

APPENDIX D2

USBR Contract Amendment

AGENDA ITEM NO.
COUNCIL MEETING

APPROVED BY

DEPARTMENT DIRECTOR

CITY MANAGER

March 13, 2007

FROM: RENE A. RAMIREZ, Director
Department of Public Utilities

BY: LON M. MARTIN, Assistant Director
Department of Public Utilities

SUBJECT: RESOLUTION AUTHORIZING THE DEPARTMENT OF PUBLIC UTILITIES TO EXECUTE AN AMENDMENT TO THE LONG-TERM CENTRAL VALLEY PROJECT WATER SUPPLY CONTRACT AND FINDING SUCH ACTION EXEMPT FROM REVIEW UNDER THE CALIFORNIA ENVIRONMENTAL QUALITY ACT; AND AUTHORIZE THE CITY MANAGER AND DIRECTOR OF PUBLIC UTILITIES TO EXECUTE THE AGREEMENT ON BEHALF OF THE CITY

KEY RESULT AREAS

One Fresno
Customer Service
Resource Management

RECOMMENDATIONS

It is recommended that Council take action on the following items:

1. Adopt a resolution of the Council of Fresno, California, authorizing the Department of Public Utilities to execute an amendment to the long-term Central Valley Project Water Supply Contract and finding such action exempt from review under the California Environmental Quality Act.
2. Authorize the City Manager and the Director of Public Utilities to execute the contract amendment on behalf of the City.

EXECUTIVE SUMMARY

On July 19, 2005, the City of Fresno renewed its contract with the United States Bureau of Reclamation ("Bureau") for the Friant Division, Central Valley Project ("CVP") water supply for an additional 40-year term ("Renewal Contract"). Due to the expiration of the previous long-term contract, the City and the Bureau proceeded with the Renewal Contract, fully aware that there was current river restoration litigation (*Natural Resources Defense Council v. Patterson* (No. CIVS 88-1658-LKK-EM); referred to as the "Litigation"), that may require a future amendment. The proposed contract amendment simply incorporates the pre-existing commitment to comply with the resolution of the Litigation that was ongoing at the time the contract itself was signed in 2005. As a result of the settlement, the long-term average annual impact to the City is a reduction of less than 5% of its annual deliveries of CVP water.

KEY OBJECTIVE BALANCE

Council action on this matter optimizes the three key objectives of customer satisfaction, employee satisfaction, and financial management by allowing the Department of Public Utilities to maintain a long-term CVP contract allowing for prudent natural resource management. Customer satisfaction is achieved by maintaining and retaining all available surface water supplies for current and future use. Employee satisfaction is derived from the ability to provide high quality reliable surface water for direct treatment and recharge operations.

BACKGROUND

Article 14(b) of the Renewal Contract provides that the terms of the Renewal Contract “are subject to any enforceable order, judgment, and/or settlement in NRDC v. Patterson, No. CIVS 88-1658-LKK-EM and shall be timely modified as necessary to effectuate or facilitate any final order, judgment or settlement in said litigation.” On October 23, 2006, Judge Karlton, United States District Court, approved a settlement to the Litigation (“Settlement”), which among other things, requires the City (and all other Friant contractors) to amend its Renewal Contract to conform to the settlement, as required in Article 14(b).

Prior to Settlement, the Litigation had been ongoing for several decades. The plaintiffs’ primary focus with the Litigation was to develop a modified operational regime for the Friant Dam that would help restore some fishery and riparian resources along the San Joaquin River. Judge Karlton approved the Settlement on October 23, 2006.

As a result of the Settlement, the long-term average annual impact to the City is a reduction of less than 5% of its average annual deliveries of CVP water. The actual impact will vary from year-to-year based on weather and snow pack. In the critical driest of years, the City may receive little or no Friant water, but historically that has occurred even without the Settlement. In most normal and wet years, the City will not be impacted because of its Class 1 priority. In dry years, the City often received less than its full 60,000 acre-foot contract entitlement simply because there is insufficient water in the system to fulfill all the Friant Class 1 contract entitlements. The Settlement will fractionally further reduce deliveries in these dry years but it remains likely that the Friant contractors will receive their full contract entitlement (and access to excess water) in very wet years.

