

# KERN COUNTY WATER AGENCY

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September 15, 2003

SENT VIA FAX

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Dear Ms. Cervantes & Ms. Brown,

The Agency appreciates the opportunity to review the draft EIR/S on the Environmental Water Account. Following are our comments, organized by general, technical and policy categories.

**General**

The draft EIR/S must contain an overall theme that good science govern all CALFED decisions on the use of the EWA as called for in the CALFED ROD. The CALFED Science Panel must continue to provide annual technical review of the EWA program. The Science Program has convened a number of important workshops to further explore and refine the science, to have balanced discussions among the policy makers, stakeholders, and scientists, and to characterize the scientific issues underlying water operations affecting the Bay-Delta estuary and watershed. These workshops have provided a forum for discussion of improvements in the science driving the EWA and to increase the trust that critical technical information is being transferred on a timely basis to the policy makers operating the two water projects.

Recent computer simulation modeling efforts by the CALFED science program are showing signs of promise. For example, a proposed model on the life history of Delta Smelt may provide valuable information in regard to Delta Smelt mortality and using the EWA in a more biologically efficient manner. Conclusive results of this and other related computer modeling efforts must be reviewed and incorporated into the EWA through the adaptive management process.

Information obtained from other CALFED programs, especially the Ecological Restoration Program (ERP) must also be utilized. Since 1995, CALFED has funded hundreds of ERP projects aimed at restoring the Bay-Delta estuary, at a cost of around \$400 million. Positive science that has come out of this effort must also be incorporated.

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We request that the EIR more specifically recognize the role of science and that the EWA may be modified over its life to respond to scientific advances.

### **Technical**

Page ES-5 – The EWA description should state that the priority purpose of the EWA is to facilitate recovery of at-risk fish populations. This is mentioned on page ES-1 and should be consistently stated throughout the document. The Agency considers the use of EWA assets to protect species that are not at risk to be a poor use of this resource over the four-year term covered by this EIR. The EIR should also more clearly distinguish groundwater substitution from water previously stored through groundwater banking programs. Such previously stored water has historically been acquired by the EWA from south of the Delta sources and may be available in the future.

Page ES-5 – Groundwater substitution is offered as an asset acquisition measure available to EWA agencies. This is described as “Purchase of surface water supplies (typically stored in a reservoir) while the users forego their surface water supplies and pump an equivalent amount of groundwater as an alternative supply.” Groundwater substitution programs could only work in specific areas, where groundwater overdraft would not be worsened by the substitution, and also where the pumping would not reduce river flows and hence water rights of downstream users. The potential impact on overdraft renders this measure of little use in the area south of the Delta. Therefore, the EIR should explicitly state that this asset acquisition measure is likely useful only in the northern California upstream areas.

Page ES-12 – Groundwater substitution and groundwater purchases should be limited as described in our comment above under Page ES-5.

Section 1.5.3.4.4 Groundwater – This section mischaracterizes the amount of transferable water available from a stored groundwater transfer by ignoring losses. In Kern County groundwater banking programs, this is assessed as 15 percent for out-of-county interests such as the EWA. The EIR should acknowledge that such losses are applied to stored groundwater purchases.

Section 2.4.2.2.4 Relaxation of the Export/Inflow Ratio – The EWA agencies have the option of relaxing the E/I ratio when certain requirements are met. The fact that this variable asset has produced less water than anticipated reflects the fact that the EWA agencies, the only ones who can relax the E/I ratio, have chosen not to do so. The EWA acquisitions should not be increased as a result of choices made by the EWA agencies that reduce the variable assets.

Section 2.4.2.3.1 Water Acquisition Types – This section correctly describes the contractual limitations on the sale of allocated SWP Table A amounts, and that EWA agencies could purchase SWP water through crop idling transfers if the regulatory and policy barriers are removed. This “if” is completely speculative and is inappropriate for a CEQA analysis. We believe this water acquisition measure should be deleted from the EIR.

