

9/27/2004

### **Regional Criteria Comments**

On Tuesday, February 17, 2004, the Bureau of Reclamation (Reclamation) held a public workshop to solicit comments on Regional Criteria for the Sacramento Valley. The “Regional Criteria for Evaluating Water Management Plans” (Regional Criteria) were developed by Reclamation under the authority of the Central Valley Project Improvement Act of 1992 (CVPIA) and in accordance with the Reclamation Reform Act of 1982 (RRA).

Reclamation received comments from the public regarding Regional Criteria. Below are comments followed by Reclamation’s responses. It is Reclamation’s intent to accurately capture all of the public’s concerns in regards to the Regional Criteria. The comments/questions have been taken directly from letters received. The comments have been edited in some circumstances in order to consolidate the main issues.

### **ADMINISTRATION**

#### **1) Why are you evaluating the need for Regional Criteria? The existing Standard Criteria provide sufficient flexibility (for Regional Plan option).**

**Response:** The Regional Criteria were developed through a stakeholder process in response to the Water Conservation Administrative Proposal.<sup>1</sup> Some water suppliers argued it was inappropriate to establish a single set of best management practice based on criteria for water conservation planning due to regional variations. Interior agreed to explore and develop such criteria for one area as an “experimental” first step. The Sacramento Valley, given its unique conditions and circumstances<sup>2</sup>, was identified in the Administrative Proposal as the focus of this initial effort.

#### **2) The Pilot Program is too large and should be scaled back.**

**Response:** The Sacramento Valley (as stated above) was chosen as an “experimental” first step. Reclamation determined that these criteria should be developed on a basin-wide management level that could be incorporated into the overall basin-wide management plan. This plan is being developed by Reclamation and several Sacramento Valley Water Rights Settlement Contractors. In addition, quantifiable objectives, which is the chosen approach for the Regional Criteria, need to be implemented and assessed on a basin-wide level to determine individual effectiveness and thereby the effectiveness of the pilot program.

#### **3) The success of a Pilot Program is to be determined only by the Contracting Officer. There is objection to having one person make that decision.**

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<sup>1</sup> In 1995, the Department of Interior initiated a stakeholder process to address areas of concern related to the implementation of CVPIA. As part of this process, the water conservation work team identified six major issues surrounding the implementation of the CVPIA water conservation requirements. In 1997, the Water Conservation Administrative Proposal was finalized which incorporated Interior’s position on the critical issues including the development of Regional Criteria

<sup>2</sup> Unique conditions and circumstances: irrigation water is eventually recaptured in the Sacramento River, groundwater basins, and through reuse, or provides riparian or wetland habitat values

**Response:** Criteria language has been modified to include the following:

*The Contracting Officer will in consultation with Participating Contractors confer with technical experts to determine the successfulness of the Regional Criteria.*

#### **PROCESS**

- 4) **The scheduling of key actions is confusing, and will likely result in extensive delays. The Regional Criteria are silent on when the Plan must be submitted. Consequently, the five years given by the Criteria to “successfully implement” the Plan may float forward throughout an indefinite period of plan preparation.**

**Response:** Criteria language has been modified to include the following:

*Within one year after contract renewal, Participating Contractors will submit an acceptable Plan in accordance with the Regional Criteria. The Sacramento River Contractors that participate in the development of a Regional Water Management Plan (Plan) will have 5 years in which to successfully implement their Plan under the approved Regional Criteria. The Regional Criteria apply to only agricultural water use in the Sacramento Valley.*

- 5) **If a (measurement) plan is not required to be submitted by a specific date, or follow a specific sequence of events, the purported deadlines contained in either or both of these measurement options will likely become points of dispute in the future. Additionally, the second (measurement) option is unclear on its face regarding the applicable timeline for any Participating Contractor whose contract renewal does not coincide with other Participating Contractors.**

**Response:** Both measurement options in the Regional Criteria specify due dates (full measurement within 5 years of contract renewal or an alternate program to be implemented within 3 years of contract renewal, with full implementation within 5 years.) The following is the exact language from the Criteria.

