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REPORT TO THE CONGRESS

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Questionable Aspects Concerning Information Presented To The Congress On Construction And Operation Of The San Luis Unit, Central Valley Project B-125045

Bureau of Reclamation
Department of the Interior

BY THE COMPTROLLER GENERAL OF THE UNITED STATES

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COMPTROLLER GENERAL OF THE UNITED STATES
WASHINGTON, D.C. 20548

B-125045

To the President of the Senate and the
Speaker of the House of Representatives

This is our report on questionable aspects concerning information presented to the Congress on the construction and operation of the San Luis Unit, Central Valley project, Bureau of Reclamation, Department of the Interior.

Our review was made pursuant to the Budget and Accounting Act, 1921 (31 U.S.C. 53), and the Accounting and Auditing Act of 1950 (31 U.S.C. 67).

Copies of this report are being sent to the Director, Bureau of the Budget, and to the Secretary of the Interior.

Comptroller General
of the United States

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COMPTROLLER GENERAL'S REPORT TO THE CONGRESS

QUESTIONABLE ASPECTS CONCERNING INFORMATION PRESENTED TO THE CONGRESS ON CONSTRUCTION AND OPERATION OF THE SAN LUIS UNIT, CENTRAL VALLEY PROJECT

Bureau of Reclamation
Department of the Interior B-125045

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D I G E S T

WHY THE REVIEW WAS MADE

The San Luis Unit, a major addition to the Central Valley project, was authorized by the Congress in 1960. The construction of a significant portion of the Unit is a combined effort of the Bureau of Reclamation of the Department of the Interior and the State of California. In January 1969, the total cost of the Unit was estimated at $687 million, of which the State's share is $172 million. (See p. 5.) The General Accounting Office (GAO) made this review because it had found indications that pertinent information relating to the construction and operation of the San Luis Unit had not been fully disclosed to the Congress.

FINDINGS AND CONCLUSIONS

The Department's feasibility report for the San Luis Unit, which was submitted to the Congress in 1956, stated that an important purpose of the Unit, in addition to providing water to irrigate eligible lands, was to replenish the groundwater and to stabilize the level of the groundwater in the area. In 1965, however, the Bureau amended its water-service contract with the Westlands Water District, the largest user of water provided by the San Luis Unit, to include provisions which, if implemented, could, in GAO's opinion, prevent the Unit from replenishing the groundwater and stabilizing the level of the groundwater. (See p. 6.)

The contract was amended to prevent ineligible landowners (landowners who own more than 160 acres of irrigable land) from indirectly benefiting from eligible landowners' use of the irrigation water provided by the San Luis Unit. A large percentage of the land in the San Luis service area is held by ineligible landowners. An ineligible landowner could benefit from the water provided by the Unit through a reduction of his cost of pumping groundwater due to a rise in the water table. This rise results from two processes: (1) nonuse of groundwater by eligible landowners and (2) percolation into the groundwater of irrigation water applied to the lands of eligible landowners. (See p. 6.)

The 1965 contract amendment provided that Westlands, when directed by the Bureau, pump the groundwater in the San Luis area that results from the percolation of irrigation project water applied to lands of eligible landowners. If pumping of groundwater is ordered by the Bureau, a stated objective of the Department's feasibility report--the stabilization of the groundwater level--may not, in GAO's opinion, be accomplished.

Also, if the Bureau requires Westlands to pump water under the terms of the agreement, it could result in the Bureau's paying Westlands about $2 million for pumping the groundwater, and in the San Luis Unit's not realizing revenues of about $4 million because part of Westlands' water requirements would be met by the pumped groundwater instead of by the purchase of water from the Unit. (See p. 12.)

The estimated $2-million payment to Westlands is based on a provision in the April 1965 agreement which requires the Federal Government to reimburse Westlands $4 for every acre-foot of groundwater it pumps; a fact the Department apparently failed to disclose to the Congress. (See p. 10.)

In another case, the Bureau advised the Congress that a decision had been made to substitute a more expensive detention reservoir for a siphon to provide increased flood control benefits and that the State of California would pay 55 percent of the additional costs. However, Bureau records showed that, at the time it so informed the Congress, the Bureau was aware that the State was not willing to share in the additional costs for the detention reservoir. (See p. 18.)

Subsequently, the detention reservoir was constructed and all the additional costs--about $2.6 million--were paid by the Federal Government. (See p. 18.)

In a third case, the Bureau informed the State of California, in March 1966, that it would allocate costs to flood control purposes in all cases where flood control benefits resulted from the construction of the San Luis Unit--including those cases where flood control benefits were incidental and where no extra cost was incurred for flood protection. This would have resulted in the Federal Government's paying about $5 million for nonreimbursable flood control purposes. GAO concluded that this allocation did not appear proper because the Congress did not specifically authorize nonreimbursable flood control allocations in the San Luis act. (See p. 24.)

RECOMMENDATIONS OR SUGGESTIONS

GAO suggested that the Bureau of Reclamation consider GAO's comments regarding the modification of the water-service contract with Westlands with the objective of fully informing the Congress of the alternatives of (1) requiring the Westlands Water District to pump groundwater to prevent ineligible landowners from benefiting from an increase in the water table or (2) allowing project water to recharge the groundwater

level and thus allow indirect benefits to accrue to ineligible landowners.

GAO suggested also that the Bureau reconsider the allocation of Federal funds to flood control purposes, especially in those cases where flood control benefits are incidental to the project and where no extra costs are incurred for flood protection.

AGENCY ACTIONS AND UNRESOLVED ISSUES

The Department stated that it had changed its allocation of Federal funds to flood control. This change resulted in savings of about $5 million to the Government on this project. (See p. 25.)

The Department disagreed with GAO's other suggestion and advised GAO that it might not require Westlands to pump groundwater. (See p. 14.) If Westlands is not required to pump groundwater, the purpose of the San Luis Unit to stabilize the groundwater will be fulfilled and the financial impact on the Government associated with the pumping requirement will not occur. However, the objective of the 1965 agreement with Westlands will not be achieved.

GAO does not believe that both purposes can be fulfilled.

MATTERS FOR CONSIDERATION BY THE CONGRESS

In view of the possible effect of the water-service contract on the achievement of the purposes of the San Luis Unit, the Congress may wish to provide guidance to the Bureau on which purpose is of primary importance--replenishing and stabilizing the groundwater supply or preventing ineligible landowners from receiving benefits from the project water.

If it determined that replenishing and stabilizing the groundwater is the primary consideration, the Congress may wish to consider the applicability to the San Luis service area of provisions of several bills introduced in the Ninety-first Congress. Provisions of these bills would increase the eligibility limitation from 160 to 640 acres and would permit the purchase of water for excess lands at a price which would include an interest factor. (See p. 12.)

CHAPTER 1

INTRODUCTION

The General Accounting Office has examined into the information presented to the Congress by the Department of the Interior concerning (1) the Bureau of Reclamation's amendment to a water-service contract with the Westlands Water District, the principal user of water provided by the San Luis Unit, a major irrigation unit of the Central Valley project in the State of California, and (2) a major revision of plans for the construction of certain facilities of the San Luis Unit. The Westlands Water District is a political subdivision of the State of California. We directed our examination to those areas which appeared to warrant particular attention, and we did not evaluate the Bureau's overall feasibility determinations for the San Luis Unit. The scope of our review is set forth on page 26.

