

# Chapter 4

## Commentors, Comments, and Responses

### 4.1 Introduction

This chapter contains responses to comments received on the Draft EWA EIS/EIR. Section 4.2 describes the format of the responses to comments. Commentors, their associated agencies, and assigned letter identifications are listed in Section 4.3. Comments are grouped into the following categories: Native American (NA), Federal agencies (FA), State agencies (SA), local agencies (LA), non-profit organizations (NP), form letters (FO), and public hearings (PH). Section 4.4 presents the comments received on the Draft EIS/EIR and the responses. The comments included in Section 4.4 are excerpted verbatim from the comment letters. Text included in the public comment letters that was not a direct comment on the Draft EIS/EIR, including introductory material and supplemental information, is not included in Section 4.4. A compilation of all comment letters in their entirety, however, is included as Attachment 1 to this volume.

### 4.2 Format of Comments and Responses

Many public comment letters received on the Draft EIS/EIR included similar comments. Where a comment could be responded to with a response to an earlier comment, reference to that response is provided. Additionally, 11 different agencies submitted form letters (FO01-FO11), most of which contained identical comments. Responses to comments in form letter FO01 are applicable for responses to comments in form letters FO02, FO04, and FO06-FO11. Therefore, form letters FO02, FO04, and FO06-FO11 are not included in Section 4.4. Form letters FO03 and FO05 are included separately because the comments in these letters varied slightly from the other form letters.

The public submitted comments during the public hearings on the Draft EIS/EIR in Sacramento and Fresno; there were no oral comments made during the meeting in Red Bluff. Each hearing is given a Letter ID; individual commentors are first identified with the hearing Letter ID and subsequently identified by agency.

### 4.3 List of Commentors

<i>Table 4-1 List of Commentors</i>			
<i>Commentor</i>	<i>Agency</i>	<i>Letter ID</i>	<i>Page Number</i>
<b>Native American</b>			
Everett Freeman	Paskenta Band of Nomlaki Indians	NA01	4-3
<b>Federal Agencies</b>			
Lisa B. Hanf	U.S. Environmental Protection Agency	FA01	4-4
Thomas R. Boyko	Western Area Power Administration	FA02	4-14

<b>Table 4-1 List of Commentors</b>			
<b>Commentor</b>	<b>Agency</b>	<b>Letter ID</b>	<b>Page Number</b>
<b>State Agencies</b>			
Carla B. Chokel	Bay Conservation and Development Commission (BCDC)	SA01	4-16
Dennis J. O'Bryant	Department of Conservation, State of California	SA02	4-17
Diane Riddle	State Water Resources Control Board	SA03	N/A <sup>1</sup>
Victoria A. Whitney	State Water Resources Control Board	SA04	N/A
Diane Riddle	State Water Resources Control Board	SA05	4-21
<b>Local Agencies</b>			
Paul Olmstead	SMUD	LA01	4-27
Christy Leighton	Glenn County Planning Division	LA02	4-28
Laura J. Simonek	Metropolitan Water District	LA03	4-31
Richard A. Denton	Contra Costa Water District	LA04	4-42
Jim Horen	Alameda County Flood Control and Water Conservation District	LA05	N/A
Dante John Nomellini	Central Delta Water Agency	LA06	4-43
Andrew M. Hitchings	Glenn-Colusa Irrigation District	LA07	4-55
Thomas N. Clark	Kern County Water Agency	LA08	4-58
Jonathan D. Parker	Kern Water Bank Authority	LA09	4-68
Jane Dunn Cirrincione	Northern California Power Agency	LA10	4-68
Charles McNiesh	Pajaro Valley Water Management Agency	LA11	4-70
Charles McNiesh	Pajaro Valley Water Management Agency	LA12	N/A
Gordon A. Hess	San Diego County Water Authority	LA13	4-70
Lowell F. Ploss	San Joaquin River Group	LA14	4-72
Jon D. Rubin	Kronick et. al. for San Luis/Delta Mendota WA	LA15	4-78
Joan A. Maher	Santa Clara Valley Water District	LA16	4-87
John Herrick	South Delta Water Agency	LA17	4-97
Curt Aikens	Yuba County Water Agency	LA18	4-110
Jeanne M. Zolezzi	Herum Crabtree Brown for Stockton East Water District	LA19	4-118
<b>Non-profit Organizations</b>			
Becky Sheehan	California Farm Bureau Federation	NP01	4-121
Jeffrey P. Sutton	Family Water Alliance	NP02	4-152
Robert F. Stackhouse	Central Valley Project Water Association	NP03	N/A
David J. Guy	Northern California Water Association	NP04	4-160
John S. Mills	John Mills for Regional Council of Rural Counties	NP05	4-164
John C. Coburn	State Water Contractors	NP06	4-211
<b>Form Letters</b>			
Douglas Welch	Chowchilla Water District	FO01	4-213
Roy Catania	Aliso Water District	FO02	See FO01
Ronald D. Jacobsma	Friant Water Users Authority	FO03	4-221
Tim Da Silva	Gravelly Ford Water District	FO04	See FO01
Stephen H. Ottemoeller	Madera Irrigation District	FO05	4-225
Douglas Welch	Madera-Chowchilla Water & Power	FO06	See FO01

<b>Table 4-1 List of Commentors</b>			
<b>Commentor</b>	<b>Agency</b>	<b>Letter ID</b>	<b>Page Number</b>
Frank Bigelow	San Joaquin River Task Force	FO07	See FO01
Steve Chedester	Exchange Contractors	FO08	See FO01
Chris White	Central California Irrigation District	FO09	See FO01
Randall G. Houk	Columbia Canal Company	FO10	See FO01
Christopher L. Campbell	Baker, Manock & Jensen for Root Creek Water District	FO11	See FO01
<b>Public Hearings – Fresno</b>			
Ronald D. Jacobsma	Friant Water Users Authority	PH01	4-231
Kane Totzke	Kern County Water Agency	PH01	4-233
Stephen Ottemoeller	Madera Irrigation District	PH01	4-235
Chris White	Central California Irrigation District	PH01	4-240
Radney Howell	Columbia Canal Company	PH01	N/A
<b>Public Hearings – Sacramento</b>			
Paul Olmstead	SMUD	PH02	4-241
John S. Mills	John Mills for Regional Council of Rural Counties	PH02	4-242
<b>Public Hearings – Red Bluff</b>			
None		PH03	N/A

<sup>1</sup> N/A – Not Applicable. Letter received did not include direct comments on the Draft EIS/EIR. No responses were required. (See Attachment 1 for a copy of the letter.)

## 4.4 Comments and Responses

### NA01 - Paskenta Band of Nomlaki Indians

#### Everett Freeman

##### NA01-1

**Comment:**

Notification of any activity should be initiated if activity is within the county.

**Response:**

Groundwater substitution can potentially adversely affect groundwater levels. In order for EWA agencies to execute Federal trust responsibilities, EWA agencies' hydrologists would evaluate each groundwater substitution well proposed by a willing seller in the Sacramento Valley (regardless of its distance from Indian trust land) for its potential to adversely affect ITAs. If hydrologists identify potential adverse effects, then consultation by EWA agencies with the affected Federally recognized tribe would commence before the water acquisition contract is finalized. Additionally, the hydrologists would annually evaluate groundwater monitoring data submitted on wells proposed for continued service to ensure such wells will not potentially adversely affect ITAs.

##### NA01-2

**Comment:**

The one - two-mile- radius regarding well location is not sufficient and should be expanded.

**Response:**

Groundwater extraction within a 1- to 2-mile radius of ITAs merits a higher level of detailed pre-purchase evaluation to determine potential interference of nearby wells. (For more details please refer to Volume 1 Section 6.2.7.3.) When hydrologists on the EWA groundwater Review Team believe that a particular water well designated by a willing seller has the potential for being hydrologically connected with the tribe's groundwater, regardless of the distance between the wells and the tribe's land, the tribe will be consulted. Additionally, tribes themselves can initiate consultation with the trustee at any time.

**NA01-3**

**Comment:**

Monitoring plan should be defined-prior to any activities. Also, there should be sufficient-criteria to determine water quality, ground water table, and water supply effects.

**Response:**

Prior to EWA groundwater substitution transfers, sellers must submit monitoring and mitigation plans. The monitoring plan will include at a minimum: (1) identification of a network of monitoring wells that adequately cover the area to be pumped, (2) periodic flow meter readings at the extraction pumps, (3) periodic measurements of groundwater levels, (4) groundwater quality testing, and (5) a means to detect land subsidence. (Refer to Volume 1 Section 6.2.7.2.3.) These measures should protect groundwater quality and quantity from adverse effects. See also response to Comment NA01-2.

**FA01 - U.S. Environmental Protection Agency**

**Lisa B. Hanf**

**FA01-1**

**Comment:**

The EWA, as characterized in this NEPA document, does not capture the current evaluations regarding potential uses of the EWA and redefinition of EWA assets in conjunction with other proposed CALFED projects, such as South Delta Improvements.

**Response:**

Section 2.1.2 of Volume 1 discusses various EWA asset acquisition and management strategies identified by the CALFED ROD and Operating Principles Agreement. This document describes the EWA through 2007 or until substantial changes, such as South Delta Improvements, requires substantial changes in the EWA. The EWA agencies released the Draft EIS/EIR before the most recent proposal was complete regarding actions in the south Delta. It does not include project-level analysis of how the EWA would function in cooperation with the South Delta Improvements Project because the details were not available when completing this document. The EWA agencies will complete new environmental analysis before the EWA program could be used in conjunction with increased pump capacity at the Delta export pumps or

before the agencies begin to implement a long-term EWA program that would extend beyond 2007. The new documentation will evaluate any changes in EWA assets and operations. The EWA agencies do not yet have a firm schedule for future NEPA compliance.

#### **FA01-2**

***Comment:***

The EIR/EIS would benefit by including more information from the recent Science Panel review of EWA which, among other matters, raised questions about the scientific basis for focusing EWA actions on managing “take” at the export facilities. The Panel provided recommendations for improving science-based assessment and management of EWA, including a broader range of asset use. Given that the alternatives evaluated in this EIR/EIS are limited to readily available water acquisition tools which can provide flexibility in Delta pumping to protect at-risk fish species, we believe the EIR/EIS should explain how the EWA can incorporate the Panel’s suggestions in the future.

***Response:***

Sections 2.4.5 and 2.5.4 have been added to Volume 1 to include a discussion of the Review Panel and types of recommendations it has previously made. Future recommendations would be incorporated into the manner in which EWA agencies make purchases and take fish actions. In addition to pumping reductions, use for EWA assets include closing the Delta Cross Channel gates, increasing instream flows, and augmenting Delta outflows.

#### **FA01-3**

***Comment:***

The Draft EIR/EIS contains incomplete information regarding potential relationships between EWA actions and quality of water within the Delta and exported from the Delta by the Central Valley Project and State Water Project.

***Response:***

The Draft EIS/EIR assessed potential EWA program effects on quality of water within the Delta and being exported from the Delta. Two measures were incorporated into the project to protect water quality:

1. Carriage water will be used to protect and maintain chloride concentrations in the Delta. (Further discussed in Volume 1 Section 5.2.2.1.)
2. EWA agencies will only purchase water if it meets all required provisions of DWR’s acceptance criteria governing conveyance of non-Project water through the California Aqueduct. (Further discussed in Volume 1 Section 5.2.2.2.)

Section 5.2.5.1.4 of Volume 1 evaluates the impacts of EWA actions on water quality. The analysis determines that there would be a less-than-significant impact to water quality within and being exported from the Delta. The commentor did not specify

concerns on how the water quality analysis in the Draft EIR/EIS is incomplete. Responses to Comments FA01-11 and FO01-15 discuss Delta water quality issues.

#### **FA01-4**

***Comment:***

EWA's purpose is to provide for protection and recovery of fish, beyond water available, through existing regulatory actions. To do so, EWA is provided with water assets, including operational commitments from the CALFED project agencies. Since its inception, the EWA has enabled resource management agencies and the water project agencies to conduct Delta operations in ways which provide fisheries benefits without impairing water supplies to export users. However, the program faces challenges which can undermine future viability, including maintenance of an adequate baseline level of protection and provision of assets needed to convey and store acquired environmental water. With respect to the baseline for EWA, compared with conditions anticipated in the CALFED Record of Decision (ROD), there has been a loss of the assets requisite to the Tier 1 Level of Protection - notably, a reduction in the water available under the Central Valley Project Improvement Act Section b(2) [p. 1-35]. The implications are a reduced level of protection to fish provided by regulatory tools, reduction in variable assets, and increased costs to the EWA and the public to provide fisheries protection and enhancement.

***Response:***

Potential changes to the regulatory baseline, or Tier 1, are part of the reason behind developing a more flexible alternative than the EWA program envisioned in the CALFED ROD. The Flexible Purchase Alternative has the flexibility to address changes to the regulatory baseline. The Fixed Purchase Alternative has less flexibility in the acquisition and management of assets. Under the Fixed Purchase Alternative, changes to Tier 1 with the same size EWA (Tier 2) could mean more instances of Tier 3, which increases the potential for uncompensated pump reductions.

#### **FA01-5**

***Comment:***

The EWA assets depend on not only Tier 1 protections and water acquisitions, but a set of operational and conveyance assets to manage water into and through the Delta for fisheries benefits. The Draft EIR/EIS makes assumptions about potential ranges of conveyance and pumping capacity for EWA use but does not examine previous decisions about these assets in the alternatives. Availability of excess pumping capacity for EWA purposes has been less than initially estimated in the 2000 CALFED Programmatic EIR/EIS. We are concerned that an alternative which depends on greater transfer capability without reexamination of ways of providing that capacity for EWA purposes will not be viable.

***Response:***

This document is not assuming conveyance availability based on the CALFED ROD, but instead on modeling efforts. The EWA agencies modeled the existing conditions

using the most current statewide water operations modeling tool (CALSIM 2) and used this information to determine estimates of the conveyance capacity.

**FA01-6**

*Comment:*

Pending proposals to increase conveyance and export capacity in the south Delta such as those enumerated in the Cumulative Impacts section will require re-examination and possible reconfiguration of EWA assets.

*Response:*

The commentor is correct (see response to Comment FA01-1).

**FA01-7**

*Comment:*

This Draft EIR/EIS (p. ES- 13) suggests that future supplemental EIR/EISs will be sufficient for longer-term use. EPA is concerned with this approach because future EIR/EISs will need to incorporate upcoming proposed facilities and operations, continuously strengthen the scientific basis for EWA actions, and take a closer look at water-quality related operations. Please see our detailed comments (attached) for more specific suggestions on contents for the Final EIS/EIR.

*Response:*

Section 2.4.2, page 2-36, of Volume 1 includes a discussion of acquisitions from sources not addressed in this EIS/EIR. The supplemental documents discussed would not address long-term changes to the EWA. The EWA agencies plan to do new environmental analysis to address continued operation of the EWA beyond 2007, or after significant changes in facilities or conveyance capacity. That analysis would incorporate and address any changes in the baseline conditions and evaluate new facilities.

**FA01-8**

*Comment:*

The Draft EIR/EIS states that there could be supplements to the document if there are future acquisitions not encompassed in this analysis (ES-13). As our cover letter explains, we are concerned that the EWA alternatives analyzed here explicitly exclude assets which are not immediately available and/or cannot be directly used for providing flexibility at the Delta export facilities. Furthermore, the Draft EIR/EIS alternatives do not address other kinds of assets essential to an effective EWA, such as storage, conveyance, and use of the export facilities.

**Recommendation:** The Final EIR/EIS should provide more detail on related CALFED project planning and analyses which affect the EWA, such as the South Delta Improvement pumping capacity increases and the proposed Intertie, and disclose work being done to effectively integrate EWA actions. Explain whether potential changes in EWA assets and operations are being considered, and describe plans and schedule for future NEPA compliance.

**Response:**

See response to Comment FA01-1.

**FA01-9**

**Comment:**

For new projects affecting the Delta, it will be important to evaluate the adverse impacts, individually and cumulatively, and to assure that water users assume the costs of mitigation as appropriate per the CALFED agreement. Some statements in the Draft EIR/EIS give the impression that the EWA might be used to mitigate water project impacts which should be the responsibility of water users (see p. 22-11, for example). Additionally, with less system “surplus” and greater competition for water, costs of EWA actions such as increasing outflow would likely rise. The Draft EIR/EIS does not evaluate EWA funding needs or sources, or principles for determining appropriate contributions from specific water users versus public funding.

Recommendation: To the extent information is available, the Final EIR/EIS should discuss funding plans and options for funding sources.

**Response:**

See response to Comment FA01-1. NEPA and CEQA do not require a discussion of funding issues. The EWA agencies have explored a variety of financing options, but have not yet made final decisions. Sufficient public funding is available for the next 2 years of EWA operation from Proposition 50 (funds are earmarked for the EWA) and other general water resources funds. The EWA agencies are developing a plan for long-term funding. A reference to EWA being used to mitigate water project impacts was not found on page 22-11.

**FA01-10**

**Comment:**

As the 2002 EWA Science Review Panel pointed out, there does not appear to be strong scientific justification to moderate export pumping activities for fisheries benefits. A better understanding of the Delta ecosystem and role of upstream conditions may result in a broader range of tools and actions to benefit fish populations. Improved measures of biological performance are needed to help gauge the appropriate overall levels and kinds of investment in the EWA.

Recommendation: The Final EIR/EIS should summarize recommendations from the 2002 EWA Review and describe work being carried out in response. Plans for future EWA assessments and adaptive management of EWA assets should be completely described.

**Response:**

Chapter 2 of Volume 1 has been updated to include Sections 2.4.5 and 2.5.4, which reference the adaptive management process identified in the ROD. The sections also include the types of recommendations the Review Panel has made previously. Future recommendations would be incorporated into the manner in which EWA agencies make purchases and take fish actions.



## **FA01-11**

### ***Comment:***

The Draft EIR/EIS is inconclusive regarding the effects of the EWA on water quality within the Delta and exports from the Delta (see p. 5-49). However, it is clear that under some circumstances shifting pumping away from the spring and into the July-September window will reduce export water quality (that is, increase salinity and bromide concentration). Furthermore, reductions in pumping can impair in-delta water quality by reducing the mixing of fresher Sacramento water with San Joaquin River water. Insofar as the operational focus of the EWA is fishery benefits, there is likely to be less opportunity to manage project operations for water quality. It is important to recognize that degradation of existing water quality with respect to key constituents such as salinity can have significant effects on uses, including drinking water - even if quality meets established objectives. We note that CALFED established a policy of "continuous improvement" of Delta water quality for the drinking water program.

**Recommendation:** The Final EIS/EIR should discuss more completely CALFED policy and current discussions regarding monitoring and protecting Delta water quality for drinking water and other uses. Provide information on potential impacts which increased salinity and organic carbon have on use of Delta water for drinking water.

### ***Response:***

The EWA Program will be operated to cause no degradation of in-Delta water quality. Volume 1 Section 5.1.2 of the Draft EIS/EIR explained that EWA agencies will use carriage water to protect and maintain water quality in the Delta. The EWA agencies will also meet all DWR regulations and criteria regarding water quality of exports.

Volume 1 Section 5.2.5.1.4 of the Draft EIS/EIR concluded that the amount of salts and other constituents delivered to the export water users would increase in some years and decrease in other years. The net change over the 15-year study period would be a slight decrease in the amount of salts and other constituents delivered to the export water users.

Waters of the Sacramento and San Joaquin Rivers mix because Sacramento River water is directed through the Delta Cross Channel into the central Delta and eventually mixes with San Joaquin water. The amount of water that flows through the Delta Cross Channel is not affected by the amount of pumping at the CVP/SWP export facilities. The same amount of Sacramento River water would enter the central Delta through the Delta Cross Channel gate regardless of the amount of pumping at the CVP/SWP export facilities. Changes in the timing of the water exports could influence distribution of the mixed water within the central Delta; however, it would not degrade in-Delta water quality or adversely affect beneficial uses.

One of CALFED's general targets for water quality is to "continuously improve Delta water quality for all uses..." (CALFED ROD). The CALFED target is not meant to apply to individual projects, such as the EWA, but instead to implementation of the entire CALFED program. While the CALFED target may not require the EWA

program to contribute to continuous improvement in Delta water quality, the EWA agencies are required to mitigate all adverse water quality effects that may be caused by the EWA.

**FA01-12**

***Comment:***

In Chapter 9 of the Draft EIR/EIS, Fisheries and Aquatic Ecosystems, the modeling outputs and analyses include information on impacts of the two alternatives (fixed purchase, and flexible) with respect to salvage (pp. 9-281-283). Although the text concludes that the flexible “typical water purchase” scenario would be more beneficial overall because of higher upstream volumes, the salvage data show a more complex situation. The flexible approach clearly benefits salmonids but not striped bass or splittail.

Recommendation: The Final EIR/EIS should examine this information more closely and, if possible, suggest explanations. The discussion should distinguish the potential benefits and impacts for the different species.

***Response:***

Analysis of the Flexible Purchase Alternative includes two scenarios, the Maximum Water Purchase Scenario and the Typical Water Purchase Scenario. The Maximum Water Purchase Scenario represents a potential worst case for environmental effects and a best case for fish benefits in the Delta. The Typical Water Purchase Scenario analyzes a more likely representation of potential impacts and benefits within the Delta. Attachment 1 in Volume 2 further discusses the two scenarios. Pages 9-254 through 9-261, 9-264 through 9-271, and 9-279 through 9-284 discuss beneficial and adverse impacts to individual fish species for each EWA alternative.

Specifically, the salvage-related benefits provided by the EWA Program relative to delta smelt, Chinook salmon, steelhead, and splittail are presented in Tables 9-56 through 9-59 in Volume 1 with implementation of the Maximum Water Purchase Scenario and in Tables 9-65 through 9-68 with implementation of the Typical Water Purchase Scenario. Tables 9-59 and 9-68 show a net reduction in splittail salvage over the 15-year period of record; therefore, each scenario would provide a beneficial effect to splittail.

The potential effects of the Maximum Water Purchase Scenario and the Typical Water Purchase Scenario on striped bass salvage were less than significant. Table 9-60 shows a total reduction in salvage of 8,935,211 striped bass with implementation of the Maximum Water Purchase Scenario over the 15-year period analyzed and Table 9-69 shows a total reduction in salvage of 7,087,274 striped bass with implementation of the Typical Water Purchase Scenario over the same 15-year period of record. In some years, however, measurable increases in striped bass salvage would be frequent.

The salvage-related benefits provided by the Fixed Purchase Alternative relative to delta smelt, Chinook salmon, steelhead, and splittail are presented in Tables 9-70 through 9-73. Similar to the Flexible Water Purchase Scenario, the analysis concludes

that the Fixed Purchase Alternative would result in beneficial impacts on these species, but to a lesser degree than that provided by implementation of the Flexible Purchase Alternative. Potential impacts to striped bass under the Fixed Purchase Alternative would also be less than significant because, although in some years there would be measurable increases, there would be a net decrease in striped bass salvage over the 15-year period of record under the Fixed Purchase Alternative.

Therefore, as shown in Chapter 9 in Volume 1, the EWA alternatives benefit splittail and have less than significant effects on striped bass. The pages identified above provide further explanations for these findings.

### **FA01-13**

***Comment:***

Several sections of Chapter 9 of the Draft EIR/EIS do not reflect recent source information. In the splittail discussion, the description and citations relate to the mid-1990s. Similarly, the description of the entrapment zone/X2 uses data up through 1996, although substantial recent work from the U.S. Geological Survey, University of California-San Francisco, and others is available. In covering the Yolo Bypass, there is no mention of the ecological dynamics and role the Bypass plays for natives such as salmonids and splittail. It appears that the Draft EIR/EIS relied on the 1996 Interim South Delta documentation, without more recent material. As a result, the evaluation of effects is incomplete.

Recommendation: The Final EIR/EIS should provide an updated evaluation of the ecological impacts of the system to specific native fish species, including the ecological dynamics and role of flood plains, including the Yolo Bypass.

***Response:***

The Draft EIR/EIS relied on numerous reference materials as a basis to describe the affected environment/existing conditions for fisheries and aquatic resources, including the 1996 Interim South Delta documents. There are multiple, up-to-date references cited in Section 9.3 of the Draft EIR/EIS and in Chapter 10 of the ASIP. As stated on page 9-74, the EWA Program would not result in changes in the frequency of bypass flooding; therefore, an analysis of potential impacts related to fish and aquatic ecosystems within the Yolo or Sutter Bypass is not required.

### **FA01-14**

***Comment:***

In the discussion of water quality in Chapter 22 of the Draft EIR/EIS, there is reference to increasing total organic carbon (TOC) above "Delta water quality standards." However, there are no water quality standards for TOC, nor are there drinking water Maximum Contaminant Levels (MCLs). There is a CALFED Program Record of Decision "target" value for organic carbon (3 mg/L measured at the intakes). Also, under the Interim Enhanced Surface Water Treatment Rule and the Long-Term 1 Enhanced Surface Water Treatment Rule there are requirements for treatment if organic carbon is elevated.

Recommendation: The Final EIR/EIS should include this correction.

**Response:**

Page 22-13 has been changed from “Delta quality standards” to “target levels identified in the CALFED ROD.”

**FA01-15**

**Comment:**

The Draft EIR/EIS does not report any water quality acceptance criteria for the Central Valley Project, other than the groundwater acceptance criteria for the Delta Mendota Canal (p. 5-9).

Recommendation: The Final EIR/EIS should explain what criteria, if any, the Bureau of Reclamation has in place to protect Central Valley Project water quality in the context of conveying non-project water.

**Response:**

Water quality acceptance criteria are limited to Bureau of Reclamation groundwater standards, and are presented in Volume 1 Section 5.1.2.9, U.S. Bureau of Reclamation Groundwater Acceptance Criteria. The only water the CVP will convey on behalf of the EWA Program will be pumped at the Tracy Pumping Plant. Therefore, the discussion regarding in-Delta water quality is sufficient to address potential water quality impacts on the CVP. If the CVP has water quality acceptance criteria other than the Groundwater Acceptance Criteria, it would pertain to transfers downstream from the Tracy Pumping Plant and would be irrelevant to the analysis of potential impacts of the EWA Program.

**FA01-16**

**Comment:**

The Draft EIR/EIS (p. 5-12) discusses trihalomethanes. Trihalomethanes are a treatment issue, not a constituent issue per se.

Recommendation: In the Final EIR/EIS, the discussion of water quality constituents of concern for drinking water should distinguish trihalomethanes as a treatment issue and be consistent with the more complete and accurate information on page 5-26.

**Response:**

Although it is true that trihalomethanes are a treatment issue and not a raw water constituent issue, organic carbon and bromide constituents can result in the formation of trihalomethanes during the water treatment process, and thus can be a concern from a drinking water source standpoint. Therefore, trihalomethanes were included as a constituent of concern in the water quality study.

**FA01-17**

**Comment:**

The Draft EIR/EIS states that EWA groundwater substitution in the Upstream from the Delta Region potentially could decrease groundwater levels and affect wells on

tribal lands. Effects could include increasing the costs of pumping from tribal wells, or drying out of the wells. If potential effects to Indian trust assets are identified, then EWA agencies have committed to consult with the affected tribes before the acquisition is finalized in order to minimize effects to those assets. Mitigation measures include discontinuing groundwater pumping if groundwater levels are drawn down to a level of concern.

**Recommendation:** We recommend that the EWA agencies consult with the potentially affected tribes now so that the Final EIR/EIS includes specific information regarding the identified levels of concern on tribal lands and the groundwater pumping rates within the areas of influence that could draw down wells to these levels. This would not only provide appropriate information in the EIR/EIS on the potential impacts of the proposed project on Indian trust assets, but facilitate in a timely manner the implementation of EWA groundwater pumping activities in these areas when they are selected in the future.

***Response:***

Please refer to response to Comments NA01-1 and NA01-3. EWA groundwater actions would not result in significant effects to Indian trust assets. Most nearby tribes were involved in the development of those sections of the Draft EIS/EIR particular to Indian trust assets.

**FA01-18**

***Comment:***

The Draft EIR/EIS identifies the potential air emissions of the action alternatives if left unmitigated. Diesel pumping of groundwater and crop idling could contribute to existing air quality violations in several counties. The proposed action, however, would include one, or a combination of, the mitigation measures identified in Section 8.2.7. The potential impacts of the proposed alternative with any of these mitigation measures are not quantified in the Draft EIR/EIS. The document indicates only that the measures would reduce impacts to air quality to less than significant levels.

**Recommendation:** The Final EIR/EIS should quantify the range of potential emissions of criteria pollutants for the action alternatives with mitigation measures so the potential impacts of the alternatives are more fully understood. The Final EIR/EIS should also discuss whether and how the project would conform with the State Implementation Plans for the air pollution control districts affected by the project.

***Response:***

The amount of emissions from groundwater substitution after mitigation has been quantified in Tables 8-11 and 8-12 on page 8-29 of Volume 1. Comparisons of project-related emissions to the statewide emissions for diesel-fueled agricultural pumps without mitigation measures are included in Volume 1 Tables 8-5, 8-6, and 8-9. Tables 8-11 and 8-12 in Volume 4 also compare the emissions after mitigation to the statewide emissions. With mitigation, the project-related emissions would be accounted for within this statewide emission inventory.

## **FA02 – Western Area Power Administration**

**Thomas R. Boyko**

### **FA02-1**

*Comment:*

Western is, however, concerned that Table ES-4, may potentially understate the actual mitigation obligation of the parties. Table ES-4 indicates the need of the parties “to develop a financial plan”. In order to fulfill the mitigation requirement, the parties will need to go beyond the development of a financial plan and identify the specific mitigation measures required for each authorized CVP purpose, such as the power function, to assure that unintended impacts do not occur. Western recommends that the language contained in Table ES-4 identifying the need to develop a project financial plan be modified so that it is consistent with other language in the EIS/EIR describing the mitigation requirement.

*Response:*

Text of the Executive Summary Table ES-4 has been revised for consistency with Chapter 16. The revised text reads, “The EWA agencies will be responsible for covering additional power costs per requirements specified in the CALFED ROD, under the Operating Principles Agreement.”

### **FA02-2**

*Comment:*

Page 16-4: Table 16-1 only contains capacity. For comparison purposes, it may be desirable to include average annual energy production since Table 16-2 on Page 16-5 presents annual average energy use. It may be desirable to do include average annual energy production for the State Water Project shown in Table 16-3 on Page 16-6.

*Response:*

Table 16-1 on page 16-4 has been modified to include energy production. To ensure consistent values of capacity and energy, the data source has been changed from Reclamation 2001 to Western’s 2001 Annual Report.

### **FA02-3**

*Comment:*

Page 16-4: “Western markets power surplus to Project Use” and First Preference Customers needs. It may be desirable to include a footnote clarifying the legal status of First Preference Customers. First Preference Customers are entities that are entitled to receive an allocation of up to 25 percent of the additional energy resulting from the operational integration of their specific project unit/division into the CVP.

For example, Trinity County is entitled to up to 25 percent of additional energy resulting from the integration of the Trinity River Division while Tuolumne and Calaveras Counties are entitled to up to 25 percent of additional energy resulting from the integration of the New Melones Project.

**Response:**

A discussion regarding First Preference Customers has been added to the text and footnote on page 16-4. The text change is: "...Power produced by the CVP hydropower system first meets First Preference Customer (Footnote 1) needs and Project water pumping loads (Project use power) at CVP pumping facilities (Table 16-2). Western markets power that is surplus to First Preference Customer and Project use as 'commercial power' under long-term, firm contracts to municipal and governmental entities (preference customers [Footnote 1]) at cost-based rates (based on generating/pumping costs)."

Footnote 1 on page 16-4 has been modified to incorporate a definition of First Preference Customers. The following text has been added to the footnote: "First Preference Customers are customers wholly located in Trinity, Calaveras, or Tuolumne Counties, California, as specified under the Trinity River Division Act (69 Stat. 719) and the New Melones provisions of the Flood Control Act of 1962 (76 Stat. 1173, 1191-1192). In both cases, the customers of the counties are entitled to 25 percent of the additional CVP energy resulting from the operational integration of their specific unit/division into the CVP."

**FA02-4**

**Comment:**

Page 16-5: "Western has completed and is in the process of implementing its post-2004 Marketing Plan for CVP hydropower resources that are surplus to Project use power needs after the long-term preference customer contracts expire in 2004."

**Response:**

The additional language suggested by Western has been incorporated into the text on page 16-5. The last sentence prior to Table 16-2 has been deleted and replaced with the following: "...The expiration of Western's long-term contracts with its preference customers is tied to the impending termination of Contract 14-06-200-2948A, a resource integration and transmission contract with the Pacific Gas and Electric Company. The expiration of this contract is tied to the end of the 1994 Power Marketing Plan and the initiation of the 2004 Power Marketing Plan. Beginning January 1, 2005, Western will market excess hydropower resources, which are surplus to Project Use Power and First Preference Customer needs on a daily available basis."

**FA02-5**

**Comment:**

Page 16-24: Table 16-8 the estimate of 2005 Average Monthly Peak Spot Market Price per MWh seems low. The source document is from February 2002. It may be desirable to update the data with more recent information so that impact analysis may be more complete.

**Response:**

A more recent comprehensive forecast of market clearing prices does not appear to be available from the California Energy Commission. A spot check of actual 2002 prices shows values generally less than the 2002 forecast contained in the resource

document. Actual 2003 prices exceed the forecasts for 2002 and 2005. The uncertainty associated with forecasting will be present regardless of the timing or source of a forecast. Absent any other published values, it is reasonable to use the 2002 forecast.

#### **FA02-6**

*Comment:*

Page 16-26: If possible, it may be desirable to update information originally developed from the 2002 California Energy Commission Report. The second paragraph states that Reclamation/Western will become responsible for timely declaration of loads and resources after 2004. It further states that EWA purchases and actions may affect day-to-day power scheduling resulting in additional costs to be borne by the CVP. The section states that these “effects could be potentially significant” but that “mitigation measures listed in Section 16.3.9 would reduce these” to “less than significant.” The original document did not contain these mitigation measures. Western understands that an errata sheet was subsequently developed and furnished to all of the reviewers. Western is in the process of analyzing these mitigation measures, as well as those on Page 16-29, and intends to provide comments in the near future.

*Response:*

See response to Comment FA02-5. Section 16.3.9 (page 16-29) in Volume 2 includes the mitigation measure for EWA effects on power production. There are no additional mitigation measures for effects on power production.

### **SA01 – Bay Conservation and Development Commission (BCDC)**

#### **Carla B. Chokel**

##### **SA01-1**

*Comment:*

In 1965, passage of the McAteer-Petris Act, established BCDC to implement and enforce a comprehensive plan for the conservation of San Francisco Bay and the development of its shoreline. Pursuant to the McAteer-Petris Act, a BCDC permit is required for placing fill, extracting materials, or changing the use of any land, water, or structure within the area of its jurisdiction. A significant decrease or change in the pattern and amount of fresh water flowing into the Bay has the potential to change the use of land and water areas by degrading their habitat values. We understand that the program is designed to provide environmental benefits; however it is at least theoretically possible that the alternatives proposed in the EWA EIR/S may decrease the pattern or amount of fresh water flowing into the Bay in a way that could negatively affect Bay habitats. Therefore, please clarify whether or not the alternatives outlined in the EWA EIR/S will significantly affect freshwater flows into the Bay system and analyze the potential impacts of any significant change. Please include a description of the McAteer-Petris Act in the State Requirement section in Chapter I of the EIR/S. A copy of the McAteer-Petris Act can be found on the Web at <http://www.bcdc.ca.gov/library/mpa/mpa.htm>.



In addition to the McAtter-Petris Act, BCDC is guided by the Commission's San Francisco Bay Plan (Bay Plan) which includes policies on fresh water inflow into the Bay system from the Sacramento and San Joaquin Rivers. BCDC applies the Bay Plan policies to all projects that may influence the quantity and quality of fresh water that flows into its jurisdiction. As noted previously, it remains unclear, after my review of the EWA EIR/S, whether the EWA alternatives proposed will alter the pattern of or decrease fresh water inflow into Suisun Bay, San Pablo Bay, and/or San Francisco Bay. Please discuss in the final draft of the EWA EIR/S whether any of the proposed alternatives will change the quantity or quality of water flowing into the Bay. If any alternatives do affect fresh water inflow, please address the proposed projects conformity with the Bay Plan policies. A copy of the entire Bay Plan can be found on the Web at <http://www.bcdc.ca.gov/library/bayplan/bayplanmenu.htm>. The Bay Plan's Findings and Policies on Fresh Water Inflow are located at <http://www.bcdc.ca.gov/library/bayplan/bayplan.htm#21>

**Response:**

Initial scoping of the proposed environmental analyses concluded that San Francisco Bay would not be affected by the EWA. The only effects of EWA implementation would be small decreases in Bay inflow during high inflow periods during the winter and early spring of some years (during reservoir refill) and increased Bay inflow during the July through September period in all years. The changes in Bay inflows would be very small; therefore, scientific analysis of these changes would be inconclusive using the analytical tools available today. In addition, it was determined that the changes in inflow would likely be positive for the Bay, and the water quality analyses of the Delta would sufficiently address water quality in San Francisco Bay. Therefore changes in Bay inflow were excluded from the environmental analyses in the Draft EIR/EIS. Therefore, a discussion of the McAtter-Petris Act is not found to be necessary. See response to Comment LA04-1 (pertains to Delta outflow required to maintain Delta water quality).

**SA02 - Department of Conservation, State of California**

**Dennis J. O'Bryant**

**SA02-1**

**Comment:**

Chapter 11 discusses Regional and Agricultural Economics. Land idling actions would not occur every year, and effects would occur only in years when crop idling actually occurs. What is the sequencing: one out of five years per land owner/operator? What are the specific limitations to idling lands under the Program? It is important that idling would not take place more than two consecutive years, and that idling sequences be staged so that impacts are minimized. Please refer to CALFED ROD Mitigation Measures 7.1-16, 7.1-26 and 7.1-27.

**Response:**

The EWA would operate differently during various year types. Volume 2 Section 11.2.7 briefly discusses when crop idling actions are likely, and Volume 1 Chapter 2 discusses EWA actions and alternatives in detail. Volume 2 Sections 11.2.3 and 13.2.7

discuss limitation to purchasing water through land idling under the EWA program. To prevent significant land use effects (discussed in Chapter 13), the EWA agencies will implement a mitigation measure that prevents any changes in land classifications under the FMMP and Williamson Act to a lower level. This would limit the number of consecutive years a particular parcel could be idled. As discussed in Section 11.2.3, the EWA agencies would limit idling to 20 percent of the rice or cotton acreage in each identified county.

#### **SA02-2**

***Comment:***

“Socioeconomic Effects Threshold” - This section includes an analysis of changes in county socioeconomic conditions (value output, value added, decrease in wages and loss of jobs) that result from idling rice acreage. The cumulative acreage of 89,600 is used as a scenario for the region, and is broken down by county. This section also provides an analysis of changes in conditions in the counties where Idling of cotton acreage may occur, 182,800 cotton acres in Fresno, Kern, Kings and Tulare Counties may be affected. There may be no formal determination of threshold of significance regarding socioeconomic impacts that pertain directly to idling of cropland, however, the document makes a determination that an EWA action would be substantially adverse if; a) land idling resulted in changes exceeding one (1) percent of county or regional baseline conditions in either total value of output, value added, wages and salaries or employment; b) land idling resulted in more than 20 percent of rice or cotton acreage in individual counties or the region being taken out of production; c) land idling resulted in substantial decreases of level of output, wages and salaries and employment to adversely affect local economies. Socioeconomic effects may appear to be relatively minor if analyzed on a regional level, however the same effects, if concentrated in a particular jurisdiction may be regarded as significant by the local constituency.

***Response:***

This referenced section is not included in the Public Draft EIS/EIR. The Draft EIS/EIR does not include any socioeconomic effects thresholds. CEQA and NEPA do not require that a finding of significance be determined for economic effects. EWA agencies included a 20 percent measure for temporary land idling as a means to reduce potential economic effects.

#### **SA02-3**

***Comment:***

The document states that crop idling would not occur every year, however, the document does not indicate clearly the crop idling sequence. Would the cropland be idled 4 out of 5 years?

***Response:***

The EWA would operate differently during various year types. Volume 2 Section 11.2.7 briefly discusses when crop idling actions would occur, and Volume 1 Chapter 2 discusses EWA actions and alternatives in detail. To prevent significant land use

effects, the EWA agencies will implement a mitigation measure that prevents any changes in land classifications under the FMMP and Williamson Act to a lower level (see Volume 2 Section 13.2.7). Therefore, cropland would not be idled 4 out of 5 years.

#### **SA02-4**

*Comment:*

The document identifies several measures that would minimize impacts to local socioeconomics:

- “Purchase water for habitat purposes so that the same locality is not affected over the long term”;
- “Limit the number of acres that can be fallowed (in order to produce transferable water) in a given area (district or county) or the amount of water that can be transferred from a given area”; and
- “Support assistance programs to aid local entities in developing and implementing groundwater management programs in transfer source areas”.

Regardless of whether there is no legal threshold of significance to agricultural socioeconomic impacts, there may be significant effects to the existing agricultural infrastructure, and we ask that the measures to reduce these effects set forth in the CALFED EIS/R section 7.3.7 be included in the document as methods to alleviate potential effects, Briefly, they are as follows:

- Supporting limitations on the amount of acreage that can be fallowed in a given area. Has this been determined?;
- Supporting training and educational opportunities, job referrals and placement services and job retraining for unemployed individuals to reenter the workforce;
- Supporting local governments and workers faced with increased demand for social services resulting from labor displacement;
- Including clauses in contracts that require use of the local workforce to the extent possible; and
- Providing opportunities for alternative industries to develop, such as recreation.

*Response:*

This referenced section is not included in the Public Draft EIS/EIR. Response to Comment response NP01-15 discusses mitigation measures for agricultural land use.

#### **SA02-5**

*Comment:*

Chapter 13 contains a discussion pertaining to the Division’s Farmland Mapping and Monitoring Program. While we appreciate that EWA would consider implementing the mitigation measure identified in 13.2.7 stating that water would not be acquired

from a parcel of land if idling the land would result in a lower classification of the land, we request that this measure be actually implemented and not merely considered. We also ask that the lowest quality agricultural land, such as, but limited to Class 4 land, or lands that support lower value crops be given priority in selecting acreages considered for fallowing as an additional measure. The Division's Farmland Mapping and Monitoring Program can assist in locating such lands. Molly Penberth is the Program Manager, and she can be contacted at (916) 324-0863.

**Response:**

The EWA agencies will implement the mitigation measure regarding land classification. Text has been changed from "the EWA would consider" to "the EWA agencies will implement." Chapter 6 of this volume includes a mitigation and monitoring table that outlines implementation and monitoring of the mitigation measure. It is likely that farmers would idle their lowest quality rice or cotton land first; therefore, it is not necessary to include a mitigation measure supporting the idling of lower value rice or cotton crops first. In general, farmers would be driven by economic incentives and would idle marginal, less profitable parcels first. These parcels typically would be on lower quality soils.

**SA02-6**

**Comment:**

Potential Acquisition and Conversion from Agricultural Uses. Will the EWA involve any land acquisition? Chapter 13 includes a statement that there may be acquisition of agricultural lands by the ERP. Whenever this is to occur, and before any acquisition Williamson Act - contracted lands or prime agricultural land, statute requires that the Department be notified. Notification requirements are under Government Code section 51291 (b).

Chapter 13 Section 2.2 includes a brief discussion on Thresholds of Significance. The word "substantial" is used. The California Environmental Quality Act's Initial Study Checklist is quite clear in identifying thresholds of significance as it pertains to agricultural resources. The California Department of Conservation has one established threshold of significance, and one tool that has been adopted by the Department to determine the significance of impacts to agricultural resources:

1. Loss of more than 100 acres of Williamson Act-contracted lands is considered of local, regional and statewide significance (CEQA Guidelines section 15206(b)(3)).
2. The Department of Conservation's Land Evaluation Site Assessment Model is an optional tool under CEQA for lead agencies to determine threshold of significance (CEQA Guidelines Appendix I).

**Response:**

The EWA would not acquire any water through land purchases. All crop idling actions involve temporary water transfers. The statement concerning the ERP is in the existing conditions section of Volume 2 Chapter 13.

The significance criteria in CEQA section 15206 are not appropriate for the EWA because the EWA would not result in the loss or cancellation of any Williamson Act acreage or any other farmland. Therefore, it is not necessary to include CEQA section 15206 in the significance criteria.