*a. Fully measure with a reasonable degree of accuracy the volume of water delivered by each Participating Contractor to each of its respective customers, and implement procedures that provide incentives for improved management of water within 5 years of contract renewal; or*

*b. Implement a mutually acceptable water measurement program (including timeframes and budget needs) within 3 years of the renewal of the Participating Contractors’ contract with Reclamation, with full implementation within 5 years. This option should be at least as effective as option 1 and will be substantiated based on field documentation derived from the measurement studies conducted in relevant sub-regions. Please*

*attach a description of the studies including the study objectives, along with an estimated timeline and budget.*

**6) There are no criteria for deeming the “Pilot Program” a success.**

**Response:** Criteria language has been modified to include the following:

*The Contracting Officer will in consultation with Participating Contractors confer with technical experts to determine the successfulness of the Regional Criteria. Factors that will be considered in this determination will be:*

- 1. Water management actions identified and implemented by the Participating Contractors as part of the regional planning process.*
- 2. The progress being made in the region in impacting the targeted benefits.*

*If the Contracting Officer deems this pilot program to be unsuccessful, Regional Criteria will be discontinued. All subsequent Plans would then be evaluated under the then current Standard Criteria.*

**7) There are no consequences for failure to submit or implement a Plan.**

**Response:** As with Contractors preparing Water Conservation Plans under the Standard Criteria, consequences of non-compliance with the water conservation planning requirements of Federal law will be incorporated in the Settlement Contracts. The proposed contract language states: *“Prior to the diversion of Project Water, the Contractor shall be implementing an effective water conservation and efficiency program based on the Basin-Wide Water Management Plan and/or Contractor’s water conservation plan that has been determined by the Contracting Officer to meet the conservation and efficiency criteria for evaluating water conservation plans established under Federal law.”*

**8) Recurring interest in transfers by Sacramento Valley Contractors should lead the Bureau to insist on the highest standard of measurement on the part of Participating Contractors.**

**Response:** Reclamation has developed and implemented policies and guidelines in the water transfer approval process that is consistent with state and federal law. These policies and guidelines validate the amount of transferable water by CVP contractors. These guidelines are consistent with those used by the California Department of Water Resources for irrigation water transfers. These guidelines determine transferable water based on determining the difference in crop evapotranspiration between historical cropping patterns and the cropping pattern in the year of the transfer.

- 9) **The list of Quantifiable Objectives (QOs) to be analyzed is further reduced by determinations by the Participating Contractors that certain QOs are non-applicable. The determination of non-applicability apparently rests exclusively with the Participating Contractors, perhaps even an individual district.**

**Response:** Criteria language has been modified to include the following:

*In certain cases, the Participating Contractors in consultation with Reclamation, may determine the QOs to be "non-applicable." A determination of non-applicability could include, but will not be limited to, the following:*

- *Whether the QOs are already being pursued through other Regional implementation activities (duplicated effort);*
- *Whether the Participating Contractors in the sub-region are unable to affect the related TBs (ineffectiveness);*
- *Whether the CALFED Science Program has determined that the QO and/or its related TB are no longer warranted based on information collected through the Region's water flow and water quality monitoring program, or the Science Program's determination that the fishery conditions in the Region have been satisfied (no longer necessary)*

- 10) **Implementation of proposed QOs is up to Participating Contractors, and no methodology is specified for declining to implement QOs. The Regional Criteria concede that implementation will be dependent upon economic and financial feasibility for the Participating Contractor.**

**Response:** Section 4 of the Regional Criteria requires the Participating Contractors to develop Proposed QOs (the QO or portion thereof that the Participating Contractors propose for further analysis) for each applicable QO that the Participating Contractors in the basin can address through water management actions. As part of that analysis, the districts are to develop an implementation plan that identifies the portion of the action that is locally cost effective. The overall evaluation of the program success will address whether the Participating Contractors have implemented those locally cost effective actions. For those actions that are not locally feasible, the Participating Contractors are required in the Annual Update to identify efforts they have undertaken to secure adequate funding.