The River and Harbor Act of 1935, approved August 30, 1935, contained the initial authorization for portions of the Central Valley project, which was designed to meet increasing water needs of California's Central Valley Basin, and provided for construction of the project by the Corps of Engineers. The River and Harbor Act of 1937 (50 Stat. 844,850) reauthorized the Central Valley project for construction by the Department of the Interior, subject to reclamation laws.

In 1956 the Department of the Interior submitted to the Congress a feasibility report on the San Luis Unit outlining a plan to provide (1) water to irrigate about 496,000 acres of land on the west side of the San Joaquin Valley, California, and (2) a small amount of water for municipal use. The feasibility report stated that practically all the agricultural water supply in the San Luis service area was pumped from wells and thereby caused a steady decline in the levels of the groundwater because the amount of water pumped was in excess of the natural recharge of the groundwater basins (overdraft). The feasibility report stated that this overdraft could not continue indefinitely and that a supplemental water supply was needed to sustain agriculture in the area.

According to the feasibility report, a dependable supply of water from the proposed San Luis Unit would (1) sustain the agriculture which was presently in the area, (2) expand irrigation to nonirrigated land, (3) replenish the groundwater and stabilize the water level, (4) stabilize the cost of pumping water, (5) reduce the risks of irrigation farming, and (6) provide an adequate water supply for municipal and industrial use.

The act of June 3, 1960 (74 Stat. 156), authorized the San Luis Unit as a combined effort of the Federal Government and the State of California. On December 30, 1961, the Department of the Interior entered into an agreement with the State, which provided that, of the total construction cost of the joint-use facilities of the San Luis Unit, 55 percent be paid by the State and 45 percent be paid by the Federal Government. The Department, in January 1969, estimated that the cost of the San Luis Unit would amount to $687 million, of which $172 million represents the State's share of the joint-use facilities. All except $7 million of the Government's cost is to be repaid by users of the project water. As of January 1969, the construction of the Unit was 56 percent completed. A map showing the San Luis Unit and related features is included as appendix II.

The principal officials of the Department of the Interior responsible for the activities discussed in this report are listed in appendix III.

CHAPTER 2

NEED FOR CONGRESSIONAL GUIDANCE TO ESTABLISH PURPOSE TO BE FULFILLED BY THE SAN LUIS UNIT

The Department's feasibility report for the San Luis Unit, which was submitted to the Congress in 1956, stated that an important purpose of the Unit, in addition to providing project water for irrigation to eligible landowners in the San Luis service area, was to replenish the underground water and to stabilize the level of the water.

The Bureau, however, amended its water-service contract with the Westlands Water District, the largest user of water in the San Luis service area, by an agreement dated April 1, 1965, to prevent ineligible landowners from indirectly benefiting from eligible landowners' use of project water. The agreement requires the Westlands Water District to pump, as required by the Bureau's contracting officer, the groundwater that results from the use of project water by eligible landowners.

Ineligible landowners, under reclamation law, are those landowners who own more than 160 acres of irrigable land and who are not eligible to purchase project water for those lands in excess of 160 acres unless they agree to dispose of the excess lands to persons who can take title to the lands as eligible landowners. The principal benefit that could accrue to an ineligible landowner is a reduction in his cost of pumping water that results from the nonuse of groundwater by eligible landowners and from the percolation of project water applied to lands of eligible landowners. In November 1968, about 366,000 acres, or 65 percent, of the irrigable lands in the Westlands service area were not eligible to receive project water.

The implementation of the requirement--that Westlands pump groundwater that results from the use of project water by eligible landowners--could result in (1) the groundwater's not being replenished and the level of the water not being stabilized, (2) the Bureau's paying Westlands about $2 million for pumping the groundwater, based on $4 an acre-foot of water pumped as provided for in the agreement, and

(3) the Bureau's not realizing revenues of about $4 million because part of Westlands' water requirements would be met by pumping groundwater rather than by purchasing project water. Conversely, if the pumping requirement is not implemented, ineligible landowners will, in our opinion, benefit from project water used by eligible landowners.

In our opinion, it may not be possible to replenish the groundwater in the San Luis service area and to stabilize the level of the groundwater, as contemplated in the feasibility report, and also to ensure that ineligible landowners do not benefit from project water. We believe, therefore, that the Department is in need of congressional advice as to which of these purposes is of primary importance. If it is determined that replenishment of the groundwater and stabilization of the level of the water is of primary importance, the Congress may wish to consider the applicability of the provisions of several bills introduced in the first session of the Ninety-first Congress to the San Luis service area.

EVENTS LEADING TO MODIFICATION OF THE WATER-SERVICE CONTRACT

On June 5, 1963, the Bureau entered into a water-service contract with the Westlands Water District. The contract provided for delivery from the San Luis Unit for resale to eligible landowners of up to 1,008,000 acre-feet of water annually to Westlands during the first 10 years of the contract period and for deliveries of lesser quantities during the remaining 40 years of the contract period.

The contract states that, in addition to the water needed for irrigation, water was needed because the groundwater underlying the Westlands service area was seriously depleted and in need of replenishment. In this regard, the feasibility report submitted to the Congress in 1956 stated that the natural recharge to the groundwater basin was 213,000 acre-feet annually, whereas the annual withdrawals from the basin, through pumping, was increasing and amounted to about 1 million acre-feet during the 1950-51 irrigation season.

In testimony before the Senate Committee on Interior and Insular Affairs, the Assistant Secretary of the Interior stated that it was hoped that, during the first 10-year period of the contract, the use of large quantities of project water would temporarily abate much of the underground pumping and would allow the natural recharge to stabilize groundwater at about 100 feet above the then-present levels.

On April 23, 1964, a proposed contract for the construction of the San Luis Unit water distribution and drainage systems to serve Westlands at an estimated cost of $157 million was approved by the Department of the Interior and submitted to the Congress on the following day for the required 90-day waiting period, a prerequisite to the appropriation of construction funds under the San Luis authorizing act.

The House Committee on Interior and Insular Affairs approved the proposed contract on May 6, 1964. The Senate Committee on Interior and Insular Affairs held hearings on July 8, 1964, but neither approved nor disapproved the proposed contract. During the hearings certain parties requested that the proposed water-service contract with Westlands be revised to ensure that the benefits arising from the use of project water were not passed on to ineligible landowners. At that time there were about 350,000 irrigable acres within the Westlands service area, of which about 100,000 acres were eligible to receive water.

Because of the concern over the number of acres of land which were owned by ineligible landowners, the Assistant Secretary of the Interior on October 9, 1964, advised the Senate Committee on Interior and Insular Affairs that the Department had reviewed the water-service contract with Westlands and had determined that certain modifications should be made.

Following are some of the more important modifications which the Assistant Secretary stated should be made to the water-service contract.

1. Deletion of the statement that project water was needed to replenish the depleted groundwater levels.

2. Deletion of the "unavoidable clause" which provided that Westlands not be in violation of reclamation law if portions of the project water delivered to eligible lands unavoidably percolated into the groundwater basin and was pumped by ineligible landowners.

3. Inclusion of a limitation on the per acre quantity of water supplied to Westlands.

4. Inclusion of a requirement that Westlands pump, for application on eligible lands, a quantity of water equal to that which percolates into the underground. Department officials estimated that between 10 and 15 percent of the project water applied on the surface would percolate into the underlying groundwater.