#### **SA02-7**

***Comment:***

Growth Inducing Impacts. Is there potential for growth as a result implementation of the Program's elements crop idling, especially considering that the EWA program may sunset in 2007?

***Response:***

Lands would remain in agriculture after the temporary EWA-related idling; therefore, crop idling would not be growth inducing. EWA has the potential for supporting growth only in the level of water supply reliability it provides to water contractors.

#### **SA02-8**

***Comment:***

According to the document, idled lands are to remain in agriculture. What potential exists for a conversion from agriculture to some other use as a result of landowner participation in the EWA Program? If there is any potential of conversion, impacts to agricultural resources will have to be assessed and mitigations must be implemented in accordance with the ROD.

***Response:***

EWA actions would not result in any permanent effect on agriculture. EWA agencies are proposing purchasing water through temporary idling actions that are consistent with historical variations in crop acreage. Many past programs, including the Drought Water Bank and Federal commodity programs, have temporarily idled comparable amounts of land, which has not resulted in permanent land conversion. There is no evidence to support that EWA participation would cause landowners to convert agricultural lands permanently to other uses. See also response to Comment NP01-8 for information about the reasons that indirect effects would not likely lead to permanent land conversion.

### **SA05 – State Water Resources Control Board**

#### **Diane Riddle**

##### **SA05-1**

***Comment:***

On page 2-23 the Draft EIS/EIR states "State Water Resources Control Board Decision 1641 allows for the following operations of the Delta Cross Channel Gates." It should be made clear that Decision-1641 (D-1641) requires closure of the Delta Cross Channel Gates by the U. S. Bureau of Reclamation (USBR) during the specified periods. USBR is required to determine the timing and duration of the closures after consultation with the U.S. Fish and Wildlife Service (USFWS), National Marine Fisheries Service (NOAA Fisheries) and the California Department of Fish and Game (DFG).

**Response:**

The text has been changed from “allows for” to “requires.”

**SA05-2**

**Comment:**

The discussion of Joint Points of Diversion (JPOD) on page 2-25 of the Draft EIS/EIR states that Stage 1 JPOD approval is subject to a Water Level Response Plan that “outlines the response to changing water levels in the south Delta.” The document should clarify that the purpose of the Water Level Response Plan is to ensure that water levels in the southern Delta will not be lowered to the injury of water users in the southern Delta. In addition, it should also be made clear. that under all stages of JPOD USBR and the Department of Water Resources (DWR) are also required to have a response plan to ensure that water quality in the southern and central Delta will not be significantly degraded through operations of JPOD to the injury of diverters in the southern and central Delta (Condition 5 on pages 150-151 and Condition 5 on page 156 of Revised D-1641).

**Response:**

Under Stage 1, the text “that outlines the response to changing water levels in the south Delta” has been changed to “to prevent lowering water levels in the south Delta to the injury of water users in the south Delta.” After the descriptions of the stages, a new sentence was added: “Under all stages of JPOD, Reclamation and DWR are also required to have a response plan to prevent water quality in the south and central Delta from being significantly degraded through operations of JPOD to the injury of diverters in the south and central Delta.”

**SA05-3**

**Comment:**

In the discussion of Stage 2 JPOD on page 2-25, the Draft EIS/EIR states “the Projects can divert water from either pumping plant for any of their permitted purposes up to permitted capacity.” The discussion should be revised to indicate that JPOD diversions at the Banks Pumping Plant are limited under D-1641 to 13,870 acre-feet per day or three-day average diversion of 13,250 acre-feet per day, except from mid-December to mid-March when San Joaquin River flow at Vernalis exceed 1,000 cubic feet per second, during which times diversions into Clifton Court Forebay may be increased by one-third of the San Joaquin River flow at Vernalis (Condition 2 on page 153 of Revised D-1641). This is also the current limit established by the U.S. Army Corps of Engineers’ (USACE) permit for the Banks Pumping Plant. Any changes to the pumping limitations established in the USACE permits would also require authorization by the SWRCB prior to increased diversions.

**Response:**

A footnote was added after “permitted capacity” to read: “JPOD diversions at the Banks Pumping Plant are limited under D-1641 to 13,870 acre-feet per day or a three-day average diversion of 13,250 acre-feet per day, except from mid-December to mid-March when San Joaquin River flow at Vernalis exceeds 1,000 cubic feet per second,

during which times diversions into Clifton Court Forebay may be increased by one-third of the San Joaquin River flow at Vernalis. This is also the current limit established by the U.S. Army Corps of Engineers' permit for the Banks Pumping Plant."

#### **SA05-4**

*Comment:*

On page 2-25, the Draft EIS/EIR states that Stage 3 JPOD diversions are subject to completion of "an operations plan to protect aquatic resources and their habitat and protect other legal users of water and if they implement water barriers or other water level protection." It should be noted that D-1641 requires that water level protection under Stage 3 be adequate for diversion of water for agricultural uses. The Stage 3 water level protection requirement is not conditioned on the agricultural users having water rights

*Response:*

A footnote was added after "water level protection" to read: "D-1641 requires that water level protection under Stage 3 be adequate for diversion of water for agricultural uses. The Stage 3 water level protection requirement is not conditioned on the agricultural users having water rights."

#### **SA05-5**

*Comment:*

In the first paragraph on page 2-26 the Draft EIS/EIR states that, "Prior to the CALFED ROD, the Projects were in Stage 1 and Stage 2 of the implementation process and could use Joint Point of Diversion to replace water that had been lost during pump reductions to protect fish." It should be made clear that the only implementation of the JPOD under D- 641 before the ROD was in 2000, and that while there may have been authorization for Stage 2 type JPOD diversions since D-1641 was adopted, they were approved by the Executive Director for a short-term basis for limited specified purposes without completion of all of the requirements for Stage 2 being met. It is further stated: "It is reasonably foreseeable that without the CALFED ROD, the Project Agencies would have completed the requirements to move into Stage 3 in which they could use the Joint Point of Diversion to supply water to their contractors in the Export Service Area." It is not clear what impact the CALFED ROD has on the Project Agencies' ability to meet the requirements for use of Stage 3 JPOD. The Draft EIR/EIS should clearly explain this assertion.

*Response:*

D-1641 officially defined JPOD; however, the Projects engaged in "make-up pumping" for State-listed species protection prior to 2000. During these actions, the SWP pumped makeup water for the CVP at Banks Pumping Plant; these actions are essentially the same as JPOD actions.

A footnote was added after "Stage 2" to read: "The State Water Resources Control Board's Executive Director approved Stage 2 type JPOD diversions after D-1641 for a

short-term basis for limited specified purposes without completion of all the requirements for Stage 2.”

In the second section cited in the comment, “without the CALFED ROD” was changed to “in the No Action/No Project Alternative.” The future without the EWA is discussed to establish the baseline condition.

#### **SA05-6**

***Comment:***

Please provide additional information on the basis of right for all potential water transfers, including the type of right (riparian, pre-1914/post-1914 appropriative, contract etc.), direct diversion/storage amount, the season of diversion/storage allowed under each right and the maximum quantities of water that may be transferred under each type of right. If water is diverted under a settlement contract, please indicate the nature of the underlying diversion rights as well. This information will be necessary for the Division to determine whether proposed future transfers are adequately addressed in the Final EIS/EIR.

***Response:***

The requested information is not included in the EIS/EIR because it is not necessary for a NEPA/CEQA document that analyzes the potential for physical environmental effects.

#### **SA05-7**

***Comment:***

The reference to Oroville-Wyandotte Irrigation District on page 4-6 should be changed to South Feather Water and Power.

***Response:***

The reference has been changed to South Feather Water and Power.

#### **SA05-8**

***Comment:***

On page 4-15, Table 4-2 seems to indicate that the Water Level Response Plan and the Water Quality Response Plan are only required for Stage 1 JPOD Diversions. The table should be revised to indicate that all stages of JPOD are subject to the Water Level and Water Quality Response Plan requirements. In addition, the statement in the first full paragraph that “The stages are not sequential, but they vary as to magnitude and required mitigation” should be revised. In effect, the various stages of JPOD do allow for incremental increases in pumping from Stage 1 to Stage 3. While Stage I JPOD diversions and rediversions may be conducted at a higher instantaneous rate under certain circumstances than Stage 2 diversions, effectively, higher total quantities of pumping are allowed under Stage 2 and even higher quantities under Stage 3 since authorization for Stage 1 JPOD pumping to recover export reductions prohibits the Projects from annually exporting more water than the individual Projects would have exported without use of the each other’s pumping facilities. Stage 2 and 3 JPOD authorizations do not include such limitations. In addition, the mitigation measures



for each Stage of JPOD are not differing requirements. The mitigation measures for each Stage incorporate and add to the requirements of the previous stage.

***Response:***

The text has been revised to further clarify Stages 1 through 3 and the mitigation requirements at each stage.

**SA05-9**

***Comment:***

References in Chapter 4 to DWR's 2002 Water Level Response Plan for Water Level Concerns in the South Delta Under D-1641 should be updated to reflect the current Water Level Response Plan conditionally approved on July 29, 2003.

***Response:***

Pages 4-14, 4-30, and 4-51 in Volume 1 have been updated to reflect the current Water Level Response Plan.

**SA05-10**

***Comment:***

On page 4-34, the Draft EIS/EIR states that permanent solutions such as dredging are being considered to address water level problems in the Southern Delta. It should be noted that the SWRCB's recent approval of the Water Level Response Plan requires DWR and USBR to diligently pursue approval of dredging permits from the USACE. Under the current approval of the Water Level Response Plan, JPOD operations are not authorized after October 1, 2003 unless DWR and USBR have obtained the required dredging permits.

***Response:***

A footnote has been added indicating that dredging is contingent upon DWR and USBR obtaining Corps dredging permits as required by the SWRCB.

**SA05-11**

***Comment:***

On page 5-8 the Draft EIS/EIR states that Order WR 2001-05 requires partial implementation of the water right requirements contained in D-1641 for meeting the water quality objectives of the 1995 Bay-Delta Water Quality Control Plan for up to 35 years. Order 2001-05 stays the dismissal of Phase 8 of the Bay-Delta Water Right hearing for a period of 18 months. The purpose of Phase 8 was to determine the responsibility of water right holders in the watersheds of the Sacramento, Cosumnes and Calaveras Rivers for meeting the flow dependant objectives in the 1995 Bay-Delta Plan. Order 2002-12 subsequently extended the dismissal of Phase 8 until January 31, 2003. Order 2001-05 requires DWR and USBR to ensure full compliance with the water quality objectives specified in Tables 1 and 2 and the objectives for Delta outflow and for Sacramento River flow at Rio Vista for fish and wildlife beneficial uses as set forth in Table 3 of D-1641 until the SWRCB adopts a further decision assigning responsibility for meeting these objectives. Neither DWR nor USBR has requested a resumption of Phase 8. Consequently, DWR and USBR are responsible for

an indefinite period of time to ensure that the flow dependant water quality objectives are met. The Draft EIS/EIR appears to be incorrectly referring to Order 2000-10 which requires DWR to meet all of the Bay-Delta water quality objectives that the SWRCB may determine are the responsibility of water right holders in the Bear River watershed until December 31, 2035, or such time as the Bear River Agreement is terminated.

***Response:***

The comments pertaining to Volume 1 Section 5.1.2.7 on page 5-8 are correct. This paragraph has been revised to remove all discussion pertaining to Order WR 2001-05.

**SA05-12**

***Comment:***

This chapter should include a discussion of the regulatory requirements of SWRCB Order 90-05 and Decision 1644. Order 90-05 requires the USBR to meet daily average temperature requirements for the Sacramento River in order to protect fishery resources and Decision 1644 requires Yuba County Water Agency to maintain specified instream flows in the Yuba River as well as flow ramping requirements and other measures to protect fish and other public trust uses.

***Response:***

The regulatory requirements of SWRCB Order 90-05 and Decision 1644 are incorporated into the hydrologic modeling assumptions discussed in Volume 1 Attachment 1, Modeling Description. Table 2 on page A1-21 specifically addressed minimum flow requirements on the Sacramento River in accordance with SWRCB WR 90-5, as well as minimum flow requirements on the Yuba River in accordance with SWRCB Decision 1644. Further discussion is provided on pages A1-29 and A1-30. Reference to Attachment 1, Modeling Description and the above discussion regarding modeling assumptions and inputs representing regulatory conditions is provided in Volume 2 Chapter 9 on page 9-61.

**SA05-13**

***Comment:***

As indicated in my previous comments on the Administrative Draft EIR/EIS, while the final EIS/EIR for the EWA may be used by the Division in considering future short term and or long term water transfers under Water Code sections 1707, 1725 and 1735, due to the programmatic nature of the analyses and mitigation measures, additional site specific investigations of potential impacts to resources and other legal water users may be required for approval of individual transfers by the SWRCB to insure that specific transfers meet the requirements of the Water Code.

***Response:***

Transfers under Water Code sections 1707, 1725, and 1735 would require approval of the SWRCB. The transfers identified in this EIS/EIR are evaluated at a project level, and the mitigation measures proposed would reduce impacts to a less-than-significant level. If transfers involve substantial new information not considered in the EIS/EIR, then it is anticipated that additional environmental documentation would be

necessary. Volume 1 Section 2.4.2 discusses the need for supplemental documentation.

## **LA01 - SMUD**

### **Paul Olmstead**

#### **LA01-1**

*Comment:*

SMUD has previously stated our concerns about the level and timing of CVP generation, the gain/loss of power resources provided to CVP preference customers as well as the northern California regional energy supply. SMUD wants assurance that there is a complete understanding of the operational impacts brought about by the EWA Program. SMUD's concerns have been reflected in the EIS/R. SMUD agrees with the commitment that Preference power customers are protected. By the information provided we are left to assume that there will be no re-operation CVP reservoirs as a result of the EWA.

Each proposed action addressed in the EIS/R may or may not have a power component associated with it. SMUD recommends that if pumping power is to be required, the amount and timing of the power use be specifically identified and included in a project matrix. Please assure that these are understood and negotiated as per the Interim Protocols for the Operation of the Environmental Water Account, issued April 7, 2003.

*Response:*

The commentor's assumption that there will be no reoperation of CVP reservoirs as a result of the EWA is incorrect. Volume 2 Sections 16.3.4.1.1 and 16.3.4.1.4 discuss the changes in the operation of Shasta and Folsom.

EWA agencies' responsibilities for preventing or mitigating power effects are understood in accordance with the CALFED ROD and Operating Principles Agreement requirements. Each of the proposed EWA actions in the Draft EIR/EIS has some component of power associated with it if CVP operations are affected. The extent of the effects is dependent on the individual action and other CVP/SWP actions and is not readily quantifiable in a matrix. Guidance related to mitigation and monitoring requirements is available for review in Chapter 6 of this volume.

#### **LA01-2**

*Comment:*

Page 16-26 notes the conveyance of EWA Water purchases and EWA Actions may affect day-to-day CVP power scheduling and the potential impact of additional cost born by the CVP. SMUD concurs with the approach taken in section 16.3.9, which states that EWA shall mitigate any adverse economic reliability, capacity or operation impacts to CVP/SWP or Project power users as a result of implementing the EWA Program. To the extent that any of the proposed actions causes an adverse impact to CVP power, in kind dollar for dollar compensation should be provided to Western Area Power Administration.

**Response:**

The EWA agencies would establish protocols for future implementation of the EWA program. Whether the protocols would include dollar-for-dollar compensation or some other mechanism is unknown. Guidance related to mitigation and monitoring requirements is available for review in Chapter 6 of Volume 4.

**LA01-3**

**Comment:**

While the EIS/R is not required to address the full range economic factors, future decisions to receive the authorization to proceed will require economic discussion. Please ensure that funding to compensate for power purchases associated with EWA program actions are funded each year to an appropriate level. The CVP Preferred customers support the EWA actions and do not want to see the program fall short of its goals due to a lack of funds available to purchase power necessary to support the EWA actions.

**Response:**

See response to comment LA01-2.

**LA02 – Glenn County Planning Division**

**Christy Leighton**

**LA02-1**

**Comment:**

Glenn County is primarily concerned about the Regional and Agricultural Economics as discussed in Chapter 11 and Environmental Consequences/Environmental Impacts as discussed in Chapter 19. The people in Glenn County are poor (Page 11-4, Table 11-2) and have a high unemployment rate (Page 19-6, Table 19-5).

The Per Capita income in Glenn County is \$18,015 compared to that in Placer County of \$34,972. The unemployment rate is 19.9 percent, highest in the region.

Page 11-37 states that “Idling 16,750 rice acres in Glenn County would result in a \$22.3 million total decrease in value of output, a \$9.8 million decrease in value added, a \$5.4 million decrease in wages and salaries, and a loss of 385 jobs.”

This type of impact, even if fewer acres are idled due to water transfers, is totally unacceptable to the County. There should be a mitigation measures to compensate with jobs for displaced workers so that the minimal local economy the County can sustain will not be totally ruined.

**Response:**

The EWA agencies would limit the amount of rice or cotton acreages that can be idled to 20 percent of total rice or cotton acreage in a county. The EWA agencies would also consider non-EWA crop idling programs; and if idled rice or cotton acreage is above historic levels, the EWA agencies would not purchase water through crop idling until the region’s economy has adjusted to the higher idling levels. The EWA agencies are

not legally required under CEQA and NEPA to include mitigation measures for potential socioeconomic effects. The EWA agencies, however, included the above measures to reduce economic effects.

Volume 2 Section 11.2.3.1 shows that 20 percent idling of rice or cotton is within historical variations. Government farm commodity programs and normal farming practices have idled comparable amounts of crop acreage in the past relative to what the EWA agencies would consider idling. Therefore, the EWA agencies would not cause the idling of more acreage than has been recently experienced by the county.

Additionally, the effects described on page 11-37 reflect a worst-case scenario for EWA crop idling actions for two reasons. First, the Flexible Purchase Alternative analyzes the maximum acreages per county that could be idled by the EWA program. In reality, crop idling would not likely occur each year, and acreage idled per County would be less than the amounts described in the document. EWA crop idling amounts and locations depend on hydrologic year type. During wetter years, EWA acquisitions would not likely involve crop idling in the Upstream from the Delta region. During drier years, crop idling actions could occur in the Upstream from the Delta Region. Volume 2 Section 11.2.7 and Volume 1 Section 2.4.3 discusses when crop idling actions would most likely to occur.

Second, the economic effects described on pages 11-37 for the amount of rice or cotton idled are conservatively large. The economic model includes a variety of forward linkages not usually included in I-O models. For example, it assumes rice transportation effects that might actually occur in other counties. Therefore, this level of effect described in the document would be very infrequent.

## **LA02-2**

### ***Comment:***

Page 11-33 discounts the impact on water transfers on tenant farmers. This adverse impact will be much greater than that described in the document. It is not expected that tenants would share in water transfer revenue and there are a large number of tenant farmers.

### ***Response:***

The Draft EIS/EIR states that that tenant farmers are not a large percentage of farmers in the counties with proposed land idling. The 1997 Agricultural Census indicates that in Glenn County tenant farmers operated 196 out of 1189 farms, which is less than 20 percent. Acreage harvested by tenant farmers was about 55,000 out of 213,000 acres (26 percent). The maximum acres of rice that could be idled in Glenn County is 16,750. Based on the above data, about 4,325 idled acres (26 percent of 16,750) in Glenn County would be tenant farmed by about 15 tenant farmers ( $55,000/196 = 281$  acres per tenant farmer,  $4,325/281 = 15$ ). These 15 tenant farmers might have opportunities to rent or work on other land in the area.

**LA02-3**

***Comment:***

Page 11-38 states that “Farmers would likely spend a percentage of the increased net revenue received from a water transfer in their local economy. The County disagrees with this statement. The County already suffers from a great deal of money spent outside the County. Workers would spend the money in Glenn County if they had jobs.

***Response:***

The noted Draft EIS/EIR paragraph states that some money received by farmers would be spent within the county, but this spending would not offset the negative effects of idling farmland. Farmers would not spend their entire revenue from the water transfer in the county, but it is reasonable to assume that a portion of the revenue would be spent in the county. This revenue could be spent at farm supply stores or local shopping centers.

Additionally, studies, such as the Public Policy Institute of California report, “Who Should be Allowed to Sell Water in California? Third Party Issues and the Water Market,” and an Agricultural Issues Center paper, “California Water Transfers Gainers and Losers in Two Northern Counties,” show that farmers invest a portion of the revenue into farming equipment and operations, which provides further benefits to employment and net revenue when the land is put back into production.

**LA02-4**

***Comment:***

Page 11-39 explains some of the problems with idled land. These are tremendous problems to Glenn County and the local economy here. No mitigation measures are proposed. The water transfer program should include payments to the County so that job training can be provided for displaced workers. The water transfer program should also include loan funds that can be used to start up replacement businesses.

***Response:***

The EWA agencies would limit crop idling purchases to 20 percent of rice or cotton land within a county to minimize the effect on that county, and would not participate in crop idling transfers in counties that are experiencing more idling than usual. The 20 percent limitation is consistent with historical variations in idled acreage within the counties. The counties already have social programs that will provide the necessary types of services. The EWA agencies are not legally required under CEQA and NEPA to include mitigation measures for potential socioeconomic effects; however, they included the above measures in the project to reduce economic effects.

## **LA03 – Metropolitan Water District**

**Laura J. Simonek**

### **LA03-1**

***Comment:***

The EIS/EIR should clarify the rationale for the EWA to include up-to-date sound scientific principles. The EIS/EIS should reiterate that the adaptive management process is an integral component of the EWA program, as indicated in the CALFED Bay-Delta PEIS/EIR and CALFED ROD, from which this Draft EIS/EIR is tiered.

***Response:***

As the Review Panel has noted in its 2002 Review Panel document, sound scientific principles are essential to the success of the EWA because they allow for efficient management and allocation of EWA resources. Chapter 2 in Volume 1 has been updated to reference the adaptive management process identified in the CALFED ROD. Sections 2.4.5 and 2.5.4 include the types of recommendations the Review Panel has made previously. Future recommendations would be incorporated into the manner in which EWA agencies make purchases and take fish actions.

### **LA03-2**

***Comment:***

The Draft EIS/EIR is not consistent with the long-term commitments of the EWA and associated funding and permitting issues. Timeframes for program coverage should be reconsidered.

***Response:***

This document describes the EWA through 2007 or until significant changes, such as South Delta Improvements, require significant changes in the EWA. The EWA agencies released the Draft EIS/EIR before the most recent proposal was complete regarding actions in the south Delta. The EWA agencies will complete new environmental analysis before the EWA program could be used in conjunction with increased pump capacity at the Delta export pumps or before they begin to implement a long-term EWA program that would extend beyond 2007.

### **LA03-3**

***Comment:***

Pages ES-5 and ES-14. Expand discussions in the Executive Summary and throughout the document (i.e. Section 2.1.2, Asset Development) to include the entirety of the actions in the Environmental Water Account Operating Principles Agreement, such as the sale of EWA assets, described in Article II (f).

***Response:***

If EWA water were not needed for fish actions, the water would likely be stored for use the following year (described in Volume 1 Section 2.4.2.3.2). It would be unlikely that the EWA agencies would sell EWA water (in part because it may not be permissible depending on the potential funding sources used to purchase the water). In a case in which unused EWA water was sold, the EWA agencies would look at the

necessity for additional environmental documentation and comply with NEPA and CEQA regulations.

**LA03-4**

***Comment:***

Page ES-10. Consider expanding wet year purchases to allow for up to 90,000 acre-foot of acquisitions (30,000 acre-foot/month over three months) plus carriage water losses to allow for a future that includes more reliable access to export capacity.

***Response:***

The EWA EIS/EIR is based on current and near-term operations of the CVP and SWP. Wet year purchases are constrained by the current restrictions on pumping from the Delta. The EWA agencies recognize that both the CVP and SWP Delta pumping capacity may be increased because of other CALFED projects. The ability to pump greater assets will be addressed in an environmental document addressing a long-term EWA. See response to Comment LA03-2.

**LA03-5**

***Comment:***

Page ES-11. Two methods of EWA asset development from the CALFED ROD and Operating Principles Agreement, exchanges and sale of EWA assets, appear to be missing from Table ES-2, which provides a comparison of EWA Alternatives.

***Response:***

Exchanges are described in Volume 1 Chapter 2, Section 2.4.2. As stated in Section 2.4.2, exchanges would have effects similar to other water management methods (groundwater storage and predelivery). The relationships of these water management methods are described in Table ES-2.

See response to Comment LA03-3 for discussion of potential sales of EWA assets.

**LA03-6**

***Comment:***

Page ES-14. The EWA could raise reservoir levels by backing export cuts upstream. While the current draft discusses the increased Delta outflow resulting from export cuts, it does not address backing of water into upstream reservoirs and any resulting impacts from the resultant reduction of upstream releases.

***Response:***

The EWA agencies anticipate that during fish actions, water not pumped would become Delta outflow. It is possible but unlikely that the Project Agencies, in consultation with the Management Agencies, may choose to reoperate reservoirs to slow releases during fish actions while still meeting Delta water standards and outflow requirements specified in D-1641. The Management Agencies conclude that this operation could reduce releases (back up water into upstream reservoirs) upon announcement of pump curtailment. This reduction would only occur if it would be



environmentally benign. In the past 3 years of EWA operation, no reduction in releases were made during EWA-related pump reductions.

**LA03-7**

***Comment:***

Page ES-15. Exchange programs that could reduce groundwater fluctuations should be mentioned under groundwater resources.

***Response:***

Potential effects on groundwater because of exchanges are captured in the evaluation of effects of groundwater storage. Section 6.2.4 (page 6-123) in Volume 1 discusses effects of EWA groundwater storage in Semitropic WSD. EWA water would increase groundwater levels until the water would be extracted. This would be a short-term effect. The following text has been added to Section 2.9.3 in Volume 1, "EWA groundwater storage would temporarily increase groundwater levels, which would provide a short-term benefit."

**LA03-8**

***Comment:***

Page ES-19. The water quality analysis in the Draft EIS/EIR does not provide sufficient information to make the conclusion that the increase in annual total salt and organic carbon load delivered to CVP and SWP water users is less than significant. As stated in our comments on Chapter 5, the Draft EIS/EIR should include consideration of water quality effects in wet and dry years, in addition to the mean of all 15 years studied. Further, the Draft EIS/EIR should consider water quality impacts, both changes in concentrations and loading, at a location in the water system that is more representative of water quality that urban Southern California receives, such as Edmonton Pumping Plant. This would take into consideration the water quality impacts of changes in the timing of water deliveries under the EWA alternatives.

***Response:***

The only potential negative water quality impact identified in the Draft EIS/EIR is related to the reduction of CVP and SWP exports in the winter and spring months because EWA program actions reduce project pumping when water quality is generally good and increase project pumping in the summer months when the water quality is sometimes poorer (see page 5-96). The analysis shows that this change in pumping could increase total salts exported to the SWP service area in some years, but the net result would be no significant change (positive or negative) over the 15-year study period. Because it is not possible to project future hydrologic conditions, the analysis in the Draft EIR/EIS concluded that implementation of the EWA program would not likely significantly increase the total salts and other constituents delivered to the SWP and CVP during the remaining years of EWA operation (2003 through 2007).

The analysis determined potential water quality impacts in the Export Service Area to be less than significant; therefore, it is not necessary to evaluate potential water

quality impacts at Southern California locations in the water system, such as the Edmonston Pumping Plant.

#### **LA03-9**

***Comment:***

Table ES3 (Summary Comparison of Effects of EWA Alternatives), page ES-21. The following effects, which are discussed in Chapter 9, are inconsistent with representations in the Executive Summary for Fisheries and Aquatic Ecosystems in the Delta and should be corrected.

“Changes in Delta outflow and location of X2 affecting Delta fishery resources” are labeled “LTS” (less than significant). However, for each at-risk species analyzed in the draft EIS/EIR, Delta outflow would increase in most months and never be less than baseline. Further, the “position of X2 would move downstream or would not shift, relative to the Baseline... in all of the 75 months simulated...” (page 9-25 1). This information should be in Table ES3 and, as stated, a “beneficial” impact consistent with pages 9-251 and 9-300, for the Flexible Purchase (maximum) case. The Typical Water Purchase Scenario text provides similar conclusions on pages 9-261 and 9-262. A “Fixed Purchase Alternative” analysis of Delta fish effects on anything besides salvage was not noted -beyond just a four-line statement stating “Various EWA actions could potentially affect habitat conditions (Delta outflow,... X2, the export/inflow ratio, and-reverse flows)...”. This statement should be followed by or reference an explanation of the meaning of “potentially affect habitat conditions.” The basis for effects on Delta fishes for the Fixed Purchase Alternative should be included and revised in Table ES3. Both Delta outflow and X2 effects are labeled “Beneficial impact” and “Potentially beneficial impact,” for the Flexible Purchase and Fixed Purchase alternatives, respectively, in the summary and comparison of alternatives in Table 9-75 on page 9-300.

***Response:***

Table ES-3 has been updated to include beneficial and potentially beneficial effects identified in Table 9-75.

As discussed in Volume 1 page 9-273, potential impacts associated with implementation of the Fixed Purchase Alternative were analyzed on a qualitative basis, in relation to the hydrologic modeling results for the maximum amount of water that could be purchased under the Flexible Purchase Alternative.

#### **LA03-10**

***Comment:***

“Exceedence of the maximum export/inflow ratio identified in the SWRCB Interim Water Quality Control Plan” would be very rare, consistent with the plan, conducted when there would be little effect on fish, used at the discretion of the fish management agencies, and used to acquire EWA assets. The EIS/EIR should rephrase this “Exceedence of maximum export/inflow ratio...” as if it would be legal if undertaken. Note that no illegal connotation occur in the EIS/EIR where export/inflow ratio effects for February-June are labeled “Beneficial impact” and

“Potentially beneficial impact,” for the Flexible Purchase and Fixed Purchase alternatives, respectively, in Table 9-75 on page 9-300.

**Response:**

On page 9-252, two references to the SWRCB Interim Water Quality Control Plan have been revised to reference SWRCB Water Rights Decision No. 1641. Page 9-252 has been revised to state, “The model simulations conducted for the Flexible Purchase Alternative included conformance with the export requirements set forth in SWRCB Water Rights Decision No. 1641. Thus, Delta E/I ratios under the Flexible Purchase Alternative and Baseline Condition would not exceed the maximum export ratio as set by SWRCB Water Rights Decision No. 1641.” Page 9-252 also indicates that the relaxation of the E/I ratio is considered an EWA asset. If the Management Agencies determine that the risk to fish is low, then pumping above the applicable limit may be undertaken, with the additional water credited to the EWA. Such actions will not be taken if there is the potential to affect State or Federally protected species and will only be taken under the direction of the Management Agencies. The EWA agencies would not take any illegal actions regarding the E/I ratios.

**LA03-11**

**Comment:**

Increases in reverse flow that delayed juvenile salmon emigration were not apparent in Chapter 9. Reverse flow effects for February-June are labeled “Beneficial impact” and “Potentially beneficial impact” for the Flexible Purchase and Fixed Purchase alternatives, respectively, in Table 9-75 on page 9-300. Please reflect these impacts in Table ES3.

**Response:**

See response to comment LA03-9.

**LA03-12**

**Comment:**

Increases in annual CVP/SWP salvage estimates for Chinook salmon and steelhead were not apparent in Chapter 9. Rather, reductions occurred for each year for both species under the maximum and typical cases of the Flexible Purchase Alternative and under the Fixed Purchase Alternative. Therefore, the Draft EIS/EIR should characterize these EWA salvage effects as a “Beneficial impact” for the Flexible Purchase and Fixed Purchase alternatives, as in Table 975 on page 9-298.

**Response:**

See response to comment LA03-9.

**LA03-13**

**Comment:**

Delta smelt and Sacramento splittail each had 1 of 15 years when annual salvage increased by 398 and 603 fish, respectively. Since these losses are pointed out qualitatively in the Executive Summary, the Draft EIS/EIR should also disclose that there that overall delta smelt and splittail annual salvages were reduced on the

average by tens of thousands to hundreds of thousands of fish, respectively. The reduction would seem to warrant a “benefit” label consistent with the “Beneficial impact” label for delta smelt and splittail salvage for both the Flexible Purchase and Fixed Purchase alternatives in Table 9-75 on page 9-299.

**Response:**

See response to comment LA03-9.

**LA03-14**

**Comment:**

Section 2.4.1.4, Augmenting Delta Outflows. This section assumes that all EWA cuts lead to increased outflow. This may be an overstatement, since EWA cuts can be linked to reduced reservoir releases in some cases. Section 2.4.1.4 should be revised to reflect this information.

**Response:**

Section 2.4.1.4 on page 2-33 has been revised to state, “In addition to taking direct actions to augment Delta outflows, other actions within the Flexible Purchase Alternative would have the secondary benefit of increasing Delta outflows. When the EWA agencies reduce Delta export pumping, outflows would increase initially as water that would have been pumped becomes Delta outflow. (Water released from Project reservoirs takes 3-5 days to reach the Delta; therefore, water released prior to the announcement of pump curtailment would contribute to Delta outflow for up to 5 days. The Projects could reduce releases upon announcement of pump curtailment; however, this would only occur if the Management Agencies concluded that it would be environmentally benign. In the past 3 years of EWA operation, no reductions in releases were made during EWA-related pump reductions.)

**LA03-15**

**Comment:**

Section 2.4.2, Asset Acquisition and Management. It is not clear whether the discussion in this section covers exchanges where EWA sends water to contractors prior to spill with only partial payback of the water. Metropolitan would like to ensure that the document covers the potential for unbalanced exchanges. The discussion in this section should be expanded to cover this scenario.

**Response:**

The “Pre-Delivery” in Section 2.4.2.3.2 in Volume 1 includes a discussion of the exchange described in the comment. The EWA agencies could pay for pre-delivery using money or water where the participating agency would give only a portion back to the EWA agencies, resulting in an “unbalanced exchange.” The resource chapters analyze the effects of pre-delivery; therefore, the document provides environmental documentation for this action.

### **LA03-16**

***Comment:***

Section 2.4.3, Typical Year EWA Operations. This section states, “In near average water years, the acquisition target would be closer to 300,000 acre-feet or even higher.” This value is significantly higher than recent estimates by EWA staff and should be revised downward.

***Response:***

The EWA agencies drafted this section of the text and included the most recent available data for potential EWA purchases. Section 2.4.3 in Volume 1 indicates that during a typical water year, EWA purchases would range from 200,000 to 300,000 acre-feet. Table 2-7 in Volume 1 details ranges of acquisitions for varying hydrologic year types.

### **LA03-17**

***Comment:***

Section 4.2.2, Significance Criteria. The document should consider that reductions in carryover are not significant unless they lead to reductions in deliveries. The same would be true for changes in timing of riverflows. Metropolitan requests that the Draft EIS/EIR reconsider the significance criteria listed in Section 4.2.2.

***Response:***

The significance criteria states, “Annual supply of water available to the CVP, SWP, or non-Project users would decrease as a result of...”. The significance criteria are connected to supply (delivery), not solely reductions in carryover or riverflow.

### **LA03-18**

***Comment:***

Section 4.2.5.4.2, Metropolitan Water District. Please revise the paragraphs in this section as follows:

“EWA agencies’ management of water via source shifting may change the pattern of reservoir level fluctuations. “ Metropolitan may have adequate alternative supplies and storage to provide for a maximum of 100,000 acre-feet of water that may be necessary for source shifting. It is anticipated that Metropolitan would participate in source shifting if adequate supplies were available for their water users. Because Metropolitan has developed a diverse portfolio of resources to utilize and depending on water supply conditions, the action would not affect the reliability of Metropolitan’s water supplies during the deferment period (although additional operational actions had to be taken in the past to compensate for adverse water quality impacts). There are both water quality and capacity concerns with the payback of this deferment; however, because of Metropolitan’s operational flexibility, the effect on water supply would be less than significant.

EWA agencies’ management of water via predelivery would change the pattern of reservoir level fluctuations. EWA water would be supplied to Metropolitan from San Luis Reservoir (to protect water from spilling from San Luis Reservoir) prior to when

it would be supplied under the Baseline Condition. Metropolitan would store the water for use later in the year. Because Metropolitan would be receiving the water earlier than it would under the Baseline Condition, the effect on water supply could be beneficial.”

**Response:**

The text in Section 4.2.5.4.2 on page 4-36 has been updated as requested.

**LA03-19**

**Comment:**

Section 22.2, Delta Facility Improvement Projects. Revise the bullet list in this section to include “State Water Contractor purchases under Article 55”.

**Response:**

The actions taken by the State Water Project (under “Article 55”) are similar to those taken as a part of the Dry Year Water Purchase Program. Although actions taken for the State Water Contractors (under “Article 55”) could occur outside the Dry Year Water Purchase Program, similar actions have also occurred as a part of the Dry Year Water Purchase Program. Therefore, any effects from the State Water Contractors (under “Article 55”) were included under the Dry Year Water Purchase Program for the purposes of the cumulative impacts analysis. Section 22.2.1.2 has been renamed Dry Year Water Purchase Program and Other Contractors’ Purchases.

**LA03-20**

**Comment:**

Section 5.2.5.1.4, Sacramento-San Joaquin Delta Region. This section states that any degradation of Delta quality (of whatever size) is contrary to CALFED objectives and would have an adverse effect. This section should be clarified to state that one of CALFED’s general targets for water quality is to “continuously improve Delta water quality for all uses ...”, (ROD, page 65). The continuous improvement water quality target is not meant to apply to individual projects but rather to implementation of a balanced CALFED Program that includes projects that will result in water quality improvement. EWA is implemented within the CALFED umbrella. The water quality impacts of EWA alternatives should be evaluated within the context of other CALFED projects that may improve Delta water quality. What matters is whether the overall package leads to an improvement.

**Response:**

Although the CALFED target may not require the EWA program to contribute to continuous improvement in Delta water quality, the EWA agencies are required to mitigate all adverse water quality effects that may be caused by the EWA.

**LA03-21**

**Comment:**

Chapter 8, Air Quality: An analysis of air pollutant emission reductions due to lessened overall fossil fuel consumption resulting in purchases from crop idling transfers should be conducted. There could be substantial reductions in that reduced

emissions will come from elimination of field preparation activities, seeding and herbicide/pesticide applications, harvesting and crop transport, and field discing of rice straw or other crop remnants. It is possible that the program involving sufficient crop idling-based transfers could internally offset a portion of increased emissions due to increased use of diesel pumps with groundwater substitution based transfers.

**Response:**

Text has been added to Volume 4 page 8-29 that describes the reduction in emissions from crop idling. Section 8.2.7.1, Groundwater Substitution Mitigation Measures, states that offsets could be used to compensate for project-related emissions. The reduction in emissions from crop idling would be considered a form of offset if the crop idling and groundwater substitution occurred in the same district in the same year. For each acre-foot of water pumped for groundwater substitution, there would be approximately a 15 percent offset in NO<sub>x</sub> emissions if an acre-foot of water were transferred for crop idling in the same district.

**LA03-22**

**Comment:**

Chapter 8, Air Quality: An additional mitigation measure for groundwater substitution transfers (Section 8.2.7.1) should be considered. The EWA could allow for the development of a diesel pump retrofit program, involving program and non-program pumps converting "dirty diesel" pumps to clean diesel, propane, or electric in amounts necessary to offset maximum increases in air pollutant emissions in any given year. Such a program would create a long-term air quality net benefit due to utilization of these pumps in non-program years and program pumping in years of smaller EWA purchases. Such a program could avoid market-distorting effects of currently proposed mitigation measures.

**Response:**

The second mitigation measure in Section 8.2.7.1 suggests this type of retrofit program. The mitigation measure in Section 8.2.7.1 on page 8-29 has been modified to state, "For each groundwater pump that is not electric that is used for groundwater substitution for the EWA, the district will retrofit non-program pumps in amounts necessary to offset the maximum increases in project-related air pollutant emissions."

**LA03-23**

**Comment:**

Chapter 9, Fisheries and Aquatic Ecosystems/Hydrologic Modeling. The salvage analyses do not include monthly averages in any tables, yet the text is routinely providing numbers for monthly averages that are really totals of 15 monthly salvage estimates, and therefore, several times greater than true monthly averages. Please correct this inaccuracy in the document.

**Response:**

The methodology for estimating salvage at the SWP and CVP export facilities is discussed on pages 9-97 through 9-98. As stated on page 9-98, daily salvage density estimates were used to calculate average monthly densities, which were then used to

calculate a salvage index. The net changes in the monthly and annual calculated salvage index are presented in Tables 9-56 through 9-60 and Tables 9-65 through 9-69.

Pages 9-255 through 9-261 discuss salvage-related effects on delta smelt, Chinook salmon, steelhead, splittail, and striped bass with implementation of the Flexible Purchase Alternative under the Maximum Water Purchase Scenario compared to the Baseline Condition. The first sentence under the subheading for each species indicates that a net reduction would occur over the 15-year period of record; the second sentence cites the total average annual decrease in salvage over the 15-year period of record from Tables 9-56 through 9-60. For clarification purposes, the word "Average" has been removed and "over the 15-year period of record" has been stated again by adding it to the end of the second sentence under the subheading for each species. This same clarification also has been made to the discussion of salvage-related effects on delta smelt, Chinook salmon, steelhead, splittail, and striped bass with implementation of the Flexible Purchase Alternative under the Typical Water Purchase Scenario compared to the Baseline Condition presented on pages 9-264 through 9-271.

#### **LA03-24**

***Comment:***

Table 9-4 (Fish Resources and Aquatic Habitat Impact Indicators and Evaluation Criteria), page 9-109. All of the Delta fish effects evaluation criteria listed in the table are negative. Beneficial effects criteria should be identified here also as they are identified in Table 9-75.

***Response:***

In general, the basic intent of environmental documents prepared under CEQA and NEPA is to identify potentially adverse impacts associated with implementation of a proposed project and to identify mitigation measures to lessen those impacts, as appropriate. The evaluation criteria presented in Table 9-4 are based on factors that indicate whether the alternatives could result in a potentially adverse impact on fish resources and aquatic habitats. However, beneficial effects may occur when a proposed action would eliminate or reduce a situation within the affected environment that is considered detrimental, such as reducing salvage at the export facilities. Beneficial impacts associated with implementation of the EWA Program are identified in the analysis of fisheries and aquatic ecosystems. Table 9-75 summarizes potential effects for each alternative and does not address effects criteria as suggested by the comment.

#### **LA03-25**

***Comment:***

Section 9.2.10, Cumulative Effects, page 9-303. The statement that source shifting will occur only for the EWA is inaccurate. The Draft EIS/EIR should be revised to reflect that source shifting would not only occur under the EWA, but also has the potential to occur under a CVP/SWP agreement.



**Response:**

The following sentence has been deleted from page 9-303, "In addition, source shifting would only occur under the EWA Program."

**LA03-26**

**Comment:**

Section 11.2.5 and 11.2.6, Environmental Consequences/Environmental Impacts of the Flexible Purchase and Fixed Purchase Alternatives. Sections 11.2.5 and 11.2.6 find that following transfers represent a negative effect on local economies. EWA market transactions, however, can represent a long-term benefit to the agricultural economy, as these transactions will bring in outside supplementary revenue to growers, relieving stress on agricultural incomes, and providing more assurances to lenders, especially in years when the agricultural economic returns are not as favorable. The document should be revised to reflect this information.

**Response:**

Volume 2 Section 11.2.5.1.1 discusses benefits to landowners from increased revenues. The specific beneficial effects listed in the comment have been added to this discussion. "EWA would bring in outside, supplementary revenue to growers, relieving stress on agricultural incomes" was added to page 11-33. The effect "providing more assurances to lenders" was not added because no references were found to support this statement.

**LA03-27**

**Comment:**

Section 22.2, Delta Facility Improvement Projects. Revise the bullet list in this section to include "State Water Contractor purchases under Article 55".

**Response:**

See response to Comment LA03-19.

**LA03-28**

**Comment:**

Section 22.2.2.1.1, Banks Pumping Plant Increase to 8,500 cfs. This section should also mention that increased capacity at the Banks Pumping Plant will provide additional opportunities for EWA to pump surplus water in the winter, at a time not harmful to fish. This also helps to compensate for occasional higher water costs.

**Response:**

Text has been added in Section 22.2.2.1.1 on page 22-11, second paragraph, to indicate that "...increased capacity at the Banks Pumping Plant may provide additional opportunities for the EWA program to pump surplus water in the winter at a time not harmful to fish." The EWA agencies would need to complete additional environmental documentation before the EWA program could operate in conjunction with increased pumping capacity at Banks Pumping Plant.

