota Canal Check 13 for the San Felipe Division would equal the San Felipe Division allocation quantity adjusted in accordance with agreed losses. The United States would review and approve the contractors' proposed schedule of deliveries, presumably following consultation with the San Luis Unit Facilities JPA. It is anticipated that the agreed wheeling procedures would ensure no water losses or loss of operational flexibility as would be enjoyed by the San Felipe Division in the absence of the title transfer.
  - d. San Luis Unit M&I Contracts. It is anticipated that Reclamation and the SLU Irrigation Contractors would consider an arrangement similar to the above, or an assignment of those Federal contract obligations to the San Luis Unit Facilities JPA or possibly the State of California. The latter alternatives would be subject to the approval of the M&I contractors. Under any arrangement, it is assumed that the obligations of the United States would be honored without adverse impact to the contractors.

**11. May title to the Gianelli pumping facilities but not power generating facilities be transferred [real property and Federal Energy Regulatory Commission (FERC) agreements]?**

**Response:** The facility is a combined pump/generation plant, so splitting the title may be very difficult to define. Reclamation has reviewed the inter-Agency agreement between FERC and Reclamation regarding jurisdiction, and is of the opinion that ownership of the plant should remain with Reclamation. This opinion is consistent with the intent of the parties that San Luis Reservoir power facilities remain a part of the CVP power production network as currently operated.



*This document does not necessarily represent the views of the Administration, the Department of the Interior, or the Bureau of Reclamation. Rather this represents ideas under consideration as part of an ongoing deliberative process.*

**12. Would the Los Banos and Panoche Detention Dams be included in the proposed transfer of facilities?**

**Response:** Reclamation believes any transfer of title of the San Luis Unit Joint-Use facilities should include the Los Banos and Panoche Detention Dams as these facilities are critical to the protection of the San Luis Canal. When practicable to do so, it is the intent of the United States to divest itself of any responsibility for associated San Luis Unit facilities upon transfer of title of the main San Luis Unit facilities. The transfer of these detention dams would obligate the State and the JPA to comply with all United States Army Corps of Engineer flood operation requirements applicable to those dams. Reclamation also anticipates these dams would be subject to California State Safety of Dams criteria.

**13. What would be the effects of replacing the United States with a JPA as a “partner” in facilities (operations, financial, general liability?)**

**Response:** Analyses concerning the financial and liability effects of replacing the United States with a JPA, to be comprised of the SLU Irrigation Contractors and the San Felipe Contractors, as DWR’s “partner” in connection with operation of the joint use facilities is ongoing. However, for the reasons set forth below, there would be no detrimental effects on operations of the facilities.

**14. Does the State of California require authority to accept title to the San Luis Unit Joint Facilities?**

**Response:** Legal analyses completed to date have concluded that DWR has authority to accept title to the Joint Use Facilities of the San Luis Unit. Further analysis is ongoing.

**15. What would be the implications for the Coordinated Operation Agreement (COA)?**

**Response:** This question is a water operations issue and is highly dependent on any final negotiated water operations agreements. Although the COA may be in need of updating independent of any drainage resolution, the current thinking on Delta operations and sharing of San Luis Reservoir and Jones PP should greatly minimize or eliminate immediate COA issues. Again, questions regarding possible implications to COA would best be posed and answered following development of a proposed water operations agreement.

**16. Would there be property tax implications because of the acquisition of land outside of district boundaries?**

**Response:** No. Joint powers authorities share the tax exempt status of its member agencies. The proposed title transfer would be to the State, which is exempt from property taxes, and the San Luis Unit Facilities JPA, which would be structured to cover all affected properties and lands.

*This document does not necessarily represent the views of the Administration, the Department of the Interior, or the Bureau of Reclamation. Rather this represents ideas under consideration as part of an ongoing deliberative process.*

**17. What would be the effect of the State Safety of Dams Act becoming applicable?**

**Response:** Reclamation understands that the transfer of title of the San Luis Dam, O’Neil Dam, Little Panoche Dam, and/or Los Banos Dam to non-federal interests would subject all transferred dams to the California Safety of Dams Program requirements.