I. Fresno’s Water Supply

As a Class 1 CVP water contractor, the City is among the group of contractors that have the highest priority right to receive Friant water. Class 2 contractors do not receive any of their contracted amounts until Class 1 contractors receive their entire contract entitlement. Thus, the settlement does NOT modify or affect this priority system.

The City’s long-term CVP contract entitles it to receive 60,000 acre-feet per year of water from the Bureau of Reclamation’s Friant Reservoir. As noted above, the City indirectly obtains roughly 40% of its potable water supplies from this supply. The balance of the City’s water supply is indirectly obtained through its water rights to the Kings River. Now, both these supplies are primarily used for local groundwater basin recharge. Although, with operation of the current surface water treatment facility and a second planned for Southeast Fresno, direct treatment of surface water is an increasingly important component to the delivery of potable water.

The actual amount of surface water the City obtains from its CVP contract and its Kings River water rights vary

based on local hydrology. In wet years the City receives the full amount of its entitlement. It receives less than its full entitlement in drier years. In extreme wet years, excess supplies are available for nominal additional cost. Because the City uses its surface water supplies conjunctively with the local groundwater basin, and the overall yield of the groundwater basin is on the order of several million acre feet, the year-to-year variability of surface water supplies has a negligible impact the long-term reliability of the City water supplies.

In other words, the important attribute of the City's water management practice is its ability to maximize its local recharge of its available surface water supplies. Provided the availability of the City's surface water portfolio is relatively stable on a long-term basis, the long-term reliability of its groundwater supplies will remain equally stable and reliable.

Therefore, given the manner in which the City manages its water supplies, and because the MEIR considered the historical variability of CVP water deliveries, executing the amendment to the contract is exempt from further CEQA review (filing a NOE is an appropriate course of action).

FISCAL IMPACT

The Settlement will result in some cost increase, which was already incorporated into the costs for water with the long-term Renewal Contract approved July 19, 2005. The Water Division's five year rate plan that was adopted by Council on February 27, 2007, includes the increase in costs. However, the Settlement includes several components that can potentially off-set these increases. First, there will be no direct pass through of the capital costs associated with implementing the settlement. Those direct costs will be paid from Federal appropriations (not requiring contractor repayment), state grants, local bond issues the debt service on which will be funded through existing CVP water supply revenues, and current CVPIA mandated environmental surcharges. The cost increase occurs because the Bureau will continue to impose the same operating and capital cost allocation on the contractors as it did absent the Settlement. But because the per acre foot charge is calculated based on the volume of water delivered, the actual per acre foot cost will increase because the average volume of water delivered will decrease.

To alleviate any detriment to contractors, the Settlement specifically provides that the Bureau will keep track of the amount of water each contractor is "shorted" through the Settlement. In those years when excess water is available, Friant contractors will have the first right to purchase the excess water at the fixed price of \$10 per acre-foot. Current fully burdened rate for CVP water is just under \$110 per acre-foot. Those contractors, like the City, that have the ability to take excess water in wet years (groundwater banking projects or recharge operations, for example) will be able to access the water at this very low cost, thereby reducing the overall cost of supplies.

Because the City has other reliably water sources and does not solely rely on its CVP water, the City also may off-set any potential cost increases through dry year transfers to those entities that have no alternative supplies. Again, the Bureau and the Friant contractors intend to focus their efforts on these transfers and exchanges as a part of implementing the Settlement.