## **LA04 – Contra Costa Water District**

**Richard A. Denton**

### **LA04-1**

*Comment:*

The Draft EIR/EIS concludes that because EWA agencies (Project Operators) will use carriage water, Delta water quality conditions will remain unchanged by increased export pumping during certain periods under the Preferred Alternative (Draft EIR/EIS pg. 5-92). This conclusion is flawed. Carriage water is not used by Project Operators as a mechanism to maintain chloride concentrations in the Delta, it is used to meet State Board D-1641 water quality standards. Project Operators do not use carriage water when water quality standards are not governing. Thus, when a water quality standard is not governing, increased exports can degrade Delta water quality, particularly drinking water quality for CCWD and other users of Delta water. The EIR must disclose the impacts of this degradation in water quality on urban water users who rely on water from the Delta. Chapter 5 of the EIR/EIS must be revised to clarify that Project Operators use carriage water to meet water quality standards in the Delta, but that this does not prevent adverse changes in water quality conditions during periods when water quality standards are not governing. The language in the EIR/EIS stating that carriage water “maintains chloride concentrations in the Delta” must be deleted unless Project Operators intend to commit to altering their current use of carriage water to prevent all water quality degradation, not just to meet standards.

*Response:*

Page 2-38 in Volume 1 states that Delta outflow would be increased using carriage water to maintain the in-Delta water quality at the same levels as would have occurred in the absence of increased CVP and/or SWP pumping of water purchased upstream from the Delta during July through September. Section 3.3.2 (Volume 4) and Section 5.2.2.1 (Volume 1) defines carriage water for purposes of the EWA document. During actual operations, the DWR Delta simulation model (DSM2) would be used to predict non-project water quality levels and the amount of increased Delta outflow required to maintain that water quality when the EWA increased Project pumping occurs. The actual water quality in the Delta would likely be slightly higher and slightly lower during different periods over the summer months, but the net result would be no significant change in Delta water quality because of EWA Program operations.

### **LA04-2**

*Comment:*

CCWD recognizes that the EWA is a valuable tool that may assist in fish population recovery and reduce uncertainty in water supply deliveries associated with fish recovery actions. The changes in timing and amount of pumping associated with the EWA can result in water quality changes in the Delta that impact Delta water users. Thus CCWD supports bundling the EWA with other projects that, when implemented

at the same time as the EWA, will result in a net improvement in Delta water quality, consistent with CALFED's water quality goal.

**Response:**

See responses to Comments FA01-3 and FA01-11.

## **LA06 - Central Delta Water Agency**

### **Dante John Nomellini**

#### **LA06-1**

**Comment:**

The DEIS/EIR fails to properly analyze the true impact of the EWA in that it is assumed that the State Water Project could not be obligated to mitigate project damages to fish or additionally to preserve fish and wildlife at water project contractor expense without the EWA.

**Response:**

The EWA program is not a mitigation measure for the CVP and SWP. The EWA program provides fish benefits and water supply reliability to water users in the Export Service Area. In this manner the EWA was designed to improve fisheries protection while not adversely affecting water supply to State and Federal water contractors.

#### **LA06-2**

**Comment:**

The impacts on water quality and flow including flushing flows in and through the Delta should be delineated. Agricultural beneficial uses in the Delta are dependent upon historically available water quality which is substantially better than the Agricultural Beneficial Use Objectives contained in the SWRCB 1995 Water Quality Control Plan. Agriculture requires year-around consideration even though many of the objectives provide limits only for the April 15-August 15 period. The months of principal concern are March through September. Although diminished in effectiveness by high rates of export pumping, spring flows flush the Delta pool extending the availability of good quality beyond the period of historically available natural surface flow.

**Response:**

Page 2-38 of Volume 1 states that Delta outflow would be increased (carriage water) as required to maintain the in-Delta water quality at the same levels as would have occurred in the absence of increased CVP and/or SWP pumping of EWA water purchased upstream from the Delta during July through September. During actual operations, the DWR Delta simulation model (DSM2) would be used to predict (1) water quality levels without the EWA and (2) the amount of increased Delta outflow required to maintain that water quality when the EWA increases Project pumping. The actual water quality in the Delta likely would be slightly higher and slightly lower during different periods over the summer months, but the net result would be no significant change in Delta water quality because of EWA Program operations.

Flushing flows, which are assumed to be the higher flows and good water quality that occurs in the winter and spring months of most water years, will not be significantly changed as a result of EWA actions. The only change to Delta inflow during the “flushing” period will be when storage reductions from non-CVP/SWP reservoirs water purchases are refilled. This refill will occur during high flow periods and the water quality analysis showed no measurable impacts on Delta water quality. Therefore, there are no changes in Project operations due to storage refill of upstream reservoirs.

During March through June, water quality in the Delta is usually improved with implementation of EWA Program actions (Project pumping reductions). In addition, the pumping reductions do not result in any significant changes to Delta in-channel flows.

### **LA06-3**

***Comment:***

Although somewhat difficult to analyze, the impact on Delta inflow due to changes in groundwater levels and the related channel losses and accretions should be considered.

***Response:***

The potential impacts on Delta inflow because of changes in groundwater levels is both difficult to analyze and difficult to monitor. Nonetheless, the possible loss of surface water due to lowered groundwater levels is considered through measures designed to minimize effects such as reductions in surface flows. Chapter 6 in Volume 1 includes the Well Review process as a mitigation measure. The well review process will ensure wells that are either hydraulically connected to major and minor tributaries to the Delta, or could draw down in shallow aquifers, are not used in EWA acquisitions.

The aquifer would tend to recharge during wet periods when the Delta is often in excess conditions. (Refer to the hydrograph on Figure 6-9 in Volume 1.) Therefore, groundwater substitution transfers would not likely affect Delta inflow.

### **LA06-4**

***Comment:***

Projects which bank water during high river flow periods and subsequently release water so as to add inflow to the Delta during the late spring and summer can provide a physical solution balance for the loss of flushing. The detail of the operating constraints will determine the extent of the impacts.

***Response:***

See response to comment LA06-2.

**LA06-5**

***Comment:***

Due to the difficulty in accurately monitoring the unconfined groundwater basins in the Sacramento Valley, the opportunity for abuse or error is high.

***Response:***

Accurate and spatially adequate groundwater monitoring is required to identify the potential effects of groundwater transfers. As discussed in Groundwater Mitigation Measures (Volume 1 Section 6.2.7.2), the sellers transferring water to the EWA Project Agencies via groundwater substitution transfers need to demonstrate that they have an established monitoring program to identify potential effects before they become significant. The sellers' monitoring program, at a minimum, must contain the following components: (1) a network of monitoring wells that adequately covers the area that is to be pumped, (2) periodic flow meter readings at the extraction pumps, (3) periodic measurements of groundwater levels, (4) groundwater quality testing, (5) means to detect land subsidence or a credible analysis demonstrating that subsidence is unlikely, and (6) a coordinated means to collect data and cooperate with other monitoring efforts in the area.

**LA06-6**

***Comment:***

Groundwater substitution should not be confused with groundwater banking which adds real yield to the system.

***Response:***

Groundwater substitution, stored groundwater purchase, and groundwater storage are defined and discussed separately in the EIS/EIR.

**LA06-7**

***Comment:***

We are particularly concerned about transfers of "paper water." Use of water which has not currently been put to use will create a new demand on the system. Water transfers should be limited to that water which is made available as the result of a decrease in net consumptive use of surface water without a substitution from groundwater. Even with such transfers, the effects on river flow to the point of original diversion and on return flows must be carefully evaluated. The river flow to the point of original diversion could be important for maintenance of flow, temperature, and dissolved oxygen for fish. Return flow could be similarly needed for fish but is clearly needed for downstream agricultural and M & I users.

***Response:***

The EWA agencies acknowledge the potential for transfers of "paper water" and therefore have developed methods to avoid this. Refill criteria for stored reservoir water transfers enable the seller to only refill with water that would not have been captured by downstream users (i.e., when the Delta is in excess conditions). Stored groundwater transfers use water that has been banked for the purpose of later use.

Groundwater substitution transfers include criteria that must be submitted to the Review Team. The amount of information to be submitted could vary; for example, different submittal requirements are given to wells depending on location relative to a surface water body, to ensure the water would not have been used by downstream users. The aquifer would tend to recharge during wet periods when the Delta is often in excess conditions and agencies have sufficient supply. Therefore, the water sold to the EWA would not be another user's water. These methods for stored surface water, stored groundwater, and groundwater substitution transfers establish that the water sold to the EWA would not be "paper water."

Additionally, the SWRCB must approve all transfers of water appropriated by a permittee or licensee and would not approve any transfer inconsistent with the California Water Code.

#### **LA06-8**

***Comment:***

To the extent the subject water is to be exported from the Delta, the effects on water levels, water quality, channel water depths and channel flow must be considered. Additionally, the impacts resulting from the exported water should also be considered. Exports to the lands on the west side of the San Joaquin could result in increased degradation of the San Joaquin River and/or destruction of the farmability of undrained lands.

***Response:***

Section 4.2.5.3 in Volume 1 analyzes effects on water levels in the Delta. The EWA program is not likely to affect annual water deliveries to the lands on the west side of the San Joaquin River (Delta Mendota Canal CVP service area). If the EWA Program did not exist, deliveries to the Delta Mendota Canal CVP service area could be reduced to ESA-enforced CVP export levels during periods when the allowable take limits for winter and spring-run Chinook salmon, as well as delta smelt, are violated. However, the amount of CVPIA b(2) water available in almost all years would be used during those same periods to protect ESA-listed species and would reduce the chance of take limit violations. If insufficient b(2) water were available in some years and Delta Mendota Canal CVP service area delivery was reduced because of ESA take limit export reductions that would not occur because of the existence of the EWA Program, the delivery reductions would happen infrequently. The quantities of delivery reductions cannot be calculated because of the many unknowns related to the behavior of the fishery on an annual basis and decisions made by the Department of Interior regarding utilization of the available b(2) water. However, the delivery reductions would be small on an annual average basis. Because the EWA would have little or no effect on supplies to this area, the EWA program would have a less-than-significant effect on the salt load in the western San Joaquin Valley and in the lower San Joaquin River.

**LA06-9**

***Comment:***

The DEIS/EIR failed to address California Water Code Sections 1392 and 1629 which prohibit profiteering from appropriative rights issued by the SWRCB in transfers to public entities.

***Response:***

The California Water Code Sections 1392 and 1629 relate to the acquisition or regulation by public entities of licenses and permits to appropriate water. The agencies involved in EWA transfers would not be selling their water rights. Instead, the transactions would involve a voluntary transfer of water over the course of 1 year to many years. In the cases of water appropriated under a license or permit, the SWRCB must approve these transfers and would not approve any transfer that is inconsistent with the Water Code.

**LA06-10**

***Comment:***

In the case of *Goodman v. County of Riverside* (1993) 140 Cal.App. 3d 900, the court found that the State Water Resources Development System (SWP) was to be completely self supporting and contractors are required to repay the cost of the entire project (Id. at p. 908.) If all or part of mitigation of fish and wildlife damage caused by the SWP was shifted to the taxpayers the project would not be self-supporting and the entire cost would not be borne by the contractors.

***Response:***

The EWA provides benefits to the environment not only through protection of at-risk fish species, but also through contribution to the recovery of the fish species in the Sacramento and San Joaquin Rivers, their tributaries, and the Delta. The EWA has an overall environmental benefit; it is appropriate to use some public funding.

**LA06-11**

***Comment:***

Water Code section 12937 “(b) 1” makes it clear that the revenues from the sale, delivery or use of the water or power, and all other income and revenue should be used only for and in the following order:

“1. The payment of the reasonable costs of the annual maintenance and operation of the State Water Resources Development System and the replacement of any parts thereof.” The EWA costs which are not for enhancement certainly fall within this category.

***Response:***

Water Code section 12937 addresses the means to pay interest on bonds used for construction of the Projects. This section is not related to financing the EWA program. See response to Comment FO01-10 for a discussion of EWA funding.

### **LA06-12**

***Comment:***

The contractors' responsibility for the broader obligation of preservation of fish and wildlife as required by Water Code sections 11900 et seq. is also based on the provision in Water Code section 12931 which in part provides: "... Any facilities hereto or hereafter authorized as a part of the Central Valley Project or facilities which are acquired or constructed as a part of the State Water Resources Development System with funds made available hereunder shall be acquired, constructed, operated, and maintained pursuant to the provisions of the code governing the Central Valley Project, as said provisions may now or hereafter be amended."

***Response:***

The obligation for preservation of fish and wildlife as required by Water Code Section 11900 is in reference to construction of State water projects. Section 11900 includes (1) construction of facilities consistent with enhancement of fish and wildlife to meet recreational needs; and (2) consideration of fish and wildlife preservation/enhancement as part of the project construction costs. Section 11900 also specifies that land for fish and wildlife be included in the land acquisition program for other purposes of State water projects. The EWA would not construct new facilities; therefore, Water Code Section 11900 is not applicable.

### **LA06-13**

***Comment:***

When the export pumping is reduced to reduce adverse impacts to fish and the EWA is used to pay the cost of such reduction, the EWA is simply a method of paying the cost to mitigate the export project damage. Such cost is clearly the obligation of the project and in turn the project contractors. The DEIS/EIR fails to address the need for reimbursement from the SWP contractors and does not discuss whether or not it is more economical to simply reduce deliveries rather than pay \$460.00 per acre foot or thereabouts for replacement water sometimes from the same contractor who would have had his delivery reduced.

***Response:***

The EWA provides benefits to the environment not only through protection of at-risk fish species, but also through contribution to the recovery of the fish species in the Sacramento and San Joaquin Rivers, their tributaries, and the Delta. The EWA has an overall environmental benefit. The EWA agencies paid \$460 per acre-foot for a single purchase only in the first year of project operations. In subsequent years the EWA agencies have paid less for water than in the first year. This past purchase price does not reflect future prices EWA agencies would pay.

### **LA06-14**

***Comment:***

While the following analysis focuses on the proposed groundwater substitution within the Merced Irrigation District, an analysis of the EWA's impacts on surface and



subsurface return flows must be conducted with respect to all proposed EWA actions and in all affected river systems.

**Response:**

Chapter 4 in Volume 1 includes a detailed analysis of return flows in all EWA affected river systems.

**LA06-15**

**Comment:**

The charts on pages 5-89 thru 5-91 of the DEIS/EIR show increases in flows in the Merced and San Joaquin rivers of over 200 cfs in the months of October and November yet they show no decrease in river flows in other months. The requisite facts and analysis to support such a conclusion appear to be absent.

On page 6-10 of the ASIP states: "EWA acquisition of Merced ID water via groundwater substitution would decrease Merced River summer flows and increase Merced River fall flows relative to the basis of comparison. Merced ID would hold the EWA transfer water in Lake McClure until the fall, when it would release the water downstream. This pattern would decrease flows downstream of New Exchequer Dam in the summer by a maximum of 70 cfs, but only for the short distance between New Exchequer Dam and Lake McSwain (the typical diversion point). EWA agency acquisition of Merced ID water via groundwater substitution would increase Merced River flows in fall relative to the basis of comparison as the water is released from Lake McClure. EWA agencies would monitor the releases to ensure that adverse effects do not occur, and institute changes to quantities of water released through adaptive management processes to avoid or minimize any adverse effect." While this entire matter should be more fully explained in the DEIS/EIR itself, from this passage it appears that the reason there are no decreases in flows (in the charts on pages 5-89 thru 5-91 of the DEIS/EIR) in months other than October and November as a result of the over 200 cfs increases in releases during both October and November are due to the assumption that the only losses to the river in months other than October and November will occur upstream of Lake McSwain, and not downstream of that point. If that is indeed the conclusion the DEIS/EIR is making, the facts and analysis necessary for the public and the decision makers to independently arrive at that conclusion are again entirely lacking.

**Response:**

Page 2-46 in Volume 1 has been updated to include a more detailed description of groundwater substitution, as follows: "Under groundwater substitution, surface water flows that would have been released for downstream users' irrigation needs would be held in the reservoir for release in October and November. Farmers would instead use groundwater for irrigation. Water elevations in Lake McClure would be slightly higher from April through November than they would be without the EWA. River flows would therefore decrease on a short stretch of the Merced River between New Exchequer Dam and Lake McSwain (the typical point of diversion). The amount of tailwater leaving the fields that have been irrigated with groundwater would be the same as the amount that would leave the fields if irrigated with surface water.

Therefore, flows on the Merced River below the point of diversion would be the same with or without the EWA.”

See response to Comment LA06-22 for a discussion of the change in flow from a decrease of 70 cfs to an increase of 200 cfs.

#### **LA06-16**

***Comment:***

Threshold information necessary to come to such conclusion would include a detailed evaluation of the surface and subsurface return flows (i.e., “accretions”) to the river which would occur both with and without the groundwater substitutions. It appears the DEIS/EIR preparers have assumed (without adequate supporting facts and analysis) that return flows will be identical with and without the groundwater substitution. Again, the mandatory facts and analysis to support such a conclusion are not set forth.

One of the many issues to explore in such an evaluation would include the following: “Will the use of groundwater reduce the amount of subsurface accretions to the river that would otherwise occur if surface water would be used?” E.g., if the location where groundwater substitution was utilized was a “gaining stream,” i.e., an area where the groundwater typically feeds the surface flow, then such a reduction would be expected. To get a meaningful and informed handle on the matter of surface and surface return flows with and without the groundwater substitution, the evaluation must naturally specify the precise area and timing when the farmer would have used the surface water in the absence of the groundwater substitution. To the extent such information is not currently known, then for the purposes of this DEIS/EIR worst case scenarios can and should be evaluated. The evaluation would thereafter need to be supplemented by site-specific CEQA analysis when such information finally becomes available.

***Response:***

As discussed in response to Comment LA06-14, Chapter 4 in Volume 1 discusses surface return flows. Sections 6.2.4.1.1, 6.2.4.1.2, and 6.2.4.1.3 in Volume 1 discuss potential for reduction in subsurface accretions. The text states, “... groundwater mitigation measures would involve assessment of measures to avoid and minimize all potential effects prior to an EWA transfer. Through the Well Review process identified in the groundwater mitigation measures, the purchasing agency would review the location and screened interval of the proposed production wells. Production wells within 2 miles of a surface water body could need to meet well depth criteria if data were insufficient to show that pumping would not result in adverse effects. Furthermore, the Well Review may determine that pumping activities should be limited to a specified depth in some areas, in order to avoid hydraulic interaction between pumping and overlying surface water systems. In addition to the well review, the groundwater mitigation measures provide guidance for the establishment of a local monitoring and mitigation program, designed to identify and mitigate local impacts. These mitigation measures would reduce effects to less than significant levels.”

In addition to potential direct effects to subsurface accretions, changes in groundwater recharge also has the potential to affect subsurface flows. These effects are discussed in the response to Comment LA17-4.

The effects of the transfers are evaluated and disclosed in this EIS/EIR; it is not anticipated that further CEQA documentation would be required.

**LA06-17**

***Comment:***

Another related concern in addition to the quantity of return flows with and without the groundwater substitution is the quality of the return flows with and without the groundwater substitution. To the extent there will in fact be return flows to the Merced and/or San Joaquin rivers from groundwater substitution, the quality of those should be compared to the quality of the return flows from the use of surface water. Thus far, there appears to be no such analysis.

***Response:***

Section 5.2.5.4 in Volume 1 discusses water quality impacts of groundwater substitution. Groundwater would mix with surface water in agricultural drainage prior to irrigation return flow reaching the river, which would dilute any constituents of concern in the groundwater. Additionally, groundwater quality in Merced ID is generally good and could improve total water quality when mixed with surface water.

**LA06-18**

***Comment:***

Ultimately, the with and without groundwater substitution return flow analysis must further analyze the effects which impacts on the quantity and quality of return flows resulting from the groundwater substitution will have on the quantity and quality in the lower San Joaquin River (which serves the landowners and water users within the Central Delta Water Agency). In particular, the impacts on the Vernalis Salinity Standard ("VSS"). To the extent releases from New Melones are relied on to mitigate any adverse impacts to the VSS, such releases should be clearly disclosed and quantified so that the decision makers (and the public) can assess the new demands which the groundwater substitution will place on the already severely over-committed New Melones Reservoir.

***Response:***

The response to Comment LA06-15 includes new text for page 2-46 in Volume 1 to clarify how the Merced ID groundwater substitution transfer would operate. Flow at the confluence of the Merced and the San Joaquin Rivers and at the San Joaquin River at Vernalis would not decrease. (See Volume 1 Table 4-3, which shows no decrease in San Joaquin River flows.) Flows at these locations would only increase during October and November when the water held in Lake McClure was released.

Therefore, the EWA program would not affect the water quality and flow standards at Vernalis or require additional flows to be released from New Melones Reservoir.

### **LA06-19**

***Comment:***

To the extent adverse impacts to the quantity and quality of the lower San Joaquin River (including the VSS) result from the groundwater substitution, feasible mitigation measures and alternatives should be discussed and evaluated to mitigate or avoid those impacts without the use of New Melones water. Releases from the Merced river should be considered as well as contributions from the other tributaries to the San Joaquin River including releases from Friant reservoir.

***Response:***

As stated in the response to Comment LA06-18, there would be no decrease in flow on the lower San Joaquin River and therefore no impacts on the water quality and flow standards at Vernalis. No mitigation measures are required.

### **LA06-20**

***Comment:***

Moreover, the cumulative impacts of the groundwater substitution on the quantity and quality of the lower San Joaquin River must be address in the context of the substantial quantities of water Merced Irrigation District, and other districts, are currently shifting from summer to spring as part of the San Joaquin River Agreement (which implements the VAMP fish experiment). Minor impacts to water quality and quantity could be significant when viewed in light of past, current and future actions, such as the San Joaquin River Agreement, which result in shifts of high quality tributary water from summer to spring and/or fall.

***Response:***

Increasing flows for fishery benefit in the main stem of the San Joaquin River and at Vernalis was a requirement of D-1641, and the environmental impacts of those requirements are not analyzed in this document. The possible loss of surface water because of lowered groundwater levels would be addressed through a series of measures designed to minimize effects such as reductions in surface flows. These measures include the Well Review process, outlined in Volume 1 Section 6.2.7.2. The well review process will examine well logs of wells within 2 miles of major or minor waterways to prevent groundwater substitution transfers that would affect surface water bodies. Therefore, groundwater substitution would not affect San Joaquin River flows.

### **LA06-21**

***Comment:***

The water quality analysis of the Merced and San Joaquin rivers at pages 5-89 thru 5-91 of the DEIS/EIR does not appear to analyze the water quality impacts in various year types, e.g., "critical," "dry," "below normal," etc. (like the DEIS/EIR does for other river segments). If true, why was a more detailed analysis of these water year types omitted? The long-term, 72 year average flows clearly do not represent "worst case" scenarios as is the purported intent of the analysis. An analysis in each of the year types should be conducted and presented in the DEIS/EIR along with a listing of

the worst possible circumstance in each of the year types-i.e., avoid the sole reliance of the presentation on “averages” (which by their very nature mask the “worst case” scenarios).

**Response:**

The flows at various locations comparing Flexible Purchase Alternative to baseline conditions are shown in long-term monthly averages because the EWA purchases from Merced Irrigation District would increase the flows in the Merced and San Joaquin rivers in October and November in all years that water purchases are completed. There would also be no decreases in river flow under the Flexible Purchase Alternative relevant to the baseline condition. Illustrating this fact by year type was not necessary to make the point that this water purchase would positively affect flows in the Merced and San Joaquin rivers.

**LA06-22**

**Comment:**

Also, as referenced above, page 6-10 of the ASIP states:

“EWA acquisition of Merced ID water via groundwater substitution would decrease Merced River summer flows and increase Merced River fall flows relative to the basis of comparison. Merced ID would hold the EWA transfer water in Lake McClure until the fall, when it would release the water downstream. This pattern would decrease flows downstream of New Exchequer Dam in the summer by a maximum of 70 cfs, but only for the short distance between New Exchequer Dam and Lake McSwain (the typical diversion point).” Where did the “70 cfs” come from? As also referenced above, on pages 5-89 thru 5-91 of the DEIS/EIRs it states that flows in the Merced and San Joaquin rivers will increase over 200 cfs in the months of October and November. Shouldn’t the flow above Lake McSwain, correspondingly decrease by 200 cfs, rather than 70 cfs? The discrepancy of these numbers and the facts and analysis to support such a discrepancy must be set forth in the DEIS/EIR.

**Response:**

The change in Merced River flows was calculated using the maximum amount of water that Merced ID could transfer, 25,000 acre-feet. Decreased releases between April and September correlate to a decrease in flow of 70 cfs. The increase of 200 cfs in October and November is greater than the decrease of 70 cfs because the amount of water that was held for 6 months is being released in a shorter timeframe (2 months).

**LA06-23**

**Comment:**

Please explain why there are no alternatives to the “no-uncompensated loss to the exporters” component of the proposed project. The Calfed ROD DEIS/EIR similarly failed to consider any alternatives to this component of the proposed project. It appears the DEIS/EIR has treated the “no-uncompensated” loss as a project “objective,” thereby inappropriately and artificially limiting the range of potentially feasible alternatives to the project. There should be at least one alternative (and preferably more) to this “no-uncompensated loss” component.

**Response:**

Volume 1 Section 1.2.1, Statement of Purpose and Need, states that a project should "...not result in uncompensated water cost to the Projects' water users." There are no alternatives that include uncompensated losses because this would be inconsistent with the project's purpose and need. The exception is the No Action Alternative, which does not include a "no uncompensated loss" component. This alternative is carried forward; however, it is ultimately not the preferred alternative because it does not meet the purpose and need of the project or the project objectives.

**LA06-24**

**Comment:**

In a similar vein, there are no alternatives to the EWA as a whole. Since the Calfed ROD EIS/EIR failed to consider any alternatives to the EWA, the current DEIS/EIR for the EWA must do so. The EWA "as a whole" should be deemed the "proposed project" for CEQA purposes in the current DEIS/EIR. As it stands, there has not been, and will not be, any presentation and evaluation of alternatives to the EWA as a whole unless the current DEIS/EIR assumes that task. To approve the EWA in the absence of such a good faith investigation, discussion and analysis of a reasonable range of alternatives to the EWA as a whole is contrary to CEQA. The current DEIS/EIR apparently makes the unwarranted assumption that such an investigation, discussion and analysis has already taken place. However, a review of the Calfed ROD EIS/EIR readily indicates that it has not.

**Response:**

As discussed in Volume 1 Section 2.2.1, several alternatives to the EWA "as a whole" were considered including desalination in southern California, increased use of Colorado River water, water use efficiency within the Project service areas, additional water sources, an isolated facility, and Delta infiltration galleries. These alternatives included alternatives identified at public scoping meetings. These alternatives were not carried forward because they did not meet the screening criteria of immediate, flexible, and reliable.

**LA06-25**

**Comment:**

Finally, the DEIS/EIR fails to adequately explain why the proposed actions pursuant to the EWA for the protection of fishery resources are not actions that "would be reasonably expected to occur in the foreseeable future if the [EWA] were not approved." (CEQA Guidelines section 15126.6(e)(2).) Any such actions are required to be part of the mandatory "no project" alternative required by Guidelines section 15126.6(e). Thus far, those actions are assumed to not be reasonably expected to occur in the future, and the facts and analysis necessary to support that finding are not sufficiently set forth.

**Response:**

The EWA program includes four primary fish actions for fish protection and recovery: reducing Delta export pumping, closing the Delta Cross Channel gates, increasing

instream flows, and augmenting Delta outflows. The No Action/No Project Alternative includes all these actions with a description of the frequency of each action that would occur because of the regulatory baseline. Both action alternatives include increased frequency of the same actions and would allow increased actions for fish recovery. In the No Action/No Project Alternative, take limit exceedance was the primary factor that led the Management Agencies to direct pump reductions. With the EWA program, actions would be more effective because they could be timelier. Actions to benefit fish would be taken more frequently, both to avoid situations where take limits are reached or exceeded and in furtherance of recovery of listed species.

Sections 2.4.1 (page 2-31) and 2.5.1 (page 2-66) in Volume 1 were clarified to indicate that the action alternatives would provide increased fish actions whereas the No Action/No Project Alternative only includes actions that are required by regulations.

## **LA07 - Glenn-Colusa Irrigation District**

### **Andrew M. Hitchings**

#### **LA07-1**

*Comment:*

GCID concurs with, and incorporates by reference, the comments that have been separately submitted by the Northern California Water Association (“NCWA”) and the Yuba County Water Agency regarding the EWA DEIR/S. In this regard, GCID concurs that the EWA DEIR/S inappropriately assumes that in nearly all cases groundwater pumping will have an effect on surface water bodies. The document then enumerates an extensive set of conditions and mitigation measures that must be met by sellers to the EWA program in order to avoid this assumed effect. This type of approach will present numerous unnecessary obstacles, given that in most cases the limited pumping of wells in the Sacramento Valley for EWA transfers would not have a significant impact on the flow in surface streams.

*Response:*

The Draft EIS/EIR does not assume impacts on surface water bodies because of groundwater substitution; the Draft EIS/EIR states that there is a potential for impacts. The Well Review is in place to determine whether the potential for impacts is great or the potential for impacts would be low for each groundwater pump. Volume 1 Section 6.2.7.2.1 states, “The purpose of the well review is to assure that all extraction wells used for water transfer to the EWA would be located and operated in such a manner as to minimize the potential risk of depleting surface water sources and adversely affecting groundwater quality.” The EWA agencies would only purchase water from wells if the wells are farther than 2 miles from major surface water features, farther than 1 mile from minor surface water features. The EWA agencies include well review to determine the acceptability of the well for use in the proposed transfer, not because they assume pumping from the well would cause an impact.

### **LA07-2**

***Comment:***

Similarly, the EWA DEIR/S improperly refers to and relies on the Department of Water Resources' ("DWR") so-called water transfer "White Papers" as the origin for many of the avoidance and mitigation measures set forth in the document. See EWA DEIR/S, at 6-143, n.20. GCID and other NCWA members have consistently expressed their concerns with certain aspects of these documents. Many of these concerns are set forth in NCWA's written comments submitted during the development of the documents. A copy of these comments are attached hereto as Exhibit A, and incorporated herein by reference.

***Response:***

The EWA agencies used this approach in Chapter 6 in Volume 1 as a mechanism to avoid or mitigate impacts without knowing in advance exactly which wells would participate in the program. (The EWA agencies cannot know the wells in advance because the willing sellers must volunteer each year.)

Responses to NCWA's written comments are included in this chapter. (See letter NP04.)

### **LA07-3**

***Comment:***

The EWA DEIR/S also states in several places that non-EWA transfer projects involving the DWR and/or USBR, including the SVWMP, would be undertaken in a manner that implements the EWA's proposed mitigation and avoidance measures. This statement is incorrect, particularly with regard to the SVWMP, where the parties are still determining the scope and extent of any measurement and monitoring conditions, and any avoidance measures, that may be implemented under that program.

***Response:***

The text has been modified in several places, including Volume 1 page 6-153, to illustrate that the approach used to mitigate impacts in the EWA and SVWMA are different. The EWA approach is one based primarily on measures designed to avoid causing adverse groundwater effects. The SVWMA environmental document is not yet complete, and will use a different analysis approach to determine and mitigate potential impacts.

### **LA07-4**

***Comment:***

This section inaccurately describes GCID's water rights, and its diversions from the Sacramento River, Stony Creek, and other tributaries thereto. In this regard, GCID holds pre and post-1914 appropriative water rights to divert from these sources. GCID diverts water under these water rights in accordance with the terms of GCID's Sacramento River Settlement Contract with the USBR. The Settlement Contract also



provides for deliveries of Central Valley Project water during the months of July and August each year.

**Response:**

The first paragraph in Volume 1 Section 4.1.2.1.2 on page 4-4 has been updated to more accurately describe GCID's water rights and diversions.

**LA07-5**

**Comment:**

This section is also misleading as to the application of the State Water Resources Control Board's Standard Permit Term 91 to GCID's diversions. In this regard, Term 91 only applies to GCID's diversions under GCID's recently granted SWRCB Water Rights Permit No. 21101 (App. No. A030838). Term 91 does not apply to GCID's diversions under its pre-1914 water rights, and under its other post-1914 licensed water rights.

**Response:**

In Volume 1 Section 4.1.2.1.2, page 4-4, text has been added regarding Term 91 as it relates to GCID's diversions. The text clarifies that Term 91 only applies to Water Rights Permit No. 21101 and not to GCID's pre-1914 or other post-1914 water rights.

**LA07-6**

**Comment:**

Footnote 18 in this section erroneously states that the recent crop idling water transfers between upstream water agencies and the Metropolitan Water District "are part of Dry Year Program." This statement is incorrect at least as to the 2003 Option and Short-Term Water Purchase and Sale Agreement Between GCID and MWD, which did not include DWR as a party thereto.

**Response:**

Footnote 18 in Volume 1 on page 4-44 has been revised to state, "Transfers negotiated between CVP and SWP contractors and other water users, such as the Forbearance Agreement with Westlands WD and the recent crop idling acquisition by Metropolitan WD from water agencies upstream, are evaluated as part of the Dry Year Program. Although not a part of the Dry Year Program, the effects of these transfers would be similar to those under the Dry Year Program. Additionally, these types of transfers could be a part of the Dry Year Program in the future." Volume 2 Section 22.2.1.2 has been renamed Dry Year Water Purchase Program and Other Contractor Purchases.

**LA07-7**

**Comment:**

The second paragraph of this section should be revised to state that the deadline for upstream users to provide 185,000 acre-feet of capacity is June 1, 2007, and not 2005. This is in accordance with the Phase 8 Management Committee's recently adopted Resolution No. 2003-01.

**Response:**

The date on page 22-4 in Volume 2 has been changed from 2005 to 2007.

## **LA08 – Kern County Water Agency**

**Thomas N. Clark**

### **LA08-1**

**Comment:**

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.

**Response:**

There is considerable scientific debate regarding the status of delta smelt recovery, as well as ongoing research and model development to assess delta smelt populations and the effects of future projects. The delta smelt models currently being developed could eventually provide valuable information and insight into these issues. The effectiveness of the EWA program would continue to be evaluated annually by a panel of independent technical experts. The EWA agencies will be able to respond to new species information and, if necessary, modify asset management decisions on an ongoing and real-time basis as part of an adaptive management process. Development of the preliminary delta smelt models referenced in the comment is currently on a 1- to 3-year timetable, making them unavailable for analysis of the EWA program as presented in the EWA Draft EIR/EIS. In addition, delta smelt remain listed as a threatened species under the Federal Endangered Species Act (ESA) and must be managed in accordance with current biological opinions. Chapter 2 in Volume 1 has been updated to include Sections 2.4.5 and 2.5.4 that reference the adaptive management process identified in the ROD and the types of recommendations the Review Panel has made previously.

### **LA08-2**

**Comment:**

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.

**Response:**

The EWA agencies agree that a purpose of the use of EWA assets is to facilitate protection and recovery of “at-risk” fish species. This focus of EWA is addressed in the Purpose and Need/Project Objectives discussion in Volume 1 Section 1.2.

**LA08-3**

***Comment:***

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.

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.

***Response:***

The role of science in the EWA is established in the CALFED ROD with the creation of an independent Review Panel. Adaptive management is outlined as “an overarching principle of the Science Program...”. It is this adaptive management that will allow the EWA agencies to “...confirm or modify problem definitions, conceptual models, research, and implementation actions.” Science was given a role in all CALFED programs, including the ERP. Scientific advances will be shared among all of the CALFED programs through the Science Program. Chapter 2 in Volume 1 has been updated to include Sections 2.4.5 and 2.5.4 to discuss the Review Panel and adaptive management. The commentor is correct that other elements of the CALFED Program have contributed to improvements in the ecological health of the Bay-Delta estuary and to improved scientific understanding of how the system works. For example, through the Category III Program, the State and Federal Governments invested substantial funds in non-flow related measures to improve the conditions of fish species and habitats. The agencies have continued these investments, coordinated through the CALFED Ecosystem Restoration Program, and also funded numerous studies to help improve the state of understanding regarding the life cycles and habitat needs of listed species, including Delta smelt and anadromous fish.

**LA08-4**

***Comment:***

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.

***Response:***

Stored groundwater purchase is defined and discussed in Volume 1 in Chapter 2, Section 2.4.2.1.4. Groundwater substitution is defined and discussed in Chapter 2, Section 2.4.2.1.2. The document evaluates effects from stored groundwater purchase and groundwater substitution separately.

**LA08-5**

***Comment:***

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.

***Response:***

Chapter 2 in Volume 1 defined asset acquisition methods that could take place in each region. Groundwater substitution is only described within the Upstream from the Delta region and would not be done in the Export Service Area. Volume 1 Chapter 6 discusses the impacts to groundwater resources and establishes mitigation measures to address groundwater overdraft and surface water/groundwater interactions. The groundwater resources paragraph under Major Conclusions and Findings in the Executive Summary has been revised to reflect this difference for groundwater substitution.

**LA08-6**

***Comment:***

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

***Response:***

Kern County Water Agency’s comment regarding groundwater substitution and groundwater purchases is noted and addressed in response to Comment LA08-5.

**LA08-7**

***Comment:***

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.

***Response:***

Section 1.5.3.4.4 is not describing groundwater storage programs, where outside entities would store water in a groundwater bank and later receive that water (less a specified loss). This section is instead referring to stored groundwater purchase, where the EWA agencies could purchase water that has already been stored in the ground by the willing seller.

The information regarding losses assessed by Kern County groundwater banking programs is incorporated into the Groundwater Storage definition in Section 2.4.2.3.2 in Volume 1, which describes how the EWA agencies could store assets in a groundwater storage facility.

#### **LA08-8**

***Comment:***

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.

***Response:***

Section 2.4.2.2.4 does not indicate that acquisitions from relaxation of the E/I ratio have been less than envisioned in the CALFED ROD. As Table 2-6 shows, acquisitions from 10/2000 to 9/2001 were less than the CALFED ROD anticipated, but acquisitions from 10/2001 to 9/2002 were far more than the CALFED ROD anticipated. The decision to relax the E/I ratio is made by the Management Agencies, although the SWRCB is notified of the decision. E/I relaxation is a variable asset and is not a reliable source of water every year because it depends on conditions within the Delta. This method, however, on average is expected to produce approximately the amount of assets included in the CALFED ROD.

#### **LA08-9**

***Comment:***

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.

***Response:***

The EIS/EIR includes this option so if DWR and the SWP contractors resolved regulatory and policy issues of sale of SWP Table A water to non-SWP contractors, then the EWA agencies could implement potential purchases of SWP Table A water without additional CEQA/NEPA coverage for a purchase. If the policy were not changed, the acquisition would not happen.

#### **LA08-10**

***Comment:***

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.

***Response:***

Section 2.4.3 in Volume 1 discusses how the EWA agencies would typically operate the Flexible Purchase Alternative. The section on critical years (Section 2.4.3.1) states that the EWA agencies would focus on purchases upstream from the Delta. The total purchases in critical years would be approximately 200,000 to 240,000 acre-feet, which is much less than the estimated conveyance capacity in critical years of 600,000 acre-feet. Although the size of the EWA in critical years is about one-third of the estimated conveyance capacity, the EWA agencies do not assume that there would always be adequate capacity available. If capacity were not available, the document includes the option for the EWA agencies to instead purchase water from the Export Service Area.

**LA08-11**

***Comment:***

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.

***Response:***

The EWA agencies could only purchase up to the maximum amount of 600,000 acre-feet of water. The EWA agencies would not purchase the maximum amount of water from every agency in 1 year. However, this document evaluates the maximum amount of water that each agency could sell to the EWA as a worst case for each agency, which results in a total greater than 600,000 acre-feet.

**LA08-12**

***Comment:***

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.

***Response:***

The Management Agencies would determine if they could provide regulatory commitments on an annual basis. This decision would be based on a variety of factors. The Management Agencies would examine the amount of water acquired in each year, any debt from previous years, the hydrologic conditions, ERP funding, and recommendations through adaptive management. If the Management Agencies cannot provide regulatory commitments, then the EWA agencies would use all

available EWA assets but may need to take uncompensated fish actions toward the end of the water year, if warranted by the Management Agencies' determination that the likelihood of the survival and recovery of 1 or more listed species is appreciably reduced.

**LA08-13**

***Comment:***

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).

***Response:***

Volume 1 Chapter 2 (Section 2.4) explains the rationale for the actions taken to benefit fish using the EWA. A change in the needs of fish was not the reason for defining the Flexible Purchase Alternative. These reasons are listed on pages 2-15 and 2-16 in Volume 1. These reasons include the following: some tools described in the CALFED ROD never materialized or did not function as well as anticipated, some flexibility in baseline protections was reduced, and NEPA/CEQA coverage for Tier 3 purchases (amount not specified in the CALFED ROD) was needed. The expectation that somewhat higher purchases and a different mix of sources than described in the CALFED ROD would be made in every year and substantially higher purchases may be needed on an infrequent basis led to the 600,000 acre-foot quantity in the Flexible Purchase Alternative. There is no expectation that the EWA agencies are going to buy 600,000 acre-feet every year; in fact, the document clearly asserts otherwise in describing the "Typical EWA Operation" in Section 2.4.3 starting on page 2-59 in Volume 1. This information has also been added to the Executive Summary in the Final EIS/EIR.

See response to Comment LA14-2 for additional information on the selection of the preferred alternative.

#### **LA08-14**

***Comment:***

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.

***Response:***

In order to evaluate potential worst-case (the selected analysis methodology for the Draft EIR/EIS) environmental impacts, the Flexible Purchase Alternative modeling simulation represents the maximum amount of water (600 TAF) that could be purchased by the EWA Program and pumped by the CVP/SWP export facilities. The Flexible Purchase Alternative would allow the EWA Project Agencies to purchase up to 600,000 acre-feet of water, although the EWA agencies would typically acquire 200,000 to 300,000 acre-feet annually, except in wet years or years with high fish needs. As stated on page 2-59 in Volume 1, "In the wetter years when operational curtailments would be expected to cost more water because the base Delta pumping rate would be higher or when the EWA ends the prior year with substantial debt, water needs for fish may be in the 400,000-600,000 acre-foot range."

Page A1-3 of Attachment 1 Volume 1, Modeling Description, states that variable operational assets include flexibility in regulatory requirements (relaxation of the E/I ratio for the purpose of providing benefits to fish) and SWP pumping of instream improvement flows upstream from the Delta utilizing CVPIA section 3406 b(2) and Ecosystem Restoration Program water. As discussed on page 2-15 in Volume 1, a combination of reasons could result in potential purchases of up to 600,000 acre-feet by the EWA Program.

A discussion regarding the biological needs of at-risk fish species targeted for protection under the EWA program is provided in Section 2.4.1, Actions to Protect Fish and Benefit the Environment, in Volume 1. For example, operation of the pumping plants can result in direct fish mortality at the pumps from entrainment through fish screens, impingement, predation, and handling of captured fish in the salvage process. Altered net flow patterns may change migratory patterns and increase the likelihood of predation. Export pumping reductions during critical out-migration periods would increase the survival of out-migrating salmonids, delta smelt, and Sacramento splittail. In addition, as stated in Section 2.4.1.3, increasing instream flows would improve habitat conditions in the tributary rivers and the Delta for anadromous and resident fish. Table 2-4 in Volume 1 identifies anadromous fish species that could require supplemental flows in various rivers and tributaries to meet habitat requirements for various life history stages, such as adult immigration, spawning, egg incubation, rearing, and emigration of juveniles.



### LA08-15

**Comment:**

Finally, this EIR should recognize that efforts are now being made to restructure the EWA as a long-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 1 year to analyze the new program that is presently under consideration.

**Response:**

See response to Comment FA01-1.

### LA08-16

**Comment:**

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-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.

**Response:**

The Fixed Purchase Alternative and Flexible Purchase Alternative account differently for variable assets. As specified in the ROD, variable assets are in addition to the 185,000 acre-foot upper limit in the Fixed Purchase Alternative. In the Flexible Purchase Alternative, the amount of water purchased within the overall range, and most often with the "typical EWA range," would account for how much water is obtained through variable assets mechanisms. Annual purchases with the Flexible Purchase Alternative would be lower if variable assets are included.

### LA08-17

**Comment:**

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 I 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 I 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.

***Response:***

The EWA agencies disagree that the EIS/EIR would result in EWA becoming part of the Tier 1 assets upon which the Biological Opinions for Delta smelt and winter-run Chinook salmon are based. The existing opinions for project operations (which it appears the commentor is referring to) were issued before Interior's 1999 decision and the CALFED ROD. Thus, neither opinion is based on the 1999 decision or Tier 1.