Reclamation believes that any federal legislation providing for transfer of title to San Luis Unit facilities would exempt the United States from any future liability relative to those facilities and remove those facilities from the Federal Reclamation program. The removal of those facilities from the Federal Reclamation program would preclude the recipients from seeking federal Reclamation financial assistance, including Federal Safety of Dams funds relative to those facilities following title transfer. The SLU Irrigation Contractors would be liable for costs incurred relative to State Safety of Dams requirements.

The San Luis Unit Irrigation Contractors believe the United States should not be relieved of prior liability from defects that existed prior to transfer. This issue is outstanding. The parties anticipate that any proposed statutory authorization would address the disposition of this issue.

**18. Would the transfer affect the existing ability of CVP contractors to use San Luis Reservoir for conveyance purposes?**

**Response:** Reclamation’s interest in continuing discussions is conditioned, among other criteria, upon the requirement that any agreed proposal would “...avoid redirected impacts to third parties”. That standard would preclude any unmitigated reduction in access of CVP contractors to use San Luis Reservoir for conveyance of their CVP water service contract supplies relative to that which the contractors would have enjoyed in the absence of the transfer of title. Any issues related to such conveyance would be addressed during negotiation of the water operations agreements.

**19. Would the title transfer preserve existing operational flexibility, including rescheduled water?**

**Response:** The degree to which operational flexibility is preserved would depend on the operating criteria developed by the parties. It is the intent of the parties to preserve existing flexibility as part of the final operations agreements. The transfer of title should not deprive any CVP or SWP contractors of any benefits associated with ongoing water resource programs, including water transfers, exchanges and conveyance, involving the San Luis Unit Joint Facilities. With respect to rescheduled water the transfer could provide greater flexibility for the members of the JPA inasmuch as they would own the reservoir. Other contractors would be permitted to reschedule water in the reservoir, but the presence of that water should be subject to existing loss criteria, i.e. foregone pumping. (Re-coloring such water as Permit No. 12860 Water reflects the general priority of right of the SLU Irrigation Contractors to use San Luis Reservoir; this is analogous to the priority of the CVP to use of Jones PP to meet direct diversion needs.)

*This document does not necessarily represent the views of the Administration, the Department of the Interior, or the Bureau of Reclamation. Rather this represents ideas under consideration as part of an ongoing deliberative process.*

**20. What effect, if any, would these concepts have on State Water Project bond and credit ratings?**

**Response:** This issue has not yet been addressed by DWR.

## **Concept 6: Transfer of Water Rights**

The United States would California Water Rights Permit No. 12860 (“Permit No. 12860”) to a Joint Powers Authority to be comprised of SLU Irrigation Contractors and San Felipe Division Contractors (“San Luis Water Rights JPA”), provided:

a) Reclamation may rely on water appropriated under Permit No. 12860 to meet existing project obligations (deliveries to Settlement Contractors, Delta Division water service contractors, San Felipe Division Contractors, San Luis Unit M&I contractors and level 2 refuge supplies) to the extent water would have been available to satisfy existing project obligations if the San Luis Unit Joint-Use facilities had not been transferred.

b) In exchange for SLU Irrigation Contractors’ water used by Reclamation to meet existing CVP obligations, Reclamation would provide to the San Luis Unit Irrigation Contractors CVP Water from CVP storage north of Delta. Water borrowed by Reclamation from water re-diverted to storage in San Luis Reservoir under Permit No. 12860 would be extinguished upon the filling of “federal share” of storage.

**21. Would the concept reflected in item (b) immediately above need to be refined based upon modeling/modeling results? Does the concept provide sufficient operational flexibility?**

**Response:** If the current concept and the operational variations being explored and modeled are fruitful, item (b) may need to be rewritten. It is the intent of the parties to negotiate water operations agreements that would preserve operational flexibility.

**22. What would be the effect of the transfer, if any, on the applicability of area of origin claims?**

**Response:** It is neither the expectation nor the intent of the parties that transfer of Permit No. 12860 would exempt this permit from the California water rights law protecting areas or counties of origin. If necessary the proposed legislation would be drafted so as to require that the limitations imposed California water rights law continue to apply.