The water-service contract with Westlands was modified by an agreement dated April 1, 1965, which contained the above-mentioned modifications. These modifications are to remain in effect until 76 percent of the irrigable land in the Westlands service area becomes eligible to receive project water under reclamation law. In addition, the water service contract, as modified, provides that the Bureau pay Westlands $4 for each acre-foot of water which the Bureau requests Westlands to pump from the ground. The payment is to compensate Westlands for the added cost of pumping water instead of purchasing water from the Bureau.

As of June 1969 the water-service contract with Westlands was being amended because of the merger of Westplains Water Storage District into Westlands. The proposed amended contract provides for yearly delivery of up to 1.4 million acre-feet of water and includes the basic provisions of the operating agreement.

INFORMATION ON POSSIBLE EFFECT OF THE OPERATING AGREEMENT APPARENTLY NOT DISCLOSED TO THE CONGRESS

The Department of the Interior advised the Congress that, to prevent ineligible landowners from benefiting from the operation of the San Luis Unit, Westlands agreed to pump a quantity of water equal to the amount of project water which percolates into the groundwater basins. The Department advised the Congress also that the agreement with Westlands to pump the project water that percolates into the underground basins would result in controlling the level of the groundwater and would prevent the ineligible landowners from indirectly benefiting from project water used by the eligible landowners. However, the records, which were made available for our review, did not show that the Department advised the Congress that the agreement provided for the payment to Westlands of $4 an acre-foot of water pumped or that Westlands' pumping of water would result in reduced sales of water by the San Luis Unit.

In response to an inquiry from a member of the Congress concerning the contract with Westlands, the Assistant Secretary of the Interior, in a letter dated August 23, 1965, quoted the following provision from the operating agreement.

> "To insure that project water will be utilized only on eligible lands, the District, commencing with the 4th year, shall pump at its expense from ground-water aquifers underlying the District for use on eligible lands an amount of water, as determined by the contracting officer."
> (emphasis added)

The Assistant Secretary made no reference in his letter to the $4 an acre-foot that the Bureau had agreed to pay Westlands for pumping water nor did he indicate the amount of revenue which the Government would not realize if Westlands met part of its demand by using groundwater rather than project water.

On July 29, 1966, hearings on activities of the Westlands Water District were held before the Senate Committee on Interior and Insular Affairs. Although the transcript of the hearings was not printed, the stenographic transcript

shows that the Assistant Commissioner, Bureau of Reclamation, in testifying before the Committee stated that:

> "Subsequent to the July 8, 1964, hearing and to make doubly sure that the Department's intention to administer strictly the land limitation provision of Reclamation law was clearly understood by all, it was determined that an operating agreement should be entered into between the Westlands Water District and the United States. ***
>
> "The salient provisions of the operating agreement are set forth on page 2 of Assistant Secretary Holum's July 28, 1966, letter to the committee and I therefore need not repeat them at this time."

The July 28, 1966, letter informed the Committee that the provisions of the operating agreement guarded against the ineligible landowners' benefiting from project water applied to eligible lands in that the agreement required Westlands to pump groundwater in an amount equal to the estimated quantity of project water that percolated into the underlying water basins. However, the Assistant Secretary again made no reference to either the $4 an acre-foot that the Bureau had agreed to pay Westlands for pumping water or the impact that the agreement could have on Bureau revenues.

The Bureau did not make any studies relative to the impact that the operating agreement could have on costs, revenues, and a recharge of the groundwater storage prior to committing the Government to the provisions of the operating agreement. We noted, however, that, prior to the date of the agreement, the Assistant Commissioner, on January 22, 1965, expressed his concern with respect to the provision which requires the Bureau to pay Westlands $4 for each acre-foot of water which it pumped. The Assistant Commissioner estimated that, if 76 percent of the irrigable land became eligible in 20 years, assuming a uniform buildup of water deliveries to eligible landowners, the payment would average about $250,000 annually.

Our analysis also showed that the revenues of the San Luis Unit could be significantly reduced because of the

provisions of the operating agreement. Our estimate of the possible financial effect of the provisions of the operating agreement was based on the terms of the agreement, certain estimates by the Bureau, and the impact of the impending merger of Westplains into the Westlands Water District because the water-service contract with Westlands was being amended at the time of our field review to provide for the merger.

Under the terms of the operating agreement, Westlands is not required to pump water during the first 3 years of operation of the San Luis Unit or after 76 percent of the irrigable land becomes eligible for project water. The Bureau estimated that, beginning with the fourth year, the required pumping each year would average about 12 percent of the water deliveries to Westlands in the prior year. Also, the Bureau's estimate of the future yearly water deliveries to Westlands indicates that water sufficient to irrigate 76 percent of the irrigable land in Westlands will be delivered during the eighth year after the initial delivery of water.

On the basis of the Bureau's estimates, the indicated eligibility of 76 percent of the irrigable land in Westlands for project water within 8 years, and the cost of $4 an acre-foot of water pumped, we estimated that the Government's payments to Westlands for pumping water could amount to about $2 million. We estimated also that the Government would not realize revenues of about $4 million from the sale of water because Westlands used pumped groundwater rather than purchased water from the San Luis Unit. Under the agreement, if 76 percent of the land within Westlands service area does not become eligible for project water within 8 years, Westlands could be required to pump water for a longer period of time and thus the Government could (1) incur additional pumping costs and (2) lose additional sales of project water.

PROPOSED REVISIONS TO EXISTING RECLAMATION LAW

The Reclamation Act of June 17, 1902 (32 Stat. 388), and subsequent acts require that the Bureau limit the delivery of project water to no more than 160 irrigable acres held by one owner (including a corporation). Holdings of

more than 160, or 320 irrigable acres owned jointly by a husband and a wife, are considered excess and thus are not eligible to receive project water.

The acts provide that an ineligible landowner desiring to obtain project water for application on his land may do so by signing a contract in which he agrees to dispose of his land to persons who can take title to the land as eligible owners at a price not to exceed the approved appraised value of the land under preproject conditions. Generally a landowner who signs a contract is required to divest himself of his excess land within 10 years.

During the Ninety-first Congress, first session, four bills were introduced in the Congress (S. 1631, H.R. 9475, H.R. 9441, and H.R. 10140), which would amend the Federal reclamation laws relating to the furnishing of water to an ineligible landowner by increasing the eligibility limitation to 640 acres. These bills also provide for further increases in the limitation every 10 years under certain conditions. In addition, the bills provide for the adoption of a formula which would enable an owner of lands in excess of the 640-acre limitation to purchase water for his excess lands without entering into a contract to dispose of his excess lands, but the charge for the water would include an interest factor; a factor which is not included in determining the charge for project water delivered to eligible landowners.

If the provisions of these bills are enacted into law, they would have an effect on the San Luis service area which is made up of large-scale landholdings. Data on ownership of land within the Westlands service area, which accounted for about 564,000 irrigable acres of the land in the San Luis service area, showed that about 65 percent of the land was ineligible for project water under reclamation law.

CONCLUSIONS

In our opinion, the implementation of the water-service contract requirement--that Westlands pump the groundwater in the San Luis service area that results from the use of project water by eligible landowners--could result in the

groundwater's not being replenished and the level of the water not being stabilized as contemplated in the feasibility report submitted to the Congress in 1956. Conversely, if the pumping requirement is not implemented, ineligible landowners will, in our opinion, benefit from project water used by eligible landowners.

Since a large percentage of land in the San Luis service area is held in ineligible ownership, it may be desirable to apply to the San Luis service area the provisions of several bills relating to the sale of project water to ineligible landowners. Under the provisions of these bills (see p. 13), the Bureau could sell project water to ineligible landowners at a rate which would include an interest factor. To the extent that ineligible landowners would purchase project water from the San Luis Unit, there would be a lessening of the need to pump groundwater and the Government would recover part of its interest costs.