DOI's May 9, 2003, decision on (b)(2) implementation may result in reduced variable assets from what was described in the CALFED ROD. DOI's May 9, 2003, decision has the potential to result in less (b)(2) water being used upstream from the Delta. In the CALFED ROD, the EWA receives half of those upstream releases that cannot be recaptured by the CVP. Thus, the EWA agencies are seeking ways to replace the flexibility of this asset.

**LA08-18**

***Comment:***

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.

***Response:***

Change in availability of variable assets was only 1 factor that caused the EWA agencies to realize that they needed additional flexibility. Volume 1 Section 2.2.2.3, Flexibility, Reliability, and Managing Uncertainty, includes information about why the EWA agencies incorporated additional flexibility into the Flexible Purchase Alternative.

The commentor states that water users are "responsible" for increased quantities included in the Flexible Purchase Alternative. The water users are currently not

funding the project (see response to Comment FO01-10 for more information about EWA funding) and have no uncompensated water loss, so it is unclear how the water users are “responsible” for choices made by the EWA agencies.

#### **LA08-19**

***Comment:***

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 1 to three, nor attempts to evaluate the appropriate size and composition of the EWA, 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.

***Response:***

This EIS/EIR is not intended to satisfy all the referenced requirements from the CALFED ROD. However, if the agencies decide to continue with the EWA without any major changes, this document analyzes environmental impacts associated with the EWA program through 2007. The effects of an increase in pumping at the Banks Pumping Plant on the size and operations of the EWA program will be the subject of future environmental analysis.

#### **LA08-20**

***Comment:***

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.

***Response:***

The quantity of water for Tier 3 cannot be predicted because it is based on fish behavior. The need for Tier 3 assets can only be described qualitatively. Page 2-70 in Volume 1 explains that Tier 3 is more likely to be triggered in the Fixed Purchase Alternative than in the Flexible Purchase Alternative because the Fixed Purchase has fewer assets and less flexibility. The No Project Alternative would not include any elements of the EWA program; therefore, it would not include any Tier 3 assets.

## **LA09 – Kern Water Bank Authority**

**Jonathan D. Parker**

### **LA09-1**

**Comment:**

EIS/EIR Text: “Both Arvin Edison WSD and the Kern Fan Element have experienced substantial drawdown in the past, with a maximum subsidence rate (as of 1970) in excess of 0.5 feet per year observed in the Arvin Maricopa area, and a total maximum approaching 9 feet (centered west of the Arvin Edison WSD within the eastern portion of the Kern-Delta WD).” Comment:

This is the only statement in the EIS/EIR regarding subsidence in the Kern Fan Element. We think it is important to note that the Department of Water Resources monitors subsidence in the Kern Water Bank area, and no significant permanent subsidence has been measured, nor is it likely to occur in the future (Personal Communication, Al Steele, Department of Water Resources).

**Response:**

Page 6-120 in Volume 1 has been updated to include this information.

### **LA09-2**

**Comment:**

EIS/EIR Text: Groundwater in the Kern Fan Element is monitored routinely for TDS and constituents that may be of concern; including DBCP, EDB, and nitrates. These constituents have been detected at elevated concentrations in shallow groundwater north of the Kern River and West of Enos Lane.

Comment: The Kern Water Bank Authority has tested both monitoring wells and supply wells for DBCP and EDB, and none has been detected. In addition, nitrate concentrations in all wells on the Kern Water Bank are below Maximum Contaminant Levels established in Title 22.

**Response:**

Page 6-120 in Volume 1 has been updated to include this information.

## **LA10 – Northern California Power Agency**

**Jane Dunn Cirrincione**

### **LA10-1**

**Comment:**

Specifically, we believe it is appropriate that the EIS/EIR acknowledges the potential impact of implementing EWA actions on CVP power resources as well as CALFED’s responsibility to mitigate such impacts. Chapter 16 summarizes the issue succinctly: “EWA shall mitigate any adverse economic, reliability, capacity or operational effects to CVP/SWP power operations or Project power users as a result of implementing the EWA program.” (Page 16-29) This mitigation is consistent with the CALFED solution principle of no redirected impacts. To its credit, Reclamation, with the support of

other CALFED agencies, has implemented past EWA actions in accordance with these principles. The actual mitigation does, however, go beyond the language of Table ES-4, “to develop a financial plan”, to include implementing compensatory actions to eliminate projected impacts to power resources. We suggest that you clarify the language in Table ES-4, consistent with language presented elsewhere in the EIS/EIR such as that language cited above.

***Response:***

The Executive Summary text has been revised to clarify that power resources effects will be mitigated for in accordance with the text provided in Volume 2 Chapter 16.

**LA10-2**

***Comment:***

Although EWA funding is not part of the EIS/EIR discussion, NCPA would also like to emphasize the CALFED principle of “beneficiary pays” as it relates to the funding of EWA. Currently, without a federal authorization of CALFED, federal funding of EWA is being authorized through the CVP operational budget, and as such may be deemed in the future to be reimbursable (CVP reimbursable expenses are charged to CVP water and power customers). Clearly this would be inappropriate and inconsistent with CALFED principles since it would redirect an impact to a third party, the CVP power contractors, who are not beneficiaries of EWA actions. Reclamation needs to emphasize the non-reimbursable nature of any funding for EWA that is provided from federal sources.

***Response:***

See response to Comment FO01-10.

**LA10-3**

***Comment:***

NCPA also has some concern with the language in Chapter 16 relative to the marketing of CVP power as performed by Western. The language as presented in the EIS/EIR is not an accurate portrayal of the operational and financial relationship between Western, preference customers and PG&E, and how and why those relationships change in 2005. We suggest that you work with Western to clarify the presentation in this area.

***Response:***

Further discussion of the post 2004 relationship between Western, preference customers, and PG&E would be speculative given the present uncertainties associated with Western operations in the future. See also response to Comment FA02-4.

## **LA11 – Pajaro Valley Water Management Agency**

**Charles McNiesh**

### **LA11-1**

***Comment:***

Without withdrawing our request for an extension of the comment period, I would like to note the following substantive comment on the draft EIS/EIR. Section 2.4.2 of Chapter 2 describes “Asset Acquisition and Management.” This section does not acknowledge potential asset acquisition, from Pajaro, which has been identified as a possible source of EWA supply in discussions between Pajaro and the Water Transfer Office of the Department of Water Resources. Expansion of the Section 2.4.2 discussion to include Pajaro may be appropriate.

***Response:***

This list cannot be comprehensive because of the changing nature of transfer negotiations. The list was finalized before discussions began between DWR and Pajaro Valley Water Management Agency. The first paragraph on page 2-36 in Volume 1 indicates that the list is not exhaustive. As described in Volume 1 Section 2.4.2, agencies can be added at any time, but additional environmental documentation may be necessary.

## **LA13 – San Diego County Water Authority**

**Gordon A. Hess**

### **LA13-1**

***Comment:***

We support the concept of the Environmental Water Account (EWA) and recognize that it has played a positive role in balancing the needs of water suppliers and the Bay-Delta ecosystem during the three years of its existence as a pilot program. For this reason, we do not support the “no action” alternative. However, we have been concerned that, if not properly operated, an ongoing EWA could degrade the quality of water exports from the Bay-Delta, make the system less flexible operationally and reduce the amount of water available for voluntary transfers from agriculture to urban areas. Like other CALFED activities, the EWA must be operated so that new benefits are shared and continuous improvement is realized in the areas of supply reliability, drinking water quality and ecosystem improvements.

***Response:***

This response is numbered according to the points made in the comment.

1. The EIS/EIR states there would be no significant effects on export water quality. With the inclusion of carriage water, modeling results demonstrated the total chloride and bromide loading over the 15-year period of record (total annual salt load delivered to CVP and SWP water users in the Export Service Area) would be 1.7 percent less under the Flexible Purchase Alternative compared to the baseline condition.

2. Although the EWA program utilizes a portion of the overall CVP/SWP system pumping capacity, the operational flexibility of the system is greatly improved with implementation of the EWA program. Without the EWA program, pumping at the CVP/SWP export facilities could be reduced to protect ESA listed species, which in turn could reduce operational flexibility and often water delivery reliability.
3. As explained in Volume 2 Section 11.2.5.5, the EWA would not have a substantial effect on water transfer prices or availability. Other types of water transfers would usually be much larger, and other factors such as farm prices, commodity programs, and normal hydrologic variability would have much more influence on prices and availability than the EWA.
4. The EWA program's Purpose and Need includes improvement of water supply reliability and ecosystem improvements (protection and recovery of at-risk fish species). The EWA program is not charged with improving water quality; however, the EWA program would not cause any significant effects on water quality. Individual projects under CALFED are not responsible for implementing all of the CALFED objectives.

#### **LA13-2**

***Comment:***

As noted in #1 above, we are concerned about the EWA's impact on the reliability and quality of water exported from the Delta and the availability of transfer water from sources north of the Delta. This concern is heightened by the flexible purchase alternative and its "flexible interpretation" of the ROD and EWA Operating Principles Agreement that allows for the purchase of between 200,000 and 600,000 acre-feet per year and does not set limits on acquisitions in either the upstream or export areas.

***Response:***

See response to Comment LA13-1.

#### **LA13-3**

***Comment:***

Impacts to tailwater flows affecting Delta water levels. The draft EIR/EIS acknowledges that EWA acquisition of water due to idling of crops will reduce and/or change the timing of the flows available to downstream users, other bodies of water and, ultimately, the Delta. Sellers of water resulting from idled lands must be required to maintain return flows to levels that will not harm downstream users.

***Response:***

Volume 1 Section 4.2.8.1 states, "The EWA agencies will require the willing sellers of water for crop idling to maintain their drainage systems at a water level that would not reduce the supplies of downstream users." This mitigation measure will prevent crop idling from negatively affecting Delta water levels.

#### **LA13-4**

***Comment:***

Impacts to the quality of water exported from the Delta. The EWA will act in the winter and spring to protect fish. The water lost by the state and federal projects due to pumping reductions will be made up in whole or partially by increased pumping during the summer. Delta water quality tends to be at its best during the winter and spring. Increased export pumping in the summer will degrade the quality of water within the Delta and, so, the quality of that which is exported. The EWA must use adequate volumes of carriage water to compensate for otherwise heightened levels of salinity, bromide and total organic carbons.

***Response:***

See response to Comment LA03-8.

#### **LA13-5**

***Comment:***

Competition and priority for use of water north of the Delta during dry years, including that which may be available for transfers. In 2002, the Department of Water Resources Dry Year Purchase Program acknowledged that the EWA had a priority for water purchases for regulatory assurances. As a result, the limited supplies of reasonably priced water upstream of the Delta went to the EWA. The draft EIR/EIS does not address this situation; the flexible purchase alternative may exacerbate it.

***Response:***

The EWA agencies and DWR have not established an official priority for water acquisitions. The agencies would coordinate acquisitions to provide the needed water amounts for both programs (see page 22-5 in Volume 2).

Typically, the limitation for transfer programs is not acquisition sources, but the ability to convey the water through the Delta. Water is usually conveyed through the SWP pumping facility because the CVP pumps do not often have available capacity. At the SWP pump station, SWP contractors have pumping priority over the EWA, and CVP contractors share priority with the EWA. In years with limited supplies available, the Dry Year Water Purchase Program is more likely to be able to move water.

### **LA14 – San Joaquin River Group**

#### **Lowell F. Ploss**

##### **LA14-1**

***Comment:***

Overall the EWA is for the purpose of protecting the State Water Project (SWP) and Central Valley Project (CVP) from a loss of water supply due to various fishery actions the resource management agencies (MAs) might want to conduct. It is difficult to determine from the EIS/EIR if the fishery actions are mitigation for existing and/or future project induced impacts or a combination of mitigation and enhancement to both protect and restore fish populations.



***Response:***

The EWA is not a program to mitigate for CVP/SWP impacts. See also response to Comment LA06-10.

As stated in Volume 1, the Purpose and Need for the EWA program is to provide protection to and recovery of at-risk native fish species dependent on the Bay-Delta estuary through environmentally beneficial changes in CVP/SWP operations at no uncompensated water costs to the Projects' water users. The EWA program includes actions to protect and restore Delta at-risk native fish species and provide additional benefits upstream.

**LA14-2**

***Comment:***

Because the two alternatives are so disparate in the quantity of water to be acquired it is difficult to compare the environmental consequences. Likewise it is difficult to make a comparison because the preferred alternative is based not upon the effects of the water acquisition actions but rather on the potential for greater flexibility in potential actions at the export pumps.

***Response:***

The two alternatives do analyze different quantities of water; however, the different amount of water for each alternative should not affect the ability to compare impacts. At the end of each resource area chapter, an alternatives comparison is included that describes the differences between the alternatives. The preferred alternative is based on both adverse effects of water acquisition as well as beneficial effects. Neither action alternative has significant unavoidable impacts; therefore, the preferred alternative is chosen because it has greater benefits (primarily related to water supply reliability and fish protection and recovery).

**LA14-3**

***Comment:***

The document describes the environmental setting in the several locations where water will be acquired, as well as, the general environmental effects. However, the preferred alternative is not based on the environmental effects in the source locations but rather on a limited justification of the MAs ease of providing fish protection benefits at the export pumps.

***Response:***

The EWA program has two primary elements, acquiring water assets and then using the assets to allow for taking additional fish actions above the regulatory baseline to benefit at-risk fish species. The acquired assets are used to replace water otherwise lost to the CVP/SWP. It is recognized that the acquisition of water may have effects at the source locations. However, the acquisition strategies include measures to minimize or prevent those effects. This allows the Management Agencies to use water assets for pump reductions, instream flow enhancements, and augmenting Delta outflow, actions that all benefit at-risk fish species.

As stated in Comment LA14-2, the preferred alternative is based on adverse effects and on benefits. The preferred alternative has more water available for fish actions as well as a lessened chance of reaching Tier 3, which could result in uncompensated water cuts.

#### **LA14-4**

***Comment:***

What is not apparent in the EIS/EIR is that in accordance with the current program any EWA water not needed by the MAs for fish protection may be purchased from the EWA by the PAs. We expect that supplemental environmental documentation will be required to address each such transfer to the water projects.

It will be the responsibility of the PAs and the willing sellers to complete any required supplemental environmental analysis. Most likely this will be in the form of tiring off the programmatic document. Since the proposed preferred alternative is based upon quasi environmental benefits, as opposed to environmental effects, it is not clear what approach the supplemental documents must take.

***Response:***

If EWA water was not needed for fish actions, the water would likely be stored for use the following year (described in Volume 1 Section 2.4.2.3.2). It would be unlikely that the EWA agencies would sell EWA water (in part because it may not be allowed, depending on the potential funding sources used to purchase the water). In a case in which unused EWA water was sold, the EWA agencies would look at the necessity for additional environmental documentation and comply with NEPA and CEQA regulations.

#### **LA14-5**

***Comment:***

Page 2-38: A water conveyance carriage charge of 10 percent is levied against any water acquired from the San Joaquin River sources. While this estimated carriage charge has been used for several years it should be re-evaluated from time to time.

***Response:***

Page 2-38 now includes a provision that the Project Agencies could re-evaluate this number using more up-to-date information.

#### **LA14-6**

***Comment:***

Page 2-63: The EIS/EIR describes the acquisition strategy to meet the multiple goals and objectives of the program. Overall the emphasis is placed on acquiring water from sources outside the SWP/CVP service area. The strategy should prioritize the acquisitions and actions first from within SWP and CVP service areas to be followed only by those purchases or actions from sources outside the SWP/CVP. The strategy should also include a first priority for the use of EWA assets to mitigate for fish losses associated with the operation of the SWP and CVP to be followed by actions associated with special studies and finally actions that enhance or restore the fish

populations. As the future EWA becomes more dependent on the sources outside the SWP and CVP the two projects will begin to expect the certainty of those outside supplies.

**Response:**

The EWA agencies would purchase water from any willing seller based on the acquisition strategy outlined on pages 2-63 through 2-65, including acquiring water at the lowest unit cost relative to the highest benefits achieved. The EWA would prioritize and take fish actions to best protect and restore at-risk Delta-dependent fish. The actions would be continuously updated through Review Panel review and adaptive management (see response to Comment FA01-10). The need to prioritize purchases from inside versus outside of the SWP and CVP service areas has not been identified.

**LA14-7**

**Comment:**

Page 2-69: Selecting an Environmentally Preferred Alternative because it allows the MAs to provide a greater level of fish protection without prioritizing use of the EWA assets should be an unacceptable justification. Such an approach allows the MAs to become lax in providing sound scientific justification for the actions selected. There appears to be no connection between the environmental effects of the water acquisition actions and the preferred alternative except more water makes the MAs' jobs easier. How the supplemental environmental documents will tier off the preferred alternative is not clear. Will the supplemental documents be based on traditional evaluations of environmental effect or based on this new approach of environmental justification?

**Response:**

As stated in the response to Comment LA14-2, the preferred alternative is selected based on an evaluation of adverse effects and benefits. Because neither alternative has significant unavoidable impacts, the preferred alternative was chosen because of its greater benefits. Any supplemental environmental documentation will also evaluate adverse and beneficial effects of the alternatives.

The EWA agencies will continuously monitor the effectiveness of the EWA program and incorporate adaptive management principles to improve the effectiveness where possible. Each year, the Management Agencies would evaluate the EWA fish actions and purchases to determine if the money spent has met the EWA purpose and need/project objectives. The EWA Program would have a limited budget, and it would be in the Management Agencies' best interests to make sure that the money was spent in a way to produce the greatest benefits to fish and the environment. In addition, Chapter 2 in Volume 1 has been revised to indicate that the Review Panel reviews would continue as outlined in the CALFED ROD. As a part of these reviews, noted scientists would examine how the EWA was operated in the previous year and suggest improvements in operations and monitoring for the following year.

#### **LA14-8**

***Comment:***

Page 4-23, Table 4-3 (Also Table 5-73, 5-74, 5-75s): Issues of water quality and flow along the San Joaquin River and at Vernalis have a history of controversy and usually result in legal confrontations between upstream and downstream water users. From the tables it appears the EIS/EIR proposes that all the collective effects of the MeID groundwater substitution program on the Merced River, San Joaquin River, and San Joaquin River at Vernalis be addressed through the maintenance of in-stream flows at a baseline level. This will require the MeID to not only store water during the groundwater substitution period but also release stored water to maintain flows equivalent in timing and magnitude to the baseline conditions. A careful balancing of operations will be required by the MeID. It is not clear if the water to be released in order to maintain the baseline condition is considered part of the EWA acquisition.

***Response:***

With groundwater substitution, the only decrease in flows would occur on a small stretch of the Merced River between New Exchequer Dam and Lake McSwain (the point of diversion). Flow at the confluence of the Merced and the San Joaquin Rivers and at the San Joaquin River at Vernalis would not decrease. Therefore, Merced ID would not need to release any stored water to maintain flows.

#### **LA14-9**

***Comment:***

Page 5-25, Table 5-25: The EIS/EIR lists the 1972-1990 Dissolved Oxygen levels in the San Joaquin River at Vernalis but the document fails to identify the levels existing in the Deep Water Ship Channel. This is a particularly important oversight since the lower San Joaquin River is included on the CWA 303(d) list of impaired water bodies and in the August 2000 CALFED Record of Decision.

***Response:***

No potentially adverse effects on water quality within the Deep Water Ship Channel would be associated with implementation of the EWA program. The only potential change in the Deep Water Ship Channel with implementation of the EWA program would be slight increases in flows, which could potentially improve Dissolved Oxygen levels in the canal.

#### **LA14-10**

***Comment:***

Page 5-27, Table 5-26: Listed are the water quality data at selected Delta monitoring stations for the period 1990 through 1998. The salinity level listed for the San Joaquin River at Vernalis during this period is consistent with the older Water Rights Decision D-1422 objectives. It is not consistent with the newer D-1641 objectives. The comparison to the newer D-1641 objectives should be included since these are the objectives the PAs must meet in operating the SWP and CVP. Also providing such long-term mean conditions are meaningless when addressing water quality. The

EIS/EIR should show the historic water quality conditions on the same 30-day running averages as required by the regulatory objectives.

**Response:**

Table 5-26 provides sampled mean water quality data for the 1990 through 1998 period and does not relate to either water right decision as suggested by the comment.

**LA14-11**

**Comment:**

Page 22-8: Within the Cumulative Effects section the EIS/EIR states the CVPIA will purchase up to 120,000 acre-feet through its water acquisition program. This appears to be low number considering that CVPIA may purchase from the Authority up to 184,000 acre-feet each year under the San Joaquin River Agreement. This discrepancy is further evident in Table 22-1 that lists the CVPIA water acquisition program as an annual implementation. The San Joaquin River Agreement sets forth a water acquisition program that began in 2000 and will end in 2009.

**Response:**

In the Volume 4, the following paragraph has been inserted in the text.

“In addition to purchasing Level 4 water for State and Federal wildlife refuges, the CVPIA WAP, in conjunction with DWR via a cost sharing agreement under the CVPIA, purchases up to 185,000 acre-feet of water for meeting the Vernalis Adaptive Management Plan (VAMP) spring pulse flow targets and fall flow requirements for anadromous fish contained in the San Joaquin River Agreement (SJRA). VAMP is a science-based adaptive fishery management plan to evaluate the relationships between water flows, export rates, and other factors on anadromous fish survival in the Sacramento River - San Joaquin River Delta. The SJRA is a cooperative, multi-interest partnership of State and Federal agencies, various water and irrigation districts including some SWP/CVP contractors (collectively known as the San Joaquin River Group Authority [SJRGA]), and environmental parties. Annually, the CVPIA WAP and DWR pay the SJRGA and in return the SJRGA provides water to increase flow on the San Joaquin River and its tributaries. The SJRA experiment began in 1999 and is scheduled to terminate in 2010.”

In addition, the sentence referenced in the above comment has been changed in Volume 4 to “The CVPIA WAP will purchase in total up to 348,000 acre-feet of water to meet Level 4 refuge supplies and instream flow requirements pursuant to the SJRA. The CVPIA WAP will also purchase varying amounts of additional water supplies per year, on an as-needed basis, to support the instream flow objectives of the Anadromous Fish Restoration Program.” Table 22-1 in Volume 2 implies that the CVPIA WAP purchases occur each year during all year types. The table does not specify an ending date for the program.

## **LA15 – Kronick et. al. for San Luis/Delta Mendota WA**

**Jon D. Rubin**

### **LA15-1**

*Comment:*

The Draft EIS/EIR should consider the actions that may develop EWA assets currently being discussed for a long-term EWA, like wet-dry year exchanges and use of storage projects south of the Delta.

*Response:*

This environmental document does not analyze effects of the EWA program beyond 2007. A long-term EWA would require new environmental documentation. See response to Comment FA01-1 for more information.

Some of the new options that are mentioned in the comment, however, are included in Volume 1. Wet-dry year exchanges are described on page 2-59, and groundwater storage is described on page 2-56. Other types of storage have not yet been included.

### **LA15-2**

*Comment:*

The Draft EIS/EIR should discuss the proposals put forth in the draft Proposition, including actions that would allow for additional source shifting beyond that contemplated for the EWA, or use of the Harvey O. Banks pumping plant to move 100,000 acre-feet of CVP water for CVP refuges.

*Response:*

See response to Comment FA01-1.

### **LA15-3**

*Comment:*

The Draft EIS/EIR considers the environmental impacts of an EWA for a four-year period, but the draft Proposition, and discussions resulting therefrom, contemplate a long-term EWA.

*Response:*

See response to Comment FA01-1

### **LA15-4**

*Comment:*

The Draft EIS/EIR considers an EWA with assets up to 600,000 acre-feet of water, but (1) provides no indication of whether the assets, as described, are needed for jeopardy avoidance or restoration, and (2) are higher than the assets currently being discussed.

*Response:*

See response to Comment LA08-13.

### **LA15-5**

***Comment:***

To avoid these perceived inconsistencies with the draft Proposition and the discussions resulting therefrom, and to ensure an EWA that is consistent with the overall goals of CalFed, the Authority proposes: (1) that the scope of actions contemplated for the development of assets for new EWA be expanded to include the tools currently being discussed, and (2) that DWR certify the final EIS/EIR for a 1 year period and Reclamation issue a record of decision authorizing the EWA for only 1 year to allow for separate, future environmental review that considers an EWA developed from the existing discussions.

***Response:***

See response to Comment FA01-1.

### **LA15-6**

***Comment:***

First, the proposed structure for the EWA should include the continuation of the current EWA science review panel to evaluate the annual management decisions of the EWA. Second, the structure for the EWA should include a comprehensive science program that would periodically evaluate the Tier 1 regulatory baseline and Tier 2 EWA assets, and their use as part of an integrated plan to protect and restore fish, wildlife, and habitat, while protecting water-supply reliability. Finally, the EWA should include a cost effective fisheries plan that allows for periodic changes in the size and use of EWA assets based on the best available science. In other words, the proposed action/proposed project should include:

- Continuation of the EWA science review panel;
- Acceleration of regulatory mechanisms to accommodate revised scientific understanding;
- Implementation of more real-time flexible Tier 1 requirements to better meet fishery and water supply needs and develop the use of “trade-offs” among water and non-water related actions which could benefit fish without impacting other environmental considerations or water supply reliability;
- Tri-annual EWA reviews by the Management and Project Agencies that integrate the latest scientific information into policy decision-making concerning how to best use the EWA assets;
- Consideration in CalFed forum, similar to the South Delta Fish Facility Forum, of the policy implications of the latest scientific information and provides advice to the Management and Project Agencies about policy decision-making related to the best use of the EWA assets; and
- Employment of mechanisms to ensure that the needs related to agency decision-making drive the CalFed science effort.

**Response:**

The EWA agencies are recommending continuation of the EWA Science Review Panel (Sections 2.4.5 and 2.5.4 have been added to Volume 1). The CALFED ROD describes what must be included in the annual science report.

Reevaluation of the regulatory baseline is outside the scope of this project.

Because the EWA program would be reevaluated no later than 2007, tri-annual EWA reviews would effectively be covered at that time.

**LA15-7**

**Comment:**

The final EIS/EIR should include a response to the recent presentation by Sheila Greene, which appeared to show that the existing EWA has a relatively small impact on avoiding direct mortality (take) of salmon at either the Harvey O. Banks or Tracy Pumping Plants. According to Greene, 2002-3 EWA actions reduced the direct mortality to Winter Run outmigrants by 0.014 percent of the estimated number entering the Delta. In 2001-2, the corresponding number was 0.009 percent of those entering the Delta and 0.12 percent of those leaving the Delta (surviving to Chipps Island).

In that year, 0.07 percent of older juvenile salmon leaving the Delta were saved by EWA actions and 0.03 percent of the fry/smolt. Corresponding numbers, in 2000-1 were, for Winter Run, 0.02 percent of those entering the Delta, 2.8 percent of those leaving, for older juveniles, 1.7 percent of those leaving the Delta, and for fry/smolt, 0.51 percent of those leaving the Delta. These data raise questions regarding whether existing use of EWA assets have been effective in promoting recovery. For that reason, the EIS/EIR should provide a response to those data.

**Response:**

The results of ongoing studies and scientific research by others including, Sheila Green and Brian Manly, are preliminary and are currently under discussion by the scientific community, including peer review by the Review Panel.

A report prepared by Sheila Greene regarding salmon mortality at the export facilities was provided at the June 2003 Salmon Workshop and was summarized by Brown and Kimmerer in September 2003. Ms. Greene provided the report to the CALFED Bay-Delta Program as part of the materials prepared, by State and Federal management and project agency biologists with stakeholders biologists input. The final report, dated October 2003, included values at five places to the right of the decimal. The commentor, however reduced the values by 2 orders of magnitude. In addition, the values calculated for winter-run Chinook salmon were based on a juvenile production estimate value that was somewhere between 370,200 and 2,613,700 fish. Given the uncertainty in this range, it would not be appropriate to rely on a subsequent value calculated to a precision of one one-hundred-thousandths of a single fish. Given the uncertainty in the relevance of the calculations presented, other than as a point of



discussion as used in the workshops, the data provided by the October 2003 report has not been incorporated into the EWA program decision-making process.

The Review Panel recognizes that a large issue of scientific uncertainty is how take at the pumps will affect fish populations. The Panel strongly supports an “experimental approach to resolving scientific uncertainties through both system level and field experiments.” At this time the agency staff is limited by a lack of data, but acknowledges that the EWA “provides a valuable opportunity for experimentation that could lead to improved protection of fish species” and intends to move forward to examine uncertainties. In the 2002 discussion, the Review Panel outlines six venues of new scientific investigation, which includes using models and data collection to successfully meet its biological objectives.

### **LA15-8**

***Comment:***

Similarly, the final EIS/EIR should address recent questions raised regarding the effects of EWA on indirect mortality (more precisely, “export-related indirect mortality”). Specifically, at the recent CalFed Science Symposium, Bryan Manly reported on his review of three analyses that should provide evidence of the significance of indirect, export-related mortality - the three analyses are Ken Newman’s analysis of approximately 60 pairs of releases of fall run smolts.

Brandes’ (USFWS) analysis of the VAMP and some pre-VAMP data, and Brandes’ analysis of results of the late fall run December-January (AFRP Action 8) experiment.

Manly concluded that for the VAMP analysis: “Correlation between flow and exports is clouding the picture . . . Probably some real experimental perturbations to the system are needed to clarify what is going on.”

For the Jan-Dec analysis: “Temperature seems to account for survival variation without any export effects ... but 1 data point may be responsible for this ... Again, some experimental manipulations may be required to properly assess the effects of exports.”

For the Newman analysis: “All the models . . . have questionable aspects in terms of assessing the statistical significance of the effects of covariates [including exports] on survival.” (parenthetical remark added). Newman concurred with Manly’s assessment. A response to this position in the final EIS/EIR is particularly important because, even if one were to set the uncertainties aside and assume that the statistical analyses are significant, the effects of EWA actions on smolt survival through the Delta are relatively small, at a large cost of EWA assets.

***Response:***

See responses to Comments FA01-10 (reference to sections added to the Final EIS/EIR regarding the Science Panel and adaptive management), LA15-7 (ongoing studies), and FO01-5 (quantifiable measures of performance).

### **LA15-9**

***Comment:***

The final EIS/EIR should respond to the lack of peer reviewed data on the effect of existing EWA actions, or Delta exports in general, on the population size of Delta Smelt. For example, while Kimmerer has presented results of an analysis showing effects as high as 25 to 30 percent of the population, these results may be questioned, not only because the analyses have not been available for review, but also because Bennett, author of the long-anticipated CalFed Delta Smelt white paper, has presented data showing that high take of smelt may have little effect on population levels.

***Response:***

See responses to Comments FA01-10 (reference to sections added to the Final EIS/EIR regarding the Science Panel and adaptive management), LA08-1 (science and Delta melt), LA15-7 (ongoing studies), and LA15-11 (salvage vs. population).

### **LA15-10**

***Comment:***

Use of EWA resources for purposes other than export reductions should be evaluated. The EIS/EIR does not discuss the effects of using EWA resources upstream, for example. It is possible that use of EWA resources for purposes other than export curtailments could provide greater fish benefits than the use for export curtailments.

***Response:***

The EWA program would consider upstream actions when appropriate, but is currently primarily focused on actions in the Delta. Volume 1 Section 2.4.1 discusses EWA actions to protect fish and benefit the environment. Other programs and regulations provide upstream fishery benefits, including CVPIA section 3406 b(2) and various biological opinions issued by USFWS and NOAA Fisheries.

Increased instream flows to benefit fish associated with improving attraction flows during upstream migration, increasing spawning and juvenile rearing habitat, and reducing redd dewatering/juvenile stranding would not result in adverse impacts on fishery resources. The Review Panel may suggest additional upstream actions, which could be incorporated into the program through adaptive management (see response to Comment FA01-10).

### **LA15-11**

***Comment:***

However, the Draft EIS/EIR does not evaluate the effect of salvage reduction on population levels. The primary purpose of the existing EWA, as stated in the CalFed record of decision, is protection and recovery of fish. Therefore, population level effects must be estimated. It is possible, in fact, likely, that impressive reductions in salvage amount to trivial effects on population levels. If this is the case, an evaluation of the effects of the EWA relative to its population level effects, that is, to its purpose (protection and recovery of fish), may provide a markedly different result than an evaluation based on salvage alone.

**Response:**

Calculations of salvage and loss at the SWP and CVP pumping facilities have been used as an indicator of potential effects resulting from changes in project operations because it is the only means available today to scientifically quantify one of the benefits provided by the EWA program, when export reductions are used to provide that benefit. Net changes in total salvage over a 15-year period were used to estimate the magnitude of direct loss based on the monthly exports from each facility and the density of fish vulnerable to entrainment at the facilities.

The Review Panel recognizes that a large issue of scientific uncertainty is how take at the pumps will affect fish populations. The Panel strongly supports an “experimental approach to resolving scientific uncertainties through both system level and field experiments.” At this time the Panel is limited by a lack of data, but acknowledges that the EWA “provides a valuable opportunity for experimentation that could lead to improved protection of fish species” and intends to move forward to examine uncertainties. In the 2002 discussion, the Review Panel outlines six venues of new scientific investigation, which includes using models and data collection to successfully meet its biological objectives.

**LA15-12**

**Comment:**

This comment aside, the treatment of salvage effects is incomplete. Statements in Chapter 9 pages 255 to 259 to the Draft EIS/EIR suggest the preferred EWA alternative will reduce average annual fish salvage by about 136,000 delta smelt, 1.1 million salmon, 29,000 steelhead, 1 million splittail, and 9 million striped bass. These implications, however, do not appear correct. Tables 9-56, 9-57, 9-58, 9-59 and 9-60 (duplicating tables in Attachment 1) show that these numbers are total estimated salvage reductions over the 15 year modeling period. If that is correct, actual estimated average annual reductions in fish salvage appear to be about 9,000 delta smelt, 75,000 salmon, 1,900 steelhead, 68,000 splittail and 596,000 striped bass. The final EIS/EIR must be modified to eliminate this apparent error.

**Response:**

See response to Comment LA03-23.

**LA15-13**

**Comment:**

Further, the above estimates are based on 1979-1993 historical fish salvage, and are likely to be over-estimates (Attachment 1, pages 1-60 and A1-61). They estimate total salvage, not adult equivalent salvage. Because of the high natural mortality of juvenile fish, many salvaged fish would not live to maturity in any case. The importance of adult equivalent salvage for striped bass is mentioned in Chapter 9 on page 260, but the issue of adult equivalence is not properly addressed. To be more accurate, the final EIS/EIR should be modified to estimate effects of reduced fish salvage in terms of adult equivalent fish.

**Response:**

Current research may result in the development of a methodology by which to quantify adult equivalent salvage, as suggested by the comment, but to date the scientific community has not achieved consensus on the nature of these complex relationships. It is further noted that using adult equivalents would not change the study conclusions in the EIS/EIR. See also response to LA15-11.

**LA15-14**

**Comment:**

The elaborate and exhaustive analysis of the existing EWA effects upstream from the Delta (pages 127-249) should be relegated to an appendix. The analyses make it clear that the EWA will produce no significant effects on fish upstream from the Delta.

**Response:**

The detailed analyses of potential impacts with implementation of the EWA program within the Upstream from the Delta Region is included in Volume 1 Chapter 9, Fisheries and Aquatic Ecosystems, to provide an equal level of analysis relative to the Delta Region and Export Service Area.

**LA15-15**

**Comment:**

The final EIS/EIR must acknowledge that changes in X2 and outflow are different aspects of the same regulatory tool, neither of which provide an independent measures of EWA effects. Species whose abundance has been shown to correlate with increased springtime outflow are longfin, flounder, Crangon shrimp, and total caridean shrimp (including Crangon). The "fish/X2" relations between abundance (A) of these species and X2 are equivalent to relations of the form  $A = C Q^k$ , where Q is Delta outflow and the exponents k for each species are determined by Prof. Newman's January 2003 regression analyses. Table 9-52 indicates the EWA will increase monthly Delta outflow by an average of 6 percent or less in January-June. An average increase of 6 percent in monthly Delta outflow can be expected to increase abundance between [95 percent confidence interval] 6 - 10 percent for longfin smelt, 18 percent for starry flounder, 2-5 percent for Crangon shrimp, and 1 - 3 percent for all caridean shrimp (including Crangon).

**Response:**

As discussed on pages 9-53 through 9-56 and pages 9-94 through 9-97 in Volume 1, salinity levels in the Delta are closely associated with freshwater flow. Delta outflow and changes in the geographic distribution of low-salinity (2 ppt) gradients are two of several indices that are typically used as part of an environmental assessment of CVP/SWP operations on the availability and quality of estuarine habitat, particularly during the late winter and spring months, which are thought to be important for survival and growth of a variety of fish and macroinvertebrate species. Delta outflow and X2 are used to evaluate changes in habitat conditions and different types of potential impacts on fisheries resources within the Delta.

## LA15-16

### *Comment:*

Similarly-, these are no correlations between the export/inflow (E/I) ratio, or QWEST (“reverse flow”) and any reliable indicators of ecosystem condition or species abundance. Using - E/I and QWEST as “indicators of changes in habitat conditions” [pages 9-95 and 9-96] is completely unjustified and continues to propagate historical errors. Residual “reverse flows” (indicated by QWEST) are now known to be totally irrelevant because of the dominance of tidal flows in the Delta. All discussions of QWEST and “reverse flows” should therefore be removed from the Draft EIS/EIR, including all discussions in Chapter 9, in Table 9-4, and on page 5-26. All discussions of the E/I ratio, except in relation to project operating requirements, should also be removed from the Draft EIS/EIR.

### *Response:*

As discussed on page 9-95 in Volume 1, the resource agencies and others are concerned that the effects of CVP/SWP operations on the distribution of fish and habitat conditions within the south Delta have been associated with changes in hydrologic conditions. One of the parameters that has been included in hydrologic modeling that has been used as a surrogate for evaluating changes in hydrologic conditions as a result of CVP and SWP export operations is a calculation of reverse flows within the lower San Joaquin River (referred to as QWEST). The calculation of QWEST and an examination of the change in frequency and magnitude of negative QWEST values is one of several indices that have typically been used as an indicator of changes in habitat conditions. The calculation of QWEST is used as one indication of the potential magnitude of change in Delta habitat conditions with implementation of the proposed EWA program.

As discussed on page 9-252 in Volume 1, the ratio between exports and Delta inflow (E/I ratio) has been identified as an indicator of the vulnerability of fish and macroinvertebrates to direct and indirect effects resulting from SWP and CVP operations. On page 9-96 it is noted that biological relationships have not been established for some indices used to evaluate Delta habitat conditions (i.e., E/I ratio); therefore, findings are based on a combination of other established biological relationships, the best available scientific information on the life history and habitat requirements for various species, the results of hydrologic modeling analyses, and professional judgment.

On page 9-252, two references to the SWRCB Interim Water Quality Control Plan have been revised to reference SWRCB Water Rights Decision No. 1641. Page 9-252 has been revised to state, “The model simulations conducted for the Flexible Purchase Alternative included conformance with the export requirements set forth in SWRCB Water Rights Decision No. 1641. Thus, Delta E/I ratios under the Flexible Purchase Alternative and Baseline Condition would not exceed the maximum export ratio as set by SWRCB Water Rights Decision No. 1641.” Page 9-252 also indicates that the relaxation of the E/I ratio is considered an EWA asset. If the Management Agencies determine that the risk to fish is low, then pumping above the applicable limit may be

undertaken, with the additional water credited to the EWA. Such actions will not be taken if there is the potential to affect State or Federal protected species and will only be taken under the direction of the Management Agencies.

#### **LA15-17**

***Comment:***

Finally, Chapter 9 on page 54 discusses the (non-existent) “entrapment zone,” once erroneously claimed to be associated with X 2. Discussions of the fictitious “entrapment zone” should be removed from the Draft EIS/EIR, to avoid further propagation of historical errors.

***Response:***

The discussion regarding the entrapment zone on pages 9-54 and 9-55 is included in the Affected Environment/Existing Conditions section in Volume 1 for explanatory purposes only as a means to define X2. Although there are differences of professional opinion regarding the existence and importance of the entrapment zone, its inclusion in the Affected Environment/Existing Conditions section does not influence the results of the analysis of habitat conditions within the Delta.

#### **LA15-18**

***Comment:***

The Draft EIS/EIR fails to consider the indirect impacts caused by the acquisition of EWA assets. Historically, EWA acquisitions increased market cost for and reduced the availability of transfer water. That historic trend is expected to continue during the period considered in the Draft EIS/EIR, particularly given the size of EWA assets contemplated. Nevertheless, the Draft EIS/EIR fails to consider the following environmental impacts, which will likely result from that trend: increased land following, increased occurrences of land subsidence, decreased groundwater levels, and decreased quality of applied water. Those impacts will be particularly significant for South of Delta agricultural water users who have historically relied on transfers, and who are now competing with the EWA for water. To ensure an adequate environment analyses, the final EIS/EIR must consider indirect impacts of the like discussed above.

***Response:***

Volume 1 Section 11.2 describes the requirements in NEPA and CEQA for an EIS/EIR to discuss economic issues. CEQA and the CEQA Guidelines direct that economic and social changes in and of themselves shall not be regarded as significant changes in the physical environment. While economic changes that may result from a project can be described in an EIR, CEQA does not require that the significance of an economic change be characterized. Similarly, NEPA does not require that the significance of an economic change be characterized.

When a project causes economic changes, which in turn create other physical changes in the environment, these changes are indirect impacts of the project. CEQA and NEPA require that an EIS/EIR discuss indirect physical impacts of a project that are

reasonably likely to occur, but need not discuss changes that are speculative or unlikely.

Therefore, because the EWA would not have any substantial effect on water prices, there would not be any indirect effects to groundwater levels or water supply. See response to Comment FO01-6 for further discussion of EWA effects to the water transfer market, potential indirect effects to other resources, and effects to south Delta water users.

## **LA16 – Santa Clara Valley Water District**

**Joan A. Maher**

### **LA16-1**

*Comment:*

Like other programmatic documents, the Draft EIR/EIS is necessarily theoretical in nature and covers a broad range of activities. Nevertheless, it is required to have a clear and understandable project description that explains:

- Required assets, including the amounts of water that would be purchased under the various alternatives;
- How those amounts of water were determined, particularly under varying hydrologic and fisheries conditions;
- How the water would be stored and conveyed through the system under the range of conditions expected to occur; and
- How required assets will be funded, and economic impacts associated with asset acquisition.

The first bullet item is well-covered in the draft documents. The remaining three are described with varying degrees of detail, but not easy for the reader to find and understand. Graphical representations such as flow charts are needed to augment the narrative description. In general the project description in Appendix J is easier to understand than in the body of the Draft.

*Response:*

This EIS/EIR is not a programmatic document; instead, it evaluates the impacts at a project-specific level.

The project description in Volume 1 Chapter 2 includes information on the first three bullet points:

1. In the Flexible Purchase Alternative, the amount of assets required in any given year would vary according to hydrologic and fisheries conditions, but would not exceed 600,000 acre-feet (see Section 2.4). In the Fixed Purchase Alternative, the EWA agencies would purchase 185,000 acre-feet of water (see Section 2.5).

2. Section 2.2.2, Development of Alternatives Carried Forward for Further Evaluation, includes information on how these amounts were determined.
3. Water would be stored and conveyed in the system differently depending on the type of action and the willing seller's water system. The management information is discussed within each asset acquisition type in Section 2.4.2. These sections include figures to illustrate how the water would be stored.
4. See response to Comment LA06-11 regarding funding.

The project description in Appendix J Volume 3 is excerpted from the project description in Chapter 2 of the main EIS/EIR (Volume 1). The project description in Appendix J is shorter than Chapter 2 because it only describes the proposed action.

#### **LA16-2**

***Comment:***

Asset Acquisition and Management (Appendix J, Section 2.4.3). Table 2-5 lists "Potential Asset Acquisitions and Management for the Proposed Action (Upper Limits)." For the Santa Clara Valley Water District, the only item marked is "Source Shifting/Pre-Delivery". Although Table 2-5 is not intended to be an exhaustive list of potential EWA sellers, the District should be identified as a potential source, given that a transfer agreement has been completed for 30,000 acre-feet of CVP water in 2003.

***Response:***

This list cannot be comprehensive because of the changing nature of transfer negotiations. The list was finalized before discussions began between DWR and Santa Clara Valley Water District. As described in Section 2.4.2, new types of transfers can be added at any time, but additional environmental documentation may be necessary. The first paragraph on page 2-36 in Volume 1 indicates that the list is not exhaustive.