Attachment:

Resolution Certifying Long-Term Renewal Contract Amendment for Execution

RESOLUTION NO. _____

A RESOLUTION OF THE COUNCIL OF FRESNO, CALIFORNIA, AUTHORIZING THE DEPARTMENT OF PUBLIC UTILITIES TO EXECUTE AN AMENDMENT TO THE LONG-TERM CENTRAL VALLEY PROJECT WATER SUPPLY CONTRACT AND FINDING SUCH ACTION EXEMPT FROM REVIEW UNDER THE CALIFORNIA ENVIRONMENTAL QUALITY ACT

WHEREAS, on July 19, 2005, the City of Fresno renewed its contract with the United States Bureau of Reclamation ("Bureau") for the Friant Division, Central Valley Project water supply for an additional 40-year term ("Renewal Contract"); and

WHEREAS, prior to executing the Renewal Contract the Bureau completed its environmental review under the National Environmental Policy Act ("NEPA") and appropriate compliance with the Endangered Species Act; and

WHEREAS, prior to execution of the Renewal Contract, the City prepared an environmental assessment and initial study pursuant to the California Environmental Quality Act pursuant to Public Resources Code section 21000 et seq. ("CEQA"). Based on this analysis, the City determined the 2025 General Plan Master Environmental Impact Report No. 10130 ("MEIR") evaluated the potential impacts of the Renewal Contract and concluded that the execution of the Renewal Contract will not create new or additional impacts not previously assessed in the MEIR; and

WHEREAS, on July 19, 2005, the Fresno City Council approved and certified the finding of conformity (State Clearinghouse No. 20050110009) with the MEIR; and

WHEREAS, at the time the Renewal Contract was signed, there was ongoing litigation involving the San Joaquin River and the operation of Friant Dam (*Natural Resources Defense Council v. Patterson* (No. CIVS 88-1658-LKK-EM); referred to as the "Litigation"), which the City was not a party to; and

WHEREAS, Article 14(b) of the Renewal Contract provides that the terms of the Renewal Contract "are subject to any enforceable order, judgment, and/or settlement in NRDC v. Patterson, No. CIVS 88-1658-LKK-EM and shall be timely modified as necessary to effectuate or facilitate any final order, judgment or settlement in said litigation."; and

WHEREAS, on or about October 23, 2006, Judge Karlton, United States District Court, approved a settlement to the Litigation, which among other things, requires the City (and all other Friant contractors) to amend its Renewal Contract to conform to the settlement, as required in Article 14(b); and

WHEREAS, the Bureau has determined the amendments to the CVP contracts required under the settlement are exempted from review under the NEPA; and

WHEREAS, the proposed amendment to the Renewal Contract is exempt from CEQA because the execution of the amendment to the Renewal Contract is a ministerial action and results in no substantial changes to the Renewal Contract or significant impacts to the environment [CEQA Guidelines Section 15061(b)(3)]; and

WHEREAS, the proposed amendment to the Renewal Contract is exempt from CEQA because the City has only ministerial authority [Pub. Resources Code Section 21080(b)(1); Cal. Code of Regulations, Title 14, Chapter 3 (CEQA Guidelines) Section 15300.1] as the amendment was contemplated as part of the original agreement in 2005.

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Fresno, based upon the documentation on file with the City, it makes the following findings:

- (1) Council finds that the execution of the amendment to the Renewal Contract is required by terms of the original Renewal Contract and that the Council's authorization of the Renewal Contract is not a discretionary decision; and
- (2) Council finds that the execution of the Renewal Contract is a ministerial action exempt from CEQA; and
- (3) Council finds, in accordance with its own independent judgment, that there is no substantial evidence in the record that the execution of the amendment to the Renewal Contract may have a significant effect on the environment beyond those disclosed in the previously certified Master Environmental Impact Report (MEIR); and
- (4) There are no substantial changes in circumstances that would result in new significant environmental effects because the original MEIR considered the possibility of obtaining less supply of water from the Friant Division project;

Accordingly, Council finds that the execution of the amendment to the Renewal Contract is exempt from CEQA, is hereby approved, and City staff is directed to file a notice of exemption with the State Clearinghouse.

Council further directs and authorizes the City Manager and the Director of the Department of Public Utilities to execute the amendment to the Renewal Contract.