**23. When may the CVP use San Luis Reservoir?**

**Response:** The existing concept provides that Reclamation would use San Luis Reservoir under several circumstances:

- When there is unused capacity in San Luis Reservoir, Reclamation could use that capacity for CVP purposes. Accordingly Reclamation may elect to store CVP water in San Luis Reservoir when space is available. This CVP water could be used for

*This document does not necessarily represent the views of the Administration, the Department of the Interior, or the Bureau of Reclamation. Rather this represents ideas under consideration as part of an ongoing deliberative process.*

- CVP purposes or to repay Permit No. 12860 water borrowed by the CVP from the SLU Irrigation Contractors. It is anticipated that the parties would develop spill (loss) criteria to address how that water would be treated during those times when reservoir space holding CVP water would be needed for the SLU Irrigation Contractors' storage purposes.
- In addition, Reclamation may rely on water appropriated under Permit No. 12860 and stored at San Luis Reservoir to meet its existing project obligations as if the San Luis Unit facilities had not been transferred.

**24. What would be the means to protect San Felipe Contractors from increased San Luis Reservoir low point risk (e.g., application of contract capital repayment to avoid adverse impacts)?**

**Response:** The SLU Irrigation Contractors and the San Felipe Contractors have tentatively reached agreement on how this would be accomplished and will soon provide information on the proposed solution.

**Concept 7: Use of Jones Pumping Plant**

The United States would pump water at the Jones PP and convey the water through the Delta-Mendota Canal. Such water would have priority to capacity in excess of the capacity required for existing project obligations.

The SLU Irrigation Contractors would pay an allocable share of costs of O&M of the Jones PP, the Delta-Mendota Canal and O'Neill Pumping / generating plant. Costs are to be allocated based on the quantity of water delivered to SLU Irrigation Contractors in proportion to total deliveries using these facilities, as provided in the current SLDMWA O&M Agreement.

**25. What would be the financial impacts, if any, of the SLU Irrigation Contractors continuing to use CVP facilities operated and maintained by the San Luis & Delta Mendota Water Authority (SLDMWA), the non-federal operating entity for the United States?**

**Response:** The methodology by which the O&M rate is established and applied is independent of the ownership of the San Luis Unit Joint-Use facilities. The negotiated concept would not affect the methodology by which O&M costs are assessed and collected by the SLDMWA. Inasmuch as the quantity of water delivered to the SLU Irrigation Contractors may vary from existing conditions, there would be an impact on the O&M rate paid by other contractors to the SLDMWA. In some years, the quantity of water delivered to the SLU Irrigation Contractors may be more than the quantity of water that would be delivered under existing conditions, and the total quantity paid to the SLDMWA by other contractors would go down. Conversely, during some years the quantity of water delivered to the SLU Irrigation Contractors would be less than the quantity that would be delivered under existing conditions. In these years, the total amount paid to the SLDMWA by other contractors would go up because their proportionate share of water delivered, compared to

*This document does not necessarily represent the views of the Administration, the Department of the Interior, or the Bureau of Reclamation. Rather this represents ideas under consideration as part of an ongoing deliberative process.*

the total quantity of water delivered, would be higher. The amount of water delivered over time would likely exhibit greater variability but it is anticipated that the total amount of water delivered over the long-run would not vary greatly as a result of the proposed drainage resolution.

**26. What would be the operational impacts, if any, caused by the use of the Jones PP? (e.g., priority for water transfers)**

**Response:** Any impacts would be highly dependent on the final negotiated water operations agreements. The current thinking on Delta operations and sharing of San Luis Reservoir and Jones PP facilities should greatly minimize or eliminate any possible conflicts, but pumping priorities must be clearly spelled out in the final water operations agreement consistent with the principles outlined in the drainage resolution documents. The overriding goal would be to minimize any operational impacts while preserving operational flexibility.

**27. What effect, if any, would these concepts have on Joint Point of Diversion?**

**Response:** There should be no effect. Permit No. 12860 water allows diversion of Permit No. 12860 water at Banks PP subject to various terms and conditions. The parties expect that all terms and conditions would remain applicable upon assignment. Permit No. 12860 would be subject to the continuing authority, including as relates to diversions at Banks PP, of the State Water Resources Control Board (SWRCB). The SLU Irrigation Contractors propose that Federal access to Joint Point to convey CVP water be senior to the conveyance of Permit No. 12860 water, consistent with the priority pumping and conveyance of CVP water through Jones PP and the DMC Canal.