#### **LA16-3**

***Comment:***

Decision-Making Process (Appendix J, Section 2.4.2.5). It would be very helpful to include further discussion of the EWAT, DAT, WOMT and CALFED Operations Group. The specific composition and purposes of the groups should be discussed, as well as opportunities for stakeholder input. It would be good to include a chart showing linkage to the CALFED Program and Bay Delta Authority.

***Response:***

EWA agencies concluded that it is very difficult to describe the groups' activities and interactions without going into great details. Therefore, these groups are introduced in the EIS/EIR (Section 2.4.2.5 of Volume 3 Appendix J) with only their general roles in their processes mentioned. Detailed information on the CALFED Operations Group is available at the group's website (<http://www.woco.water.ca.gov/calfedops/index.html>). EWAT is a group composed of EWA agencies' staff that is responsible for planning and implementing the EWA



Work Plan (see [http://calwater.ca.gov/Programs/EnvironmentalWaterAccount/WorkPlan\\_Dec2002/EWAProgramAssessment\\_and\\_WorkPlan.pdf](http://calwater.ca.gov/Programs/EnvironmentalWaterAccount/WorkPlan_Dec2002/EWAProgramAssessment_and_WorkPlan.pdf)).

#### **LA16-4**

***Comment:***

Biological Benefits of the EWA. The Draft EIR/EIS appears to take a conservative approach to environmental impact evaluation by describing potential impacts in a worst case scenario. The District supports that approach, because it does a thorough job of meeting the disclosure requirements of the CEQA process. At the same time, more realistic, expected impacts should be disclosed, and it should be recognized that the fundamental purpose of the EWA is to advance recovery of fish. With the exception of Table ES-5, Summary of Beneficial Effects of the EWA Alternative, in the Executive Summary, the report was largely silent on program benefits. Additional discussion should be provided on biological benefits.

***Response:***

Table ES-3 in the Executive Summary has been revised to reflect the summary analysis of Fisheries and Aquatic Ecosystems within the Delta contained in Volume 1 Table 9-75, which includes additional references to beneficial impacts of the proposed EWA Program.

#### **LA16-5**

***Comment:***

Monitoring Program and Adaptive Management (Appendix J, Chapter 7). A critical feature of an ongoing EWA program is effective monitoring and evaluation to adapt operations as necessary to achieve biological benefits. Additional discussion is needed on existing monitoring programs, and how those fit into the monitoring program described in the Draft EIR/EIS.

***Response:***

Chapter 2 in Volume 1 has been updated to reference the adaptive management process identified in the ROD. Sections 2.4.5 and 2.5.4 include the types of recommendations the Review Panel has made previously. Future recommendations would be incorporated into the manner in which EWA agencies make purchases and take fish actions.

#### **LA16-6**

***Comment:***

Cumulative Impacts. As listed in Chapter 22, there are other water purchase programs in California that will compete for the same water. Chapter 22 should discuss existing or needed institutional arrangements to oversee, facilitate and coordinate these programs.

***Response:***

EWA agencies will coordinate EWA operations with other programs. Many of the same agencies are involved in several of the programs. Most of the transferred water

must go through the State and Federal facilities and pumps; therefore, Reclamation and DWR will be involved in many of the transfers. This will facilitate the oversight and coordination of multiple transfer programs.

**LA16-7**

***Comment:***

Executive Summary. Put the cumulative environmental impacts discussed in Chapter 22 in a table at the end of the Executive Summary similar to Tables ES-2-5.

***Response:***

Cumulative effects have been added to the Executive Summary, Table ES-6 in Volume 4.

**LA16-8**

***Comment:***

Chapter 2. In Figure 2-3, Santa Clara County does not appear to be part of the Asset Acquisition and Management Areas.

***Response:***

Santa Clara Valley Water District has been added to the Export Service Area in this figure.

**LA16-9**

***Comment:***

Chapter 4, Section 4.1.4.1, Santa Clara Valley Water District. The last sentence of the first paragraph should be modified to read: "Imported water is conveyed to the district through two main conveyance systems: the South Bay Aqueduct, which conveys water from the SWP, and the San Felipe Division, which conveys CVP water from San Luis Reservoir."

***Response:***

The sentence has been modified as recommended on page 4-16.

**LA16-10**

***Comment:***

Chapter 5. The evaluation of long-term averages for flow and reservoir level fluctuations will mask many impacts. Might be better to use the change in the range of reservoir level fluctuations in a month.

***Response:***

Every effort was made in the Draft EIR/EIS to present the results of the analysis so that potential impacts would be clearly identified. Long-term averages were used in the water quality analysis because it was determined that monthly incremental analysis is sufficient to identify the potential water quality impacts associated with the proposed EWA Program.

**LA16-11**

**Comment:**

Chapter 6. Figures 6-7 and Figure 6-8: It is unclear if the contours shown on these figures represent depth to first water, or whether they represent piezometric head elevations measured in wells. Were these elevations measured from wells that were screened within a single aquifer, or are the wells screened in hydrologically distinct zones? More information is needed, preferably in notes on the figures

**Response:**

Notes have been added on the figures to more accurately define the contours.

**LA16-12**

**Comment:**

Chapter 6. Pg. 6-44: The first paragraph should be modified to read: "...increased pumping of groundwater may induce increased recharge from a surface water body to groundwater, or, in cases where groundwater naturally recharges surface bodies, from groundwater to a surface water body, and thereby reduce the amount of surface water that is actually available to downstream users."

**Response:**

The paragraph has been modified to read: "The close hydrologic interaction of surface water and groundwater makes this determination difficult because increased pumping of groundwater may induce increased recharge from a surface water body to groundwater, or may prevent groundwater from flowing to surface water in cases where groundwater naturally recharges surface bodies, and thereby reduce the amount of surface water that is actually available to downstream users."

**LA16-13**

**Comment:**

Chapter 6. Pg. 6-45: The first sentence should be modified to read, "Regional groundwater level declines are provided here to illustrate the magnitude of regional storage reduction and are not intended to measure significance in the local context."

**Response:**

The text has been modified to add "in the local context" to the end of the first sentence.

**LA16-14**

**Comment:**

Chapter 6. Pg. 6-46, 4th paragraph: Please define the terms "groundwater substitution" and "groundwater purchase"

**Response:**

The text has been updated to define groundwater substitution and groundwater purchase on page 6-42 where these terms are introduced in this chapter.

**LA16-15**

**Comment:**

Chapter 6. Pg. 6-47, Table 6-6: Please include units for EWA Acquisition Range.

**Response:**

The units “acre-feet” have been added to EWA Acquisition Range.

**LA16-16**

**Comment:**

Chapter 6. Pg. 6-48, third paragraph: This paragraph states that the Anderson Cottonwood ID will perform mitigation measures, and it is states that these mitigation measures would reduce effects to less-than-significant levels. These statements are repeated for other irrigation districts discussed in Chapter 6. It would be more clear if the statements were revised to read as follows: “Planned mitigation measures are required to reduce effects to less than significant levels; if it is assessed that these planned mitigation measures cannot reduce effects to less than significant levels, then the proposed transfer will not take place.” Please include examples of mitigation measures that could reduce groundwater impacts to less than significant levels, either here or in Section 6.2.7.

**Response:**

The mitigation measures are listed in Volume 1 Section 6.2.7; if these measures were not sufficient to reduce impacts to less than significant, the transfer would not take place. There would be no additional mitigation measures. Volume 1 Section 6.2.7.2.4 states, “...if the EWA agencies determine that the mitigation undertaken by the seller is inappropriate or ineffective, it will terminate its participation in the project.”

**LA16-17**

**Comment:**

Chapter 6. References to the “well review” process, monitoring program, and Review Team throughout section 6.2.4 are confusing because these terms are not explained until the end of Chapter 6. Moving Section 6.2.7 before section 6.2.4 would address this problem.

**Response:**

Text has been added on pages 6-48 and 6-51 to state that more complete descriptions of these terms are found in Section 6.2.7.2.

**LA16-18**

**Comment:**

Chapter 6. Section 6.2.4, which discusses potential environmental impacts and refers to monitoring and mitigation measures to avoid these impacts, would be easier to understand if it were prefaced with 6.2.7, which describes those groundwater mitigation measures. We suggest that Section 6.2.7 be inserted between sections 6.2.2 and 6.2.3.

**Response:**

The discussion of the mitigation measures prior to the discussion of the impacts could be equally confusing. In the current layout, the reader views all impacts and then has an understanding of why the mitigation measures are necessary.

**LA16-19**

**Comment:**

Chapter 6. Pg. 6-56, Second paragraph: Reference to figure 6-21 should actually be a reference to 6-22.

**Response:**

The figure reference was changed in the Errata sheets distributed during the public review period. The change is reflected in Volume 4 Section 5.1 on page 6-56.

**LA16-20**

**Comment:**

Chapter 6. Pg. 6-56, last paragraph: The following sentence appears to be misplaced, since its relationship to the rest of the paragraph is unclear: "According to well data for Glenn Colusa ID, 60 percent of the district's domestic wells and 10 percent of their agricultural wells are 110 feet deep, or shallower."

**Response:**

The sentence has been revised to further clarify its relationship to the section.

**LA16-21**

**Comment:**

Chapter 6. Pg. 6-62, first full paragraph: The statement that no significant impacts related to the distribution of reduced quality water would be likely because Glenn Colusa ID and RD 108 would be responsible for monitoring any degradation and mitigation any adverse effects is not convincing. Once groundwater quality is degraded, mitigation of degraded groundwater is difficult and sometimes not feasible. The statement that no impact is likely without any supporting information is not convincing.

**Response:**

The assessment that no significant impacts would occur relating to the distribution of water of reduced water quality is based on two points. The first, as highlighted in the comment, is that water quality must be monitored to ensure groundwater of reduced quality is not distributed. The second is that in general, groundwater in the area is reported to be of adequate quality for agricultural use. If the groundwater to be distributed is found to be of poor or inadequate quality, the mitigation measure is to cease the purchase and not to mitigate the distribution of poor quality water.

**LA16-22**

**Comment:**

Chapter 6. Pg. 6-63: please define "BMO"

**Response:**

BMO was defined on page 6-4 in Volume 1. A reference to page 6-4 has been added to page 6-63.

**LA16-23**

**Comment:**

Chapter 6. Pg. 6-64: first paragraph: Please explain describe the Technical Advisory Committee - with what organization is it associated, and who formed it?

**Response:**

An explanation of the Technical Advisory Committee has been added to page 6-64 as a footnote.

**LA16-24**

**Comment:**

Chapter 6. Pg. 6-121: Groundwater quality concerns associated with Semitropic WSD are discussed on this page. This discussion, however, needs to include issues associated with elevated arsenic concentrations in the Stored Water Recovery Unit within the Semitropic water bank.

**Response:**

The text has been modified to make note of water quality arsenic concentrations in the Stored Water Recovery Unit within the Semitropic water bank.

**LA16-25**

**Comment:**

Chapter 6. Pg. 6-144 - 6-145: It is useful to list specific well acceptance criteria, but references to supporting information that justifies these criteria is needed.

**Response:**

Given the uncertainties and limitations of conducting a detailed site-by-site analysis to quantify the local surface water-groundwater interaction, an approach based on a standard set of guidelines was adopted. These guidelines are designed to provide a reasonable degree of protection, without imposing excessive limitations on willing sellers. Nonetheless, as discussed in Volume 1 Section 6.2.7.1.1, it is recognized that site conditions across the area of analysis, and the extent of information that needs to be submitted, would differ. Additionally, as also noted in Section 6.2.7.1.1, the recommendations are intended as initial guidelines to selling agencies, and selling agencies can provide other data or measures that illustrate significant impacts would not occur as a result of their proposed transfer.

**LA16-26**

**Comment:**

Chapter 6. On pages 6-141 - 6-145, the description of the groundwater monitoring, mitigation, and review measures seem to put the brunt of labor to evaluate raw data on the Project Agencies. According to these sections, the Project Agencies would take

on the responsibility of reviewing existing groundwater levels, approving extraction wells, monitoring, and mitigation plans, providing recommendations to the seller regarding changes that should be made in the mitigation plans if needed (pg 6-142). The document lists specific information that needs to be submitted, including locations of proposed production wells, driller's logs, and other information such as aquifer performance tests or other local studies (pg 6-144), but it does not state that the seller should provide any assessment or compile and submit this data in a cohesive format. Instead, the implication appears to be that specific information and plans will be submitted to the Project Agencies, who will then evaluate the information and plans and determine if they are acceptable. However, on pg 6-146 to 6-147, the discussion of pre-purchase groundwater evaluations states that selling agencies are to perform evaluations to investigate potential impacts from a proposed transfer but does not provide any specifics, nor does it tie these evaluations to the Project Agency review process. The discussion of the responsibilities of the purchasing agencies, selling agencies, and Project Agencies should be integrated to clearly describe the process for collection and evaluation of the data and the responsibilities of each party.

***Response:***

Volume 1 Section 6.2.7.1 describes that avoidance, mitigation, and monitoring is a collaborative effort between willing sellers and the Project Agencies. "This process recognizes that the seller should be responsible for assessing and mitigating significant adverse effects resulting from the transfer within the source area of the transfer. It also recognizes that the EWA agencies' principles [responsibilities under NEPA/CEQA] require them to determine whether the seller has an adequate mitigation plan in place. Accordingly, the Project Agencies would take on the responsibility of reviewing existing groundwater levels in the local area of transfer and approving the seller's extraction wells, monitoring, and mitigation plans prior to the initiation of a groundwater based transfer to the purchasing agencies."

Chapter 6 of this volume (Volume 4) includes mitigation and monitoring guidelines that describe the responsibilities of the EWA agencies and willing sellers.

**LA16-27**

***Comment:***

Chapter 6. Pg. 6-146, Minimum Potential for Regional Effects in a Non-Overdrafted Subbasin: This section indicates that the seller does not need to perform a pre-purchase groundwater evaluation if existing groundwater levels are high relative to historical fluctuations because groundwater transfers will likely not save potentially adverse effects. While it is likely that subsidence is unlikely to occur from a transfer under these conditions, a transfer could impact groundwater quality if the region contains groundwater of poor quality in some areas. A withdrawal of groundwater, depending upon where the groundwater is pumped, could spread impacted groundwater to areas of higher quality groundwater. Under these circumstances, it would be more prudent to recommend that a pre-purchase evaluation be performed to assess impacts to groundwater quality, even if groundwater elevations are high.

**Response:**

This comment refers to procedures outlined for the pre-purchase groundwater evaluation. The pre-purchase groundwater evaluation is only one component of the groundwater mitigation measures designed to avoid groundwater transfers that would result in regionally significant adverse effects. The procedures state that if groundwater levels are high relative to historical fluctuations, then a “regional groundwater level review” is not necessary. However, the remaining elements of the groundwater mitigation measures are necessary. The other measures, which include submission of both well construction details and groundwater Monitoring Program information, are designed to avoid transfers that could potentially cause other effects, such as water quality degradation.

**LA16-28**

**Comment:**

Chapter 6. On pages 6-146 through 6-149 indicates that the selling agency must establish a monitoring program that assesses the effects of the transfer on the existing groundwater system. This section should specify that a single report containing the required information should be submitted, and that the report should contain an assessment/evaluation section that analyzes the submitted data and provides conclusions regarding the effects of the transfer on the existing groundwater system.

**Response:**

The Monitoring Program contains specific information requirements that must be met by the selling agencies. The evaluation conducted and the resulting conclusions determined by the Review Team would be discussed with the selling agency. The format of the selling agencies’ submitted information or the conclusions is not a concern; instead, the focus is to gather adequate information for the selling agency and Review Team to ensure any potential effects would be detected.

**LA16-29**

**Comment:**

Chapter 22. Add a table of the cumulative environmental impacts discussed, similar to Tables ES-2-5.

**Response:**

The Executive Summary in this volume (Volume 4) includes a new table (Table ES-6) summarizing cumulative effects.

**LA16-30**

**Comment:**

Appendix J, Chapter 2. The narrative describing the EWA Action Area does not seem to match the map shown in Figure 2-1. Specifically, the narrative includes Santa Clara County (Anderson Reservoir in particular) as part of the Export Service Area that is affected “directly or indirectly by EWA water asset acquisition, storage, conveyance, transfer, or release activities performed to support fish actions.” Yet this area is not shown as part of the green hatched area in Figure 2-1. Similarly, in Figure 2-4 of



Appendix J, Chapter 2, Santa Clara County does not appear to be part of the Asset Acquisition and Management Areas.

**Response:**

Santa Clara County has been included in Appendix J, Figures 2-1 and 2-4 in Chapter 5 of this volume (Volume 4).

## **LA17 – South Delta Water Agency**

### **John Herrick**

#### **LA17-1**

**Comment:**

The DEIS/EIR is seriously inadequate and misleading in many respects. This imbalance appears to result from focusing on export and fishery issues to a degree that results in inadequate thought and examination of impacts on non-project water uses. These include the adverse consequences of shifting stream flow from summer to other months, and of ignoring the cumulative effect of EWA water acquisitions and water management on the overall efficient use of the State's water supply, and of ignoring compliance with the San Joaquin River Protection and Delta Protection statutes, San Joaquin River Protection Act, Delta Protection Statutes, Area of Origin Statutes, CVPIA restrictions, and other California water law limitations.

Of particular importance to SDWA is how the DEIR/EIS examines the effect of EWA acquisitions on the Merced tributary's water supply while ignoring the associated effect on the San Joaquin main stem flow and quality, and also ignoring the resulting increased burden on the seriously over-committed New Melones facility. This and other inadequacies are discussed below.

**Response:**

Volumes 1 and 2 include much information on how shifting stream flow could affect environmental resources. These shifts would only affect the Delta and rivers with EWA willing sellers; this draft analyzes transfers that may affect the Sacramento, Feather, Yuba, American, or Merced Rivers. As discussed below, the transfers from Merced Irrigation District would not adversely affect the San Joaquin River. On affected rivers, flows may shift from the April-June period until July-September. The effects of these shifts are documented in the resource chapters, including Water Supply and Management (Chapter 4), Water Quality (Chapter 5), Fisheries and Aquatic Ecosystems (Chapter 9), Vegetation and Wildlife (Chapter 10), Recreation Resources (Chapter 14), Flood Control (Chapter 15), Power (Chapter 16), Cultural Resources (Chapter 17), and Visual Resources (Chapter 18).

The commentor mentions several statutes that are part of California water law. The EWA will be carried out in compliance with all legal requirements. The only EWA acquisition from Merced ID would be groundwater substitution. San Joaquin River flows would not decrease under groundwater substitution. Therefore, there would be no need for New Melones to make any releases because of EWA actions. The only river decrease would be on the Merced River between New Exchequer Dam and Lake

McSwain (the point of diversion without the EWA). Flows on the Merced and San Joaquin Rivers would increase in October and November when the water held in Lake McClure was released. These changes in river flows are shown on Tables 4-3 and Tables 5-73 through 5-76 in Volume 1.

#### **LA17-2**

***Comment:***

The impacts of EWA acquisitions and operations must be addressed as impacts that exacerbate existing impacts by project operations including time of flow shifts by b(2) and b(3) releases. The EWA flow shifts can not just be dismissed as minor increases.

***Response:***

The EIS/EIR analyzes the effects of Sections 3406(b)(2) and 3406(b)(3) of the CVPIA in conjunction with the EWA program. The No Action/No Project Alternative includes the 800,000 acre-feet of water dedicated to the environment in Section 3406 (b)(2). This water is used to benefit fish and wildlife in CVP-controlled streams, which would overlap with the EWA program on the Sacramento River, American River, and the Delta.

Section 3406(b)(3) authorized and directed the Department of the Interior to create a program to acquire water supply for fish and wildlife purposes, which led to Reclamation's Water Acquisition Program. The cumulative analysis includes this program and examines the potential cumulative effects of the Water Acquisition Program with the EWA.

The environmental document does not dismiss effects of flow shifts without analysis. As discussed in the response to Comment LA17-1, the document includes detailed analysis of the environmental effects of these flow shifts. The analysis results are compared to the significance criteria and determined to be less than significant.

#### **LA17-3**

***Comment:***

The State's Water Code 1000 4.6 (b)2 requires that the Department of Water Resources must propose measures that would provide a sustainable water supply to replace the unsustainable overdraft of groundwater. The DEIR/EIS proposes that Merced ID sell surface water to EWA and shift to groundwater for its own needs. See pages 2-46, and elsewhere. If this shift causes or exacerbates groundwater overdraft it is counter to the Water code.

***Response:***

As stated in Volume 1 Section 6.2.4.1.3, Merced ID's current operational changes and conservation practices have resulted in a total in-lieu recharge exceeding 200,000 acre-feet as of September 2001. Merced ID plans to continue these water conservation and in-lieu recharge efforts as reflected in the Merced Water Supply Update Status Report (2002). These efforts are intended to protect the underlying groundwater basin. An important component of Merced ID's Management Plan is the construction of additional recharge facilities. The groundwater transfer to the EWA would facilitate a

phased test of Merced ID's pumping capacity and local effects on groundwater. This information would not only provide well drawdown data, but would also be useful in determining the locations of future groundwater recharge facilities.

Volume 1 Section 2.4.2.1.2 states, "Groundwater substitution transfers...could only be used...where the water supplier determines that the water transfer would not contribute to the groundwater overdraft." Additionally, the footnote to this statement reads, "According to California Water Code 1745.10: A water user that transfers surface water pursuant to this article may not replace that water with groundwater unless the groundwater use is either of the following: (a) Consistent with a groundwater management plan adopted pursuant to State law for the affected area. (b) Approved by the water supplier from whose service area the water is to be transferred and that water supplier, if a groundwater management plan has not been adopted, determines that the transfer will not create, or contribute to, conditions of long-term overdraft in the affected groundwater basin." Merced ID's current programs and groundwater management plan provide for future sustainability of its groundwater; therefore, according to the Water Code, Merced ID would be permitted to continue groundwater extraction.

#### **LA17-4**

***Comment:***

Page 6-109 states that Merced ID will construct "additional recharge facilities" to protect the groundwater basin. Water for this recharge must necessarily be surface water that would otherwise come down the river at some point in time. Even if groundwater were recharged by percolation, the refill water would be provided by a reduction in surface water supply.

***Response:***

The 'additional recharge facilities' mentioned on page 6-109 in Volume 1 refer to a project under Merced ID's Management Plan and are not a part of the EWA program. Therefore, potential effects of the recharge facilities are not evaluated in the EWA EIS/EIR. Under the No Action/No Project alternative, recharge of the overdrafted basin would occur (both natural recharge and through constructed recharge facilities). The EWA program would not increase recharge; therefore, the EWA would not change recharge-related reductions in surface water flows.

#### **LA17-5**

***Comment:***

Pages 5-89 through 91 claim that as a result of Merced purchases the October/November flow in the main stem of the San Joaquin River will be increased by more than 200 cfs without any reduction in flow at other times! There is no explanation of where the water for this net increase in normal flow would come from.

***Response:***

Flow would decrease on the Merced River between April and September; however, this decrease would only occur between New Exchequer Dam and Lake McSwain (point of diversion without the EWA). Below Lake McSwain, flow would not

decrease. Flow would then increase in October and November when stored EWA water is released from Lake McClure. Text has been added to Chapter 2 of Volume 1 to clarify how the Merced ID transfer would operate (see response to Comment LA06-15). Tables 5-73, 5-74, and 5-75 in Volume 1 measure flow below Lake McSwain; no decreases would occur at these locations.

#### **LA17-6**

***Comment:***

The same lack of explanation would apply to EWA water taken from storage without replacement by groundwater, see page 2-36. Water will not come down the river if it is used to refill either groundwater or surface storage.

***Response:***

The EWA agencies do not propose to purchase stored surface water from Merced ID; the EWA alternatives only include groundwater substitution. Therefore, refill to surface storage facilities would not be necessary. Groundwater recharge is part of Merced ID's management plan, and would occur with or without the EWA (see response to Comment LA17-4).

#### **LA17-7**

***Comment:***

Merced ID's pre-1914 water rights are for water for its own use within its boundaries. Whenever Merced water or other upstream water (page 2-17) is used for refill instead of river flow, it increases the burden on New Melones for water releases to meet the vernalis salinity standard unless the standard is being met with natural flows. The yield of New Melones is already seriously over-committed.

***Response:***

Merced ID would not release water from storage facilities as part of the EWA. Because the EWA program would not increase stored surface water releases, there would be no need for refill, and therefore no burden on New Melones. Table 2-5 in Volume 1 shows the only acquisition from Merced ID would be from groundwater substitution. Groundwater substitution would require Merced ID to hold water that would have been released for irrigation until it is released later in the year for conveyance through the Delta to water users downstream from the Delta. While water is being held, only the stretch of the Merced River between New Exchequer Dam and Lake McSwain would have reduced flow. The Merced River below Lake McSwain and the San Joaquin River would not have any reductions in flow. On the contrary, these river reaches would see an increase in flow during October and November. As discussed in response to Comment LA17-4, groundwater recharge would not affect downstream users. The San Joaquin River would not decrease because of EWA actions; therefore, there would be no increased burden on New Melones.

### **LA17-8**

***Comment:***

The average salinity at Vernalis per page 5-25 is almost meaningless. It is difficult to accept the allegation that the maximum salinity at Vernalis and upstream of the inflow of Stanislaus water quality releases is not available. Also, Table 5-27 only addresses an unrepresentative wet sequence of years.

***Response:***

The discussion on pages 5-24 and 5-25 and data in Tables 5-24 and 5-25 in Volume 1 are provided to describe the existing conditions within the San Joaquin River area of analysis. These data were not utilized directly in the analysis of potential water quality impacts associated with implementation of the EWA Program. Table 5-25 shows the maximum and minimum water quality parameters collected at Vernalis during the 1972 through 1990 period. Minimum and maximum electrical conductivity information is not available for the entire 1972 through 1990 period; therefore, it was not included in Table 5-25.

### **LA17-9**

***Comment:***

The impacts of EWA on water quality in South Delta channels must be addressed as cumulative with existing impacts by CVP and SWP. The CVP imports very large loads of salt into the San Joaquin watershed via the Delta Mendota Canal, DMC- Several hundred thousand tons of this imported salt then drains into the river in most years from the wetlands and agricultural lands that are served with DMC water. Shifts in time of river flow from summer or other low flow periods to spring and fall exacerbate the impact of this salt load on salinity in the main stem of the river and in South Delta channels.

***Response:***

See response to Comment LA06-8.

### **LA17-10**

***Comment:***

Page 4-13 alleges that local agricultural drainage causes salinity problems in the South Delta. It should be explained that the salt load in local drainage is only there because of the salt load in the river that derives from salt imported by the CVP to the west side of the San Joaquin watershed. It should also be explained that high salinity and inadequate dissolved oxygen in South Delta channels result because some channel reaches are made stagnant by inadequate river inflow combined with a lack of circulation resulting from the distortion of flows due to export pumping.

***Response:***

The following sentence, "If local agricultural drainage water is pumped into the channels where circulation is poor, such as shallow, stagnant, or dead-end channels, water quality can be affected" was removed from the water supply chapter in Chapter 5 Volume 4. Volume 1 Section 5.2.5.1.4 included a discussion on Delta water quality.

### **LA17-11**

***Comment:***

The DEIR/EIS fails to address a much more water efficient way to increase flows for fishery benefit in the main stem of the river and at Vernalis. Whenever export rates are limited for fishery protection or because of dry years these river flows can be provided at low cost and without any new facilities by circulating Delta water down the DMC then into the river via the Newman Wasteway, and thence back down the river to the Delta for recapture of an equivalent amount of water. Refer to DWR report dated January, 1998, and to the SWRCB mandate that this water efficient proposal should be considered in place of the use of tributary water to provide Vernalis fishery flows such as was discussed on page 2-17, first bullet.

***Response:***

Increasing flows for fishery benefit in the main stem of the San Joaquin River and at Vernalis was a requirement of D-1641, and the environmental impacts of those requirements are not analyzed in this document. Increasing instream flows is a secondary fish action in the EWA program and would only be performed if it could be done in conjunction with other actions (i.e., releasing water to be pumped to pay back earlier pump reductions at the same time that the instream flows could benefit fish) or if additional assets remained at the end of a water year. The recirculation proposal would not provide water assets for the EWA program, would incur pumping costs at Banks Pumping Plant or Tracy Pumping Plant, and would prevent the Project Agencies from pumping water for the EWA to export from the Delta or acquire in transactions from Sacramento and San Joaquin sources upstream from the Delta. The proposal described in this comment would not meet the purpose and need/project objectives; therefore, it was not included as an alternative.

### **LA17-12**

***Comment:***

Page 4-43 suggests that reductions in water levels in the South Delta are a minor problem. However, this impact must be considered as a cumulative impact. Furthermore, the reduction in water level is caused not only by increased export rates as discussed on page 4-43 but also by the reduction in summer flow at Vernalis discussed above.

***Response:***

The EWA agencies understand that there are effects to south Delta water users under the baseline condition. The EIS/EIR discusses the effect on South Delta water levels at a cumulative level. The summer flow would not be reduced at Vernalis because of EWA actions (see responses to Comment LA14-8 and LA17-7).

### **LA17-13**

***Comment:***

The discussion of bromides on page 5-30 acknowledges that bromides in South Delta channels derive largely from bromides which come from the San Francisco Bay and are then exported via the DMC and are therefore included in west side drainage into

the river. These loads of bromides in the DMC are influenced by the extent to which Sacramento water flows across the Delta in eastern channels versus western Delta channels. This is affected by water management such as the Delta Cross Channel closure discussed on page 5-30. These effects on bromide loads should be addressed.

***Response:***

Section 5.2.5.1.4 of Volume 1 includes specific analysis of the impacts on bromide levels within water delivered to the CVP under baseline and EWA Program alternative conditions. This analysis concludes that bromide levels in water delivered to the CVP/SWP water users would decrease slightly with implementation of the Flexible Purchase Alternative over a 15-year period.

**LA17-14**

***Comment:***

Neither b(2) nor b(3) releases should be made from the Stanislaus watershed per page 2-23. The entire yield of New Melones was allocated to various uses when New Melones was built. First, the allocation for releases to dilute CVP salt (see item 10 above) to comply with the Vernalis salinity standard proved to be seriously inadequate to meet that SWRCB requirement. Then the allocation for fish flows was very substantially increased by a 1987 agreement between the Bureau of Reclamation and the Department of Fish and Game. Consequently the water yield of New Melones was seriously over-committed. The CVPIA then required that the Bureau release 800,000 acre feet of water, known as b(2) water, for fishery benefit, but did not stipulate from which reservoirs the releases should be made. The Bureau should not release b(2) water from New Melones because New Melones fish releases were already substantially increased by the 1987 agreement, and because the reservoir yield is already substantially over-committed. The Bureau should also not acquire what is called b(3) water for the same reason.

***Response:***

The EWA program would not affect New Melones Reservoir. This environmental document does not include any EWA water acquisitions on the Stanislaus River, and the acquisitions on the Merced would not cause any decreases on the San Joaquin River that would require compensation from the Stanislaus. The response to Comment LA17-7 includes more information on flow changes downstream from Merced Irrigation District. This document is not the basis of decision on CVPIA Section 3406 (b)(2) or (b)(3).

**LA17-15**

***Comment:***

The document identifies settlement contractors of the Bureau of Reclamation as being potential sellers. However, it then goes on to talk about purchasing water resulting from groundwater substitution. CVPIA Section 3403(f) defines "Central Valley Project water" as "all water that is developed, diverted, stored, or delivered by the Secretary in accordance with the statutes authorizing the Central Valley Project and in accordance with the terms and conditions of water rights acquired pursuant to

California law.” Such a definition includes not only all contractors of the CVP but also includes all settlement contractors of the project notwithstanding recent Bureau interpretations. CVPIA goes on to limit transfers of CVP water to only that water which would have been “consumptively used or irretrievably lost to beneficial use...” (CVPIA Section 3405(a)(1)(I)). Clearly, this means the proposed EWA purchases from groundwater substitution by settlement contractors is illegal. Even with the Bureau’s incorrect interpretation of what CVP water is, why would it embark upon a program to purchase “paper water” from one set of suppliers when the federal statute precludes such purchases from other suppliers?

***Response:***

Under groundwater substitution transfers, EWA agencies would purchase water that would have been consumptively used. In these transfers, water users forego surface water supplies that they would have consumptively used.

The EWA agencies acknowledge the potential for transfers of “paper water” and therefore have developed methods to avoid this. Groundwater substitution transfers include criteria that must be submitted to the Review Team. The amount of information to be submitted can vary; for example, different submittal requirements are given to wells depending on location relative to a surface water body, to ensure the water would not have been used by downstream users. The aquifer would tend to recharge during wet periods when the Delta is often in excess conditions and agencies have sufficient supply. Therefore, the water sold to the EWA would not be another users’ water.

**LA17-16**

***Comment:***

Similarly under State law, California Water Code Section 1726(e) requires that transfers which require permit changes shall be limited to water that “would have been consumptively used or stored pursuant to the (sellers’) permit or license . . .” This statute also clearly sets forth a State policy to limit transfers so that they do not increase the total consumption of water and do not result in a reallocation of a shortage. Any transferor therefore that refills its reservoir or substitutes groundwater to make up for the transferred water is violating the statute.

***Response:***

The EWA agencies’ purchase of stored reservoir water would be a purchase of water that was stored for consumptive use. The EWA agencies’ purchase under groundwater substitution would acquire surface water that would have been consumptively used by the crop. Both of these purchases would be consistent with Water Code Section 1725 (e). The farmers could pump groundwater to replace surface water, consistent with local or county regulations.

**LA17-17**

***Comment:***

The document on page 4-12 incorrectly suggests that Sacramento River water only reaches the South Delta pursuant to the operation of the export pumps. The tidal



action in the Delta in combination with the Sacramento Rivers greater flow results in Sacramento River water reaching all Delta channels under normal circumstances. Because of this, Delta channels are riparian to the rivers on both the Sacramento and San Joaquin system.

***Response:***

The text has been changed to state, “Both the San Joaquin and Sacramento Rivers flow into the south Delta; however, the San Joaquin River is the major contributor. During times when San Joaquin River flows are low, additional Sacramento River water is drawn to the south Delta by a combination of SWP/CVP pumping and other diversions.”

**LA17-18**

***Comment:***

The document incorrectly describes the Response Plan for JPOD under D-1641. The plan does identify water levels at three locations as being acceptable for JPOD operations, but that does not mean that those levels provide protection in all instances. [The document should note that SDWA objected to approval of this and prior response plans due to ongoing violations of the plan.] Of greatest concern is the fact that for the past two years the specified water levels have been generally met during the summer months but that a catastrophic decrease in water levels on Tom Paine Slough occurred in the last two years. Given this significant lack of water height, there is currently no basis in fact for accepting the specified water level heights as providing protection.

The Response Plan also states that an adverse effect is defined as a decrease in the low tide level. To the contrary though, it appears that export operations which decrease the height and duration of the high tide may be the likely cause of the problem on Tom Paine Slough.

***Response:***

The significance criteria was chosen at the height that is currently provided for in the Response Plan. If the Response Plan revised thresholds for significance or methods for maintaining water levels, the EWA agencies would alter their actions accordingly. In a letter to the State Water Resources Control Board for the submittal of the Response Plan dated June 25, 2003, DWR and USBR state, “It is difficult to predict when water levels of concern may occur due to the numerous factors influencing the water levels in the South Delta. A key component retained in this plan concerns unanticipated water levels of concern. In the plan, Reclamation and the Department pledge to suspend the JPOD/transfer upon the request of SDWA if diverters within the South Delta experience water levels of concern when and where no such levels were forecasted...”. The EWA agencies would mitigate for any EWA-related water supply impacts.

The State Water Resources Control Board’s Approval of Water Level Response Plan Required by State Water Resources Control Board Decision D-1641 lists several points on which SDWA opposed approval of the Response Plan. The SWRCB’s response to

concerns over water levels in Tom Paine Slough include, "...Thus SDWA's testimony indicates that when water level problems were experienced, the DWR has been able to mitigate the effects. Additionally, as noted above, the forecasting procedure has been modified to attempt to predict low water levels experienced near Tom Paine Slough. The proposed Plan also provides for the suspension of JPOD operation upon request of SDWA, if water levels of concern continue." and "The SWRCB recognizes that the forecasting does not always predict low water levels in all locations. While this approval was being prepared, and no JPOD operations were being conducted, unpredicted low water levels occurred in Tom Paine Slough. This approval is conditioned to ensure, to the extent possible, that low water levels do not occur due to JPOD operations." Again, it is the intent of the EWA agencies to mitigate for any EWA-related impacts to south Delta water users as described in Volume 1 Section 4.2.8.2 and mandated by the SWRCB.

#### **LA17-19**

***Comment:***

Section 4.2.4 of the document states that in the absence of EWA, actions to protect fisheries would only be in response to ESA take limits. This is of course untrue, such things as the AFRP, CVPIA, SWRCB decisions and orders, as well as other State and Federal Laws require numerous actions be undertaken to protect, maintain, and enhance fisheries.

***Response:***

The term 'fish actions' was used in this section to represent pump curtailment because the reduction in export pumping would affect water supply, the subject matter of this chapter. The text has been revised to more clearly describe the effects of the No Action Alternative, "If the EWA were not implemented, actions to protect fish would continue as described in the affected environment section; pump curtailments would occur only in response to regulatory requirements (primarily ESA take limits). Pumping reductions would result in reduced deliveries, which would be more likely in dry years because in wet years the Project would be more likely to recover from export reductions for fish protection."

#### **LA17-20**

***Comment:***

The document incorrectly suggests that carriage water accompanying EWA releases increases Delta outflow. Although such a situation is possible, the carriage water calculation is an attempt to offset system losses in order to result in no change in Delta outflow resulting from the transfer/export.

***Response:***

Carriage water is defined in Chapter 5 in Volume 1 as, "...an increase in Delta outflow that protects Delta water quality and maintains chloride concentrations at levels that would be equivalent to those under the Baseline Condition." Carriage water is the amount of water that becomes Delta outflow to maintain Delta water quality. The

amount of water that is needed to offset system losses between purchase in the Upstream of the Delta region and the Delta is defined as conveyance loss.

**LA17-21**

*Comment:*

The document states that increased export pumping would not exacerbate the circulation problems in the South Delta and thus water quality and therefore does not evaluate this impact. To the contrary, increased export pumping have and will continue to decrease the height and duration of high tides resulting in insufficient water being trapped behind the tidal barriers. This situation results in null zones and an exacerbation of the poor water quality condition. Last year, a diverter off Grant Line Canal had significant crop damage and was forced to remove orchards because of this adverse effect on circulation resulting from increased exports.

*Response:*

Preliminary studies completed by DWR have not shown that increased export pumping has decreased the height and duration of high tides resulting in insufficient water being trapped behind the tidal barriers, as suggested by the comment, other than at Tom Paine Slough. The issues at Tom Paine Slough do not appear to be related to water levels or the capacity of the facility. The EWA Program will continue to work with DWR to address short-term effects associated with Delta export pumping.

**LA17-22**

*Comment:*

It is not clear to what extent the document examines actual impacts to water Levels in the South Delta as it references charts which represent “monthly mean averages.” The charts given show a misleading picture of the situation. Included herewith are examples of DWR modeling for recent JPOD operations. As can be seen, the measuring point near Coney Island shows significantly lower levels than contained in the DEIR/EIS.

*Response:*

The EIS/EIR evaluates both monthly mean averages and monthly mean of the daily minimums. Page 4-30 in Volume 1 states, “Because daily averages include tidal influences (both high tide and low tide), the minimum daily water levels are not represented on Figures 4-4 through 4-7. It is important to consider the minimum daily water levels because the potential for effects would be greatest at these levels. Figures 4-8 and 4-9 show the monthly mean of the daily minimum values, representing the lowest water levels at the same location as Figures 4-6 and 4-7. (Figures for the monthly mean of the daily minimum values are not shown for the location shown on Figures 4-4 and 4-5. The temporary barriers at these locations maintain water levels above the threshold.)” The graph in the EIS/EIR showing the water level at Coney Island has very similar data compared to the graph supplied by the commentor. The graph supplied by the commentor shows a minimum water level at ~ -1.0 ft, whereas Figure 4-8 shows a minimum water level at ~ -0.8 ft. Figure 4-8 shows the difference in water levels between the Baseline Condition and the Flexible Purchase Alternative.

Figure 4-8 in Volume 1 shows that water levels would be lower with the Flexible Purchase Alternative. This effect would be mitigated as described in Volume 1 Section 4.2.8.2.

#### **LA17-23**

***Comment:***

With regard to mitigation measures for the effects on South Delta Water Levels, the document refers to temporary pumps and dredging. The dredging of a channel has no effect on the height of the water level in light of the tidal action and incoming flows. Thus, dredging in any particular location would not affect the situation where a pump or syphon is not low enough to divert water. Temporary pumps have been used in certain circumstances to substitute for adversely impacted siphons; however, such a general reference cannot be considered adequate mitigation under CEQA or NEPA. Water levels in Middle River are sometimes nonexistent at times when barriers are inoperative or removed and therefore cannot be mitigated by a temporary pump. Similarly, there is no permit in place or application thereof in progress which would allow temporary pumps to put water over the temporary barriers to improve water levels upstream.

***Response:***

Page 4-43 in Volume 1 has been revised to include the following information:

“The SWRCB and the Response Plan identify many measures that the DWR and Reclamation must take to mitigate for impacts to south Delta water users. These measures include modifications to agricultural diversion structures, including changes in the intake structures that would facilitate agricultural diversions from shallow water; dredging to ensure that agricultural diverters have adequate water depths at their points of diversion to divert water during JPOD operations; and a commitment by DWR and Reclamation to work in good faith with local diverters and the South Delta WA providing portable pumps or suspending JPOD operations when water levels of concern have been experienced. The SWRCB (under the Response Plan) deems these mitigation measures as sufficient to address concerns of the south Delta water users; these measures are likewise sufficient to reduce potential impacts to a less-than-significant level in the EWA EIS/EIR.”

#### **LA17-24**

***Comment:***

The document's examination of water quality does not seem to reference the existing permit terms and conditions of the projects which require a 0.7/1.0 EC at Vernalis and three other South Delta measuring points.

***Response:***

The water quality section does not reference the existing permit terms and conditions of the project which require a 0.7/1.0 EC at Vernalis on the San Joaquin River and other South Delta measuring points because water quality is not expected to change at these locations. As discussed on page 5-90 in Volume 1, the EWA would not cause flows on the San Joaquin River at Vernalis to decrease in any months; flows would

increase in October and November. An increase in flows would improve the ambient water quality via dilution.

**LA17-25**

*Comment:*

It is incumbent upon those persons proposing and eventually approving the project to explain the purpose and operation of the EWA. In large part, EWA purchases are to replace water that would have been exported but was lost due to reductions in export operations to benefit fisheries. That replacement water is then by definition delivered to those export contractors who would have received it absent the decrease in exports for fisheries. The purpose of EWA is to insure that deliveries to the export contractors do not decrease as a result of the fishery actions. However, EWA then turns around and repurchases that same water from the export contractors at an elevated price. In short, the project is to pay the export contractors to transfer water to the projects so that they can continue to deliver that same water to the export contractors. This raises serious questions with regards to the propriety and legality of such a program which results in an export contractor buying water from the SWP at less than \$100 per acre foot and then reselling it back to the SWP (for future delivery to the same seller) in excess of \$400 per acre-foot. This situation also raises concerns with regard to Water Code sections prohibiting the profit on the transfer of water rights and area of origin laws.

The SDWA believes the DEIR/EIS does not adequately examine the effects of the project on water users in the South Delta and the legality of the proposed transactions.

*Response:*

EWA agencies enter into contract agreements with water agencies not just to acquire water but to also obtain water management services. These services include groundwater storage, banking, surface water storage, pre-delivery, and delayed delivery of Project water supplies. In some instances, the costs of these services are added to water acquisition costs. The \$400 water acquisition cost mentioned in the comment was for a one-time, first year purchase action. It is not typical of subsequent or current EWA water purchase costs.

Section 4.2.5.3 in Volume 1 analyzes the effects of the EWA program on south Delta users. The response to comment LA06-9 includes information regarding the water code sections that address public acquisition of water rights. All EWA water acquisition and management actions described in the EWA EIS/EIR are in compliance with Water Code. In addition, the State Water Resources Control Board must approve all transfers of water appropriated by a permittee or licensee and would not approve any transfer inconsistent with the Water Code.