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CLERK'S CERTIFICATION

STATE OF CALIFORNIA)
COUNTY OF FRESNO) ss.
CITY OF FRESNO)

I, REBECCA E. KLISCH, City Clerk of the City of Fresno, certify that the foregoing resolution was adopted by the Council of the City of Fresno, California, at a regular meeting held on the _____ day of _____, 2007.

AYES:
NOES:
ABSENT:
ABSTAIN:

Mayor Approval: _____, 2007

Mayor Approval/No Return: _____, 2007

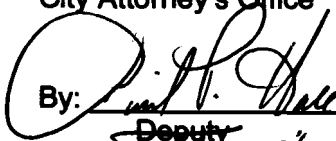
Mayor Veto: _____, 2007

Council Override Vote: _____, 2007

REBECCA E. KLISCH
City Clerk

Deputy

APPROVED AS TO FORM:
City Attorney's Office

By: 
Deputy Chief Assistant.

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6 UNITED STATES
7 DEPARTMENT OF THE INTERIOR
8 BUREAU OF RECLAMATION
9 Central Valley Project, California

10 AMENDMENT TO LONG-TERM RENEWAL CONTRACT BETWEEN
11 THE UNITED STATES
12 AND
13 CITY OF FRESNO
14 PROVIDING FOR PROJECT WATER SERVICE FROM FRIANT DIVISION
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16 THIS CONTRACT AMENDMENT, is made this 6th day of

17 April, 2007, in pursuance generally of the Act of Congress of June 17,

18 1902 (32 Stat. 388), and the acts amendatory thereof or supplementary thereto, including,

19 but not limited to, the Acts of August 26, 1937 (50 Stat. 844), as amended and supplemented,

20 August 4, 1939 (53 Stat. 1187), as amended and supplemented, July 2, 1956 (70 Stat. 483),

21 June 21, 1963 (77 Stat. 68), October 12, 1982 (96 Stat. 1263), October 27, 1986

22 (100 Stat. 3050), as amended, and Title XXXIV of the Act of October 30, 1992 (106 Stat. 4706),

23 all collectively hereinafter referred to as Federal Reclamation law, between

24 THE UNITED STATES OF AMERICA, hereinafter referred to as the United States, and,

25 CITY OF FRESNO, hereinafter referred to as the Contractor, a public agency of the State of

26 California, duly organized, existing, and acting pursuant to the laws thereof;

27 WITNESSETH, That:

28 EXPLANATORY RECITALS

29 [1st] WHEREAS, the United States and the Contractor entered into a contract
30 dated August 18, 2005, designated Contract No. 14-06-200-8901-LTR1, providing for water
31 service from the Central Valley Project, hereinafter referred to as the "Existing Contract;" and

32 [2nd] WHEREAS, pursuant to subdivision (b) of Article 14 of the Existing
33 Contract, the terms of the Existing Contract are subject to any enforceable order, judgment and/or
34 settlement in *NRDC v. Patterson*, No. CIVS 88-1658-LKK-EM (now styled *Natural Resources*
35 *Defense Council, et al. v. Rodgers, et al.*, No. CIV-S-88-1658 LKK/GGH) and that the Existing
36 Contract shall be timely modified as necessary to effectuate or facilitate any final order, judgment
37 or settlement in said litigation; and

38 [3rd] WHEREAS, the parties to said litigation have reached agreement on a
39 global resolution of all Claims for Relief in the Seventh Amended Complaint, on the terms and
40 conditions stated in the Stipulation of Settlement dated September 13, 2006, designated Exhibit 1
41 in the Order Approving Stipulation dated October 23, 2006; and

42 [4th] WHEREAS, the parties hereto desire to amend the Existing Contract as
43 required by said Stipulation of Settlement.