**Concept 8: Restrictions on Exercise of Permit No. 12860**

Permit No. 12860 would be subject to:

- Terms and conditions imposed under D-1641 and the continuing jurisdiction of the State Water Resource Control Board; and
- Non-discretionary actions lawfully imposed under state or federal law, including but not limited to biological opinions imposed pursuant to federal law; and
- Future discretionary actions or restrictions, if any, imposed by United States Fish & Wildlife Service or NOAA Fisheries; provided the United States makes up for such water lost caused by the actions or restriction through Environmental Water Account (EWA, or its equivalent and CVPIA section 3406(b)(3) activities.

**28. What would be the effect, if any, if there is no EWA?**

**Response:** EWA is one possible tool to cover water losses due to future discretionary actions or restrictions imposed by the U. S. F&WS or NOAA fisheries. If EWA terminates,

*This document does not necessarily represent the views of the Administration, the Department of the Interior, or the Bureau of Reclamation. Rather this represents ideas under consideration as part of an ongoing deliberative process.*

such coverage could be accomplished through CVPIA Article 3406 b (3) actions or through water service contracts proposed to be assigned by Westlands Water District to the U. S. Fish and Wildlife Service for fish and wildlife purposes.

**29. What effect, if any, would these concepts have on project descriptions (e.g., in the CVP-OCAP)?**

**Response:** Although the drainage resolution agreement would ultimately need to address Federal Endangered Species Act (ESA) compliance, this action is not yet ripe for inclusion in the current re-consultations. The proposed action must be preceded by federal legislation. Depending on how the drainage resolution is implemented, any future Habitat Conservation Plan in the Delta, and/or the degree of project integration, the project description for future OCAP documents would need to be updated as appropriate.

**30. Would it be necessary to modify b(2) accounting?**

**Response:** Any impacts to b(2) would be highly dependent on the final negotiated water operations agreements. Although b(2) accounting and implementation may need improvement independent of any drainage resolution or title transfer, the current proposals related to Delta operations and sharing of San Luis Reservoir and Jones PP facilities should greatly minimize or eliminate any immediate b(2) concerns. It is the intent of the parties that the proposed resolution should result in net positive environmental improvements.

**Concept 9: Use of CVP Power**

The United States would provide CVP Power at the Jones PP, O’Neill PP, Dos Amigos PP, and Gianelli PP to pump water appropriated pursuant to Permit No. 12860.

The United States would provide CVP Power to operate the Coalinga PP and all pumping plants along the San Luis Canal and Coalinga Canal without additional cost to the SLU Irrigation contractors.

**32. What is meant by the provision of CVP Power “without additional cost to the SLU Irrigation Contractors?”**

**Response:** The concepts described in this document provide that the SLU Irrigation Contractors would be relieved of its respective obligation to repay CVP capital costs. CVP capital costs include those capital costs associated with CVP Power. Accordingly, the SLU Irrigation Contractors would not be charged the capital component of the “traditional” CVP Power Rate assessed CVP water service contractors. However, the SLU Irrigation Contractors would continue to be responsible for payment of their allocable share of CVP power O&M costs.

*This document does not necessarily represent the views of the Administration, the Department of the Interior, or the Bureau of Reclamation. Rather this represents ideas under consideration as part of an ongoing deliberative process.*

**32. Would the SLU Irrigation Contractors, Firebaugh Canal Water District and Central California Irrigation District be able to use CVP Power for a non-federal San Luis Unit drainage water treatment plan?**

**Response:** This issue has not yet been addressed by the parties. Any proposal to provide CVP Power to operate non-federal facilities would be subject to the approval of the Congress. The provision of such power, if any, would likely be limited to no more than that which would be used to operate federally funded drainage facilities.

**33. Would CVP Power be provided to the Pachecho PP and the Coyote PP (San Felipe Division) if and when title is transferred pursuant to Article 5(c)?**

**Response:** This issue has not yet been addressed by the parties. Any proposal to provide CVP Power to operate non-federal facilities following transfer of title would be subject to the approval of the Congress.

## **Concept 10: Restoration Fund Payments**

Each SLU Irrigation Contractor would pay into the Restoration Fund established by the CVPIA \$7.00 (adjustable) per acre-foot of Permit No. 12860 Water delivered within their respective service area, provided that, of that \$7.00 (adjustable), \$3.00 would be used by the Department of the Interior for in-Delta ecosystem restoration projects selected by Interior in consultation with the SLU Irrigation Contractors.