## LA18 - Yuba County Water Agency

### Curt Aikens

#### LA18-1

*Comment:*

1. The draft EIR/EIS does not contain any significant information or any analysis on the effect that groundwater pumping might have on surface water bodies. Rather, this potential effect is merely assumed, and an extensive number of measures are included to attempt to have each seller avoid this potential effect. YCWA believes this approach is incorrect: First, reasonable analysis of this potential effects of groundwater pumping on surface water supplies should be undertaken. YCWA believes that, if even a limited analysis of this effect were to be done, it would result in findings that (in most if not all cases) pumping of wells would not have a significant impact on the flow in surface streams.

2. The draft EIR/EIS describes a potential impact on the flow of streams that would affect SWP and CVP supplies as an environmental impacts when in fact it is not. The EWA was established to allow for actions to mitigate the potential impact of the SWP and CVP export facilities on fish, without negatively impacting SWP and CVP deliveries. The EWA water purchases are administered by DWR and USBR. Any potential reduction in stream flow to the Delta from groundwater pumping related to a transfer to the EWA would be an issue of transfer efficiency, and potentially affect the net price of the water purchased. YCWA believes that by couching this issue as an "environmental impact" rather than as a project efficiency issue, the draft EIR/EIS misrepresents the effects of groundwater substitution transfers. This is further evidenced by the use of the DWR "Transfer White Papers" as the basis for avoidance measures. These papers and associated map relate only to potential impacts to major streams that flow to the Delta, and do not address minor creeks. Therefore, the only effect that is addressed by these avoidance measures is the effect on SWP and CVP water supplies, which are speculative without the inclusion of any analysis.

*Response:*

1. The EIS/EIR does not assume impacts on surface water bodies because of groundwater substitution; the EIS/EIR states that there is a potential for impacts. The Well Review is in place to determine the degree of potential impact for each groundwater pump. Volume 1 Section 6.2.7.2.1 states, "The purpose of the well review is to assure that all extraction wells used for water transfer to the EWA would be located and operated in such a manner as to minimize the potential risk of depleting surface water sources and adversely affecting groundwater quality." The EWA agencies include the well review to determine the acceptability of the well for use in the proposed transfer, not because they assume pumping from the well would cause an impact. The EWA agencies used this approach because they needed to mitigate impacts without knowing in advance exactly which wells would participate in the program. (The EWA agencies cannot know the wells in advance because the willing sellers must volunteer each year.)

2. Impacts on water supply are considered in the EIS/EIR because a change in the water supply is a physical impact and therefore must be considered under CEQA. CEQA Guidelines Section 15126.2 (a) Consideration and Discussion of Significant Environmental Impacts states, "The discussion should include relevant specifics of the area, the resources involved, physical changes, alterations to ecological systems...and other aspects of the resource base such as water...". The term 'effects' is defined in part in Section 15358 (a)(2), "Indirect or secondary effects may include...related effects on air and water and other natural systems, including ecosystems."

#### **LA18-2**

***Comment:***

The air quality section of the environmental document uses a standard of zero increase in pollutants to assess the significance of the effects of using diesel motors for pumping groundwater. This standard for determining the level of significance is contrary to the requirements of the air quality management districts (AQMDs) in the Central Valley. Each of the AQMDs has established thresholds of significance for ozone precursors and particulates that would allow for the use of diesels for some of the pumping.

***Response:***

The thresholds established by the AQMDs and APCDs are those that are required to obtain a permit; however, the ability to obtain a permit does not equal a determination of no significance under CEQA. Until very recently, the AQMDs and APCDs have had no regulatory authority to set thresholds for agricultural practices; agricultural-related emissions were exempt from otherwise required permits such as permits to operate or new source review. New regulations will require permits for groundwater pumps as stationary sources, but as stated above, a permit does not equal a less-than-significant impact. Under CEQA, the lead agencies may determine the thresholds for significance. In this case, because of the poor air quality in the region and nonattainment status, the lead agencies have stated that any additional increase in emissions would be considered significant.

#### **LA18-3**

***Comment:***

In addition, the preparers used an unreasonable and unlikely set of assumptions for the pollutant loads of diesel pumps, even though there is information available to suggest that these assumptions are overly conservative and would not represent the potential for a significant impact on air quality. The preparers should do a County by County analysis using the best available information to determine a threshold for diesel motor use, and should incorporate the AQMD standards for thresholds of significance.

***Response:***

The assumption that all pumps would be diesel pumps was set as a worst case scenario to enable the seller to be covered by the EIS/EIR for any pump mixture.

Based on the recommendation that information be obtained on a county basis and incorporated into the assumptions of the EIS/EIR, additional data have been included in Chapter 5 Volume 4. Colusa and Yuba Counties, however, were the only counties that were able to supply this information. Colusa County has 95 percent diesel pumps, and Yuba County has 35 percent diesel. The document still includes the assumption of 100 percent diesel pumps for the remaining counties because no other information is available. See response to Comment LA18-2 regarding thresholds of significance.

#### **LA18-4**

***Comment:***

Although the environmental document was prepared for a project time period of more than 1 year, and refers to long-term transfers (i.e., for more than 1 year), the approach to the aspects of surface water transfers only relates to temporary (i.e., 1 year) transfers. In particular, the discussion of reservoir refill impacts and the avoidance measures are focused on single-year transfers, and would be impracticable to apply to long-term transfers. The preparers should examine and discuss how long-term transfers may be accomplished.

***Response:***

The following text was in Volume 2 Chapter 14; it has been added to Chapter 4, Page 4-21 (in Chapter 5 Volume 4) to describe how multi-year transfers would affect refill criteria. In the discussion under the Feather River: "Stored reservoir water purchased from South Feather Water and Power would not be purchased a second year in a row if the reservoirs did not refill the previous year." In the discussion under the Yuba River: "If full refill did not occur, Yuba County WA would consider selling less water the following year. The EWA agencies would not purchase water if the transfer would cause a significant effect on recreation [water supply]." In the discussion under the American River: "If the EWA agencies acquired water through a multi-year contract with Placer County WA, water could be transferred during a second year, even if the reservoirs did not refill the year before, as long as the two reservoirs did not drop below a combined 50,000 acre-feet of storage (minimum operating levels)." The differences in operations between agencies are based on discussions with reservoir operators in each agency.

#### **LA18-5**

***Comment:***

In the cumulative effects section of the environmental document, it is stated that other transfer projects (e.g., transfers to buyers other than EWA) would likely be carried out by implementing measures to avoid negative impacts at would be similar to those prescribed in the draft EIR/EIS. This is incorrect. There are many approaches to examining, avoiding and mitigating the potential impacts of a transfer. Also, other projects may take a more direct approach that analyzes the potential for impacts, rather than assuming that would occur. The preparers should remove these statements.



***Response:***

It is reasonable to assume that many of the measures taken by EWA agencies would be similar to measures taken by other programs because many of the water acquisitions methods are similar. Other water transfer programs will require environmental documentation, then a more direct approach will be specified. Without this documentation, EWA agencies must speculate on operations and effects of other programs. Pages 20-14, 22-16, and 22-22 have been changed to reflect that not all programs would have the same mitigation measures as the EWA program.

**LA18-6**

***Comment:***

Although YCWA provided some information for the preparation of the draft EIR/EIS, and provided some input on the document, the process for preparation of the document did not generally involve the participation of potential water transferors from the Sacramento Valley. The draft EIR/EIS examines two main aspects of the EWA, namely, the actions to be taken and the projects that would produce water for sale to the EWA. Resource agencies, including DWR and USBR, were fully-involved in the preparation of the environmental document. The owners and operators of projects that would provide transfer water to the EWA were not involved. The sellers should be more fully involved in the environmental document preparation, and in the land and implementation of the accounting and mitigation measures called for in the environmental document.

***Response:***

As mentioned in Chapter 23 of the Volume 2 and the July 2001 Public Scoping Summary Report, the lead agencies held public informational and environmental process scoping meetings for the project. Public scoping meetings for the EWA were held throughout the State of California in the following locations and dates: Sacramento, July 19, 2001; Chico, July 19, 2001; Oakland, July 23, 2001; Tracy, July 24, 2001; Bakersfield, July 25, 2001; and Los Angeles, July 24, 2001. At each public scoping meeting, the EWA agencies presented a project overview and recorded public comments. The EWA agencies prepared a scoping report to summarize the public comments received at the scoping meetings.

The EWA agencies held public hearings on the Draft EIS/EIR throughout the State of California in the following locations and dates: Sacramento, August 25, 2003; Red Bluff, August 26, 2003; and Fresno, August 28, 2003.

In response to YCWA's comment that the "owners and operators of projects that would provide transfer water to the EWA were not involved," it must be noted that all potential sources of available water supply, with the exception of two agencies, were contacted. Citations of personal communications with all agencies can be found in the reference sections of many chapters (e.g., Chapter 6, Groundwater).

### **LA18-7**

***Comment:***

In prior water transfers to EWA, YCWA has provided assurance of the delivery of transfer water from groundwater substitution by measuring the transfer water at the Marysville Gage. The draft EIR/EIS makes no mention of this, and instead represents that adverse effects could occur on the Yuba River due to groundwater pumping. Any impact to the Yuba River from groundwater pumping would impact YCWA water supplies, not the environment or downstream users.

***Response:***

The details of the monitoring program would be finalized between the local agency and the Review Team. In the past the Marysville Gage has been used as a means of providing assurance of the transfer water from groundwater substitution. However, it should be noted, although quite likely limited, that the potential for effects downstream from the gage still exists, as the Marysville Gage is some way upstream from the confluence of the Yuba and Feather Rivers. Additionally, the protections referred to apply only when the actual transfer is occurring and do not account for residual effects that could continue while the aquifer system is recharging after the transfer period. See response to Comment LA18-2 regarding water supply as an environmental impact.

### **LA18-8**

***Comment:***

The groundwater mitigation measures section of the draft EIR/EIS are an extensive listing of rules and processes for the review of the sellers' project, project effects, monitoring plans, mitigation plans and even describes a need to have "assurances that adequate financial resources are available to cover reasonably anticipated mitigation needs," while describing the purported need for a collaborative process. This section, in effect, proposes oversight of the sellers' project. The EWA should establish a truly collaborative process in which the unique aspects of individual projects can be dealt with in an informed and positive manner.

***Response:***

The EWA agencies and sellers are working toward the same goal - to ensure no harm is caused by the purchase of water from groundwater substitution. The sellers are responsible for developing monitoring and mitigation measures, and the EWA agencies are responsible for monitoring and mitigation oversight. Although the sellers would undoubtedly want no harm to come to any of the water users in their districts, and therefore be responsible in implementing monitoring and mitigation measures, the EWA agencies must still be involved. The EIS/EIR does in fact propose that the EWA agencies oversee monitoring and mitigation to make sure the measures are completed. The EWA agencies have disclosed impacts, included mitigation requirements for impacts, and developed guidelines for mitigation and monitoring (Chapter 6 of this volume). As part of these guidelines, the agency responsible for oversight of mitigation is identified.

### LA18-9

**Comment:**

On page 2-45, second paragraph, fourth line “EWA agencies would try to maintain relatively constant flow on the Yuba River.” “EWA” should be “YCWA.”

**Response:**

In Volume 4, “EWA agencies” was changed to “Yuba County WA.”

### LA18-10

**Comment:**

Section 4.2.3.1.2 does not properly characterize reservoir refill, and does not reflect the terms that have been used for refill in previous YCWA-EWA transfers. Is it the intention to unilaterally change these terms?

**Response:**

The EWA agencies intend refill to work in the same manner as in previous years. The EIS/EIR states that Yuba County WA would refill New Bullards Bar regardless of conditions in the Delta and would repay the Projects the following summer for any quantity of water taken at a time when the Projects could have pumped the water (when the Delta is in balanced conditions). This definition of refill reflects the terms that have been used in past years. However, the refill criteria as presented in Volume 1 Section 4.2.3.1.2 describes refill in a shortened form (a paragraph) compared to the pages that make up the actual refill criteria agreement. Page 4-21 in Volume 1 has been revised to state, “Refill would occur generally as described in this paragraph; a sample of a refill criteria agreement for illustrative purposes only can be found at [http://calwater.ca.gov/Programs/EnvironmentalWaterAccount/adobe\\_pdf/EWA\\_YCWA\\_Final\\_Draft.pdf](http://calwater.ca.gov/Programs/EnvironmentalWaterAccount/adobe_pdf/EWA_YCWA_Final_Draft.pdf).”

### LA18-11

**Comment:**

Table 5-48 on page 5-70 is incorrect. Under current conditions YCWA would not transfer 100 TAF of water if the end of September storage in New Bullards Bar Reservoir were as low as 614 TAF. The typical without-transfer end of September storage for New Bullards Bar Reservoir is 705 TAF. In order to calculate the median monthly storage under baseline conditions, past transfers (1989, 1990, 1991, 1992, 1997, 2001 and 2002) would have to be added back in.

**Response:**

The median value was calculated over the historical record from 1970 to 2001. Of the seven past transfers indicated in the comment, only the transfer in 2001 was made to the EWA and accounted for in the calculations. The addition of the transfer water for 1 year back into the calculation of median monthly storage would not influence the baseline numbers substantially. Since transfers in 1989, 1990, 1991, 1992, and 1997 were made to other programs, these transfers could occur in addition to transfers to the EWA; therefore, the monthly storage with these transfers is considered part of the Baseline Condition. Yuba County WA could choose to make transfers only if the

Baseline Condition was 705,000 acre-feet; this document however, includes transfers if the Baseline was 614,000 acre-feet and concludes there would be no significant effects on water quality at this level.

**LA18-12**

**Comment:**

Page 6-80, third paragraph, ninth line “Yuba River Operating Program” should be “Yuba River Development Project.”

**Response:**

The text has been changed from Yuba River Operating Program to Yuba River Development Project.

**LA18-13**

**Comment:**

Page 6-81, first paragraph first line is misleading. The entire transfer for both the north and south Yuba basins was 65,000 acre-ft. Pumping in the north was only 47,500 acre-ft.

**Response:**

The text has been changed to state, “...indicated regional declines associated with a 47,500 acre-foot transfer from the North Yuba subbasin (65,000 acre-foot total transfer from the North and South Yuba basins)...”.

**LA18-14**

**Comment:**

The numbers in Table 6-14 are incorrect. There is double counting for the 2001 EWA and the 2001 Dry Year program.

**Response:**

The table has been updated to avoid the duplication.

**LA18-15**

**Comment:**

As stated in the general comments above, the well review criteria only includes wells within a specific distance of major and minor surface stream tributary to the Delta. These measures are thus clearly only targeted for impacts to the SWP and CVP, as these entities provide for all downstream in-basin diversions below the Yuba River. These criteria should not be described as needed for avoidance of environmental impacts, only for impact to the SWP and CVP water supplies.

**Response:**

Refer to response to Comment LA18-1, point 2.

### **LA18-16**

***Comment:***

Page 6-153 discusses the Sacramento Valley Water Management Agreement (“SVWMA”) as one of the programs that would have groundwater pumping, and could have a cumulative effect with the EWA. Paragraph six states “It is assumed that each program will institute groundwater mitigation measures similar to those stipulated in the EWA Program.” This reference should not be included. As the environmental document states over and over, there are many ways to implement a project and avoid significant impacts. The approach that is taken for the EWA is the one selected by the SWP and CVP, and is not appropriate for the SVWMA.

***Response:***

See response to Comment LA07-3.

### **LA18-17**

***Comment:***

Figure 14-9 on page 14-25 is incorrect, as it uses the median figures described as incorrect in item 10 above.

***Response:***

The Assessment Methods section of Volume 2 Chapter 14 indicates that the recreation analysis uses median values; 50 percent of the time actual reservoir and river levels would be higher and 50 percent of the time the actual levels would be lower than those used in the baseline. If the reservoir and river levels differ greatly from the historic level during a transfer year, the effects would also differ from those predicted by the analysis. If reservoir levels were higher than the historical average, the actual effects would be less than the predicted effects. If reservoir levels were lower than the historical average, the actual effects would be greater than the predicted effects. Page 14-25 states, however, “The EWA agencies would not purchase water if the transfer would cause a significant effect on recreation.” It is not possible to know the exact storage during the transfer period for use in this EIS/EIR because the reservoir levels fluctuate annually.

### **LA18-18**

***Comment:***

Page 16-19 discusses potential effect on power costs from a shifting of generation on the Yuba River, and describes these effects as potentially significant. The section then refers to Section 16.3.9, which describes mitigation of power costs only to the SWP and CVP. If the impact is created from a contractual obligation of the EWA, and is not an impact that must be mitigated for all effected parties, than it should not be included in the EIR/EIS.

***Response:***

Text on pages 16-19 and 16-21 of Volume 2 has been updated to indicate that it is anticipated that the willing sellers would incorporate provisions for potential decreases in revenue from power production into the contractual arrangements with

the EWA agencies. The effects on power would therefore be less than significant. The references to mitigation are inappropriate in this instance and have been removed.

### **LA18-19**

***Comment:***

Page 17-19, Section 17.2.5.1.2 describes a potentially significant effect of New Bullards Bar Reservoir level fluctuations on cultural resources. It also states that Reclamation would “require inventory and evaluation of unsurveyed areas if levels are lowered to below historical low levels.” The mitigation measure states that the transferring agency will conduct an inventory in this condition and implement mitigation measures. YCWA does not agree. The EWA Project Agencies or Reclamation should be responsible for this action.

***Response:***

Willing sellers are responsible for implementing EWA program mitigation measures. During negotiations, YCWA would be able to include in the price of water the cost of cultural resource inventory and evaluation of unsurveyed areas, should levels reach beyond the historically low marks.

## **LA19 – Herum Crabtree Brown for Stockton East Water District Jeanne M. Zolezzi**

### **LA19-1**

***Comment:***

More care should be taken throughout the document to clarify the purpose and goals of the EWA. These are set forth succinctly and accurately in several places in the document as follows:

“To address the ability of EWA agencies in meeting the goal to provide water for the protection and recovery of fish beyond that available under the regulatory baseline, the CALFED ROD identified the EWA as a 4-year (2001-04) cooperative management program of which the purpose is to provide protection to the fish of the Bay-Delta estuary at no uncompensated water cost to the Project’s water users. The approach involves acquiring alternative sources of Project water supplies to replace water supply otherwise lost through changes in Project operations. The EWA agencies may determine through written agreement to extend the EWA beyond September 30, 2004, as stated in the CALFED ROD. Because there is a possibility for extension, this EIS/EIR analyzes EWA actions that will start at the time of the signing of the EWA ROD through 2007. The EWA ROD is scheduled for signing in early 2004.” EIR/EIS Executive Summary, at p. 3. This states clearly that the protection to fish is to be provided at no uncompensated water cost to the Project’s water users. Elsewhere in the document, however, reference is made to a narrower purpose:

“The CALFED Multi-Species Conservation Strategy Conservation Agreement and the CALFED Biological Opinions included commitment by several CALFED agencies [list omitted] that there would be no additional CVP or SWP export reductions from actions conducted to protect fish under the Federal Endangered Species Act, a

California Endangered Species Act, or Natural Community Conservation Planning Act beyond the regulatory baseline of fishery protection.” Draft EIS/EIR Chapter 2, at p. 2-3.

The document should be clarified to consistently state that EWA protections are not limited to export reductions, but apply to any reduction in supply to SWP and CVP contractors beyond the regulatory baseline.

**Response:**

Volume 1 Section 1.2 clearly identifies the Purpose and Need and Project Objectives. The Project Objectives identify that the EWA must “improve the water supply reliability for water users in the export service area by reducing conflicts at the Delta export pumps without resulting in uncompensated water costs to the Projects’ water users.”

To protect fish and the environment, the EWA agencies would take actions that include reducing export pumping, closing the Delta Cross Channel gates, increasing instream flows, and augmenting Delta outflows. The EWA agencies would acquire and manage water assets to enable them to take these actions. The acquired water would be used to increase instream flows, to augment Delta outflows, or to compensate users for pump reductions or decreased pumping because of Delta Cross Channel gate closure beyond the regulatory baseline. As stated on page 2-2 in Volume 1, increasing instream flows and augmenting Delta outflows would be secondary benefits of the EWA; the EWA agencies would use most of the EWA assets to take actions in the Delta and compensate users in the export service area. These actions would be the highest priority because they enable the CALFED agencies to meet the regulatory commitment outlined in the MSCS (text cited in comment) that there would be no additional CVP or SWP export reductions from actions conducted to protect fish under the ESA, CESA, or NCCPA beyond the regulatory baseline of fishery protection.

The environmental document analyzes the effects of the fish actions and the asset acquisition and management methods by resource area. The Water Supply and Management chapter (Chapter 4) determined that the EWA would not cause significant adverse effects on water users upstream from the Delta. The EWA is not intended to compensate water users for non-EWA fish-related actions that may be taken by other agencies or entities that may affect water supply reliability.

The EWA program could not meet the needs of all Project users in the State; the Purpose and Need/Project Objectives that dictate the direction that the program takes are more limited than the comment suggests.

**LA19-2**

**Comment:**

Baseline Definition

There is also some confusion regarding the definition of the regulatory baseline.

In the CALFED Programmatic Record of Decision (Appendix A to EIR/EIS) at Page 55, the baseline level of protection identified as Tier 1 in the EWA discussion, consists of:

- 1993 Winter-run Biological Opinion (NMFS)
- 1995 Delta Water Quality Control Plan (SWRCB)
- 1995 Delta Smelt Biological Opinion (USFWS)
- Full Use of 800 TAF Supply of Water Pursuant to Section 3406(b)(2) of the CVPIA in accordance with Interior's October 5, 1999 Decision

Chapter 2 of the EIR/EIS describes "Alternatives, Including the Proposed Action/Proposed Project". This chapter also discusses the regulatory baseline actions to protect fish and states:

"The CALFED ROD identified a baseline level of fishery protection requirements for Project operations. Existing regulatory programs established these requirements prior to implementation of the CALFED ROD, and these programs alter Project operations in ways that improve Delta water conditions for fish. The No Action/No Project Alternative includes the environmental requirements identified below."

The document then describes not only the baseline levels bulleted above, but also includes the Spring-run Chinook and Steelhead Biological Opinion. A footnote states: Fisheries issued this biological opinion after the signing of the CALFED ROD; however, it is included in the No Action/No Project because it also changes the operations of the Delta to benefit fish and the environment. The text should clarify that while this action is included in the No Action/No Project, it is not included in the regulatory baseline for CALFED EWA purposes.

**Response:**

The "Baseline Level of Protection" section in the CALFED ROD included "Other Environmental Protections" in addition to the items included in the comment. This section stated: "The regulatory baseline above also assumes that other environmental protections contained in statutes remain in place." Spring-run Chinook and steelhead were listed before the CALFED ROD; therefore, the environmental protections for these species are part of the regulatory baseline.

**LA19-3**

**Comment:**

The document includes descriptions of how water will be acquired for the EWA and provided to CVP and SWP exporters south of the Delta. While the document also includes discussions of water acquisition "Upstream from the Delta Region" (See EWA Draft EIS/EIR Chapter 2 at p. 2-36) there is no concurrent discussion on how any adverse impacts to CVP contractors "Upstream from the Delta Region" would be mitigated by providing EWA acquired water.



Overall, the EWA agencies must keep in mind that there are project water users upstream from the Delta region entitled to protection under EWA who either are being or will be injured by additional fish protection actions above the regulatory baseline set forth in the CALFED ROD. The EWA EIR/EIS must acknowledge this fact, and establish mechanisms to address the needs of these water users in addition to the project exporters on whom it focuses most of the document.

***Response:***

Volume 1 Chapter 4, Water Supply and Management, analyzes the effects of the EWA on water users, both Project and non-Project. This chapter found that the EWA does not have significant impacts on any water user in the upstream from the Delta region. As stated in a response to Comment LA19-1, the EWA program only compensates water users for EWA fish actions. The program is not large enough to compensate Project users for fish actions through other mechanisms.

**NP01 - California Farm Bureau Federation**

**Becky Sheehan**

**NP01-1**

***Comment:***

The concept of the Environmental Water Account (“EWA”) was introduced in the 1999 draft of the CALFED Bay-Delta Program Environmental Impact Report/ Environmental Impact Statement, but no details were provided as to its size, its operation, its impacts or how its impacts would be mitigated, or what the fishery agencies would require in order to grant “assurances” at the pumps that no uncompensated water would be taken to offset the impacts of the operation of the project. This valuable information was not revealed until the June 9th Framework Agreement, and ultimately, the August 28, 2000 Record of Decision. The EWA has been improperly operated for the last three years with CALFED acting as if all of the acquisitions are entirely separate and unrelated projects. Categorical Exclusions from CEQA and Negative Declarations have been used repeatedly and improperly for water acquisitions totaling 185,000 acre-feet annually with 200,000 acre-feet as an initial water investment. As a result, the cumulative impacts for the first three years of the program have never been considered or mitigated, thus the environment has been impacted. The impacts of this program now are being considered in this environmental document for the first time three years after the program has already begun operation.

***Response:***

The types of EWA transfers that occurred in the first 3 years of operation were stored surface water transfers, groundwater substitution, stored groundwater purchase, and source shifting. Each EWA transfer was accompanied by the appropriate type of environmental review under CEQA and NEPA, as applicable. The only impacts that were found were impacts related to groundwater substitution, which were mitigated. The EWA EIS/EIR has addressed the potential for cumulative impacts of the actions under the Flexible and Fixed Purchase Alternatives in this document.

### **NP01-2**

**Comment:**

Equally problematic is the lead agency's attempt to completely disregard the Final CALFED Bay-Delta Programmatic Environmental Impact Report/ Environmental Impact Statement ("CALFED EIR/S"). Farm Bureau agrees that the CALFED EIR/S is legally insufficient; but to the extent CALFED insists on continuing with its flawed program in contravention of law, it is the guiding document for this program. While the litigation is pending, CALFED cannot pick and chose which portions of the program it will implement and which it will ignore. For this reason, the Draft EIR/S cannot incorporate by reference only selected portions of the CALFED EIR/S. We understand that the CALFED Program as described in the CALFED EIR/S is flawed, but the EWA must be operated consistent with 2000 CALFED Record of Decision unless or until a new document is adopted

**Response:**

The entire CALFED PEIS/EIR was not incorporated by reference because not all of it was used in the EWA EIS/EIR. Section 1.6 of Volume 1 explains that certain sections of the CALFED PEIS/EIR were incorporated by reference for background information and context relevant to the proposed EWA project to avoid duplication of already accessible public information. The impact analysis sections of the PEIS/EIR were not incorporated because they were either too general to provide impact analysis coverage for the EWA project, or the analytical tools have evolved to allow for more refined impact analysis today.

The PEIS/EIR is the programmatic environmental analysis document, not a decision document. The Programmatic ROD is the decision document of the state and Federal agencies for the overall CALFED Bay-Delta Program. Consistent with the ROD, the mitigation strategies developed in the CALFED PEIS/EIR and adopted in the CALFED ROD were considered in developing this EIS/EIR.

The project described in the programmatic documents (i.e., the ROD, the CEQA findings, and the CALFED PEIS/EIR) is more general and flexible than the commentor indicates. The programmatic project is a broad framework to help the agencies plan future actions. As the programmatic states, the CALFED agencies did not analyze or approve site-specific projects. Specific projects are discussed in the "Plan for Actions" section of the ROD, including the EWA, but these projects were proposals for future actions, subject to future, site-specific analyses. The EWA has been developed consistently with this framework.

### **NP01-3**

**Comment:**

The Draft EIR/S is proposing significant agricultural land idling. According to the Draft EIR/S, land retirement in the northern Sacramento Valley could reach 89,600 acres and the land retirement could reach 182,800 acres in southern Central Valley. (p. 11-36 and p. 11-44.) These figures represent significant agricultural land idling, even if

the same parcels are not idled every year. The farming communities in the target areas will have a consistent and long-term agricultural land and water loss each year.

In order to understand the magnitude of the impacts, the Farm Bureau requests clarification as to whether the land idling figures are a “cap”, meaning that no idling will be permitted above these levels in each region. We would also like to know how the 89,600 acre and 182,800 acre figures were generated. Currently, it is unclear whether the 600,000 acre-feet proposed for acquisition under the Flexible Alternative could come entirely from land retirement if that is the only significant source of water. It is our understanding that the usual operation of the EWA would not include land retirement as the leading source of water, but could land retirement be the primary source of water in an unusual year? This information is important for decision-makers and the public to understand because agricultural land and water resources are an important part of the physical environment. Farmers and ranchers need these land and water resources to provide the proper environment for growing crops and raising animals.

***Response:***

The commentor mistakenly states that the EWA agencies would engage in land retirement. All land idling would be temporary.

The EWA agencies would not make crop idling purchases every year; therefore, crop idling effects would not be “consistent and long-term.” The EWA program would not cause any permanent changes to land use, and the effects would be temporary. Crop idling is limited by a 20 percent threshold to reduce economic effects. The 20 percent criterion applies to rice acreage in the Upstream from the Delta counties and cotton acreage in the Export Service Area counties. The EWA agencies would not purchase water through crop idling above the cap. Volume 2 Section 11.2.3 details how EWA agencies would calculate 20 percent of the acreage. The values used in the document are an average of 1995 to 1999 rice and cotton acreage data taken from the California Agricultural Commissioners Reports. These values will change in future years according to the criteria discussed in Section 11.2.3.

The EIS/EIR economic analysis describes effects of a worst-case scenario. In typical years, EWA would need 200,000 to 300,000 acre-feet of water, most of which would not come from crop idling. During wet years, if 600,000 acre-feet is needed, crop idling in the Export Service Area could potentially supply much of the total amount. Chapter 2 further explains the operations of EWA in varying year types.

Volume 2 Section 11.2.7 provides a briefer description. Crop idling would not be likely to occur every year.

Water sales to the EWA program would be entirely voluntary. (See page 2-35 in Volume 1.)

#### **NP01-4**

**Comment:**

One of the major principles of the California Environmental Quality Act (“CEQA”) is to sustain the long-term productivity of the state’s agriculture by conserving and protecting the soil, water, and air that are agriculture’s basic resources. (See, Cal. Pub. Res. Code §21060.5; 14 C.C.R § 15360; CEQA Guidelines.) In fact, the California Legislature amended CEQA in 1993 because there was concern that agricultural resources were not being sufficiently protected; thus lead agencies required additional guidance as to how to properly review impacts to these resources. (See, Sen. Bill No. 850 (1993-1994 Reg. Sess.) (adding Pub. Res. Code §§ 21060.1 and 21095).

During the 1993 CEQA amendment process, the Legislature made clear its intent that CEQA is to protect agricultural resources:

Agriculture is the state’s leading industry and is important to the state’s economy.

The continued productivity of agricultural lands in California is important in maintaining a healthy agricultural economy.

The conversion of agricultural lands to nonagricultural uses threatens the long-term health of the state’s agricultural industry.

The California Environmental Quality Act plays an important role in the preservation of agricultural lands.

It is the intent of the Legislature in enacting this act to encourage wise and efficient land use decisions based on the best available information by promoting the adoption and use of land evaluation and site assessment criteria by state and local agencies based on the system developed by the United States Soil Conservation Service to implement the Farmland Protection Policy Act (7 U.S.C. sees. 4201, et seq.).

Legis. Counsel’s Digest for Sen. Bill No. 850, Environment-Agricultural Land Preservation (1993-1994 Reg. Sess. This explicit statement by the Legislature highlights two important points: (1) that the legislature is concerned about “conversion of agricultural lands to non-agricultural uses;” and (2) that an important purpose of CEQA is to ensure the “preservation of agricultural lands.” Id.

Moreover, Appendix G of the CEQA Guidelines further identifies the type of agricultural impacts that must be considered under CEQA. Appropriately, it states:

AGRICULTURAL RESOURCES:...would the project:

- (a) Convert Prime Farmland, Unique Farmland, or Farmland of Statewide Importance (Farmland), as shown on the maps prepared pursuant to the Farmland Mapping and Monitoring Program of the California Resources Agency, to non-agricultural use?
- (b) Conflict with existing zoning for agricultural use, or a Williamson Act contract?
- (c) Involve other changes to the existing environment which, due to their location or nature, could result in conversion of Farmland, to nonagricultural use?

The Draft EIR/S does not properly consider agricultural land and water resources per this CEQA guidance.

**Response:**

The agricultural land use analysis used CEQA Guidelines to develop significance criteria for potential effects. The significance criteria in the document correspond to (a) and (b) of Agricultural Land Resources section of Appendix G, as adapted for the EWA program. The criterion (c) was not applicable because the EWA program would not result in any construction activities or permanent changes to the existing environment. The EWA program would not permanently convert agricultural lands to nonagricultural uses. Accordingly, the EWA program would not cause the permanent loss of farmlands in a manner that is commonly associated with construction on farmlands. Any loss of the ability to produce rice and cotton will be temporary and within historical variations. Temporary idling could potentially cause changes in the farmland designations for idled lands, but mitigation has been incorporated to reduce this effect of temporary idling to less-than-significant levels.

The EWA program would also create benefits for agricultural soils and for agricultural production. Temporary idling for the EWA could provide the same type of soils benefits as idling for common agricultural practices. Temporary idling would provide assets for farmers in those areas to further invest in their agricultural operations. In the Export Service Area, the EWA program would increase water supply reliability for agricultural users, creating a benefit for agricultural production and potentially more use of agricultural lands that may have occurred absent the EWA. The benefits of the EWA program to agricultural lands and land uses, as well as the mitigation incorporated in Volume 2 Chapter 13, demonstrate that the EWA program would be consistent with the legislative purposes described in the comment.

**NP01-5**

**Comment:**

Agricultural resources similarly are considered a part of the existing environment under the National Environmental Policy Act ("NEPA"). On August 30, 1976, the Council on Environmental Quality ("CEQ"), in cooperation with the Department of Agriculture, issued a memorandum to federal agencies informing them of the need to consider loss of farmland as a potentially significant environmental impact. On

August 20, 1980, the CEQ issued additional guidance to the heads of agencies as losses of agricultural lands had continued:

Approximately 1 million acres of prime and unique agricultural lands are being converted irreversibly to non-agricultural uses each year. Actions by federal agencies such as construction activities, development grants and loans, and federal land management decisions frequently contribute to the loss of prime and unique agricultural lands directly and indirectly. Often these losses are unintentional and are not necessarily related to accomplishing the agency's mission.

45 F.R. 59189. The CEQ further states:

If an agency determines that a proposal significantly affects[s] the quality of the human environment, it must initiate the scoping process...to identify those issues, including effects on prime or unique agricultural lands, that will be analyzed and considered, along with the alternatives available to avoid or mitigate adverse effects related to inducing changes in the patterns of land use ... cumulative effects ... mitigation measures ... to lessen the impact on ... agricultural lands.

Id. Pursuant to this CEQ guidance, CALFED was obligated to consider impacts to agricultural resources.

***Response:***

The document analyzes effects to agricultural resources in Volume 2 Chapter 13. EWA agencies would not cause any permanent changes to agricultural land that would result in loss of farmland. All EWA idling actions would be temporary. The EWA agencies implemented a comprehensive scoping process before developing the Draft EIS/EIR. They provided the opportunity for public involvement and comment on all resource issues, including agricultural land use.

**NP01-6**

***Comment:***

The Draft EIR/S did not adequately consider impacts to agricultural resources as directed by both NEPA and CEQA because the document does not recognize the indirect effects of consistently taking a significant amount of farmland out of production every year. The fact that the same parcels may not be idled every year cannot be equated with negligible impacts.

***Response:***

The EIS/EIR analyzed potential effects on agricultural resources in Volume 2 Chapter 13 and fulfilled the requirements of CEQA and NEPA. Indirect effects of crop idling are discussed in many resource chapters, including but not limited to Groundwater (Volume 1 Chapter 6), Water Supply (Volume 1 Chapter 4), and Regional and Agricultural Economics (Volume 2 Chapter 11). EWA agencies would not purchase water through idling in every year and would propose idling actions that are consistent with historical variations in crop acreage. Therefore, the program would not take significantly more land out of production than has been out of production in

the past. Many past programs, including the Drought Water Bank and previous programs authorized by past Farm Bills, have taken comparable amounts of land out of production without any permanent effects to agriculture. In fact, during most years, acres idled by the EWA program would be much less than the numbers proposed in the document. Volume 2 Section 11.2.7 discusses when crop idling actions are expected to occur. EWA agencies would purchase water from reservoir storage and groundwater substitution before crop idling. Lastly, the idea that different parcels would be idled each year preserves the land classification under the FMMP and Williamson Act, which protects agricultural lands.

#### **NP01-7**

***Comment:***

As CEQA provides, “Direct and indirect significant effects of the project on the environment shall be clearly identified and described, giving due consideration to both the short-term and long-term effects.” 14 Cal. Code Regs. § 15126.2(a). “The discussion should include relevant specifics of the area, the resources involved, physical changes, alterations to ecological systems, and changes induced in population distribution, population concentration, the human use of the land (including commercial and residential development), health and safety problems caused by the physical changes, and other aspects of the resource base such as water, historical resources, scenic quality, and public services.” *Id.* The Draft EIR/S violates this requirement of CEQA by failing properly to consider the direct impacts of the EWA’s proposed changes in agricultural water, agricultural land, and the human food supply.

NEPA similarly requires a consideration of direct and indirect impacts. 40 C.F.R. §§ 1502.16(a), (b). Among other things, EIS’s must consider “the environmental impact of the proposed action,” and “any adverse environmental effects which cannot be avoided should the proposal be implemented.”

***Response:***

All water purchased by the EWA agencies through crop idling would be from willing sellers. Volume 1 Chapter 4 discusses effects of this sale on water used in agriculture to other agricultural users. Volume 2 Chapter 13 discusses effects on agricultural land. Therefore, the EIS/EIR does discuss impacts to these resources.

National and international markets produce rice supplies for California and the U.S. There is very little potential for shortages of rice in the foreseeable future. The USDA’s Rice Situation and Outlook Report for 2002 projects a bumper crop and record supplies for 2003 with the lowest U.S. price since 1986/87. The EIS/EIR complies with both CEQA and NEPA requirements for assessing environmental impacts of the project. The “environmental impacts of the proposed action” are addressed in all resource chapters and “any adverse environmental effects which cannot be avoided should the proposal be implemented” are discussed in those resource chapters required by CEQA and NEPA.

### **NP01-8**

***Comment:***

When a substantial segment of agricultural land is consistently removed from production every year, the farming infrastructure is damaged and farmland and farm water will be converted to other uses. A viable agricultural sector needs access to various support services, such as farm workers, supply companies, equipment dealers, transportation providers, pesticide applicators, processors, and marketers. These support services, in turn, require a critical mass of farmers to remain viable. But as agricultural land and water are converted to other uses, resulting in fragmentation of agricultural land, these necessary support services typically leave the area. Land fragmentation also reduces economies of scale, and increases traffic on rural roads with which agricultural traffic must compete. The net result of these impacts is to discourage farmers and ranchers from remaining in or entering the agricultural business, which in turn leads to further conversion of agricultural land and water.

The aforementioned loss of farm infrastructure and viability are not just economic or social impacts. The loss of infrastructure is also a physical impact to the environment because the agricultural soils and the water required for production of food and fiber have lost their productive capabilities when they are converted to other uses like urban development, wildlife refuges, and parks. Moreover, when farmland and farm water are converted, there are other environmental impacts to consider besides the loss of agricultural productivity. The impacts vary depending on the use that replaces agriculture, but they may occur whether agricultural land is converted to urban development or wildlife habitat. These potential impacts include, but are not limited to, a change in drainage patterns, diminished groundwater recharge, increased in water use, deterioration in water quality. Therefore, these secondary effects cause a “reasonably foreseeable indirect change in the environment” - by depleting agricultural infrastructure and is encouraging additional conversions of agricultural land and water to other uses - and thus must be analyzed as an environmental impact under CEQA. Pub. Res. Code § 21065. With the above points in mind, the Draft EIR/S is incorrect when it states that the FPPA and the NEPA Memorandum on Farmland Protection do not apply because there will be no permanent conversions. (See pp. 1-18 and 1-19.) First and foremost, neither law is limited in its application to only permanent agricultural land conversions. At the same time, there may be indirect impacts from the project that will cause permanent agricultural land conversions.

***Response:***

EWA agencies are proposing temporary idling actions that would be consistent with historical variations in crop acreage. Many past programs, including the Drought Water Bank and Federal commodity programs, have taken comparable amounts of land out of production temporarily, and the amount of annual land idling is within normal annual variations. Therefore, economic effects would be within the range of recent experience. Therefore, any idling that is within historical averages should not have any effects on agricultural infrastructure.



The commentor has not provided evidence to support the statement that further additional land and water used for farming will be changed to other uses because of the EWA creating a weakened agricultural support sector. Information could not be found to support the suggestion that voluntary, temporary water transfers weaken the agricultural support sector or create these indirect effects in the areas where water transfers would be based on temporary land idling. The opposite could be true. Increased net returns from participation in voluntary transfers provide additional net income that could be used to support and invest in farm operations.

It is true that lower average levels of production would have effects on long-run levels of supply services. These effects are fully captured in the regional economic analysis. Input-Output (I-O) analysis captures all long-run changes in input markets, and the Department of Water Resource's Economic Model for Temporary Idling of Irrigated Land (DEIM) model supplemented existing input-output data to capture all effects in forward-linked markets (post-processing activities of crop production, such as transportation or rice milling). DEIM estimates liberal (i.e., large) economic effects for two reasons. First, because the EWA transfers would be temporary, some long-run effects estimated by the model would actually not occur. Second, some of the forward linkage effects would not occur in the county of origin as currently assumed. For example, not all counties in the Upstream of the Delta Region have rice mills.

The EWA program is proposing temporary idling that would not likely result in permanent changes to agricultural land or water uses for the reasons discussed above. Effects of temporary crop idling to other resources, including water supply, groundwater, vegetation and wildlife, and water quality are discussed in other chapters.

#### **NP01-9**

***Comment:***

The Draft EIR/S does not sufficiently consider the cumulative impacts of crop idling, short and long-term, as required by both CEQA and NEPA. Significantly, the Draft EIR/S does not consider any of the agricultural land retirement programs that are currently being undertaken throughout the region, nor does it consider widespread urban pressures to convert agricultural land.

CEQA requires that every EIR "shall discuss cumulative impacts of a project when the project's incremental effect is cumulatively considerable." 14 Cal. Code Regs. § 15130(a). "The cumulative impact from several projects is the change in the environment which results from the incremental impact of the project when added to other closely related past, present, and reasonably foreseeable probable future projects. Cumulative impacts can result from individually minor but collectively significant projects taking place over a period of time." *Id.* at § 15355(b):*Los Angeles Unified School Dist. v. City of Los Angeles*, 58 Cal. App. 4th 1019, 1024-1025 (Cal. Ct. App. 1997). Thus, it is well established that one "overwhelming consideration" of CEQA is that environmental considerations "do not become submerged by chopping a large project into many little ones- each with a minimal potential impact on the

environment- which cumulatively may have disastrous consequences.” *Bozung v. Local Agency Formation Com.* 13 Cal. 3d. 263, 283-84 (Cal. 1975).

NEPA regulations also require a federal agency to consider “cumulative actions, which when viewed with other proposed actions have cumulative significant impacts and should therefore be discussed in the same impact statement.” 40 C.F.R. 1508.25 (a)(2). See also *id.* at 1508.25(c) (requiring discussion in EIS of cumulative impacts).

Although this is by no means an exhaustive list, the Draft EIR/S should have considered the following classes of projects:

1. The many agricultural land conversions that have been funded by the Wildlife Conservation Board in the past and that are currently proposed;
2. The land retirement and temporary idling funded through Farm Bill (Conservation Title) Programs;
3. United States Fish and Wildlife Service National Wildlife Refuges and proposed expansions of these refuges;
4. Agricultural land conversions funded through the CALFED Ecosystem Restoration Program both before and after the ROD;
5. All of the private and public agricultural land acquisitions and conversions associated with the Sacramento River Conservation Area;
6. Habitat Conservation Plans/Natural Community Conservation Plans, both approved and in negotiation, because these plans usually convert farmland to wildlife reserves as mitigation for urban development (Kern County, Placer County, Yolo County, Solano County, San Joaquin County);
7. Agricultural land conversions funded by the Central Valley Project Improvement Act Restoration Program;
8. Acquisitions of “B3” water through the Central Valley Project Improvement Act;
9. Metropolitan Water Agency’s northern water acquisition program;
10. Levee setback programs for river meander that are retiring agricultural lands (Sacramento-San Joaquin Rivers Comprehensive Plan, CALFED); 11. Urban sprawl;
11. The incremental pumping associated with the Napa Proposition;
12. The changes in project operations associated with the new Central Valley Project Operating Criteria and Procedures (“OCAP”).