44 NOW, THEREFORE, in consideration of the mutual and dependent covenants
45 herein contained, it is hereby agreed as follows:

46 1. Subdivision (a) of Article 3 of the Existing Contract is deleted in its entirety, and
47 the following is substituted in lieu thereof:

48 “(a) During each Year, consistent with all applicable State water rights, permits, and
49 licenses, Federal law, and the Stipulation of Settlement dated September 13, 2006,
50 the Order Approving Stipulation of Settlement, and the Judgment and further orders
51 issued by the Court pursuant to terms and conditions of the Settlement in
52 *Natural Resources Defense Council, et al. v. Rodgers, et al.*, No. CIV-S-88-1658
53 LKK/GGH, and subject to the provisions set forth in Articles 11 and 12 of this
54 Contract, the Contracting Officer shall make available for delivery to the Contractor
55 60,000 acre-feet of Class 1 Water for M&I purposes. The quantity of Water Delivered
56 to the Contractor in accordance with this subdivision shall be scheduled and paid for
57 pursuant to the provisions of Articles 4 and 7 of this Contract.”

58 2. Subdivision (a) of Article 11 of the Existing Contract is deleted in its entirety, and
59 the following is substituted in lieu thereof:

60 “(a) Subject to: (i) the authorized purposes and priorities of the Project and the
61 requirements of Federal law, and the Stipulation of Settlement dated September 13,
62 2006, the Order Approving Stipulation of Settlement, the Judgment and further
63 orders issued by the Court pursuant to terms and conditions of the Settlement in
64 *Natural Resources Defense Council, et al. v. Rodgers, et al.*, No. CIV-S-88-1658
65 LKK/GGH and (ii) the obligations of the United States under existing contracts, or
66 renewals thereof, providing for water deliveries from the Project, the Contracting
67 Officer shall make all reasonable efforts to optimize Project Water deliveries to the
68 Contractor as provided in this Contract.”

69 3. Subdivision (b) of Article 12 of the Existing Contract is deleted in its entirety, and
70 the following is substituted in lieu thereof:

71 “(b) If there is a Condition of Shortage because of errors in physical operations of the
72 Project, drought, other physical causes beyond the control of the Contracting Officer or
73 actions taken by the Contracting Officer to meet legal obligations, including but not
74 limited to obligations pursuant to the Stipulation of Settlement dated September 13,
75 2006, the Order Approving Stipulation of Settlement, the Judgment and further
76 orders issued by the Court pursuant to terms and conditions of the Settlement in
77 *Natural Resources Defense Council, et al. v. Rodgers, et al.*, No. CIV-S-88-1658
78 LKK/GGH then, except as provided in subdivision (a) of Article 18 of this Contract,
79 no liability shall accrue against the United States or any of its officers, agents, or
80 employees for any damage, direct or indirect, arising therefrom.”

81 4. Subdivision (b) of Article 14 of the Existing Contract is deleted in its entirety, and the
82 following is substituted in lieu thereof:

83 “(b) The terms of this Contract are subject to the Stipulation of Settlement dated
84 September 13, 2006, the Order Approving Stipulation of Settlement, the Judgment and
85 further orders issued by the Court pursuant to terms and conditions of the Settlement in
86 *Natural Resources Defense Council, et al. v. Rodgers, et al.*, No. CIV-S-88-1658
87 LKK/GGH. Nothing in this Contract shall be interpreted to limit or interfere with the
88 full implementation of this Settlement, Order, the Judgment and further orders issued
89 by the Court pursuant to terms and conditions of the Settlement.”

90 5. Except as specifically amended herein, the Existing Contract is valid and shall
91 continue in full force and effect as originally written and executed.

92 IN WITNESS WHEREOF, the parties hereto have executed this Contract
93 Amendment as of the day and year first above written.

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APPROVED AS TO LEGAL
FORM AND SUFFICIENCY
James E. Turner
OFFICE OF REGIONAL SOLICITOR
DEPARTMENT OF THE INTERIOR

THE UNITED STATES OF AMERICA

By: *[Signature]*
Regional Director, Mid-Pacific Region
Bureau of Reclamation

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CITY OF FRESNO

99 (SEAL)
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By: *Andrew T. Saury*
City Manager

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By: *[Signature]*
Public Utilities Director

Attest:

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By: *Elvira Sommeville*
City Clerk (3/26/07)

107 Approved as to form:

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By: *[Signature]*
City Attorney