DEPARTMENT OF THE INTERIOR COMMENTS

In our draft report, we proposed to the Department of the Interior that the Bureau consider our comments regarding the modification of the water-service contract with Westlands with the objective of fully informing the Congress of the alternatives of (1) requiring Westlands to pump groundwater to prevent ineligible landowners from benefiting from an increase in groundwater levels or (2) allowing project water to recharge the groundwater and thus allow indirect benefits to accrue to ineligible landowners.

In a letter dated December 11, 1968 (see app. I), the Director of Survey and Review, in commenting for the Department on our draft report, stated that the Department did not share our concern over the impact on the financial aspects of the project due to (1) the payment to Westlands of $4 an acre-foot of water pumped and (2) the loss of water revenues resulting from Westlands' use of pumped water rather than project water. He stated that, because of the acute subsidence problem now faced in the San Luis service area, it was believed that Westlands would not be required to pump water.

Our review showed that subsidence had been a problem in the San Luis service area since the Department submitted its feasibility report on the Unit to the Congress in 1956. Therefore, the Director's comment that Westlands may not be required to pump water because of the subsidence now being faced appears to have been equally valid in April 1965, when the water-service contract with Westlands was modified to provide for pumping water to ensure that ineligible landowners would not benefit from the project water.

The Director stated also that the Department believed that a sufficient acreage of excess lands in the Westlands service area would eventually become eligible to fully absorb the available water supply provided by the San Luis Unit. He stated that this belief was based on two considerations.

First, the merger of the Westplains area into the Westlands Water District created a total irrigable acreage within the boundaries of the enlarged Westlands district, which, when coupled with the water-service requirements of the Pleasant Valley Water District, would actually create a demand for more than the available water supply.

Second, since the combined burden of annual tax assessments and the cost of obtaining water by pumping will substantially exceed the cost of obtaining project water, ineligible landowners will find it economically desirable to break up their holdings by signing recordable contracts to dispose of their excess land.

The Director stated further that there was ample justification to assume that acreage would be placed under recordable contracts, in those service areas of Westlands for which distribution facilities had not as yet been constructed, in the same manner as the areas presently served by the existing Westlands distribution system.

With regard to the Director's statement on the effect of the merger of Westlands and Westplains, our estimate of the revenues that would not be realized was based on the impact of the merger of the two irrigation districts. (See p. 12.)

Also, the Pleasant Valley Water District's service area of 40,000 irrigable acres and the maximum of 80,000 acre-feet of water to be furnished by the San Luis Unit are relatively insignificant when compared with the service area and water requirements of the Westlands service area, which contains about 564,000 irrigable acres, and the proposed water-service contract under negotiation as of June 1969, which provides for yearly water deliveries of up to about 1.4 million acre-feet. At the time of our field review, the Bureau had not entered into a contract with the Pleasant Valley Water District.

Since the completion of our fieldwork, the Bureau has obtained, as indicated in the Director's letter, additional recordable contracts from the landowners in the Westlands service area. Also, additional portions of the distribution system have been completed and the percentage of land ineligible for project water has decreased.

We believe, however, that the Bureau may have difficulty in obtaining recordable contracts from several ineligible landowners who own substantial acreage in the service area and that, therefore, 76 percent of the irrigable land in the Westlands service area may not become eligible for project water within 8 years. As of November 1968, three landowners who together owned about 25 percent of the acreage had not signed recordable contracts, although some of this land could be served by the existing distribution system if the land were owned by eligible landowners.

We contacted one of these landowners, the Southern Pacific Company, to obtain its view with respect to compliance with the 160 acre limitation. The position of Southern Pacific, which has about 110,000 acres, or 20 percent, of the irrigable land within the Westlands service area, is clearly presented in the following paragraphs from its letter to us of March 4, 1969.

> "*** we believe that the 160 acre limitation has become antiquated in the light of improved modern farming techniques and that it tends to stultify the efficient development of California farm land. Consequently, we strongly support proposed legislation, along the lines suggested recently by

Governor Reagan's Task Force, which would substantially increase the amount of the present acreage limitation, perhaps with a provision that those receiving water on such additional land would not be entitled to any subsidy but would have to pay full interest charges.

"Until the situation is clarified, it has been our policy not to execute any recordable contracts with respect to our land under which we would have to sell the property in excess of 160 acres."

We were advised by a project engineer of the Bureau that, as of April 14, 1969, about 5,000 acres of Southern Pacific land could be served by the distribution system if the land was owned by eligible landowners.

MATTERS FOR CONSIDERATION BY THE CONGRESS

In view of the possible effect of the water-service contract, as modified, with Westlands on the achievement of the purposes of the San Luis Unit, the Congress may wish to provide guidance to the Bureau as to whether the replenishing and stabilizing of the groundwater supply in the San Luis service area or the preventing of ineligible landowners from receiving benefits from the project water is of primary importance.

If it is determined that replenishing and stabilizing the groundwater should be given primary consideration, the Congress may wish to consider the applicability of the provisions of the bills (S. 1631, H.R. 9475, H.R. 9441, and H.R. 10140) to the San Luis service area. The provisions of these bills would increase the eligibility limitation from 160 to 640 acres and would permit the purchase of water for excess lands at a price which would include an interest factor.

CHAPTER 3

IMPORTANT INFORMATION CONCERNING THE CONSTRUCTION OF A DETENTION RESERVOIR APPARENTLY NOT MADE AVAILABLE TO THE CONGRESS

The Bureau of Reclamation obtained an appropriation from the Congress to construct the Los Banos Creek Detention Reservoir, a flood control facility, in lieu of a previously approved siphon, as a means of handling cross-drainage on the San Luis Canal. In seeking the appropriation to construct this facility, the Bureau advised the Senate Subcommittee on Public Works, Committee on Appropriations, that detention reservoirs provide increased flood control benefits and make available recreational and fish and wildlife enhancement opportunities. The Bureau stated also that the construction of a detention reservoir rather than a siphon would add to the project cost, of which the State of California would pay 55 percent and the Government would pay 45 percent.

Our review of the Department's records showed that, at the time the Bureau provided the above information to the Subcommittee, it was aware that the State was not willing to share in any increased costs resulting from the construction of flood control facilities. The effect of construction of the Los Banos Creek Detention Reservoir has been an increase in cost to the Government of $2.6 million over the originally proposed siphon.

CONSTRUCTION OF THE LOS BANOS CREEK DETENTION RESERVOIR

The feasibility report for the San Luis Unit provided for certain structures described as siphons and retention basins which were to be constructed to confine flows of the streams crossing the San Luis Canal and to prevent flood damage to the canal. In an agreement dated December 30, 1961, the Bureau and the State agreed to share the costs of constructing these structures on a 45-55 basis.

In January 1962, the Bureau proposed to the State that the cross-drainage along the San Luis Canal be confined by means of detention reservoirs in Los Banos, Little Panoche, and Panoche[1] Creeks as alternatives to the siphons and retention basins described in the feasibility report. According to the Bureau, the detention reservoirs were preferable to the plan contained in the feasibility report because they would provide additional flood control and recreation benefits; the Los Banos Creek Detention Reservoir would specifically provide flood control to the city of Los Banos.