### **MEASUREMENT**

- 11) **There are no criteria for determining that an alternative measurement program is as effective.**
- 12) **Reclamation has moved away from the +/-6% requirement as in the Standard Criteria.**

**Response: (11 & 12)** The following section from the Regional Criteria addresses options for measurement:

*Each Participating Contractor shall implement one of the following measurement options:*

1. *Fully measure with a reasonable degree of accuracy the volume of water delivered by each Participating Contractor to each of its respective customers, and implement procedures that provide incentives for improved management of water within 5 years of contract renewal; or*
2. *Implement a mutually acceptable water measurement program (including timeframes and budget needs) within 3 years of the renewal of the Participating Contractors' contract with Reclamation, with full Implementation within 5 years thereof. This option should be at least as effective as option 1 and will be substantiated based on field documentation derived from the measurement study(s) conducted in relevant Sub-regions. Please attach a description of the study(s) including the study objectives, along with an estimated timeline and budget.*

The criterion for determination are that the alternative measurement program must be at least as effective as option 1. As stated earlier in the Regional Criteria:

*The development and Implementation of these Regional Criteria for the Sacramento Valley is an alternative "experimental" pilot program to the current Standard Criteria for Evaluating Water Management Plans (Standard Criteria),...It further states that, "If the Contracting Officer deems this pilot program to be unsuccessful, these Regional Criteria will be discontinued. All subsequent Plans would then be evaluated under the then current Standard Criteria."*

The effectiveness of the measurement program(s) will be analyzed as part of the determination of the Regional Criteria's success.

- 13) All Federal contractors must accurately measure deliveries to customers and bill by volume. If the proposed Regional Criteria offer a path for multiple Sacramento Valley water districts supplied by the CVP to avoid measurement, the adoption of Regional Criteria would be highly problematic. Such an action would be inconsistent with applicable laws, and the CALFED ROD.**

**Response:** See response to #11 and #12 above. Also, an alternative measurement program will be evaluated based on study results that address in part, the benefits of accurate water measurement and pricing. Currently, there are no water measurement requirements that have been established in response to the CALFED ROD.

**TECHNICAL**

- 14) The BMP approach is preferred over the QOs. The CALFED program should not be used as a substitute for the CVPIA Standard Criteria.**

**Response:** See response to comment #1. In addition, as per CALFED's ROD, the implementation plan includes incentives in agriculture that will consider several factors. Many of these factors are included in the QOs being developed in the CALFED process by the agricultural water use efficiency steering committee stakeholder process. CALFED agencies anticipate that these QOs will be an important factor in prioritizing expenditures under the agricultural incentive program. This pilot program will help Reclamation and other stakeholders determine the relative effectiveness between the BMP and QO approaches.

**15) Many of CALFED's QOs are not quantified and there is no apparent obligation for Participating Contractors to assist in or contribute to their quantification. Also, State and Federal budgetary commitments for further quantification are lacking.**

**Response:** Participating Contractors will initially analyze those QOs which have been fully quantified by the CALFED Bay Delta Authority's Water Use Efficiency Program. After those QOs have been evaluated, the Participating Contractors will identify that portion of the targeted benefit from the remaining QOs that they believe can be positively affected through their actions. For cases in which the Participating Contractors can not, for legitimate reason, significantly impact the targeted benefit, the Participating Contractors will submit a justification for non-applicability. (See Section 4 under Determination of Non-Applicability). In addition, the CALFED Bay Delta Authority's Water Use Efficiency Program has identified in its' work plan the ongoing development of QOs as a program objective. Therefore, it is anticipated that the Water Use Efficiency Program will continue to quantify additional QOs.

**16) Remaining "proposed QOs" are to be analyzed at a rate of at least one-fifth of the list per year. This suggests that the analysis of the proposed QOs will take place well after plan submission, i.e., that proposed QO analysis will be a plan implementation activity, rather than simply a plan formulation activity.**

**Response:** The analysis of the QOs is a new endeavor and the development of an implementation plan will take considerable coordination among Participating Contractors. Reclamation realizes it is not practical for each of the QOs and the associated implementation plans to be developed prior to the renewal of the districts' contracts. Therefore, Reclamation has established a phased process that requires the submission of background information followed by annual development of QOs and associated implementation plans. Analysis of all applicable QOs and implementation actions will be identified prior to the conclusion of the 5 year pilot program. In addition, the QOs and implementation plans will be submitted by the Participating Contractors and reviewed by Reclamation in the Participating Contractors' Annual Updates.

**17) No timelines are established for QO implementation.**

**Response:** Implementation of the programs identified in the plan and subsequent Annual Updates are critical to the success of water management in the Region. Implementation plans, including timelines, for each QO will be evaluated by Reclamation based on Annual Update information provided under Section 7 of the Regional Criteria. Plan implementation will be an important factor when evaluating the adequacy of Plans developed under the Regional Criteria and in determining whether these Regional Criteria are at least as effective as the existing Standard Criteria.