**34. What would be the impact of the above on Central Valley Project Improvement Act (CVPIA) Restoration Fund (RF) revenues?**

**Response:** The RP proposed to be paid by the SLU Irrigation Contractors (\$7.00 per AF) is less than that currently assessed and collected from CVP water service contractors (\$8.58 per AF). Consistent with the above information, Reclamation anticipates a reduction of approximately \$1.58 (adjusted) per acre-foot for each acre-foot of irrigation water delivered to the SLU Irrigation Contractors and a loss of \$8.58 (adjusted) per acre foot of irrigation water that would not be delivered to the SLU Irrigation Contractors as a result of changes in operations due to a non-federal drainage resolution. The parties are conducting various operational studies in order to ensure reductions over time in deliveries to the SLU Irrigation Contractors, if any, are minimized. Following completion of those studies and the negotiation of an operations agreement, Reclamation would evaluate the anticipated reduction, if any, in CVPIA RF revenues

It is important to note that the SLU Irrigation Contractors propose to continue to pay in perpetuity the \$7.00 (adjusted) payment for any and all irrigation water delivered under Permit No. 12860. Accordingly, the remaining CVP water and power contractors would likely benefit through reduced Restoration Payments to become effective under Section 3407 (d)(2)(A) upon completion of the fish, wildlife and habitat mitigation and restoration actions

*This document does not necessarily represent the views of the Administration, the Department of the Interior, or the Bureau of Reclamation. Rather this represents ideas under consideration as part of an ongoing deliberative process.*

mandated by Section 3406 of the CVPIA. Furthermore, as discussed in the below section entitled “**Benefits to the Environment**”, the proposed drainage resolution is intended to provide a number of benefits to the environment, including additional water for environmental uses in the Delta or upstream of the Delta in approximately one-third of the years. As discussed in the introductory portion of this document, the parties intend, among other criteria, that the final proposed drainage resolution be of net positive benefit to the environment and are committed to precluding any redirected financial impacts to third parties, including those which may be attributable to revenue losses to the CVPIA RF.

### **Concept 11: Points of Delivery**

The points of delivery in existing water service contracts for water supplied or conveyed through San Luis Unit Facilities or San Felipe Division Facilities would be unchanged. The existing points of delivery along the Delta-Mendota Canal and the Mendota Pool would be unchanged.

### **Concept 12: Effect On Existing Water Service or Repayment Contracts**

Upon title transfer of the San Luis Joint-Use and Federal Facilities to the San Luis Facilities JPA and the State of California pursuant to Article 5(a), the water service and repayment contracts of the SLU Irrigation Contractors would be terminated or amended consistent with these Concepts. The San Luis Water District and Westlands Water District existing water service contracts would each be amended to provide for the delivery of up to 6,000 acre-feet annually of CVP Water for M&I use. San Luis Water District would retain for M&I use several water service contracts obtained through assignment. In addition, a portion of Westlands Water Districts existing water service contract (approximately 40,000 acre-feet) would be assigned to the United States Navy for the irrigation of agricultural lands at Naval Air Station Lemoore. Water service contracts obtained by Westlands Water District through assignment would be assigned to the United States Fish & Wildlife Service.

Nothing in these Concepts is intended to affect the contracts by and between the United States and the San Felipe Division Contractors or those contractors within the San Luis Unit that hold water service contracts for M&I water other than the identified SLU Irrigation Contractors.

#### **35. What impact, if any, would these Concepts have on the reallocation agreement between the Santa Clara Valley Water District and various San Luis and Delta-Mendota Canal water service contractors?**

**Response:** The parties to the reallocation agreement would review these Concepts and determine whether or not an impact(s) may occur. The parties propose to address those impacts, if any, through amendment of the reallocation agreement.

#### **36. What impact would these Concepts have on implementation of the CVP M&I shortage policy?**



*This document does not necessarily represent the views of the Administration, the Department of the Interior, or the Bureau of Reclamation. Rather this represents ideas under consideration as part of an ongoing deliberative process.*

**Response:** Consistent with the collective goal to avoid redirected impacts the parties propose that any final negotiated proposal be structured to preserve the proposed CVP M&I shortage policy and to protect remaining CVP irrigation contractors from any increased burden to reallocate irrigation water to meet the proposed 75 percent M&I reliability.