**Response:**

Sections 11.2.8, 12.2.6, and 13.2.9 in Volume 2 discuss the EWA's cumulative contribution to effects on regional and agricultural economics, agricultural social issues, and agricultural land uses. The following response discusses the programs included in the cumulative effects analysis, the programs suggested by the commentor, cumulative effects to land use, and, finally, cumulative effects to regional economics.

The cumulative effects analysis includes other water transfer programs that could result in crop idling, such as the Dry Year Purchase Program, the Drought Risk Reduction Investment Program, the CVPIA Water Acquisition Program, and the CALFED Environmental Water Program. The analysis considers water transfers associated with the Metropolitan Water District in the Dry Year Program. The commentor suggests inclusion of the incremental pumping associated with the proposed CVP/SWP Integrated Operations, as well as changes in operations under OCAP. These changes in operations are not incorporated in this document because they are not anticipated to be in place during the timeframe of this EWA project. The changes will need to be addressed in future EWA environmental documentation.

The cumulative analysis also includes the Westlands Land Retirement Program because of its timing, location, and size. The program is being implemented within the timeframe of the EWA and will retire cropland in Kings and Fresno Counties, which are in the EWA crop idling water acquisition region. The program proposes to remove 200,000 acres of cropland from production. This is a substantial amount and would affect the regional agricultural economy. In this instance, the EWA agencies would not purchase water from idling cropland in Kings and Fresno Counties until the economy has adapted to the losses in production, employment, and output caused by the retirement program.

The commentor suggested numerous programs that it believes must be included in the cumulative effects analysis. The list refers to "agricultural land conversions," by the Wildlife Conservation Board, Farm Bill Programs, National Wildlife Refuges, Bay-Delta Ecosystem Restoration Program, Sacramento River Conservation Area, Habitat Conservation Plans and Natural Community Conservation Plans, CVPIA programs, levee setback projects, and urban sprawl. The use of the term "agricultural land conversions" in the comment appears to refer to a permanent change in the use of agricultural lands to a nonagricultural use.

For purposes of Chapter 13, Agricultural Land Use, some of the programs on the commentor's list are specifically described in Section 13.1, Affected Environment/Existing Conditions, including Farm Bills Programs (Sections 13.1.2.3 and 13.1.2.4), and the CALFED Ecosystem Restoration Program (Section 13.1.2.5). The CALFED Ecosystem Restoration Program is a single blueprint for restoration that captures a host of State, Federal, local, and non-profit efforts that involve habitat restoration. The farmland data obtained from the Department of Conservation describes existing conditions in each county, thereby capturing any land use changes from past and present projects through 2000 on the commentor's list, as well as

farmland preservation projects and loss of farmland due to urbanization. For example, the existing conditions discussion for Butte County acknowledges land use changes due to farmland being restored to natural uses and includes in Table 13-3 the magnitude of the changes. The existing conditions discussions in Chapter 11, Regional and Agricultural Economics, and Chapter 12, Agricultural Social Issues, also incorporates existing land use patterns that are a result of past restoration projects, past farmland preservation projects, and past urbanization.

With respect to Chapter 13, Agricultural Land Use, it is unclear what specific physical environmental impacts have been or will be caused by the projects and programs listed in the comment that are similar to those created by the EWA. These other programs have been implemented and have not caused substantial changes to the baseline amounts of rice or cotton acreage in the crop idling counties. The EWA program will result in temporary land idling, but will not cause a permanent change in the use of agricultural lands. The EWA program would therefore not cause land to be permanently unavailable for agricultural production. Temporary idling creates no harm to the agricultural soils and may even be beneficial to the soils. Temporary idling does not cause any permanent land use changes that might cause a loss of the agricultural soils and does not cause a change in land use designations that might eventually lead to development on the agricultural soils. With mitigation, any EWA program temporary idling will not cause a change in the designation of the soils on the idled lands. Accordingly, the EWA program would not have an incremental adverse effect on agricultural land or land uses that is cumulatively considerable when viewed in light of the programs and projects on the commentor's list.

Moreover, information reviewed on the restoration programs and projects does not indicate that they are causing widespread adverse physical impacts to agricultural lands. Land acquisition and habitat restoration activities for the Bay-Delta Program focus on non-agricultural lands; lands where agricultural production is impaired by flooding, poor drainage, and other site conditions, rendering the economic return low or even negative; and lands where wildlife-compatible agricultural activities will continue. Some of the habitat restoration programs include ongoing, wildlife-friendly agricultural activities in habitat restoration and preservation projects. Existing and future funding at the State and Federal level has also been devoted to projects that will permanently preserve land for agricultural uses.

With respect to Chapter 11, Regional and Agricultural Economics, the projects and programs in the commentor's list are also part of the description of the affected environment/existing conditions in Section 11.1 to the extent they have caused a detectable shift in agricultural economic activity. Section 11.1 includes U.S. Department of Agriculture data showing farms and crop profiles, agricultural revenues and production costs, and leading commodities by county. Section 11.1.4 also includes a discussion of existing conditions related to property tax revenues and acknowledges both the reduced tax rates associated with lands enrolled in the Williamson Act, as well as subvention payments that provide partial replacement of local property tax revenues due to the Williamson Act. Section 11.2.3.1 discusses the historical acreage reduction provisions under Farm Bill programs.

The EWA crop idling will not remove lands from the tax rolls; therefore, the EWA program would not contribute any incremental effect to loss of property tax revenues in conjunction with the commentor's other projects and programs, to the extent these may result in land being removed from a county's tax rolls.

The EWA crop idling would have regional economic effects in conjunction with the Westlands Land Retirement Program, as described in Section 11.2.8.1.2. The commentor's projects and programs may also result in some loss of the availability of important farmlands for agricultural production during the time frame of the EWA program. The amount of this change is dependent on a host of factors, such as willing land sellers, adequate State and Federal authorizations, and available funding. The economic effect of additional important farmland being removed from production during the timeframe of the EWA program would likely be small because the CALFED Ecosystem Restoration Program, which may have funding during the EWA timeframe, focuses its restoration efforts on existing public lands, on lands that are not farmland, or on farmland that is not economically productive; many of the programs prioritize conservation easements over fee title, and the easements often include compatible agricultural activities; several of the programs support conservation easements to permanently preserve agricultural land for agricultural production. Accordingly, the analysis in Chapter 11 does not change.

In summary, the EWA program would not make a cumulatively considerable contribution to cumulative effects to the regional economy. The EWA agencies would implement the 20 percent measure with consideration of the other programs included in the cumulative impacts analysis and would not purchase water in any areas where land idling is larger than historically normal trends. EWA agencies would consider the effects of other programs to the agricultural economy before making any purchase.

The following text has been added to in Section 11.2.8.1.2 (page 11-62) to clarify how EWA agencies would determine which programs are included in the cumulative analysis for regional and agricultural economics: "EWA agencies would use the Agricultural Commissioners Reports to determine how much land is in rice or cotton production in each county. If the reports show a substantial decrease in farmed acreage, EWA agencies would not purchase water through rice or cotton idling in these counties. For example, the EWA agencies would consider the Westland Global Land Settlement Program."

#### **NP01-10**

##### ***Comment:***

The Draft EIR/S does not discuss the EWA's potential impact to our state's supply of food and fiber. The CEQA Guidelines require an agency to make a "mandatory finding[] of significance" for an environmental impact where "[t]he environmental effects of a project will cause substantial adverse effects on human beings, either directly or indirectly." 14 Cal. Code Regs. § 15065.

Because CALFED and the EWA will result in a reduction in the human food and fiber supply, the impact is by definition significant. The food supply analysis in the Final CALFED Bay-Delta Programmatic Environmental Impact Report/ Environmental Impact Statement ("CALFED EIR/S") cannot be relied on because it also failed to adequately consider the program's effects on the food supply. In the Final CALFED EIR/S Response to Comments, CALFED asserted that "there is currently a sufficient surplus in the national food system that the market would allow replacement" of certain crops such as feed corn, alfalfa, wheat, pears and almonds. But no analysis or substantial evidence was offered in support of these conclusions in the CALFED EIR/S and no reference is made to rice which is the food crop targeted by the Draft EIR/S. In a legally defensible analysis, the lead agencies also must consider the importance of rice to many minority communities and their unwillingness to replace this traditional staple of their diet. For this reason, rice may not be a crop that can be replaced in the food supply, assuming that "replacement value" is even an appropriate consideration.

Finally neither document, the Final CALFED EIR/S nor the Draft EIR/S, discusses the program's impacts on the state's supply of fiber, e.g., cotton. California is known for its high quality cotton, as we grow nearly all of our nation's Pima cotton and we are the only state that grows the San Joaquin Acala variety. These varieties are among the highest quality cottons in the world, competing with Egyptian cotton in the world markets. As clothing is a fundamental need of all people, the impacts to the state's supply of fiber should have been considered.

**Response:**

CEQA Guidelines section 15065 describes the considerations for a lead agency in determining whether to prepare an EIR and for evaluating certain types of impacts in an EIR. Here, the CEQA lead agency has prepared an EIR and developed an impacts analysis appropriate to the proposed project and consistent with section 15065. Contrary to the commentor's statement, EWA crop idling actions would not cause a substantial adverse impact on human beings due to a reduction in the supply of cotton or rice. The EIS/EIR describes that EWA program land idling would be temporary and would not result in any permanent decreases in production. Shortages of rice or upland cotton in the foreseeable future are extremely unlikely.

Food supply for California and the United States is produced in national and international markets. EWA actions would not cause a shortage in human rice supplies. According to USDA data, the world planted about 373 million acres of rice in 2002. Under a worst-case scenario, EWA agencies could purchase water from idling 89,600 rice acres, or about 0.02 percent of the world rice acreage. In terms of production, EWA program crop idling would result in a decrease of 344,000 tons of rice, or about 0.07 percent of the world's rice production in 2002.

EWA temporary crop idling actions would not likely affect California's overall food supply. Technological advances in the past have increased crop yield per acre, resulting in more supply. UCCE and California Rice Commission research states that United States and California rice production has steadily increased since 1991 even

with fluctuation in the amount of acreage. The University of California Agricultural Issues Center paper, "Farmland Conversion: Perceptions and Reality," states that California will not have any food shortages if its farmland is developed for urban use and that gradual decreases in farmland do not lead to actual declines in food production. This paper points out that permanent conversion of farmland would not affect food supply in California; the EWA program is only causing temporary effects to farmland.

EWA crop idling would not have an effect on the price or availability of rice for Californians, including any minority communities. The USDA Economic Research Service provides acreage forecasts for commodity crops under the Farm Security and Rural Investment Act of 2002. Acreage of commodity crops, which include rice and upland cotton, is projected to increase by more than 4 million acres between 2001 and 2011 (The 2002 Farm Act: Provisions and Implications for Commodity Markets. Wescott, Young and Price Ag Information Bulletin no. AIB 778. November 2002). The Rice Situation and Outlook Report for 2002 projects a bumper crop and record supplies for 2003 with the lowest U.S. price since 1986/87.

Regarding the production of fiber, many regions in the United States (Texas, Arizona, and southern states) and countries in the world grow cotton. California produces only about 3 percent of the world's cotton supply. According to USDA data, the world planted close to 84 million acres of cotton in 2002. Under a worst-case scenario, the EWA program could idle 182,800 cotton acres, or 0.2 percent of the world's cotton acreage. The EWA agencies would consider purchasing water from idling only upland cotton, not Pima cotton. In terms of production, the EWA program would result in the loss of about 24 million tons of cotton, assuming that this lost cotton acreage is not planted in other fields. This loss equates to about 0.05 percent of the world's cotton production in 2002. Therefore, EWA crop idling in California would not affect the supply of cotton.

#### **NP01-11**

***Comment:***

The Draft EIR/S fails to recognize that idling farmland has growth inducing impacts because it will weaken the viability of the farms and ranches in the communities where idling occurs. See, indirect impacts section, above, for discussion of impacts of loss of agricultural infrastructure.

***Response:***

As stated in Chapter 21, growth is a function of many factors, including, for example, local government decisions, the existence of employment opportunities in different sectors, and proximity to urbanized and suburbanized areas. Temporary land idling in water source areas associated with the EWA would not induce growth. Lands would remain available for agricultural uses after temporarily idling and would retain existing zoning and general plan designations. Land idling would also be within historical levels and is therefore not likely to weaken the viability of farms and ranches or the agricultural support sector.

See Chapter 21 for a discussion of the relationship between increased water supply reliability and growth.

See response to Comment NP01-8 for discussion of potential effects to agricultural infrastructure.

#### **NP01-12**

***Comment:***

At the same time, we completely disagree with the statement in the Draft EIR/S that more stable crop production would have the opposite effect and actually cause urban development. (p. 3-3.) No cite was given in the environmental document to support this claim, and we are completely unfamiliar with any study that would support such a statement.

The lead agency must never assume that growth in an area is necessarily beneficial or of little significance environmentally, but must make its judgment in this regard only after open-minded analysis. 14 Cal. Code Regs. § 15126.2(d). CEQA requires agencies to “[d]iscuss the ways in which the proposed project could foster economic or population growth, or the construction of additional housing, either directly or indirectly, in the surrounding environment.” 14 Cal. Code of Regs. § § 15126.2(d) and 15126(d); Cal Pub. Res. Code § 21100(b)(5).

More stable crop production, in fact, would not be growth inducing. It is well documented that a stable agricultural economy protects open spaces from urban sprawl; in fact, “smart growth” advocates regularly promote a strong agricultural resource base as one of the tools to fight sprawl. The basic premise is that farmland and open space is less likely to be sold for development if it supports other uses that relieve the need to sell to urban speculators. See, <http://www.farmland.org> ./, see also, Fact Sheet, Why Save Farmland, American Farmland Trust, May 2002 (attached).

***Response:***

Reliability in the Export Service Area has the potential for “indirect growth, economic effects (more stable crop production or crop idling), or indirect groundwater effects...”. The EWA program would improve water supply reliability in the Export Service Area by protecting exports from fish protection actions. Improved water supply reliability would provide farmers in the Export Service Area with water to grow crops. Therefore, crop production in the Export Service Area with the EWA program would be more stable. The sentence is not implying that more stable crop production would result in urban development. Rather, more crop production would increase the volume of sales in backward and forward linked agricultural industries.

#### **NP01-13**

***Comment:***

The Draft EIR/S only includes three alternatives: the Fixed Alternative (which is apparently the EWA under its current operation), the Flexible Alternative (which greatly expands the EWA), and the No-Action Alternative. This is not a full range of



alternatives, and there are other alternatives that should have been considered that would have satisfied the objectives of the EWA while producing fewer impacts.

The Draft EIR/S did not consider at least two obviously feasible alternatives:

1. The Draft EIR/S should have considered a greatly reduced EWA that only provides assets to offset pumping reductions that result from a “red light” jeopardy determination at the pumps. This proposed alternative would mitigate some of the program’s potential impacts, thus possibly making it a more environmentally benign alternative, while still meeting the program’s objectives.
2. The Draft EIR/S should also have considered a modified Fixed Alternative that included a discussion of how the operation principles could be modified to more efficiently utilize the current EWA assets.

CEQA requires agencies to consider in every EIR a reasonable range of alternatives to the proposed action. See e.g., *Laurel Heights Improvements Ass’n v. Regents of University of California* 47 Cal.3d. 376,400 (Cal. 1988). The California Legislature has expressly declared that “it is the policy of this state to: ... [r]equire governmental agencies at all levels ... to consider alternatives to proposed actions affecting the environment.” Cal. Pub. Res. Code § 210001(g). NEPA similarly requires agencies to include a discussion of “alternatives to the proposed action” in their EISs. See 42 U.S.C. § 4332(2)(C)(iii). NEPA also requires agencies to “study, develop, and describe appropriate alternatives to recommended courses of action in any proposal that involves unresolved conflicts concerning alternative uses of available resources.” See 42 U.S.C. § 4332(2)(E). Judicial review of the range of alternatives considered by an agency is an inquiry into whether the agency has set forth all those alternatives necessary to permit a “reasoned choice.” 14 Cal. Code Regs. § 15126.6(f). “The statutory requirements for consideration of alternatives must be judged against the rule of reason.” *Citizens of Goleta Valley*, 52 Cal.3d. at 565. See also *Save Lake Washington v. Frank*, 641 F.2d. 1330, 1334 (9 th Cir. 1981) (applying the same principles in the analogous context of NEPA); *Life of Land v. Brinegar*, 485 F.2d. 460, 472 (9th Cir. 1973) (same.)<sup>5</sup>

**Response:**

The EIS/EIR considered a full range of alternatives, as is discussed in Section 2.2.1. These alternatives were then narrowed because some did not meet the criteria of immediate, flexible, and reliable that are included in the Purpose and Need/Project Objectives.

Of the commentor’s two suggested alternatives, the first is essentially a ‘no action’ alternative because it would result in the EWA agencies reverting to a regulatory-only approach to responding to listed species. The second suggestion is already embedded in both the fixed and flexible alternatives in that methods to use the assets more efficiently is a premise behind the rigorous scientific review process that has been occurring annually for the EWA and will continue under either alternative.

#### **NP01-14**

**Comment:**

On a related issue, the preferred Flexible Alternative should not be selected because it does not satisfy the project's stated water delivery "reliability" objective (see p. 1-9); or in the alternative, its satisfaction of this objective is so minimal that the Flexible Alternative should not be selected. The Draft EIR/S does not even speak of assurances to water users. The public and the decision-makers cannot determine how "reliably" water will be delivered until the conditions that will likely be placed on the granting of assurances are revealed. The absence of a biological opinion, or at least sufficient detail in the Agency Species Implementation Plan ("ASIP"), is a glaring inadequacy of the Draft EIR/S.

**Response:**

See response to Comment LA08-12.

#### **NP01-15**

**Comment:**

Under CEQA, lead agencies must adopt feasible mitigation measures (or feasible environmentally superior alternatives) in order to substantially lessen or avoid otherwise significant adverse environmental impacts. Pub. Res. Code §§ 21002, 21081(a); Cal. Code Regs. §§ 15002(a)(3), 15021(a)(2), 15091(a)(1). NEPA also requires agencies to include in EISs a discussion of mitigation measures. See 42 U.S.C. § 4332(2)(C) (requiring discussion of "any adverse environmental effects which cannot be avoided). The CEQ regulations require agencies to include in EIS/S "appropriate mitigation measures not already included in the proposed action or alternatives." 40 C.F.R. § 1502.14(f). See also 40 C.F.R. § 1502.16(h) (requiring discussion of "[m]eans to mitigate adverse environmental impacts (if not fully covered under 1502.14(f)").

The mitigation proposed in the Agricultural Land Resource Section is insufficient because many feasible mitigation measures were never considered. First, the 20 percent limit on agricultural land idling that is included within the agricultural economic and social impact sections should be included within the agricultural land section too. This measure is unquestionably feasible because it is offered to mitigate for other impacts of this plan. Second, if the lead agencies were properly adhering to the RODS, the CALFED EIR/S would be incorporated by reference in its entirety, which necessarily includes the Agricultural Land and Water Section. However, the Draft EIR/S makes no reference to the agricultural resource mitigation measures itemized in the CALFED EIR/S. See CALFED EIR/S pp. 7.1-29 to 7.1-30. As the EWA is a CALFED program, these measures must be a part of the EWA's mitigation plan. At the very least, these are clearly feasible measures that should have been considered in the Draft EIR/S. While the measures included in the final CALFED EIR/S are insufficient to mitigate the impacts of the CALFED program, they are at least a step above the single measure that is offered in the Draft EIR/S. Both environmental documents, however, suffer from the same shortcoming, which is the failure to include an implementation plan.

Finally, there are many mitigation measures that were not considered in either document that are inherently feasible, thus requiring review in the Draft EIR/S. These inherently feasible measures include the following:

1. Protect agricultural land and associated water rights of equivalent production potential for the duration of the water transfer at a predetermined ratio of at least 1:1 and/or protect an equivalent percentage of agricultural land and associated water rights of equivalent production potential within the same county or irrigation district of the transfer for the duration of the transfer.
2. Agreements with the regulatory agencies that land idled by the EWA will not be considered reverted to habitat or its natural state for Endangered Species Act and Clean Water Act purposes. The environmental baseline will not be increased, thereby increasing environmental regulation when the land is put back into production.
3. A mitigation fee paid to an infrastructure security bank that will make funds available to packing plants, processing plants and other farm infrastructure that is impacted by a loss in tonnage as a result of EWA crop idling. For example, a fee could be charged to the account for every acre-foot of water that is acquired by the EWA due to crop idling. A strong farm infrastructure will protect the environment from a changes in land and water use.

***Response:***

The mitigation measure included in the Agricultural Land Use chapter would reduce the effect to a less-than-significant level. Therefore, additional mitigation measures are not required in the analysis.

The EWA project description incorporates the criterion that the EWA agencies would not purchase water through idling more than 20 percent of rice or cotton acreage within a county. Therefore, the 20 percent idling criterion is applicable when considering effects on all environmental resources and does not need to be included as a mitigation measure in the Agricultural Land Use section.

The EWA agencies considered the mitigation strategies in the CALFED ROD when developing this EIS/EIR; however, these measures largely relate to avoiding and minimizing the physical effects of permanent changes in agricultural land use because of ecosystem restoration projects, levee system improvement projects, and construction of storage and water conveyance. These measures are not applicable to the EWA because only temporary crop idling is proposed, and land will remain available for agricultural production. The EWA agencies are not required to incorporate mitigation strategies that do not apply to EWA actions.

The EIS/EIR does incorporate a strategy identified in the CALFED ROD through the 20 percent criterion: "Limiting the number of acres that can be fallowed in a given area or the amount of water that can be transferred from a given area." In addition, the EIS/EIR includes a new land use mitigation measure that is specific for EWA

actions. This measure limits the years that a parcel could be idled to prevent changes in the total acreage of important farmlands under the Farmland Mapping and Monitoring Program and prime farmland under the Williamson Act.

With regard to the suggested mitigation measures:

1. EWA water transfers are temporary and would not have permanent effects on agricultural land or water rights. EWA agencies incorporated a 20 percent measure into the project description to protect agricultural land and also included a mitigation measure to protect prime farmland. These two measures reduce land use effects to less than significant. Therefore, this mitigation measure is not necessary to include.
2. The proposed measure appears to suggest a regulatory benefit for those landowners participating in the EWA by idling crops. It is not clear how this proposal would mitigate for an environmental impact. Because the EWA would result in only temporary crop idling, the landowners would likely treat the idled property in a manner similar to what they would do if idling as part of regular agricultural practices. Any regulatory agreements would appear to address perceived regulatory burdens on the landowners, instead of a physical impact on the environment.
3. EWA crop idling actions would not result in any permanent conversion of agricultural land. The 20 percent measure would reduce socioeconomic effects to third parties. EWA agencies are not legally required under CEQA and NEPA to include mitigation measures for economic effects.

#### **NP01-16**

***Comment:***

By taking rice land out of production, the 10 to 20 million waterbirds (including migrants) that depend on the Central Valley will be significantly affected. (Source: California Rice Commission). Sixty percent of the waterfowl on the Pacific Flyway winter in the Central Valley, with rice fields providing habitat to nearly 70 percent of the migrant shorebirds during their journey south. (Id.) Without rice farming, wetland habitats in the Central Valley would be reduced by as much as 45 percent. (Id.) A loss of this magnitude would have a disastrous effect on waterfowl, and a host of other wetland-dependant species. We are not suggesting that the EWA under any of the alternatives would take all of the rice land in the valley out of production, but the Draft EIR/S should have considered the direct, indirect and cumulative impacts that idling rice lands would have on the birds that use these lands as an important stop on the Pacific Flyway, particularly under the Flexible Alternative. (See attached, list of species that depend on rice lands that the Draft EIR/S failed to consider.)

***Response:***

Section 10.2.6.1.18, page 10-84, in Volume 2 discusses the direct and indirect impacts to wildlife in general from the idling of seasonally flooded agriculture (rice) under the Flexible Purchase Alternative. In particular, this section discusses impacts to

waterfowl, wading bird, and shorebird guilds. Impacts include changes in habitat availability, forage availability, and the potential for fragmentation of habitat. It is important to note that EWA water acquisitions would not preclude flooding of fields in the winter, a common practice, thereby retaining wetland habitat for over-wintering species. In addition, the analysis of waterfowl distribution throughout the Central Valley shows waterfowl populations use a variety of wetland habitats and that the birds readily move among the habitats as the winter season proceeds. To address potential effects to rice habitat, conservation measures have been developed to minimize the effects to species most dependent on the habitat. The analyses of the conservation measures developed to protect the giant garter snake and other special-status species show that these measures also reduce the effects of rice idling on waterfowl, wading bird, and shorebird guilds to less-than-significant levels. Section 10.2.11 and Chapter 22 discuss cumulative impacts and find that the cumulative effects are also less than significant.

Additionally, Section 10.2.1.3 discusses species not analyzed in the EIS/EIR. These species were not included in the evaluation of impacts if they may occasionally visit, but are not dependent on seasonally flooded agricultural land and, therefore, would not be affected by crop idling. The list supplied by the California Farm Bureau Federation was used when drafting the EWA EIS/EIR to determine which species to include in its analysis in addition to consultation with CDFG and USFWS. The majority of the species in Tables A1, A2, and A3 (in Appendix A of the EWA ASIP, Volume 3), however, were determined to (as the table titles note) utilize rice at some point during their life cycle, but are not dependent upon rice. Therefore, these species were not analyzed in detail, and an analysis of impacts to wildlife in general finds that these impacts would be less than significant.

#### **NP01-17**

***Comment:***

The Draft EIR/S is missing important information that is necessary for meaningful analysis of the proposal. In order to provide this information to the public and the decision-makers, the Draft EIR/S must be recirculated.

The lead agencies' failure to provide sufficient information about the EWA proposal for years 4-7 will require the inclusion of significant new information in the next draft. In order to ensure meaningful public participation in the CEQA process, CEQA requires that the EIR be recirculated if the lead agency adds "significant new information" to the document subsequent to the close of the public comment period, but prior to certification. Cal Pub. Res. Code § 21092.1. This lack of information is depriving the public of meaningful participation. *Laurel Heights II*, 6 Cal. 4th 1129; see also 14 Cal. Code Regs. 15088.5; *Mira Monte Homeowners Ass'n v. County of Ventura*, 165 Cal. App. 3d. 357, 365 (1985) ("the failure to prepare a subsequent or supplemental EIR [based on new information] deprived the public, who relied on the EIR's representations, of meaningful participation"; *Save Our Peninsula Committee v. Monterey County Bd. of Supervisors*, 87 Cal. App. 4th 99, 128-131 (2001) (new information concerning the source of offsetting groundwater pumping requires

recirculation of EIR); *City of Santee v County of San Diego*, 214 Cal. App. 3d. at 145155 (new information regarding time limit for transportation project requires recirculation”).)

NEPA also requires agencies to supplement a draft EIS when “a draft statement is so inadequate as to preclude meaningful analysis” or if: (1) “[t]he agency makes substantial changes in the proposed action that are relevant to environmental concerns”; or (2) “[t]here are significant new circumstances or information relevant to environmental concerns and bearing on the proposed action or its impacts.” 40 C.F.R. §§ 1502.9(a), (c)(1).

***Response:***

Volume 1 Chapter 2 contains information regarding the project description, action alternatives, and typical year EWA operations. Volume 1 Chapter 3 contains a definition of the project area.

Regarding recirculation, at issue here is the word “significant.” The commentor quotes the Laurel Heights II decision to support the claim that the lack of information in the EIS/EIR deprives the public of meaningful participation. In this decision, the court set forth four examples of situations in which recirculation is required (6 C4th at 1130):

1. When the new information shows a new, substantial environmental impact resulting either from the project or from a mitigation measure;
2. When the new information shows a substantial increase in the severity of an environmental impact, except that recirculation is unnecessary if mitigation adopted reduces this impact to insignificance;
3. When the new information shows a feasible alternative or mitigation measure, considerably different from those considered in the EIR, that clearly would lessen the environmental impacts of a project and the project proponent declines to adopt it; and
4. When the Draft EIR was so fundamentally and basically inadequate and conclusory in nature that public comment on the Draft EIR was essentially meaningless.

Under Sec. 1502.9(a) of NEPA, the draft statement must fulfill and satisfy to the fullest extent possible the requirements established for final statements in Section 102(2)(c) of the Act. If a draft statement is so inadequate as to preclude meaningful analysis, the agency shall prepare and circulate a revised draft of the appropriate portion. The agency shall make every effort to disclose and discuss at appropriate points in the draft statement all major points of view on the environmental impacts of the alternatives including the proposed action.

The EWA EIS/EIR does not require recirculation because no new impacts resulting from the project or mitigation measures have been identified; no increases in impact severity have been identified; no new feasible alternatives or mitigation measures have been suggested that would lessen impacts that the EWA agencies decline to adopt; and the Draft EIS/EIR is adequate.

#### **NP01-18**

***Comment:***

There is no biological opinion attached to the Draft EIR/S and the action-specific implementation plan (“ASIP”) does not provide any information about how or if assurances will be provided to the water users. The public needs to know if “assurances” that no uncompensated water will be diverted for fishery purposes are a part of the alternatives. If assurances are a part of the plan, the public has the right to know the following: 1. How much water must be acquired by what date, 2. Whether there is a minimum funding requirement for the EWA and the ERP before the EWA is considered fully operational and assurances approved, 3. Are there other undisclosed requirements that must be met before the assurances will be approved, 4. To what use will EWA water be dedicated and how much water will be dedicated to each use. This information is vital as, without it, the public and the decision-makers do not know to what extent the various alternatives satisfy the project’s objectives, which include water supply reliability. This information is similarly important to determine how much water would have to be acquired before the Tier III threshold is met and possibly exceeded.

***Response:***

See response to Comment LA08-12.

#### **NP01-19**

***Comment:***

The EWA science panel has met each year since the EWA became operational in 2000, yet the Draft EIR/S makes no mention of these workshops or the scientific community’s questions regarding any benefits that protected fish species have enjoyed as a result of the operation of the EWA. Clearly, there is a dispute within the scientific community regarding whether the EWA has benefited any protected fish species and this dispute should be reflected in the environmental document. Similarly, unsupported statements attesting to how the fishery will benefit from the EWA appear throughout the Draft EIR/S. These statements must be qualified or further explained because the inherent assumption that the fishery has benefited from the EWA is not necessarily true.

The Draft EIR/S must include a discussion regarding the extent to which the EWA is having a positive population effect on protected salmon species, and why the EWA should continue if the populations of protected salmon species are not increasing as a result of its operation. This discussion took place at this year’s EWA science workshop with a presentation by Sheila Greene, thus her work should be discussed in the environmental document because it directly relates to a controversy about the

operation of the EWA. The lead agencies and the public will not be fully informed if Ms. Greene's work is not discussed because it directly relates to whether the operation of the EWA should be altered and whether the EWA should be expanded. See, Central Valley Chinook Genetic Characterization in the Delta, EWA Workshop July 2003, Sheila Greene (attached.)

Similarly, the EWA must include a discussion regarding the extent to which the EWA is relieving any indirect effects of the operation of the project pumps on protected salmon species. Specifically, the lead agencies and the public cannot have an informed discussion about whether the operation of the EWA should be modified and the size of the account increased without addressing Brian Manly's work in the Draft EIR/S. (See, "Use and Appropriateness of the Available Statistical Tools in Assessing and Quantifying Fish Mortality in the Delta", by Brian Manly, Western EcoSystems Technology, Inc., Cheyenne, Wyoming (which has been presented at an EWA Workshop)) (attached.)

If the agencies agree that the EWA has little effect on protected fish populations, but want to continue with the EWA because of a perceived benefit of avoiding ESA "take" prohibitions, then the agencies need to explain in the Draft EIR/S why avoiding "take" has no significant effect on protected fish populations. If there is no population effect, then there may be a problem with the "take" criteria.

As far as delta smelt are concerned, there is also rigorous scientific debate as to whether delta smelt have in fact already been recovered since population counts satisfied the recovery criteria this year. At the same time, delta smelt researchers are on the brink of completing two models that will result in new information about how the operation of the EWA and the project pumps affect delta smelt and how they should be operated to support the species. For these reasons, the EWA should not be substantially modified as proposed in the Flexible Alternative until the more complex IBM and Matrix models are operational. If the lead agencies decide to implement the Flexible Alternative despite these facts, then the Draft EIR/S must explain the scientific justification supporting the decision to change the operation of the EWA at a time when delta smelt populations are achieving important milestones.

**Response:**

The environmental protections inherent to the EWA program are outlined in the CALFED Bay-Delta Program Record of Decision (ROD) issued August 28, 2000. The EWA EIR/EIS analyzes the EWA program on a project-specific basis in compliance with CEQA and NEPA. The quantitative and qualitative analyses completed for fisheries and aquatic ecosystems (Chapter 9 in Volume 1) indicate potential beneficial impacts associated with implementation of the EWA Program related to improved habitat conditions within the Delta, as well as reduced salvage at the CVP and SWP export facilities. See also responses to comments FA01-10 (pertaining to an update of the EIS/EIR to include Review Panel recommendations and description of the adaptive management process), LA08-1 (regarding delta smelt models and adaptive management process identified in the CALFED ROD), LA15-7 and LA15-11 (pertaining to uncertainty in estimation of how take at pumps will affect fish



populations), FO01-3 (regarding incidental take estimates under the Federal ESA), and FO01-5 (pertaining to monitoring and mitigation responsibilities of the EWA program regarding fish actions).

#### **NP01-20**

*Comment:*

Air Quality Chapter, Table 8-4, p. 8-16: Farm Bureau is cited as a source for Table 8-4. The cite to the Farm Bureau must be changed because the figures quoted in the article were not generated or endorsed by the Farm Bureau, being the exclusive opinion of the sources quoted in the article. The cite refers to an Ag Alert news article that reported in 1999 that the Sacramento Regional Air Basin wanted to lower oxides of nitrogen levels by exchanging old agricultural pumps for newer lower-polluting units. The Farm Bureau publication was merely reporting comments made by others about the plan. Moreover, the table presented in the Draft EIR/S does not appear anywhere in the news article and the data included in the article cannot be reasonably inferred from its text. Regardless, news articles should not be used as the basis for decision-making documents that are supposed to be based on science.

*Response:*

The citation on page 8-16 in Volume 1 has been modified with a footnote to state, "Grams/bhp-hr for NO<sub>x</sub> for emissions estimates for diesel and propane pumps obtained from Greg Gilbert, Sacramento Metropolitan Air Quality Management District, as reported in California Farm Bureau Federation, 1999." The source of the information in the Ag Alert article was Greg Gilbert, Sacramento Metropolitan Air Quality Management District mobile source division project manager, a reputable source for inclusion in a decision-making document. Further, the citation for the source in the EIS/EIR that states "California Farm Bureau Federation 1999" does not mean that the Farm Bureau generated or endorsed this figure. This citation allows the public to look up the reference by giving the location of the article, which in this case is on the California Farm Bureau Federation internet site.

#### **NP01-21**

*Comment:*

Agricultural Social Issues Chapter, p. 12-22, "Central Valley Land Use Report": The cite refers to an Ag Alert article about the release of a report from the Agricultural Task Force for Resource Conservation and Economic Growth in the Central Valley. Again, it is inappropriate to quote a news article, especially when the article is merely announcing the release of a report authored by another entity. Farm Bureau was a member of the task force that released the underlying report; however, it was the task force and not Farm Bureau that drafted and released the report.

*Response:*

The citation was removed, as it was not needed to reference information in the EIS/EIR. The text within Chapter 12 has no reference to the article, nor was any information contained within the article incorporated into Chapter 12.

**NP01-22**

***Comment:***

Adoption of the Flexible Alternative will improperly expand the purpose of the EWA as identified in the ROD if it is used to purchase water exclusively for in-stream flows and/or water quality management, or if the water is released at a time when it cannot be used to off-set pumping restrictions at the project pumps. The ROD identified the CALFED Environmental Water Program (“EWP”) as the water purchase mechanism for in-stream flows, not the EWA. If EWA water is used exclusively for in-stream flows and/or water quality management, there may be insufficient water when it is required to offset pumping reductions, and Tier III and possibly mandatory cut backs will not be avoided.

***Response:***

As stated on page 2-2 in Volume 1, increasing instream flows and augmenting Delta outflows would be secondary fish actions. The primary fish actions would be to benefit Delta-dependent species through export pumping reductions and closing the Delta Cross Channel gates beyond the regulatory baseline. The EWA agencies may take the secondary fish actions, however, if assets are available. These actions may also be accomplished in how the EWA agencies manage the water; for example, instream benefits may be obtained by releasing water to pay back for pumping reductions at times when instream flows are also needed. The CALFED ROD and EWA Operating Principles Agreement (Attachment 2 of the CALFED ROD) identified all four of these EWA fish actions.

**NP01-23**

***Comment:***

The Farm Bureau requests clarification as to the total amount of water that is included within the Flexible Alternative. When the Draft EIR/S compares Flexible and Fixed Alternatives, it states that the Fixed Alternative includes a purchase of 185,000 acre-feet and the Flexible Alternative includes a purchase of up to 600,000 acre-feet. The document also says that the variable assets will still be a part of both plans. Does this mean that 195,000 acre-feet of variable assets are in addition to the 600,000 acre-feet purchase proposed in the Flexible Alternative? Is the 200,000 acre-feet purchase that was supposed to occur in the first year of the account’s operation additive, thereby making the ultimate total acquisition under the Flexible Alternative 795,000 acre-feet in certain years?

***Response:***

The Flexible Purchase Alternative would only include up to 600,000 acre-feet of acquisitions. Variable assets would offset some of this total; therefore, the EWA agencies would need to purchase less additional water. The CALFED ROD also identified a purchase of 200,000 acre-feet of water in storage during the first year of EWA operation; if the EWA agencies could feasibly purchase this water, it would also offset a portion of the 600,000 acre-feet. The 600,000 acre-foot upper limit includes variable assets and all asset acquisitions, including water in storage.

**NP01-24**

***Comment:***

The Draft EIR/S states that one of the reasons to support the Flexible Alternative is that there maybe expanded or new water storage projects in the future. Unless these projects are coming on-line in the next three years, these projects are not a rational justification for an expanded EWA. (See p. 2-15.)

***Response:***

Page 2-15 does not discuss new water storage projects, but simply refers to new facilities. It is not listing reasons to support the Flexible Purchase Alternative, but is defining the upper limit of the Flexible Purchase Alternative. To reduce confusion, this phrase has been deleted from the EIS/EIR: "4) EWA water purchase needs may increase in the future to address potential impacts of new facilities operations."

**NP01-25**

***Comment:***

The Draft EIR/S must provide analysis as to how feasible it is for rice farmers to switch to crops that have lower water requirements to support the statement made on p. 2-46. Which crops have available infrastructure, appropriate soils and other relevant inputs, thereby making them viable alternatives to rice production?

***Response:***

The EWA agencies do not anticipate that rice farmers would be interested in crop substitution. It is a likely (and often necessary) option, however, in the Export Service Area. The option is included upstream from the Delta to provide flexibility for willing sellers. The EWA agencies would not require substitution, but would consider this type of transfer if proposed by a willing seller. As Section 2.4.2.1.3 states, "Crop substitution would have similar but lesser effects than crop idling, so it is considered to be a part of the crop idling discussion for the remainder of the document."

**NP01-26**

***Comment:***

The statement in the noise section prematurely assumes that there will be a reduction in noise when land is idled. As the EWA could have growth inducing impacts, agricultural land could be replaced with urban development, thereby bringing the validity of this statement into question.

***Response:***

All EWA program land idling actions described in this EIS/EIR would be temporary. EWA actions would not directly or indirectly lead to the conversion of land to non-agricultural uses (see response to Comment NP01-8 for additional information on indirect economic effects). Additional water supply reliability would be intended to increase sustainability of current agricultural and urban developments. EWA actions would not lead to an increased water supply that would support growth or remove a barrier to increased growth causing increased noise production.

**NP01-27**

***Comment:***

The Draft EIR/S states there are conservation measures in the Multispecies Conservation Service (“MSCS”) that will be mitigating impacts of the EWA. Which measures are mitigating which impacts? (p. 9-109.)

***Response:***

In consultation with the USFWS, NOAA fisheries, and CDFG, MSCS conservation measures were reviewed for applicability to the EWA, and were revised as necessary to mitigate for impacts caused by EWA actions. These conservation measures can be found in the EIS/EIR Section 9.2.3 and 10.2.4, and in the EWA ASIP (Appendix J of the EIS/EIR) Section 2.5.3.

**NP01-28**

***Comment:***

Does the Draft EIR/S purportedly analyze the impacts from all of the transfers in Table 2-5? Will the lead agencies undertake additional review if a transfer that it not included on this table is proposed even if the amount of water acquired is not more than 600,000 acre-feet?

***Response:***

As stated in the first full paragraph on page 2-36 in Volume 1, new acquisition sources may require additional environmental documentation, even if the annual purchases total less than 600,000 acre-feet:

“Table 2-5 does not contain an exhaustive list of potential EWA sellers; additional agencies may decide at any time that they wish to sell water to the EWA. An analysis of the potential environmental effects of transferring water, however, requires information on the transfer sources. This environmental document will analyze the effects associated with the potential transfers in Table 2-5 and will serve as a document from which to tier, should other EWA transfers require a supplemental document. EWA water transfers that meet and implement the environmental measures incorporated into the project and mitigation measures developed in this document for the specific areas identified should not need additional environmental documentation once the programs have been reviewed and are complying with these measures.”

**NP01-29**

***Comment:***

The Draft EIR/S should have considered impacts to water users caused by giving the EWA preference at Banks Pumping Plant. (p. 2-50.)

***Response:***

Page 22-2 in Volume 2 explains conveyance priority for both the CVP and SWP pumping facilities:

## SWP

- SWP pumping
- Water transfers for SWP contractors
- Joint Point of Diversion use for specific CVP contractors
- Wheeling for CVP and EWA (split 50-50 between CVP and EWA/Refuge Level 4 purchases)
- Water transfers for others

## CVP

- CVP pumping
- Refuge level 4
- Cross Valley Canal
- EWA
- Water transfers for others

The CVP and SWP established these priorities as part of the CALFED program. This environmental document analyzes the effects of the EWA program on others using various amounts of conveyance. Chapter 4 in Volume 1 analyzes the effects of EWA pumping on the CVP (page 4-34 for the Flexible Purchase Alternative and page 4-40 for the Fixed Purchase Alternative). Water transfers for others are not typically limited by available conveyance capacity, but instead by current institutional and financial requirements.

### **NP01-30**

#### ***Comment:***

The Draft EIR/S should have undertaken a more thorough analysis of the potential increases in water acquisition costs.

#### ***Response:***

Section 11.2.5.5 provides a detailed, qualitative analysis of potential price effects of EWA purchases. EWA has only been in operation for 3 years, and the water transfer market is still developing. Therefore, there is not enough history to quantify any price effects. Section 11.2.5.5 provides a detailed, qualitative analysis of potential price effects of EWA purchases. A more detailed quantitative analysis is not possible due to the limited history of EWA and the water transfer market. However, the qualitative analysis demonstrates that the price effects due to implementation of the EWA would likely be small relative to other variations.

**NP01-31**

***Comment:***

The documents on p. 3-15 are improperly incorporated by reference because the Draft EIR/S does not state where these documents are available for public review, presumably because they have not been made available to the public. Further, the Draft EIR/S should also have briefly summarized the incorporated material and described the relationship between the incorporated material and the Draft EIR/S. Cal Code of Regs. §§ 15150(b) and (c).

***Response:***

The following information has been added to the EIS/EIR (Volume 4 Chapter). The documents listed on pages 3-14 and 3-15 are available on the CALFED web site and on the DWR web site, respectively. Additionally, documents incorporated by reference are located at the CALFED Bay-Delta Authority office at 650 Capitol Mall, 5th Floor, Sacramento, CA 95814. Page 3-15 in Volume 1 also has been revised to include a brief summary of the relationship between the incorporated material and the EIS/EIR.

**NP01-32**

***Comment:***

The statements made pp. 9-255 to 9-259 suggest that the Flexible Alternative will reduce average annual fish salvage by about 136,000 delta smelt, 1.1 million salmon, 29,000 steelhead, 1 million splittail and 9 million striped bass. These statements are misleading and should be clarified because the numbers are estimated total reductions for the entire 15-year modeling period and not annual reductions.