**18) There is concern by the absence of any Fish & Wildlife Service (FWS) and National Marine Fisheries Service representatives both at the public workshop and in evaluating, monitoring, enforcing, and reporting on any part of the Reclamation’s proposal, especially since the Sacramento River, like the Trinity, supports ESA-listed fish species. Moreover, none of Reclamation’s representatives at the public meeting could explain how the Federal Government’s legal oversight duties are to be carried out under this proposal. Reclamation & FWS have no authority to allow Sacramento River Contractors flexibility in federally managed fishery and water quality responsibilities.**

**Response:** As with the Standard Criteria, the U.S. Fish and Wildlife Service has been provided with draft copies of the Regional Criteria for their review and comment. Plans developed under the Regional Criteria are intended to comply with the water conservation sections of the RRA of 1982 and the CVPIA. Fishery and water quality responsibilities and coordination are addressed by other Federal and State laws.

**19) In the event that a Participating Contractor identifies a gap in data, the Plan merely needs to identify that problem in its first 5-year Plan and then only needs to explain how the Participating Contractor will consider addressing it in its next 5-year Plan, some ten years later.**

**Response:** Requirements for “gaps” in data are consistent with the Standard Criteria requirement which states that, *“For data not available in preparation of this Plan the Participating Contractor shall describe how the information will be obtained for the next Plan revision,.....”* Accordingly, resolution of a data gap should start and close in less than 5 years.

**20) The Tribe demands that the legal and scientific standard to which the Trinity ROD is being held also apply to the Sacramento River. The Regional Criteria appear to allow the Sacramento River Contractors to manage fish and water resources in a manner that does not provide for full and public-noticed compliance with NEPA, ESA and tribal trusts legal mandates.**

**Response:** Reclamation sees no linkage between the Regional Criteria and the Trinity ROD. They are different subjects with their own technical, legal, and policy issues. Development of Water Management Criteria (along with management of fish and water resources) has been assessed in various environmental documents (with associated public review), including the Final Programmatic Environmental Impact Statement for the

Central Valley Project Improvement Act, dated Oct 1999; Draft Biological Opinion on Operation of the CVP and Implementation of the CVPIA, dated November 2000; the Record Of Decision, CVPIA, Final Programmatic Environmental Impact Statement, dated January, 2001, and will be included in the Long-Term Contract Renewal Environmental Impact Statement and Biological Opinion for the Sacramento River Settlement Contractors.

**21) Participating Contractors are not required to use interdisciplinary teams when developing the Regional Criteria.**

**Response:** The Regional Criteria are designed to be “as-effective-as” the Standard Criteria, and to address the requirements and authorities as set forth in CVPIA and RRA. During development, Regional Criteria were reviewed by interdisciplinary staff members including hydro-geologists, agricultural engineers and environmental specialists within the Federal government, and were reviewed by other State and public interest stakeholders.

**MONITORING & QUALITY ASSURANCE**

**22) There are concerns that the monitoring program does not require an objective scientific monitoring team, nor does it explain what is meant by monitoring.**

**Response:** The Regional Plan participants are to develop a mutually acceptable monitoring program. Reclamation will evaluate the monitoring program based on sound science.

In response to your concerns, additional factors for evaluating the monitoring program have been added to the Regional Criteria. These factors include: Target constituents (or actions), sampling frequency and technique, analytical methodology, and units of measurement.

**23) The Monitoring program must be transparent and include adaptive management objectives, science-based oversight, and public availability.**

**Response:**

a. Adaptive management is an integral part of the objectives driven approach incorporated in the Regional Criteria. This is why the monitoring section was incorporated in the Regional Criteria. Because of the time required to analyze objectives, implement actions and monitor results, it is not envisioned that adaptive management will be a major factor in the first 5 years of the plan implementation. However, if this approach proves to be a success and is extended past the initial 5 year period, it is anticipated that the revised Regional Criteria will incorporate additional criteria addressing adaptive management to insure that the implementation actions are truly addressing the targeted benefits and not having detrimental impacts.



b. See response #22 relative to transparency of monitoring and objective science-based oversight.

c. Once the draft Regional Plan has been conditionally deemed adequate by Reclamation, a notice of availability will be published in the Federal Register. At that time the public will be give 30 days in which to comment on the Regional Plan, including the monitoring program.