



VIA EMAIL

July 21, 2016

Mr. Michael Jackson (mjackson@usbr.gov)
Area Manager
South-Central California Area Office
1243 N Street
Fresno, CA 93721-1813

Mr. David Murillo (dmurillo@usbr.gov)
Regional Director
Bureau of Reclamation
2800 Cottage Way
Sacramento, California 95825

Re: Bureau of Reclamation Anticipated Breach of Warren Act Contracts

Dear David,

As you know, each of the undersigned districts (collectively “**Districts**”) holds a Warren Act Contract or multiple contracts (“**Contracts**”) with the United States Bureau of Reclamation (“**Reclamation**”). Through these Contracts, each of the Districts obtained permission from Reclamation to store a non-project water supply (“**Non-Project Water**”), in Central Valley Project Facilities, including the Delta-Mendota Canal, O’Neill Forebay, and San Luis Reservoir. That water is not a supply of the Central Valley Project.

BACKGROUND

The Contracts each provide that the “United States or the designated Operating Non-Federal Entity shall Convey through excess Capacity in the Project Facilities, the Non-Project Water for delivery to the Contractor from said point(s) of introduction in the Delta-Mendota canal and/or at said point(s) of delivery identified. . .” [emphasis added]

Under the Contracts, Reclamation is contractually committed to supply each of the Districts with the quantity of Non-Project Water previously introduced into the Project Facilities by the Contractor, less 5 percent for Conveyance losses in Project Facilities. The Districts have each scheduled Non-Project Water to be delivered from Reclamation over the next weeks and months, in compliance with the Contracts. At no point did Reclamation request to borrow the water and in fact Reclamation, earlier this year, stated they were not going borrow water as they did last year. Despite this, at numerous times over the past months, Reclamation exhibited use of the stored Non-Project Water for other purposes, to be delivered to third parties. The Districts have indicated to Reclamation over these past six months that Reclamation has no authority to transfer or borrow the Non-Project Water owned by the Districts in San Luis Reservoir. The Non-Project Water is essential for continued irrigation in each of the Districts. Further, the Contracts also confirm that it is:

specifically understood by the parties hereto that the United States is only providing Storage and/or Conveyance capacity for the Non-Project Water and does not claim any interest in the acquisition or use of the Non-Project Water beyond the terms specifically set forth in this Contract.”

On June 21, 2016, the Districts each received a copy of a communication from Elizabeth Kiteck of Reclamation’s Central Valley Project Operations office, to the San Luis and Delta Mendota Water Authority, as follows:

As we discussed on the phone, please prepare for an O’Neill shutdown at 0001 Sunday, July 24, 2016. Please notify the contractors to cease deliveries. The 800 cfs that we’re pumping at Jones would be for a combination M&I health and safety and water rights contractors. We are also scheduling 0 af at Federal dos Amigos beginning on Friday, 7/22.

Since that email, we have been notified that the shutdown may occur as early as 6 pm on Saturday.

Reclamation currently holds under contract for the Districts the following quantities of Non-Project water as of the end of June 2016:

DISTRICT	CONTRACT	QUANTITY (af)	SOURCE
Banta-Carbona Irrigation District	15-WC-20-4659	23,235	Pre-1914 Water
	13-WC-20-4380	6,223	Groundwater
Byron-Bethany Irrigation District	15-WC-20-4382	957	Pre-1914 Water
	15-WC-20-4657	1,615	
Del Puerto Water District	13-WC-20-4410	2,658	Groundwater
	13-WC-20-4383	14,043	
	13-WC-20-4383	2,127	
	13-WC-20-4548	3,534	
Patterson Irrigation District	15-WC-20-4787	10,635	Pre-1914 Water
	14-WC-20-4545	458	
West Stanislaus Irrigation District	13-WC-20-4388	14,473	Groundwater
TOTAL:		77,386	

It is our understanding at this time that:

1. There is no water available in San Luis Reservoir to be made available to the Districts because Reclamation has transferred the Non-Project water belonging to the Districts to third parties, in violation of the Contracts.
2. None of the 800 cfs being pumped at Jones Pumping Plant would be available to the Districts for repayment of their Non-Project Water because Reclamation has advised it will be available to third parties, rather than provide those parties water from other available sources.

DEMAND


The Districts have interpreted Reclamation’s actions over the past few weeks, culminating with the above email, as a breach of the Contracts. Reclamation has indicated, through both its words and actions, that it will not perform its obligations under the Contracts, resulting in an anticipatory breach of the Contracts. Reclamation, by its own actions, has put the performance of the Contracts out of its own power to perform by transferring the Non-Project water in San Luis Reservoir, in which it did not have any right, title or interest.

Therefore, the Districts hereby demand that Reclamation immediately provide them with written assurances that it will perform its contractual obligations under the Contracts, and a written plan of action for doing so,


including but not limited to commencing releases of readily available CVP supply from Millerton, Folsom and/or Shasta Reservoirs.

While the Districts will attempt to mitigate the damages resulting from Reclamation's breach of the Contracts, they will look to Reclamation for all damages resulting from its breach.


BANTA-CARBONA IRRIGATION DISTRICT

By: 
David Weisenberger, General Manager

BYRON-BETHANY IRRIGATION DISTRICT

By: 
Rick Gilmore, General Manager


DEL PUERTO WATER DISTRICT

By: 
Anthea G. Hansen, General Manager

PATTERSON IRRIGATION DISTRICT

By: 
Marc Vanden, General Manager

WEST STANISLAUS IRRIGATION DISTRICT

By: 
Robert Pierce, General Manager

cc: Mr. Estevan Lopez, Commissioner
Mr. Pablo Arroyave, Assistance Regional Director: parroyave@usbr.gov
Mr. Jason Peltier, San Luis & Delta-Mendota Water Authority: Jason.peltier@sldmwa.org
Honorable Jeff Denham: Jason.larrabee@mail.house.gov
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West Stanislaus Irrigation District Board of Directors