Section 2.4.3.1 Critical Year – In describing the potential EWA operations during a dry year, the EIR assumes that significant cross-Delta transfer capacity would be available. However, the analysis seems to ignore the potential impacts on transfer capacity of Phase 8 water and water purchases made by SWP contractors, such as occurred this year with Metropolitan Water District (even though they were unable to ultimately deliver the water this year). These should be considered since such actions will diminish the capacity available for moving EWA water.

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Section 7.2.4 Environmental Consequences of the Flexible Purchase Alternative – This section evaluates “all transfers to the EWA from willing sellers (a transfer amount that would result in greater than 600,000 acre-feet).” This statement appears to be in conflict with the rest of the EIR, which states that 600,000 acre-feet of purchases in any year would be the maximum amount.

#### Policy

ESA Commitments - The CALFED ROD established the EWA with the specific commitment that there would be no reductions in CVP and SWP Delta exports due to the Endangered Species Act as long as the requisite quantities of water were made available to the EWA. While the preferred alternative mentions that CVP and SWP water supply commitments would be addressed (i.e., no loss of water), there is no mention in this EIR of whether the ESA commitments would be continued.

Page ES-8 – The “Flexible Purchase Alternative” targets a substantially larger EWA (up to 600,000 acre-feet annually) than called for under the CALFED ROD (“the “Fixed Purchase Alternative” – 185,000 acre-feet annually). The Flexible Purchase Alternative is identified as the preferred alternative. The “Statement of Purpose and Need” makes no mention of the biological necessity for a significantly larger EWA. The Agency appreciates the need for the EIR to evaluate “bookends” large enough to accommodate potential changes to the EWA during years four to seven, the EIR needs to be far more specific in informing the public that this amount of water would be rarely, if ever, required. The reader of the EIR, even of the executive summary, should come away with the understanding that far less assets will be needed to carry out the EWA program and provide the ESA commitments except in very unusual circumstances. This is particularly important since the CALFED Science Program reports that the EWA program during the first three years of operation has reduced “take” of at-risk fish populations under the Fixed Purchase Alternative. To simply state that the Flexible Purchase Alternative is the preferred alternative because it will allow the EWA agencies to take more actions to benefit fish without having to prioritize usage is misleading (see Page ES-18).

As well, even though the Flexible Purchase Alternative would provide more water to benefit fish over the Fixed Purchase Alternative, a more rapid trajectory to recovery would only occur if the additional water were used in a biologically prudent manner (see Table 2-10 Comparison of Alternatives). This EIR provides no specifics on what presently unmet biological needs exist that an expanded EWA would address, nor how the additional water would be used to meet those needs. Rather, it offers generalizations and categories of potential EWA water usage. This is insufficient information to determine the biological necessity of a larger EWA program.

Finally, this EIR should recognize that efforts are now being made to restructure the EWA as a longer-term (up to ten years) program that will operate in conjunction with the South Delta Improvement Program, the new OCAP for the CVP and SWP, and the efforts to more closely coordinate operations of the CVP and SWP. It is likely that the program described in this EIR will not have a four-year life and a supplement to this EIR may be required in as little as one year to analyze the new program that is presently under consideration.

Page ES-11 Comparison of EWA Alternatives Table ES-2 – Table ES-2 lists variable assets under both the Flexible Purchase Alternative and the Fixed Purchase Alternative. The EIR justifies a larger EWA, in part, on the fact that variable assets have not provided the volumes of water envisioned by the CALFED ROD. If it is assumed that a larger EWA (up to 600,000 acre-

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feet) plus the variable assets will be at the disposal of EWA agencies, then the potential size of the EWA could exceed 600,000 acre-feet. The variable assets should offset, not add to, the maximum size of the EWA. Further, this section should also emphasize that it is very unlikely that this amount of assets will be needed.