On November 7, 1962, in connection with the proposed Los Banos Creek Detention Reservoir, the State informed the Bureau that the increased cost of constructing this reservoir was not economically justified and recommended that the siphon plan be adopted unless the increased cost of the detention reservoir was going to be allocated to flood control purposes and paid for with Federal funds. The feasibility report for the San Luis Unit did not provide for any flood control as an expressed purpose of the Unit. Costs allocated to flood control purposes are borne entirely by the Federal Government.

On March 11, 1963, the Bureau's Regional Director solicited the views of the Commissioner of the Bureau of Reclamation as to the appropriate steps to be taken to inform the Congress of the planned revision in the facilities to be provided and to obtain authorization for the proposed cost allocation to flood control purposes. The Acting Assistant Commissioner replied on April 3, 1963, that the detention reservoirs as proposed went far beyond eliminating the siphon structures described in the feasibility report since the detention reservoirs were to serve other purposes as well; namely, flood protection to Los Banos Creek lands and recreational and fish and wildlife enhancement. He stated:

> "It appears to us that your current proposals cannot be considered authorized under the Act of June 3, 1960, because they involve flood control and more than minimum basic recreation, which are not specifically authorized by that act."

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[1] A siphon was later substituted as a means of handling the cross-drainage on the Panoche Creek.

Although officials of the Bureau had proposed plans to eliminate the siphon and to provide for a cost allocation to flood control purposes which would be funded by the Government as a nonreimbursable item, the Commissioner stated on April 29, 1963, before the Subcommittee on Public Works Appropriations, House of Representatives, that:

> "On the San Luis, there is very little [nonreimbursable costs] because there is no flood control, as such, in the San Luis unit, nor navigation. It is all allocated to irrigation with the exception of some to road relocation on a nonreimbursable basis."

Six weeks later, on June 10, 1963, before the Senate's Subcommittee on Public Works of the Committee on Appropriations, the Commissioner testified that the Bureau had changed its plans with respect to the manner of handling the three natural drainage channels intersected by the San Luis Canal, with the following remarks.

> "It originally was anticipated this [San Luis] canal would cross these drainage channels by means of rather expensive siphons, and we would just let these floods go on down the natural courses. Local agencies involved have objected quite strenuously to handling it in this fashion. As a result, we have checked into possible ways, in connection with our canal, to improve the local flood control situation. There was damage down there in 1955, for example, in the amount of more than half a million dollars from these side drainage floodings.
>
> "So we have now changed our plan. The budget that we have before you involves eliminating these siphons, and, in lieu thereof, we plan on putting in reservoirs on the side streams above the canal location which will provide increased flood control benefits and make available recreational and fish and wildlife enhancement opportunities. <u>This will add to the costs somewhat, of which the State will pick up 55 percent and we will pick up 45 percent</u>." (Emphasis provided.)

During our examination, we found no evidence that the State had ever given the Bureau assurances that it would participate in the added cost attributable to flood control purposes. In fact, on June 8, 1964, after the Bureau had obtained funds from the Congress to construct the detention reservoir, the State formally protested any charges for the portion attributable to flood control purposes. Subsequently, in July 1964, the State proposed to its congressional delegation that a bill be introduced in the Congress providing that the costs attributable to flood control purposes be considered nonreimbursable and not part of the costs of the joint-use facilities of the San Luis Unit.

On September 18, 1964, the Department of the Interior's Associate Solicitor, Water and Power, expressed an opinion concerning the authority of the Bureau to allocate part of the Los Banos Creek Detention Reservoir costs to flood control purposes. He stated that, since the Congress had authorized the San Luis Unit as an integral part of the Central Valley project, by implication it could be assumed that purposes, such as flood control which was set out in the basic legislation, were also authorized for the San Luis Unit.

He stated also that, since the San Luis act was explicit as to the purpose of the San Luis Unit, an argument could be advanced that the Congress intended the San Luis Unit to be an integral part of the Central Valley project only for the purposes expressly stated in the legislation, which did not include flood control purposes. The Associate Solicitor concluded that, in view of the lack of express statutory language and of an explicit statement in the Committee reports, it appeared desirable to obtain informal clearance from the congressional committee staffs of the interpretation that additional congressional authorization was not necessary.

The records available for our review did not show that informal clearance was obtained from the appropriate congressional committees. However, on May 3, 1965, the Assistant Commissioner authorized the assigning of a portion of the costs of Los Banos Creek Detention Reservoir to flood control purposes which had the effect of increasing the cost to the Government by about $2.6 million.

The cost of crossing the Los Banos Creek by siphon was estimated at $3.1 million compared with the cost of a multiple-purpose detention reservoir presently estimated by the Bureau at $5.6 million. Under the siphon plan, the Bureau would have shared in 45 percent of the cost, or about $1.4 million, and the State would have shared in 55 percent of the cost, or about $1.7 million. By changing the plan to provide for a detention reservoir and by allocating $2.6 million to flood control purposes, the Government will bear about $4 million of the cost and the State will bear about $1.7 million of the cost, as shown in the following cost allocation.

Construction Cost

Function	Total cost	Federal share	State share
	(000 omitted)		
Canal protection	$1,953	$ 879	$1,074
Flood control	2,600	2,600	-
Recreation	1,066	480	586
	$5,619	$3,959	$1,660

In regard to the allocation of costs to flood control purposes for the Los Banos Creek Detention Reservoir, the Commissioner of Reclamation (see p. 20), testified before the Senate Subcommittee on Public Works of the Committee on Appropriations that the flood of 1955, considered to be the worst in recorded history of northern California, caused more than half a million dollars worth of damage from side drainage floodings. However, a report by the Sacramento District Office, Corps of Engineers, indicated that the Los Banos Creek flood damage in 1955 totaled $140,000 and that additional damages caused by other West Side tributaries totaled about $300,000, most of which occurred outside the San Luis service area.

DEPARTMENT OF THE INTERIOR COMMENTS

In commenting for the Department on our draft report, the Director of Survey and Review stated that, in the case

of the Los Banos Creek Detention Reservoir, the flood control benefits were part of the planning for the facility and not incidental benefits. The Director advised us that the allocation to nonreimbursable flood control purposes of $2.6 million of the cost of the Los Banos Creek Detention Reservoir is in accordance with the Reclamation Project Act of 1939, the representation made to the Congress, and Senate Document 97.

We are not questioning whether the allocation of the costs associated with the Los Banos Creek Detention Reservoir was in accordance with the Reclamation Project Act of 1939 or Senate Document 97. However, in our opinion, the Bureau's representation made to the Congress at the time appropriations were requested was not correct in that the Bureau stated that the State of California would contribute 55 percent of the additional cost of providing a detention reservoir rather than a siphon. This statement was made at a point in time when the State had already recommended to the Bureau that the siphon plan be adopted unless the increased cost of constructing this reservoir would be paid for with Federal funds.

The Bureau submitted information during the 1967 and 1968 appropriation hearings relative to the allocation of the cost of the San Luis Unit, which indicated that about $2.5 million of the San Luis Unit cost was allocated to nonreimbursable flood control purposes. However, the earliest of these hearings was held about 3 years after the hearings in which the Bureau advised the Congress that the State was going to pay 55 percent of the increased cost of the Los Banos Creek Detention Reservoir and after the reservoir had been constructed.

Therefore, in our opinion, the Bureau did not provide the Congress with accurate and complete information on the financing of the Los Banos Creek Detention Reservoir. In this respect, we noted that the Director in commenting on our report draft did not direct his comments to this matter.