**37. Why would the SLU Irrigation Contractors continue “to receive CVP M&I water under a water service contract”? Won’t their M&I water come out of the Permit No. 12860 Water?**

**Response:** The proposal being discussed provides for the assignment of Water Permit No. 12860 in lieu of irrigation water provided under existing SLU Irrigation Contractors’ water service contracts. Westlands and San Luis Water Districts propose to retain a right to a relatively modest amount of CVP M&I water service under amended and assigned water service contracts. The acceptability of any non-federal drainage proposal is predicated upon no adverse impacts to the water supplies of the remaining CVP contractors. In addition, the SLU Irrigation Contractors would limit their maximum annual diversions to no more than 1.0 MAF, an amount considerably less than their current maximum annual contract quantity of almost 1.4 MAF.

**Concept 13: Benefits to the Environment**

Implementation of these concepts would provide a number of benefits to the environment. Among these is a significant reduction in the total quantity of water the CVP is obligated to deliver south of the Delta. Currently, the San Luis Unit contractors have a combined annual contract total of approximately 1.4 million acre-feet. The total maximum quantity of water that may be annually appropriated under Permit No. 12860 is 1 million acre-feet. Modeling indicates that implementation of these concepts would make additional water available for environmental uses in the Delta or upstream of the Delta in approximately one-third of the years. In approximately ten percent of the years, this additional water is 400,000 acre-feet. Moreover, the assignment of contracts by Westlands Water District to the United States Fish & Wildlife Service would make up to 43,350 acre-feet of water available for use at Fish & Wildlife’s discretion for use in the Delta, to provide upstream flow, or for level 4 refuge supplies. Implementation of the WRDP would eliminate discharges of drain water into the San Joaquin River, with concomitant improvements to water quality and improved flexibility for operations of New Melones Reservoir.

**38. What impact would these Concepts have on the United States’ ability to meet its existing regulatory and contractual obligations?**

**Response:** Among other criteria, Reclamation is committed to negotiating a resolution that avoids redirected impacts to third parties (including those having contractual obligations with the United States) and meeting all its existing regulatory obligations (e.g., Delta obligations, temperature requirements, pumping restrictions, etc.)

**39. What impact would these Concepts have upon Delta operations?**

*This document does not necessarily represent the views of the Administration, the Department of the Interior, or the Bureau of Reclamation. Rather this represents ideas under consideration as part of an ongoing deliberative process.*

**Response:** The San Luis Reservoir is an off-stream storage facility dependent upon Delta pumping. This dependence would be maintained upon the assignment of Permit No. 12860. Current modeling and discussions suggest that the joint operations of Reclamation and the SLU Irrigation Contractors would be similar to current CVP operations. Nevertheless, any drainage resolution agreement would be subject to National Environmental Policy Act (NEPA) review and Endangered Species Act (ESA) compliance. Accordingly, all pumping at Jones PP would be subject to applicable biological opinions that currently exist or that may result from the ESA consultation process.

#### **Concept 14: Effect On Reclamation Law Obligations**

Upon enactment of the legislation authorizing implementation of these concepts, water delivered pursuant to existing water service contracts between the United States and the SLU Irrigation Contractors would not be subject to the Reclamation Reform Act or any other limitations of federal reclamation law; provided that after transfer of the San Luis Facilities to the San Luis Facilities JPA, if any SLU Irrigation Contractor maintains a water service contract(s), that Contractor would be subject to Reclamation Reform Act or any other limitations of federal reclamation law to the extent required by or because of that water service contract(s).

#### **Concept 15: Environmental Compliance**

The SLU Irrigation Contractors would pay all costs to prepare documents required to comply with applicable environmental laws, including the National Environmental Policy Act, historical and cultural preservation studies and federal Endangered Species Act.

##### **40. Should these concepts extend to the payment of environmental mitigation costs?**

**Response:** The parties would need to address financial responsibility for any costs depending upon the mitigation needs.