Section 1.6.2.1 Recent Decisions Affecting CVPIA (b)(2) Water – This section states that the series of judgments in *San Luis & Delta Mendota Water Authority, et al v. United States* (the *Wanger* decision) resulted in a change to Tier 1 as described in the CALFED ROD and may reduce the amount of variable assets available under the EWA Operating Principles. The Agency does not agree with this interpretation. In effect, the interpretation in the EIR/S would result in the EWA becoming part of the Tier 1 assets upon which the biological opinions for Delta Smelt and Winter-run salmon are based. The EWA was never tied to these biological opinions. Even though the CALFED ROD specified use of (b)(2) water “in accordance with Interior’s October 5, 1999 decision” (see CALFED ROD, Page 56), the *Wanger* decision in effect declared that methodology illegal. The Agency disagrees with the assertion that EWA assets must now be used to make up for that illegality. The EWA should be sized solely on the basis of what is needed to protect at-risk fish species. The Agency recognizes that the various stakeholders disagree on this issue. Nevertheless, the EIR/S should not assume that the EWA is responsible for the difference between Interior’s October 5, 1999 methodology and the *Wanger* decision.

Section 2.2.2.3 Flexibility, Reliability, and Managing Uncertainty – This section offers several explanations for why a maximum of 600,000 acre-feet was identified by the EWA agencies as the most extreme case. The Agency’s comments under Page ES-8 and Section 1.6.2.1 outline two such justifications. A third offered in Section 2.2.2.3 is that the EWA’s variable assets in years one to three have produced less water to date than the amount anticipated in the CALFED ROD (145,000 acre-feet). The section notes that greater use of the Banks Pumping Plant capacity in the spring to convey SWP supplies and less (b)(2) water being released upstream (of which the EWA was to recapture half the releases reaching the Delta) have “reduced” the EWA.

Frankly, most of the water supply commitments made in the CALFED ROD have also not been implemented in the manner the water supplier community would like. Yet we are not being offered the opportunity to re-interpret those commitments or to shift responsibility for achieving the commitments to other parties. When the EWA agencies signed the CALFED ROD, they were taking a risk that the variable assets would work out. The fact that they have not should not become the responsibility of the water users.

Also, the fact that less (b)(2) water has been released upstream, precluding its recapture by the EWA, is simply a reflection of the choices that the EWA agencies have made in use of water budget. They have chosen to focus their water assets on Delta actions, which don’t offer the opportunity to recapture, instead of upstream releases. The Agency considers it inappropriate for water users to be made responsible for the choices that have been made to date by the EWA agencies.

The CALFED ROD specifies that, before the EWA expires after year four, the agencies will assess the success of EWA operations and analyze the potential impacts from new facilities and expanded conveyance capacity. The agencies will then determine the appropriate size and composition of an EWA, as well as the EWA’s sharing in the benefits from new facilities, in the fifth and future years. This EIR/S neither assesses the success of EWA operations during years one to three, nor attempts to evaluate the appropriate size and composition of the EWA,

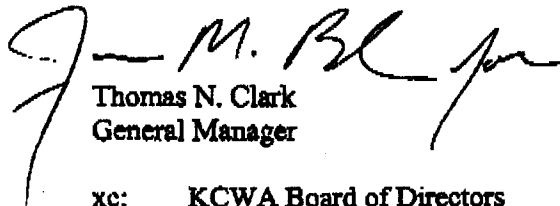
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considering new facilities that are on the short-term horizon (i.e., Banks 8,500). In this regard, it fails to meet the requirements of the CALFED ROD.

Section 2.4 Flexible Purchase Alternative (The Proposed Project) – The Agency understands that the modeling reveals that the maximum purchase of 600,000 acre-feet would only occur three to five times over the 70 years of hydrology. However, there is no discussion under the No Project Alternative of how many times over the 70 years of hydrology that Tier 3 assets may be needed, nor in what quantities. As a result, an adequate comparison of the No Project and Proposed Project cannot be done.

Thank you for the opportunity to review this draft EIR/S. If you have further questions, feel free to contact Brent Walthall at (916) 325-1600 or Lloyd Fryer at (661) 392-0494.

Sincerely,



Thomas N. Clark  
General Manager

xc: KCWA Board of Directors  
Cliff Schulz  
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