CHAPTER 4

SIGNIFICANT SAVINGS AS A RESULT OF ACTION TAKEN TO REVISE PROPOSED ALLOCATION OF COSTS

Our review showed that on March 9, 1966, the Bureau of Reclamation had informed the State of California that it would allocate costs to flood control purposes in all cases where flood control benefits resulted from the construction of the San Luis Unit, even in those cases where flood control benefits were incidental and where no extra cost was incurred for flood protection.

The Bureau, on the basis of a special study by the Corps of Engineers, estimated that about $5 million of the cost of facilities that had been constructed could have been allocated to flood control purposes. This is in addition to the cost allocated to flood control purposes for the Los Banos Creek Detention Reservoir. Since the State had paid 55 percent of the cost of constructing these facilities, an allocation of costs to flood control purposes would result in the Government's refunding $2,750,000 to the State. In addition, the remaining costs of $2,250,000 would not be recoverable by the Bureau through charges to water users.

Although the feasibility report on the San Luis Unit provided for certain flood control facilities, it appeared to us that the Congress did not intend for these facilities to be constructed on a nonreimbursable basis since no authority for nonreimbursable flood control allocations was contained in the San Luis act. Therefore, it did not appear proper for the Bureau to allocate the cost of those facilities to nonreimbursable flood control purposes.

In our draft report submitted to the agency for comment, we proposed that the Bureau reconsider its position regarding the nonreimbursable allocation of Federal funds for flood control purposes, especially in those cases where flood control benefits are incidental and where no extra

costs are incurred for the flood protection. We stated that, in our opinion, the allocation of costs to flood control purposes would be inconsistent with the information presented to the Congress in the feasibility report.

In commenting for the Department on our draft report, the Director of Survey and Review stated that the Department had reconsidered its position regarding the nonreimbursable allocation for flood control purposes where flood control benefits were incidental and where no extra costs were incurred for flood protection. The Director stated also that on August 16, 1968, the Regional Director advised the State Department of Water Resources that the Bureau was not in a position to allocate additional costs of the San Luis joint facilities as nonreimbursable expenditures for flood control unless specifically provided by the Congress.

The action taken by the Bureau resulted in savings of about $5 million to the Government. Of the construction cost of the features, 55 percent, or about $2,750,000, was borne by the State and the remaining 45 percent, or about $2,250,000, was treated as a reimbursable cost to be repaid by the water users under water-service contracts.

CHAPTER 5

SCOPE OF REVIEW

Our review, conducted at the Bureau of Reclamation office in Sacramento, California, and Bureau Headquarters in Washington, D.C., included an examination of applicable legislation, justifications for appropriations, supporting documents, correspondence, and other pertinent records as they related to information presented to the Congress on the construction and operation of the San Luis Unit. In addition, we interviewed officials of the Department of the Interior and the largest ineligible landowner in the San Luis service area.

APPENDIXES

UNITED STATES
DEPARTMENT OF THE INTERIOR
OFFICE OF THE SECRETARY
WASHINGTON, D.C. 20240

DEC 11 1968

Mr. A. T. Samuelson
Director, Civil Division
General Accounting Office
Washington, D. C. 20548

Dear Mr. Samuelson:

The Department has completed the review of the GAO draft report "Review of Information Presented to the Congress Concerning an Agreement for the Sale of Water and Major Construction Changes of the San Luis Unit, Central Valley Project, Department of the Interior, Bureau of Reclamation." The complexity of the matters discussed in the report required time-consuming discussions for development of our comments and response. Our response is directed to the context of the specific report section identified with the principal marginal caption beginning on page 11 of the draft.

Inadequate information regarding the possible effect of an amendment to the water service contract with Westlands Water District

The report expressed concern over a possibility that the excess land problem may result in a situation whereby a sufficient acreage of excess lands in the Westlands Water District may not eventually become eligible to receive project water to fully absorb the available supply developed by the San Luis Unit. It is firmly believed such an eventuality will not occur. This position is based on two principal considerations.

First, the merger of the Westplains area into the Westlands Irrigation District creates a total irrigable acreage within the boundaries of that enlarged district which is of such a magnitude that, when coupled with the water service requirements of the Pleasant Valley area, will actually create a demand for more than the available water supply.

Second, it is believed the impact of economic forces will in the long run make it highly desirable for excess landowners to break up their holdings by signing recordable contracts and thereby making such lands eligible to receive project water as it is made available through progressive construction of segments of the planned distribution system. The combined burden of annual ad valorem tax assessments and the costs of making water available to ineligible excess lands through private pumping will substantially exceed the overall costs of equal water service from the San Luis Unit.

Consequently, there is ample justification to assume that acreage will be placed under recordable contracts, in those portions of the Westlands Irrigation District for which distribution works have not as yet been constructed, in accordance with the pattern experienced within the first areas for which distribution works have made San Luis Unit water service available. Attached hereto is a graphic presentation which indicates the pattern of conversion from ineligible excess land to an eligible land status through execution of recordable contracts, as the water service area has been progressively expanded.

Concern was also expressed about the potential impact on the financial aspects of the Central Valley Project due to the $4.00 per acre-foot credit for water pumped by the Westlands Irrigation District at the request of the United States, and the related loss of water service revenues identified with water deliveries foregone from the San Luis Unit, all as covered by the provisions of the April 1, 1965, operating agreement. This concern is not shared.

Negotiation of this operating agreement could not be avoided because of the pressures which had built up as a result of the factions involved in the crossfire generated by the excess land problems. However, in releasing these pressures, there was no diminution of management controls as a result of the agreement for the Westlands Irrigation District to pump from groundwater acquifers if such action should become desirable in connection with the excess land laws. Article 1(b) of the operating agreement provides that the amount of water pumped, if any, will be "as determined by the contracting officer, limited by the following standards: (1) that such amount shall not exceed the net amount of project water furnished to the District that reaches the pumping acquifers underlying the District; (2) that such amount of water so to be pumped is of usable quality for the crops to which such water is to be applied; and (3) that the pumping of such amount of water will not significantly contribute to the land subsidence within the San Luis Unit." (Underlining supplied.)

Thus, the Bureau of Reclamation is in a position to completely control the extent of any financial impact on the Central Valley Project identified with the pumping provision in the operating agreement. Moreover, because of the acute subsidence problem now being faced on the San Luis Unit, it is believed such pumping by the Westlands Irrigation District will not be required.

Inadequate information in connection with the construction of detention dams

We believe the Los Banos detention reservoir has the same status in the intent of Congress and eyes of the law as any other multipurpose reservoir constructed subsequent to the Reclamation Project Act of 1939. Section 9(b)

of this Act authorizes the Secretary to allocate to nonreimbursable flood control the portion of the costs of such reservoirs that he finds proper. We further believe that the allocation of $2,600,000 of the costs of Los Banos detention reservoir to nonreimbursable flood control is in accordance with the spirit of the 1939 Act, the representations made to the Congress, and the precepts enunciated in Senate Document No. 97.

Another aspect of nonreimbursable flood control allocations for the San Luis Unit, which was discussed in the audit report draft, pertains to flood benefits identified with facilities where such benefits are only incidental and no extra cost was incurred for flood protection. The draft report on page 31 recommends that "the Bureau reconsider its position regarding the nonreimbursable allocation of Federal funds for flood control purposes, especially in those cases where flood control benefits are incidental and no extra costs are incurred for the flood protection." In deciding whether a nonreimbursable allocation should be made, several factors were considered. One is the fact that no extra cost was incurred to produce the benefits. Another pertinent factor considered is the contract of December 30, 1961, with the State of California. Article 10 of this contract defines the joint-use facilities, and Article 16 provides that "The State shall pay 55 percent and the United States shall pay 45 percent of the actual total cost of construction as specified in Article 15." Article 15 defines the cost of construction of the joint-use facilities to be allocated in accordance with Article 16.