##### **41. Should these concepts be extended to the California Environmental Quality Act?**

**Response:** It may be appropriate and would be considered.

#### **Concept 16: Contingent Upon Legislation**

Implementation of these Concepts would be contingent upon enactment of federal legislation, which would approve terms and authorizing and directing the Secretary of the Interior to take actions provided herein.

*This document does not necessarily represent the views of the Administration, the Department of the Interior, or the Bureau of Reclamation. Rather this represents ideas under consideration as part of an ongoing deliberative process.*

**42. Would state legislation be required?**

**Response:** This issue is being researched by DWR.

**Concept 17: Third Party Impacts/Beneficiaries**

Nothing herein would be intended to result in impacts to third parties. Nothing herein would confer any rights or interests to other parties.

**Other Questions:**

**43. In addition to the criteria that must be met prior to implementation of these concepts, what other factors would be considered by Reclamation in evaluating whether or not it would support a specific proposal?**

**Response:** Reclamation would evaluate all aspects of any proposed drainage alternative developed pursuant to this process to determine whether or not the proposed concept in total is consistent with federal interests, including the above criteria. That analysis would include an evaluation from the federal viewpoint of the various financial aspects of the proposed concept, including, but not limited to, the existing capital obligations proposed to be relieved; federal costs expected to be avoided through cancellation of the duty of the U.S. to provide drainage under the San Luis Act; foregone federal reimbursement as a result of the cancellation of the federal drainage duty; additional costs that may be incurred by the U. S. in support of various elements of the proposal (e.g., possible declaration of various redirected costs as nonreimbursable); discontinuation of federal liability for future safety of dams and drainage claims, and the provision of additional environmental benefits. It is Reclamation's intent to ensure that any proposed concept is evaluated whenever possible on a quantitative basis so that the Secretary can make an informed decision as to whether or not a proposed drainage resolution is compatible with the goals and objectives of the U. S. and is -- in its entirety -- a prudent solution to the drainage issue when compared to Federal alternatives.

**44. Would there be an irrigation subsidy associated with the proposed action?**

**Answer:** Reclamation intends that the transfer of title of the San Luis Unit Joint Use and Federal Only Facilities to the San Luis Facilities JPA and individual SLU contractors respectively would (a) result in a complete termination of Reclamation's responsibility or liability for O&M, including any existing or future safety of dam considerations, improvements, or other corrective actions relative to those facilities, and (b) make those facilities ineligible for future federal funding under various Reclamation programs.

Following title transfer and assignment of Permit No. 12860, the SLU Irrigation Contractors would no longer be entitled to Federal CVP storage services. The SLU Irrigation Contractors would continue to enjoy access to pumping at the CVP's Jones PP in exchange for payment of the associated O&M costs and the provision of storage services for CVP Water at San Luis Reservoir in accordance with the Concepts put forth above.

*This document does not necessarily represent the views of the Administration, the Department of the Interior, or the Bureau of Reclamation. Rather this represents ideas under consideration as part of an ongoing deliberative process.*

Furthermore, following Congressional approval of the proposed non-federal drainage resolution, the SLU Irrigation Contractors would not be entitled to any future federal assistance relative to the drainage solution and would be responsible for any future claims related to the San Luis Unit drainage issue.

**45. What would be the value of the facilities and water proposed to be transferred to the SLU Irrigation Contractors?**

**Response:** This is a difficult question to answer as there are no comparable transactions. The proposal encompasses a number of activities, including the assumption by the SLU Irrigation Contractors of a substantial drainage construction and O&M obligation. Furthermore, the SLU Irrigation Contractors currently have a contractual right and a statutory right of contract renewal (25 years for irrigation water) to enjoy the benefits of storage at the CVP's northern and south of Delta storage facilities, San Luis conveyance, and the right to divert up to 1.4 million acre-feet of CVP water per year for beneficial use, including the ability to transfer and make exchanges consistent with Reclamation law and applicable contracts. Accordingly, the proposal under consideration does not constitute a new water supply for the SLU irrigation contractors nor do the physical facilities generate a new water supply.

The primary benefits associated with the assignment of the Permit No. 12860 and the transfer of title of the San Luis Unit facilities to the SLU Irrigation Contractors are related to their ability to better control their costs and the maintenance of the facilities on which they rely to provide their landowners water. They would no longer be dependent on the Federal appropriations process and would no longer have to compete for the limited financial resources of Reclamation.