After reviewing these considerations, the Regional Director wrote the State Department of Water Resources on August 16, 1968, and advised that ". . . the Bureau of Reclamation is not in a position to allocate additional costs of the San Luis joint facilities as nonreimbursable expenditures for flood control unless specifically provided by Congress. However, we plan no adjustment to the nonreimbursable allocation already provided in the accounting for the construction costs of the Los Banos detention dam." This is because flood control benefits identified with Los Banos detention dam were a part of the planning for this structure and were not in the category of incidental benefits. We have not made any representations to Congress regarding a nonreimbursable allocation based on incidental benefits identified with other facilities nor do we plan to make any unless Congress requests it.

[See GAO note on p.

[See GAO note.]

Sincerely yours,

J. V. Hall Jr.

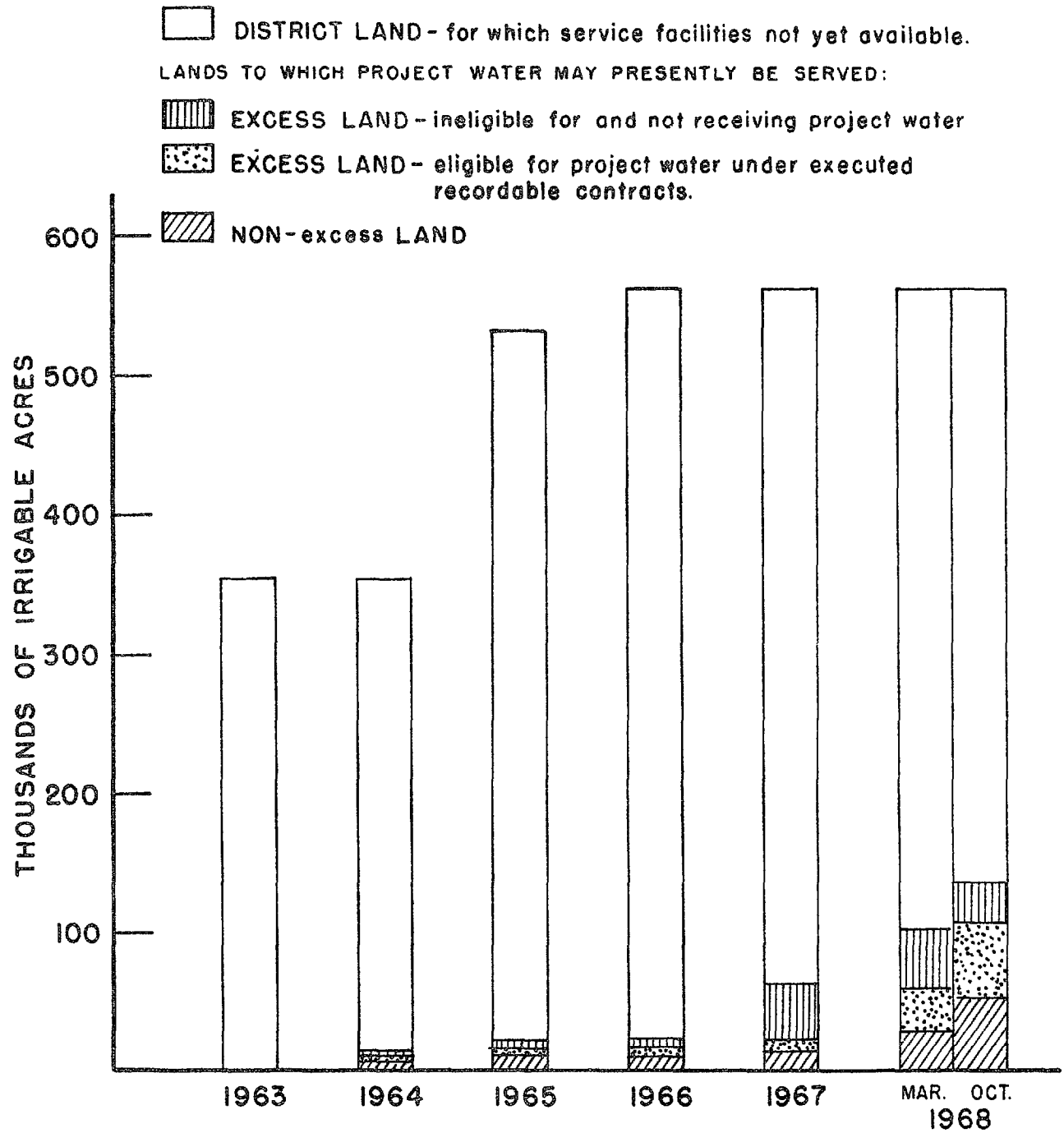
Director of Survey and Review

Enclosure

GAO note: The deleted comments relate to matters which were discussed in the draft report but omitted from this final report.

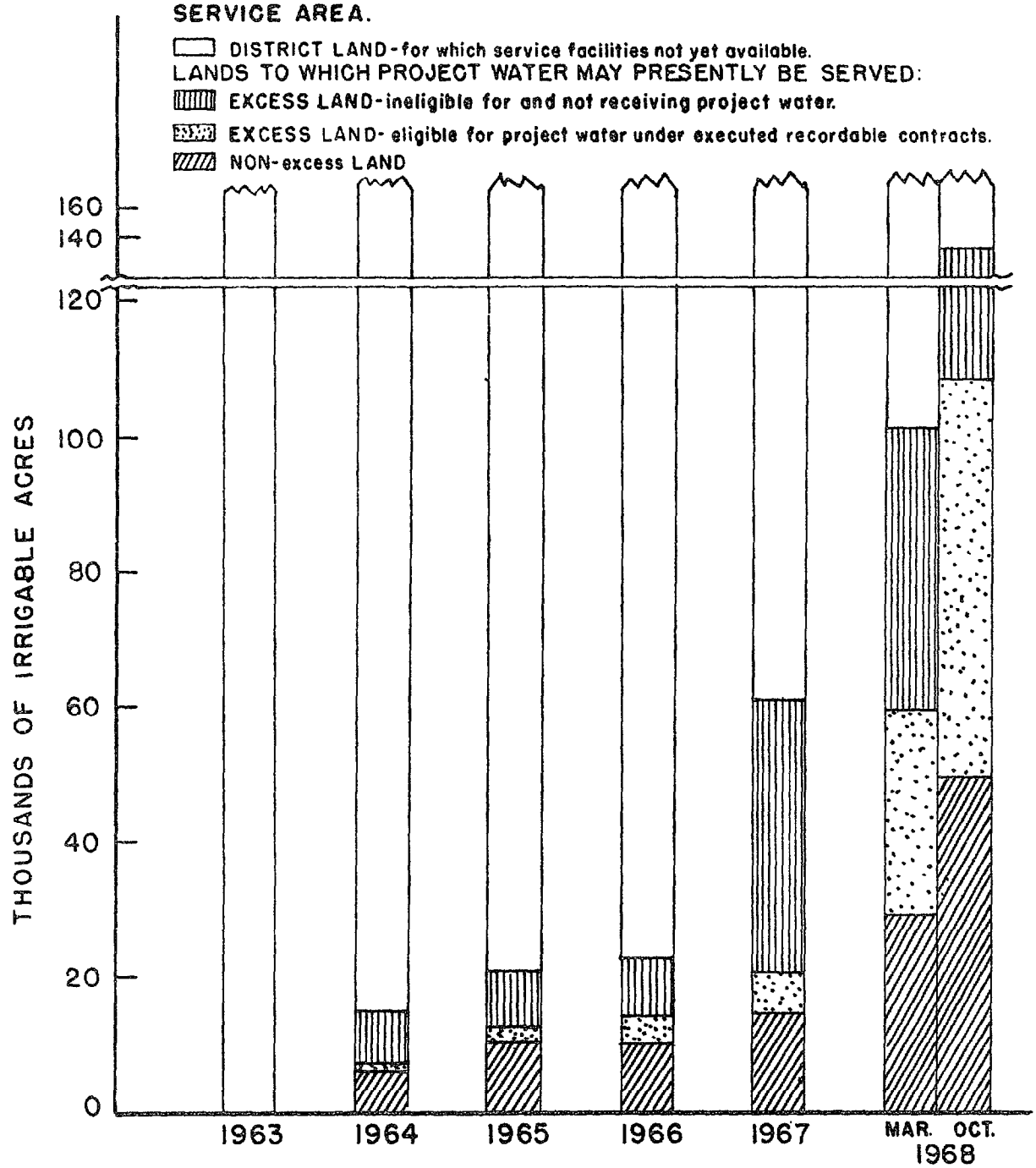
WESTLANDS WATER DISTRICT
Central Valley Project, California

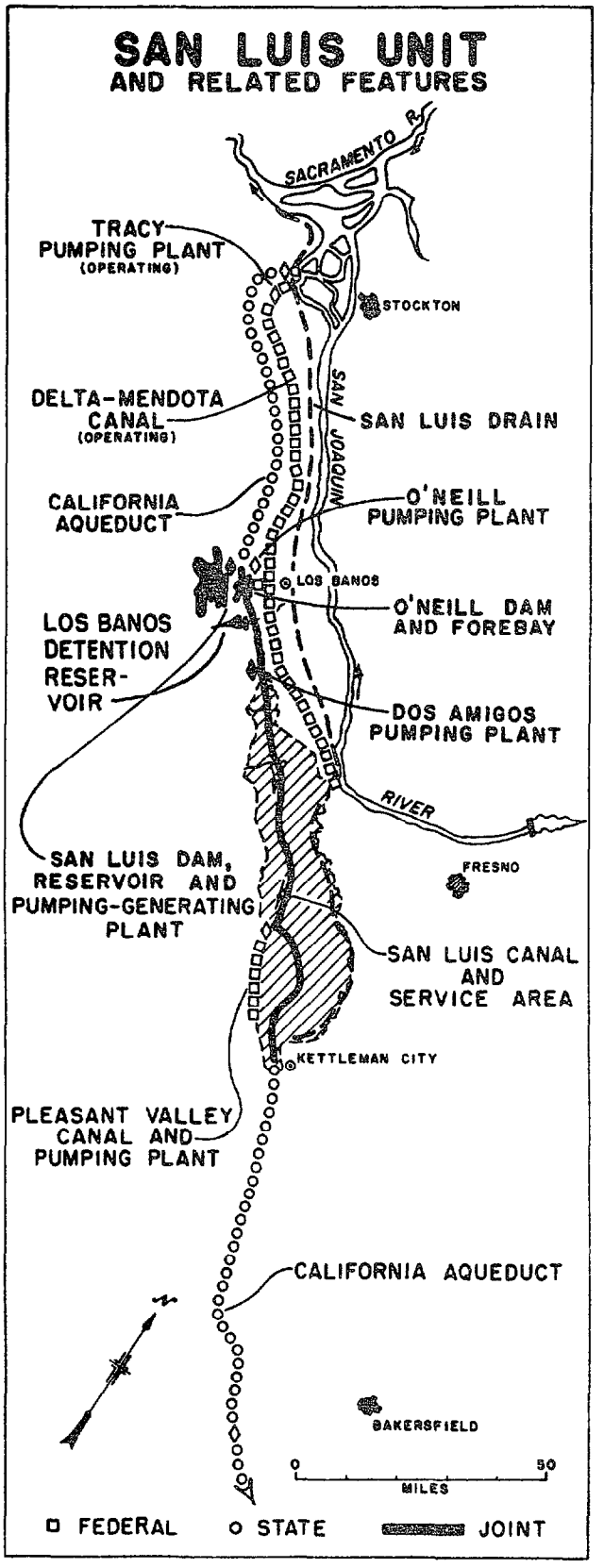
TREND OF PROPORTIONATE INCREASE IN ELIGIBILITY FOR WATER SERVICE WITH ANNUALLY EXPANDING SERVICE AREA.



WESTLANDS WATER DISTRICT
Central Valley Project, California

TREND OF PROPORTIONATE INCREASE IN ELIGIBILITY FOR WATER SERVICE WITH ANNUALLY EXPANDING SERVICE AREA.




SAN LUIS UNIT
AND RELATED FEATURES
SACRAMENTO R.
TRACY PUMPING PLANT (OPERATING)
STOCKTON
DELTA-MENDOTA CANAL (OPERATING)
SAN JOAQUIN
SAN LUIS DRAIN
CALIFORNIA AQUEDUCT
O'NEILL PUMPING PLANT
LOS BANOS
O'NEILL DAM AND FOREBAY
LOS BANOS DETENTION RESER-VOIR
DOS AMIGOS PUMPING PLANT
RIVER
FRESNO
SAN LUIS DAM, RESERVOIR AND PUMPING-GENERATING PLANT
SAN LUIS CANAL AND SERVICE AREA
KETTLEMAN CITY
PLEASANT VALLEY CANAL AND PUMPING PLANT
CALIFORNIA AQUEDUCT
BAKERSFIELD
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MILES
FEDERAL
STATE
JOINT

PRINCIPAL OFFICIALS OF THE DEPARTMENT OF THE INTERIOR AND THE BUREAU OF RECLAMATION RESPONSIBLE FOR THE ACTIVITIES DISCUSSED IN THIS REPORT

	Tenure of office	
	From	To
DEPARTMENT OF THE INTERIOR		
SECRETARY OF THE INTERIOR:		
Walter J. Hickel	Jan. 1969	Present
Stewart L. Udall	Jan. 1961	Jan, 1969
Fred A. Seaton	June 1956	Jan. 1961
Douglas McKay	Jan. 1953	Apr. 1956
ASSISTANT SECRETARY, WATER AND POWER DEVELOPMENT:		
James R. Smith	Mar. 1969	Present
Kenneth Holum	Jan. 1961	Jan. 1969
Fred G. Aandahl	Feb. 1953	Jan. 1961
BUREAU OF RECLAMATION		
COMMISSIONER:		
Ellis L. Armstrong	Nov. 1969	Present
Floyd E. Dominy	May 1959	Oct. 1969
Wilbur A. Dexheimer	July 1953	Apr. 1959
DIRECTOR, REGION 2:		
Robert J. Pafford, Jr.	Jan. 1963	Present
Hugh P. Dugan	Sept. 1959	Jan. 1963
Bernard P. Bellport	Sept. 1957	Sept. 1959
Clyde Spencer	Dec. 1953	Sept. 1957

U.S. GAO, Wash., D.C.