***Response:***

See response to Comment LA03-23 (regarding clarifications to the EIS/EIR to indicate that the salvage totals are for a 15-year modeling period).

**NP01-33**

***Comment:***

The models used in Chapter 9 to analyze the EWA's fishery implications use data from years 1979-1993. Does the analysis in the Draft EIR/s take into account the fishery restrictions that have been implemented since 1992, i.e., Central Valley Project Improvement Act ("CVPIA") B2, new biological opinions, etc. These restrictions already have increased the amount of water available to offset fishery impacts caused by the pumps, thus the EWA may have less of an impact.

***Response:***

The comment is correct. As stated on page A1-61 of Attachment 1 in Volume 1, Modeling Description, "It is recognized that during the historical period, 1979 to 1993, the Projects were operated under Delta water quality, flow, and export constraint requirements that were much less stringent than the Delta requirements in place today. This suggests that the historical fish salvage was likely higher than it would be if the 1979 to 1993 period reoccurred with the Projects operated under today's Delta

requirements, as assumed in this analysis. As a result, the Delta effects analyzed in this document likely will over-estimate the amount of EWA assets required to achieve the State and Federal fishery agencies' habitat conditions improvement goals."

**NP01-34**

*Comment:*

The Draft EIR/S should not consider changes in X2 and changes in delta outflow as two separate benefits of the EWA because these are different aspects of the same thing and not separate benefits.

*Response:*

See response to Comment LA15-15 (pertaining to the uses of X2 and Delta outflow as evaluation tools).

**NP01-35**

*Comment:*

On p. 9-54 there is a discussion of the non-existent entrapment zone that was once erroneously associated with X2. To avoid further propagation of errors, the discussion of the fictitious "entrapment zone" must be removed from the Draft EIR/S.

*Response:*

See response to Comment LA15-17 (pertaining to use of the entrapment zone as a means of defining X2).

**NP01-36**

*Comment:*

All discussions of QWEST and "reverse flows" should be removed from the Draft EIR/S because we now know that the reverse flow concept is entirely irrelevant, providing no indication of changes in habitat conditions and species abundance. See pp. 9-26, 9-95 to 9-96, and Table 9-4.

*Response:*

See response to Comment LA15-16 (regarding QWEST).

**NP01-37**

*Comment:*

All discussions of the E/I ratio should be excluded because it is not a reliable indicator of ecosystem conditions or species abundance. The only appropriate place to discuss the E/I ratio is in relation to project operation requirements. See pp. 9-95 to 9-96.

*Response:*

See response to Comment LA15-16 (regarding the export/inflow ratio).

## **NP02 – Family Water Alliance**

**Jeffrey P. Sutton**

### **NP02-1**

***Comment:***

The Preferred Alternative selected, the so-called Flexible Alternative, does no more than provide the EWA the power to expend millions of taxpayer dollars to purchase water to benefit the Export Service Area and apparently also the environment, at the expense of agricultural interests located north of the Delta. However, despite the great length of the document, it still lacks a clear description of how the money will be spent, what exactly the benefits are which will be reaped, and most importantly what will happen to the water once it is used for unspecified environmental uses. It is hard to imagine how such broad strokes can even be submitted for proper analysis for an EIR/EIS. Further, as outlined below, the current draft completely fails to take into account the significant economic burden such a program will place on rural agricultural communities located north of the Delta.

***Response:***

The EWA agencies included the Flexible Purchase Alternative as the environmentally preferred alternative because neither action alternative had significant unavoidable effects, and the Flexible Purchase Alternative had more benefits. Each chapter addressing a resource area (Chapters 4-20) describes the benefits to that resource where applicable. The Executive Summary includes these benefits in Table ES-5. Volume 1 Sections 2.4.1 and 2.5.1 describe actions to benefit fish and the environment that are included in the Flexible Purchase Alternative and Fixed Purchase Alternative, respectively. The response to Comment NP02-6 includes a description of how the EWA agencies would use water for each action to benefit fish and the environment.

The response to Comment NP02-2 describes the detailed economic analyses included in Chapter 11 and 12 of the EIS/EIR.

### **NP02-2**

***Comment:***

It is clear that the majority of water to be purchased, up to 600,000 acre feet in some years, will come from the area north of the Delta. Much of this water will likely come from payments to idle rice land. The primary industry in the Sacramento Valley is agriculture, the largest crop produced is rice. The idling of up to 200,000 acres of rice land would be the equivalent of closing down one of the large automotive plants in Detroit. In the Sacramento Valley, our farms are our factories. The closing down of a substantial portion of those factories will have tremendous negative economic effects on our communities.

Over the years many investments in infrastructure and business have been developed which solely cater to the rice industry, including dryers, mills, customized machinery, and a multitude of agri-businesses. In years where the EWA is to purchase large amounts of water via idling of rice land, huge economic effects will be felt in rural counties. First, unemployment will rise. The EIR/EIS claims that rice is a crop that



does not require a large amount of labor. However, this analysis neglects to address that a large crop idling program will also result in economic losses to the businesses which support and depend on the rice industry, including mills, dryers, trucking, crop dusters, fertilizer companies, parts stores, and tractor companies, thereby affecting their labor force.

Second, as described above, the losses experienced by these businesses will greatly reduce the amount of money flowing through and being multiplied through the counties where rice is the primary crop. These losses are magnified when you consider the fact that the Draft EIR/EIS clearly states it needs to be flexible and that the amount of water purchased from year to year will be determined at that time, taking away any type of predictability and stability for the businesses which support the rice industry. In short, the lack of a clearly defined plan, which is subject to change, will greatly harm the economic prospects of many counties north of the Delta, primarily Glenn, Colusa, Yolo, Sutter, and Butte Counties.

***Response:***

EWA agencies do not propose to idle 200,000 acres of rice land in a given year; the upper limit for rice idling in the Flexible Purchase Alternative would be 89,600 acres (see Table 11-31 in Volume 2). Section 2.4.3 in Volume 1 describes the EWA actions during varying year types for the Flexible Purchase Alternative. In most years, the Flexible Purchase Alternative would purchase 200,000 to 300,000 acre-feet of water, most of which would not come from crop idling. The Fixed Purchase Alternative would purchase 35,000 acre-feet in the Upstream from the Delta Region, and would also attempt to secure purchases through other methods before crop idling transfers.

Chapter 11 analyzes third party effects of the EWA program using IMPLAN, a regional input-output model that considers direct, indirect, and induced effects. The model includes effects on businesses that support and depend on the rice industry, including mills, dryers, trucking, crop dusters, fertilizer companies, parts stores, and tractor companies. It also includes the effects to money flowing through the economy. Sections 11.2.5.1 and 11.2.5.2 discuss these effects.

Furthermore, both Chapter 11 and 12 discuss effects to the labor force. The agricultural industry has always had a large degree of uncertainty and instability. Economic conditions, hydrologic conditions, and normal farming practices affect the amounts of acreage planted each year. The EWA agencies are proposing idling actions that are consistent with historical fluctuations of crop acreage. The EWA program would not take away any additional stability or predictability for farmers. In fact, farmers would be receiving higher revenues from participating in the EWA.

**NP02-3**

***Comment:***

The CALFED Record of Decision clearly lays out, as one of its solution principles, the promise to avoid any redirected negative impacts as a result of its programs. The Environmental Water Account is just one of many programs promoted by CALFED which clearly breaches this self-directed mandate. The agricultural counties located

North of the Delta have been targeted for several CALFED and related programs which have had a direct negative economic affect on the region. Land acquisitions for environmental restoration by the state and federal government have taken large amounts of productive agricultural land off the tax rolls, and as such, the revenues multiplied through the region have been greatly reduced. Further, in lieu tax payments have historically fallen short of replacing this revenue source for the counties, placing great strain on the ability of the local governments to address the needs of its constituency. These programs have also increased pressure on farmers in regard to ESA and other governmental regulation, and has greatly increases crop losses due to predation, due to a complete absences of permit streamlining-and landowner assurances to mitigate these impacts. The Environmental Water Program and the Phase 8 Program have also depleted significant water resources from the agricultural areas north of the Delta. Moreover, the demand for water from the export service area (MWD and Westlands) have resulted in further idling of productive farmland. Cumulatively, these programs and trends have, and will continue to, have an increased negative impact on the economic vitality of a region that has historically been qualified as economically disadvantaged. These cumulative redirected negative impacts are clear breach of the CALFED Record of Decision.

***Response:***

The comments inaccurately portray the role of the CALFED solution principles. The solution principles were developed early in the planning process for a long-term Bay-Delta solution as a way to ensure that potential Bay-Delta solutions would be acceptable for the competing interests, and that the solutions would not create problems for one sector or geographic area as it solved them for a different sector or geographic area. The solution principles provided an overall measure of the acceptability of the programmatic alternatives and helped guide the design of the alternatives. They were intended to be evaluated against the Bay-Delta Program as a whole, not to be applied to individual parts of the Program. Accordingly, looking at the EWA program alone against the solution principles does not provide the view of the entire CALFED Program and how the CALFED Program conforms to the solution principles.

The solution principle referred to in several letters as “pose no significant redirected impacts” states that “solutions will not solve problems in the Bay-Delta system by redirecting significant negative impacts, when viewed in their entirety, within the Bay-Delta or to other regions of California.” Again, this particular solution principle is intended to apply to the Bay-Delta Program as a whole, not to individual components such as the EWA. These issues surrounding the solution principles were also included in the CALFED PEIS/EIR, Responses to Comments, Common Response 20.

The solution principles represent a policy issue for the lead agencies. Neither CEQA nor NEPA require the lead agencies to evaluate the EWA against the solution principles in this EIS/EIR. The EIS/EIR does provide information and analysis that agencies can use to assist them in making policy determinations. For example, a major issue described in the Regional and Agricultural Economics chapter is third party effects associated with rice and cotton idling. The EWA agencies have limited crop

idling to 20 percent of rice or cotton land within a county to minimize economic effects. For both the Fixed Purchase and Flexible Purchase Alternatives, crop idling effects on the economy do not exceed historic experience. Additionally, EWA crop idling actions would not cause any agricultural land to come off county tax rolls. EWA agencies are proposing temporary idling and have mitigation measures in place to prevent land classification changes that could affect county tax revenues. Therefore, crop idling would not redirect impacts to a substantial degree related to agricultural economy.

#### **NP02-4**

*Comment:*

The CALFED Program claims that all of the competing interests are to get healthy together. To date, the environmental considerations have received an extremely disproportionate share of the attention and funding, to the detriment of rural agricultural communities. The EWA, as presently proposed, is just another example of this unbalanced and insincere commitment on the part of CALFED. The EWA EIR/EIS analysis clearly has ignored existing studies and neglected to conduct its own research regarding the severe economic implications of this program, especially when viewed in light of the pressures presently experienced by this agricultural region. I direct you to the Glenn County Economic Study which illustrates the economic losses as a result of land acquisitions by the state and federal government. Further, a letter from the Glenn County Board of Supervisors that the California Dept. of Fish and Game is in arrears by over \$600,000 of in lieu tax payments. This is occurring at time when this County is terminating over 30 teachers due to budget constraints, illustrating the effect environmental programs have already had on this region. Glenn-Colusa Irrigation District is currently undertaking a study to assess the economic effect of a recent transfer of 40,000 acre-feet of water to MWD, a study that should be analyzed by the EWA before unilaterally declaring that the economic effect, a declaration that has been made with a complete absence of empirical data. Such studies must be conducted and analyzed prior to implementation of a program that has the potential to destroy the economic viability of an entire region of California; a region that is a major producer of food and fiber for the nation and the world.

*Response:*

The primary elements of the EWA include assisting fish populations and increasing water supply reliability in the Export Service Area. These elements would benefit all sectors, including agricultural, environmental, and urban.

Chapters 11, 12, and 13 of the EIS/EIR provide a detailed analysis of the EWA-related effects on the agricultural economy, jobs, and land use. Chapter 11 provides a quantitative analysis on the effects to total output, value-added, wages and salaries, and jobs in each county where crops may be idled. The EWA agencies incorporated a 20 percent idling measure into the project to reduce potential economic effects. A recent report by the Public Policy Institute of California indicates that "local economic effects of idling have been quite small for programs idling anywhere from 6 to 29 percent of acreage."

Furthermore, the EWA agencies will also consider other concurrent land idling programs and if necessary will idle less acreage to remain within 20 percent. EWA agencies would also only purchase water from willing sellers; those farmers' revenues from the water sale would increase relative to farming the land. A portion of this revenue would be spent within the county, bolstering the local economy. The EWA agencies also would not remove any land from county tax rolls; therefore, the EWA would not affect county tax revenues.

Studies including the PPIC report and Agricultural Issues Center paper, "California Water Transfers Gainers and Losers in Two Northern Counties," show that farmers invest a portion of the revenue into farming equipment and operations, which could contribute to larger revenues when land is placed back in production. EWA land idling would be temporary and would not have any permanent effects to crop production. Potential idling would be within the normal historical fluctuations of crop acreage. Therefore, effects would not be substantially different from previous years, and the EWA program would not have "the potential to destroy the economic viability of an entire region of California."

Lastly, the world's rice and fiber supply would not be affected by EWA crop idling. Please refer to Comment NP01-10 for information regarding food and fiber production.

#### **NP02-5**

***Comment:***

The EWA also inadequately assesses the alternatives. To begin, the No Action Alternative is insufficiently addressed. The focus on protecting the export service area at the expense of the region located north of the Delta is not addressed. The environment and the needs of the export service area are clearly placed above agricultural interests. The Fixed Alternative is also dispensed as insufficient, despite the fact that it would provide the stability necessary for the agricultural sector to make informed decisions based on predictable demands.

***Response:***

The comment does not specify what portions of the EIS/EIR are inadequate or insufficient for the alternative analysis; the EIS/EIR describes and assesses the alternatives throughout Chapters 2 through 22 and in several appendices.

As discussed in the response to Comment NP02-3, the EWA program would not redirect significant effects from the Export Service Area to the Upstream from the Delta Region. The two action alternatives would not have any unmitigated significant environmental impacts. In addition, while CEQA and NEPA do not require mitigation for economic effects, the EWA agencies have included measures to reduce those effects. The Flexible Purchase Alternative is the preferred alternative based on an evaluation of adverse and beneficial effects. Because neither alternative has significant unavoidable impacts, the preferred alternative was chosen because of its greater benefits.

The EWA program would not solely benefit the environment. Agricultural users in the Export Service Area would also benefit from increased water supply reliability (Sections 4.2.5.4 and 4.2.6.4 for the Flexible Purchase and Fixed Purchase Alternatives, respectively). In addition, the EWA acquisition of water via crop idling would increase net revenues to individual farmers/landowners participating in the EWA (Section 11.2.5.1.1 and 11.2.6.1 for the Flexible Purchase and Fixed Purchase Alternatives, respectively).

#### **NP02-6**

***Comment:***

The current preferred alternative, the Flexible Alternative gives the EWA complete discretion to manage precious water resources without regard to the economic impacts associated with its decisions. Further, the Flexible Alternative provides no outline of what criteria will govern its implementation, or how exactly it will be implemented. Also, the current proposal makes no attempt to partner with other programs, such as the Environmental Water Program or the Phase 8 Program, to seek efficiencies that would reduce the demand on the amount of water siphoned away from other interests. Most troubling is the absence of any discussion on what will happen to the EWA water once it is put to environmental use. This water can certainly be put to multiple uses to satiate other demands after being dedicated for a specific in stream purpose.

***Response:***

This comment incorporates multiple issues, including: (1) how the EWA agencies would manage EWA monetary and water assets; (2) how the EWA would interact with other cumulative programs; and (3) what specifically would happen to the EWA water. The sections below address each of these issues.

#### **1. Financial and Asset Management**

The EWA agencies are responsible for managing the economic impacts of its decisions. For management of the public's financial assets, the EWA has a defined budget that governs its actions (see [http://calwater.ca.gov/Programs/EnvironmentalWaterAccount/WorkPlan\\_Dec2002/EWAProgramAssessment\\_and\\_WorkPlan.pdf](http://calwater.ca.gov/Programs/EnvironmentalWaterAccount/WorkPlan_Dec2002/EWAProgramAssessment_and_WorkPlan.pdf)). EWA agencies' management seeks to maximize the effectiveness of its fish actions relative to its budget, and an annual CALFED Science Panel reviews and evaluates EWA's performance (see [http://www.science.calwater.ca.gov/pdf/EWA\\_Year3\\_10-15\\_16-03.pdf](http://www.science.calwater.ca.gov/pdf/EWA_Year3_10-15_16-03.pdf) for 2003 results). To demonstrate that EWA agencies also consider the economic impacts of its actions, Chapter 11 evaluates economic issues. Although CEQA and NEPA do not require mitigation for economic effects, the EWA agencies have included measures to reduce economic effects.

For a description of the Flexible Alternative's implementation criteria, see Chapter 2, Sections 2.4.1, 2.4.2, and 2.4.3. In particular, Section 2.4.1.5 describes the decision-making process for fishery actions, and Section 2.4.4 describes EWA's strategy for acquisition of water assets.

## 2. Interaction with Cumulative Programs

The EWA agencies will continue to work with other programs, including the EWP and the Sacramento Valley Water Management Plan, but those programs are still in the planning stages. As these programs are implemented, the EWA agencies will work with the programs to seek multiple benefits.

## 3. Water Management

The EWA agencies would acquire water, or assets, to enable them to take actions to protect fish and the environment. The main action to protect fish and the environment would not be instream use. As stated on page 2-2 in Volume 1, increasing instream flows and augmenting Delta outflows are secondary fish actions. The primary EWA fish actions would be to reduce Delta pumping and close the Delta Cross Channel gates to benefit Delta-dependent fish species. When the EWA agencies reduce Delta export pumping, the supplies to Delta export users decrease. The EWA agencies would then use assets to compensate users for that reduction by providing supplies later in the summer when export pumping would be less likely to affect fish. When the EWA agencies close the Delta Cross Channel gates over the regulatory baseline, export pumping may need to be reduced because of quality or quantity concerns. The EWA agencies would use assets to compensate users for any reduction in supply because of EWA-initiated closures of the Delta Cross Channel gates.

If the EWA agencies use assets to increase instream flows, they would try to time these increases to serve multiple purposes. They would attempt to release flows at times that would provide instream benefits when the water could also be pumped through the Delta export pumps to compensate for pumping reductions or Delta Cross Channel closures. If the EWA agencies decide to release flows for instream benefits at times that the Delta export pumps cannot move the water, then the instream flows would also provide benefits by augmenting Delta outflow.

### **NP02-7**

#### ***Comment:***

In conclusion, the EWA EIS/EIR makes broad and sweeping conclusions based on no empirical data. The proposal is so short on specifics on how it will be implemented that a true environmental or economic analysis is completely impossible to conduct. It fails to adequately specify the criteria for decision making on its operations or the benefits that unspecified actions will reap. Its economic analysis is completely illusory, ignoring the direct impacts of the proposal and the cumulative impacts associated with the numerous other CALFED and related programs on rural agricultural communities. It fails to provide any outline which can be used to forecast demand, thereby crippling agricultural business managers in their ability to strategize accordingly. It insufficiently analyzes the alternative strategies. Further, it neglects significant environmental benefits provided by productive rice ground for purposes such as the Pacific Flyway. The document appears to be nothing more than a self-serving attempt to divert large amounts of water from the north of the Delta agricultural water users, reallocating said resources to unspecified environmental

purposes and the service export areas. As stated above, this program is a clear breach of the CALFED Record of Decision, it ignores the interests of an already economically disadvantaged area, redirecting even further negative impacts to rural agricultural communities.

***Response:***

The EWA EIS/EIR includes an impact analysis for the EWA program for numerous resource categories. Chapters 4-20 include the detailed methodology and data for each resource category analysis; Chapter 2 of the document outlines the description of alternatives upon which these analyses are based.

The comment includes several specific issues such as project economic impacts and the EWA purpose and need. Greater detail is provided below for these issues.

Section 2.4.3 of the EWA EIS/EIR details the Typical Year EWA Operations. This section also explains the criteria for making operational decisions for the Flexible Purchase Alternative (Section 2.4.1.5).

Each chapter addressing a resource area (Chapters 4-20) describes benefits to that resource where applicable. The Executive Summary summarizes these benefits in Table ES-5.

Chapters 11, 12, and 13 of the EIS/EIR provide a detailed analysis of EWA-related effects on the agricultural economy, jobs, and land use. Chapter 11 analyzes third-party effects of the EWA. An IMPLAN regional input output model was used that considers direct, indirect, and induced effects. Model output includes effects on businesses that support and depend on the rice industry, including mills, dryers, trucking, crop dusters, fertilizer companies, parts stores, and tractor companies. Output also includes the effects to money flowing through the economy.

Furthermore, Chapter 11 includes a cumulative analysis that considers other land idling and land retirement programs. The analysis states that before purchasing water through crop idling, the EWA agencies would consider all other idling programs, including land retirement programs. The EWA agencies would implement the 20 percent measure with consideration of other programs and would not purchase water in any areas where land idling is larger than historically normal.

EWA agencies are proposing temporary idling actions that are consistent with historical variations in crop acreage. Many past programs, including the Drought Water Bank and Federal commodity programs, have taken comparable amounts of land out of production temporarily, and the amount of annual land idling is within normal annual variations. Therefore, economic effects would be within the range of recent experience.

The Typical Year EWA Operations detailed in Section 2.4.3 can be used to forecast demand.

Section 10.2.14.2 (pages 10-23 to 10-29) in Volume 2 discusses the benefits that rice provides wildlife, particularly birds using the Pacific Flyway. Sections 10.2.6.1.7 through 10.2.6.1.18 (pages 10-70 to 10-84) discuss the impacts that rice idling under the Flexible Purchase Alternative would have on wildlife by reducing the amount of habitat available, the amount of forage available, and the fragmentation of habitat. Section 10.2.7.1.7 (pages 10-99 to 10-101) discusses the impacts that idling of rice under the Fixed Purchase Alternative would have on wildlife.

See response to Comment NP02-3 for more information about the solution principles.

## **NP04 – Northern California Water Association**

**David J. Guy**

### **NP04-1**

*Comment:*

Northern California water rights are sacrosanct and must be fully respected in implementing the EWA. The ROD specifically recognizes the importance of water rights and it specifically provides that the “CALFED Agencies have crafted the EWA so that it has no effects on the water rights of other water right holders in the watershed.” (ROD at 34, 54.) This language highlights the assurances that were expressly given to Northern California and other upstream water users that their water rights would be fully honored. It also shows that the protection of water rights was central to the EWA concept and is critical to advance the EWA as a creative part of the CALFED program.

A key, yet often overlooked, foundation for the EWA is the Tier 1 regulatory baseline contained in the ROD. (Page 55.) This baseline includes the 1993 Winter-run Biological Opinion, the 1995 Water Quality Control Plan (WQCP), the 1995 Delta Smelt Biological Opinion and the Central Valley Project Improvement Act (CVPIA) 3406(b)(2) (800,000 acre-feet (af)). More specifically, to address potential conflict in implementing the 1995 WQCP, Sacramento Valley water users have developed the Sacramento Valley Water Management Program (SVWMP) in conjunction with the same federal and state agencies and export water users that receive the benefit from the EWA.

Tier 2 of the EWA is the acquisition of assets (water), including the 35,000 af plus from Northern California. For Tier 2 to function properly, the regulatory foundation within Tier 1 must be strong and meaningful. This has not been the case. Most notably, the State Water Resources Control Board (a CALFED agency) in its Decision 1644 breached the regulatory baseline by using the regulatory process to take water from the Yuba County Water Agency (Agency). This was clearly not part of the Tier 1 baseline and, as a practical matter, raises questions about the Agency’s ability to work with the CALFED agencies to provide Tier 2 water.

For the assurances in Northern California to be meaningful, the CALFED agencies must pursue a collaborative process with the Agency to provide a balanced approach to water supply and fishery enhancement in the lower Yuba River. This, coupled with



a stronger reconfirmation to honor water rights and an acknowledgement that any Tier 3 assets will come from CALFED agencies (not upstream water users), will help facilitate a successful EWA with Northern California participation.

In this same regard, any EWA water acquisitions must occur without adverse impacts on the water supplies available to CVP contractors in the Sacramento Valley.

***Response:***

The EWA agencies cannot control SWRCB actions related to water rights. The quote from the CALFED ROD, however, is still accurate. The EWA program would not affect water rights.

If the EWA agencies were to purchase water from Yuba County Water Agency, they would work collaboratively to prevent effects to fish and water users when transferring water. As Section 2.1.3 explains, "If USFWS and NOAA Fisheries trigger Tier 3, measures could include increased EWA acquisitions or uncompensated fish actions." This document includes the effects of EWA acquisitions and found less than significant effects. Uncompensated fish actions in the Delta would not affect users in the Upstream from the Delta Region.

Chapter 4 analyzes effects on water supplies in the Sacramento Valley, and found that any effects would be less than significant.

**NP04-2**

***Comment:***

We are very concerned that the EIS/EIR reveals an attempt by the CALFED agencies to dictate water management in Northern California. For example:

1. The approach in the EIS/EIR overstates local water management impacts. More specifically, the document assumes that groundwater pumping will adversely affect surface water without any analysis or supporting information.
2. Impacts to the State Water Project (SWP) and CVP are improperly described as "environmental impacts," when in fact they are simply the water rights positions held by Department of Water Resources (DWR) and the Bureau of Reclamation (BOR).
3. The documents improperly refer to the DWR white papers on water transfers. NCWA has previously expressed our concerns about these white papers and our fear that they would be used as a broad policy for documents such as this EIS/EIR.
4. The document makes it nearly impossible to utilize diesel pumps, by using a zero tolerance standard for air pollution, despite other requirements for the air quality management districts in the Central Valley. This is particularly ironic considering the state policy only a year ago to utilize diesel pumps to help avert the energy crisis in the state.

Rather than focus on these concerns in more detail at this time, we instead would like to have further discussion on the details for each of these issues.

This reversion to outdated management styles is not consistent with the innovative thinking that led to the EWA. Moreover, this document has the potential to set back water policy more than a decade. We urge the agencies instead to focus on the creative water management that is being discussed as part of the SVWMP and other water transfers in the Sacramento Valley as opportunities to manage water more efficiently and effectively for California.

**Response:**

The EWA agencies designed the mitigation measures and project features identified within the EWA document to address the specific issues that relate to operating a program with the flexibility of the EWA (where water is purchased from different sources through different mechanisms every year). These measures are not designed to dictate water management in California.

The following paragraphs respond to the numbered elements of the comment.

1. The Draft EIS/EIR does not assume impacts on surface water bodies because of groundwater substitution; the Draft EIS/EIR concludes that there is a potential for impacts if wells are within 1 mile from a minor waterway or 2 miles from a major waterway. The Well Review is in place to determine whether the potential for impacts is great or the potential for impacts would be low for each groundwater pump within those areas. Section 6.2.7.2.1 states, "The purpose of the well review is to assure that all extraction wells used for water transfer to the EWA would be located and operated in such a manner as to minimize the potential risk of depleting surface water sources and adversely affecting groundwater quality." The EWA agencies include the well review to determine the acceptability of the well for use in the proposed transfer, not because they assume pumping from the well would cause an impact.
2. Impacts on water supply are considered in the EIS/EIR because a change in the water supply is a physical impact and therefore must be considered under CEQA. CEQA Guidelines Section 15126.2 (a) Consideration and Discussion of Significant Environmental Impacts states, "The discussion should include relevant specifics of the area, the resources involved, physical changes, alterations to ecological systems...and other aspects of the resource base such as water...". The term 'effects' is defined in part in Section 15358 (a)(2), "Indirect or secondary effects may include...related effects on air and water and other natural systems, including ecosystems."
3. The EWA agencies used this approach because they needed to mitigate impacts without knowing in advance exactly which wells would participate in the program. (The EWA agencies cannot know the wells in advance because the willing sellers must volunteer each year.)

4. The thresholds established by the AQMDs and APCDs are those that are required in order to obtain a permit; however, the ability to obtain a permit does not equal a determination of no significance under CEQA. Until very recently, the AQMDs and APCDs have had no regulatory authority to set thresholds for agricultural practices; agricultural-related emissions were exempt from otherwise required permits such as permits to operate or new source review. New regulations will require permits for groundwater pumps as stationary sources, but, as stated above, a permit does not equal a less than significant impact. Under CEQA, the lead agencies may determine the thresholds for significance. In this case, due to the poor air quality in the region and nonattainment status, the lead agencies have stated that any additional increase in emissions would be considered significant.

### **NP04-3**

#### ***Comment:***

In closing, it has been particularly frustrating to Northern California water users that they were not involved in the preparation of the EIS/EIR. As contributors to the Bay-Delta system and the EWA assets, Northern California water users could provide valuable insight into the efforts necessary to help the EWA achieve its objectives while assuring that the program will not “redirect impacts” to upstream areas in Northern California.

#### ***Response:***

As mentioned in Chapter 23 in Volume 2 and the July 2001 Public Scoping Summary Report, the lead agencies held public informational and environmental process scoping meetings for the project. Public scoping meetings for the EWA were held throughout the State of California in the following locations and dates: Sacramento, July 19, 2001; Chico, July 19, 2001; Oakland, July 23, 2001; Tracy, July 24, 2001; Bakersfield, July 25, 2001; and Los Angeles, July 24, 2001. At each public scoping meeting, the EWA agencies presented a project overview and accepted public comments. The EWA agencies prepared a scoping report to summarize the public comments received at the scoping meetings.

The EWA agencies held public hearings on the Draft EIS/EIR throughout the State of California in the following locations and dates: Sacramento, August 25, 2003; Red Bluff, August 26, 2003; and Fresno, August 28, 2003.

In response to NCWA’s frustration that northern California water users were not involved in the preparation of the environmental document, it must be noted that all potential sources of available water supply, excluding Garden Highway MWC and Westlands WD, were contacted. Citations of personal communications with all agencies can be found in the reference sections of many chapters (e.g., Chapter 6, Groundwater).

## NP05 – John Mills for Regional Council of Rural Counties

### John S. Mills

#### NP05-1

*Comment:*

We wish to point out that the EWA project is a CALFED implementation action. The Record of Decision (8/28/00) in and of itself cannot create the authority to carry out the CALFED Program. Indeed, the Record of Decision (ROD) states, “The commitments of the United States and of the State of California under this ROD are necessarily contingent upon the availability of appropriate funds or upon enactment of authorizing legislation...”

There is no authorization for the CALFED Program at the federal level. Therefore, under what specific federal authority is the EWA Project being carried out? We asked this question in our letter which constituted our formal Response to Revised Notice of Preparation for CALFED EWA. That question was not responded to in the current Draft EIS/EIR. We ask, again, that this important question be formally answered in the Administrative Record.

This question is especially salient as per the ROD, “California taxpayers, stakeholders and the Federal Government will be called upon to invest billions of dollars over the next decade on CALFED programs. Expenditure of those funds must be based upon accountability and measurable progress being made on all elements of the Program.” The CALFED Program was intended to be implemented in whole and not piecemeal. The EWA, as a portion of the ROD, should be authorized and implemented as part of a greater whole, not selectively implemented in a manner that would be unbalanced. “All aspects of the CALFED Program are interrelated and interdependent. Ecosystem Restoration is dependent upon water supply and conservation. Water supply depends upon water use efficiency and consistency in regulation. Water quality depends upon improved conveyance, levee stability and healthy watersheds. The success of all the elements depends upon expanded and more strategically managed storage.”

These very issues were underscored by the Legislative Analyst’s Office (LAO) Report of 1/29/01 regarding the Environmental Water Account as follows:

“The EWA is a new concept, and a number of important policy and operational issues remain unresolved. We think that it is premature to establish the program until these issues are resolved:

- The costs and benefits of the EWA, and the program’s impacts on the water transfer market and groundwater resources.
- The appropriate state role in EWA, particularly in terms of funding.
- Operational issues including governance, acquisition and use of water by EWA and scientific review.

- How to facilitate the water transfers and provide the storage capacity necessary for EWA to work well.
- How to hold the program accountable to the legislature.”

The LAO’s report went on to recommend (in part), “...we recommend that legislation be enacted to create the program and to specify how the program will be governed, funded, operated and held accountable. Funding should be governed by the ‘beneficiary pays’ principle...”

We wish to underscore that public funds are being used to essentially purchase a public asset (water) through negotiations between state and federal agencies and those who would benefit from the implementation of the program through both selling and buying water. We urge that the document clearly explain how decisions on acquisition of EWA assets are made, who makes them, where the funds come from to pay for them and who the beneficiaries are in the various transactions.

This issue was also raised in the report by the LAO’s office: “The CALFED appears to have conflicting views about how EWA should be funded. On one hand, CALFED has adopted ‘the beneficiary pays’ as the grounding principle to fund its programs overall. (In other words, those who benefit from a program should pay for the program.) On the other hand, the five fishery and water agencies set to administer EWA have agreed that the account’s operation will not result in an increase in costs to parties contracting for SWP and CVP water. This is so even though these contracting parties would benefit from EWA’s making water deliveries more certain...EWA helps water project operators meet their regulatory responsibilities under endangered species laws.”

“The stakes in buying and selling water in markets with public money requires accountability which goes far beyond the bottom line. The public must know how and why particular choices were made...The bottom line is, however that management agencies must be held accountable for how they use the flexibility that the EWA provides.”

All of these details are part of the required project description for CEQA. The ROD identifies Governance as a component of the CALFED Program.

The issue of how these decisions are made is important in relationship to the specific incorporation of action-by-action implementation of mitigation measures associated with EWA water acquisitions, including those impacts often referred to as third party impacts.

To underscore the importance of this matter, we refer you to the very point as to the size and scope of the EWA itself - that is the Project Description and that of the alternatives. The so-called “Fixed Purchase Alternative” is in fact the description of the EWA program from the Calfed Record of Decision. That proposal was to limit

upstream of delta acquisitions to just 35,000 acre feet and total acquisitions to 185,000 acre feet.

However, the EWA project proposal of acquiring up to 600,000 acre feet, with no limitation on upstream acquisitions represents what is euphemistically referred to as "...a flexible interpretation of the CALFED ROD and Operating Principles Agreement..."

It is not clear to the reader under what specific authority the agencies used such broad, chimerical powers to reinvent the Record of Decision. This point is not inconsequential in light of the numerous other areas of the ROD in which much latitude now exists for agencies to convene in a nonpublic forum and then to flexibly interpret the ROD.

Further, the agencies are also bound by another portion of the ROD. We refer you to the CALFED solution principle that CALFED will, "...Have no Significant Redirected Impacts. Solutions will not solve problems in the Bay-Delta system by redirecting significant negative impacts, when viewed in their entirety, within the Bay-Delta or to other regions of California."

***Response:***

Many of the CALFED actions, including implementation of the EWA, can be done under existing authorities. The State agencies are authorized to carry out this project under various statutes, and the Federal agencies are acting under the following authorities:

- Reclamation Act of 1937, as amended;
- Reclamation Act of 1939;
- Central Valley Project Improvement Act, Section 3406(b)(3);
- Endangered Species Act;
- Fish and Wildlife Coordination Act; and
- Magnuson-Stevens Fishery Conservation and Management Act.

Chapter 11 discusses the EWA's effect on the water transfer market; Chapter 6 discusses the effects on groundwater resources. Chapter 2 includes operational issues; Chapter 2 in Volume 1 (pages 2-65 and 2-69) has been revised to include references to the adaptive management process and Review Panel as outlined in the CALFED ROD.

The EWA agencies have explored a variety of financing options, but have not yet made final decisions. Sufficient public funding is available for the next 2 years of EWA operation from Proposition 50 (funds are earmarked for the EWA) and other

general water resources funds. The EWA agencies are developing a plan for long-term funding.

Please see the response to Comment FO01-5 for information regarding monitoring and accountability.

#### **NP05-2**

***Comment:***

The increased water transfers, which would be required by the EWA will, in many cases, come from water sources within RCRC member Counties. Some of those Counties, as well as other upstream Counties, should reasonably be expected to make claim under the Area of Origin Statutes for additional water supplies for their local area. The water necessary for the Area of Origin needs could be the same water sources used for increased transfer water out of the north state in the EWA scheme. Therefore, the competition for the same water resources, could result in a conflict with the objectives and intentions of upstream Area of Origin requirements to sustain their economies and environments. Many of the RCRC member Counties are agriculturally based and rural in nature. They are also areas that have been generally identified as areas from which the EWA, the CALFED Ecosystem Restoration Program (ERP), the Governor's Drought Water Bank, and the Central Valley Project Improvement Act will seek to additional acquire water resources.

***Response:***

The EWA will be carried out in compliance with California Water laws, including the County of Origin Law, Water Code sections 10505 et seq, the Watershed of Origin Law, Water Code section 11460 et seq, the protected area statute, Water Code section 1215 et seq, the Delta Protection Act, Water Code sections 12200 et seq, and other applicable laws. "Claims" by local entities under those statutes must comply with the requirements of water rights laws. Because the potential sources of water analyzed in the EIS/EIR exceed the amount that would actually be needed by the EWA, if some sources were to become unavailable because of area of origin laws, the EWA agencies would purchase from other sources (see response to Comment NP05-6 regarding availability of sources).

#### **NP05-3**

***Comment:***

Further, it is our understanding that the Environmental Water Account represents what is only a portion of a much larger water acquisition effort underway statewide. Many of these efforts are common knowledge and must be addressed within the context of the EWA EIS/EIR. The cumulative impacts of the total Calfed Program, and not just each element must be addressed in this document CEQA Guidelines sec. 15355, 15065(c) and 15130. Furthermore, a full range of alternatives for these actions (both in this proposal and in the EWA as referenced) must be evaluated within that cumulative framework CEQA Guidelines sec. 15126.6. Additionally, the program must be developed and implemented in total - that is not fragmented into portions - and implemented piecemeal. We therefore refer you to our comments of 6/17/02

directed with regards to the Environmental Water Account Project (SCH #1996032083) proposal and the anticipated (and now we believe, cumulative) impacts resulting from that action upon the RCRC membership area. The cumulative impacts of the total Calfed Program, and not just each element must be addressed in this document CEQA Guidelines sec. 15355, 15065(c) and 15130. Furthermore, a full range of alternatives for these actions (both in this proposal and in the EWA as referenced) must be evaluated within that cumulative framework CEQA Guidelines sec. 15126.6.

***Response:***

The cumulative effects of the entire Bay-Delta Program do not need to be included in the EWA EIS/EIR. A cumulative effects analysis is required to evaluate a proposed project in conjunction with those past, present, and reasonably foreseeable future projects that will cause related impacts. Here, the cumulative effects analysis is correctly focused on those types of projects, including those within and outside the Bay-Delta Program, that create related impacts.

In addition, the alternatives analysis for this EIS/EIR need not revisit alternatives to the entire Bay-Delta Program. The PEIS/EIR on the Bay-Delta program provided the agencies with the environmental analysis of the entire program over thirty years and across two-thirds of the State, at a general level of detail. That document provided the general level of information and analysis appropriate for a programmatic EIS/EIR. This EWA EIS/EIR is properly focusing on the project-specific impacts of the EWA over the expected timeframe of 4 years, in the specific geographic areas where direct, indirect, and cumulative impacts may occur. The EWA EIS/EIR contains sufficient analysis to stand alone. The programmatic EIS/EIR provides useful background and context for the EWA, but the analysis contained therein is not being relied on for this document.

**NP05-4**

***Comment:***

The EWA, as stated in the subject report is to be implemented over four years. However, the EWA provides that "Because there is a possibility for extension, this EIS/EIR analyzes EWA actions that will start at the time of the signing of the EWA ROD through 2007."

Under what specific authority and what process would be used to extend the ROD? This is important in terms of the potential for phasing of the project and speaks to the heart of the matter as to duration of impacts. The EWA was intended to be just a four-year program as defined by the ROD. The agencies, absent a legislative and congressional authorization, do not have the authority to unilaterally extend one segment of the greater federally unauthorized CALFED Program. Therefore, if the project description includes the provision for this extension the analysis should clearly explain the details of that process.

***Response:***

The Federal agencies participating in the EWA (Reclamation, USFWS, NOAA Fisheries) would use the same authorities for an EWA through 2007 as for an EWA



through 2004. The EWA Operating Principles Agreement, attached to the CALFED ROD, permits extension of the EWA by written agreement among the five EWA Agencies. The Federal agencies are acting under the following authorities:

- Reclamation Act of 1937, as amended;
- Reclamation Act of 1939;
- Central Valley Project Improvement Act, Section 3406(b)(3);
- Endangered Species Act;
- Fish and Wildlife Coordination Act; and
- Magnuson-Stevens Fishery Conservation and Management Act.

#### **NP05-5**

***Comment:***

Following the completion of the subject environmental review, it is reasonable to assume the EWA could be implemented (presuming funding and authority exists). Under that scenario, additional discretionary permits would be necessary from those counties which have authority to regulate ground water resources (including ground water substitution for surface water transfers) and conduct site specific CEQA analysis. Additionally, the actual water sellers, also local agencies, will be imposing potential conditions and mitigation measures on proposals for transfer. There is no guarantee that the party wishing to transfer the water will be granted entitlements from all required local agencies. That is, a described EWA transfer action may not take place due to local permit denial. Additionally, local CEQA analysis, more detailed than the EWA document, may discover environmental consequences which cannot be mitigated successfully and for which the local decision making entity is unwilling to make a finding of overriding socio/economic considerations. Thus, EWA actions anticipated in this analysis may not come to pass due to local permit processes.

***Response:***

Chapter 6, Groundwater Resources, describes the groundwater management plans and ordinances that may affect groundwater substitution transfers. Section 6.1.2 recognizes that all transfers must meet State regulations, CVP and SWP contractual requirements, and local regulations. If a county requires a permit for groundwater substitution, the EWA agencies would only purchase water from willing sellers that obtain the necessary permits.

#### **NP05-6**

***Comment:***

If identified transfer sources are unavailable due to local permit denial what is the management response for the EWA project proponents? Will the total amount of water resources remain the same but the amount increase in identified areas? Will the

total amount of water be commensurately reduced? Will other source areas, not identified in the EWA document be proposed and if so how will those be dealt with in the CEQA process?

**Response:**

Volume Table 2-5 identifies more sources than would be used within a single year so that the EWA agencies would have the flexibility to look at a wide range of sources, depending on annual availability. Availability could vary because of hydrologic conditions or institutional constraints. If sources were not available, the EWA agencies would turn to sources other than those listed in Table 2-5. If many sources were not available, the EWA agencies would look to new sources and follow the procedures outlined on page 2-36 in Volume 1 to include new sources.

**NP05-7**

**Comment:**

The EWA operation and analysis in the environmental document is primarily focused on water acquisitions. We believe that CEQA requires a full and complete disclosure of the complete project for an adequate analysis. CALFED currently is proposing to develop (subject to further evaluation) both north and south of Delta surface storage. What amounts of that total new storage will be required by the EWA?

“As new water projects are built, the appropriate amounts of Tier 2 and Tier 3 water are likely to increase. Where possible the additional EWA water should be built into the cost of the new projects and thus borne by the beneficiaries of the new projects.”

It is critical to know what CALFED, or other storage projects, are anticipated to have to commit water resources to the EWA. That information should be incorporated into this analysis in a cumulative assessment. While we recognize that new storage facilities would not likely come on line within 4 years it is also uncertain that the EWA will terminate in 4 years. Therefore, the very real possibility exists that the EWA could be extended and that this question is salient. Indeed, is the extension of the EWA predicated upon access to new storage? If so how much and who would pay? Is that access limited to only CALFED storage projects or are all existing or new storage projects potential EWA facilities?

In addition, we believe it is worth noting that as the earlier findings of the LAO's office affirmed, that those who presently benefit from the EWA (water exporters) do not pay for benefits received. CALFED anticipates that new storage (even non-CALFED storage) would require users to pay for EWA actions. It is evident that the methodology for determining which water users must pay for EWA benefits and which parties must subsidize those benefits should see the light of day in this analysis. It cannot be left to the EWA agencies to determine, at some later date, how the benefits will be paid for and by whom. Please clarify.

**Response:**

This EIS/EIR analyzes impacts of the alternatives through 2007. None of the CALFED storage programs will be constructed by that time

([http://calwater.ca.gov/ProgramTracking\\_2003/adobe\\_pdf/StorageProgramTracking\\_Jan2003.pdf](http://calwater.ca.gov/ProgramTracking_2003/adobe_pdf/StorageProgramTracking_Jan2003.pdf)). Extension of the EWA timeframe would require new environmental documentation.

#### **NP05-8**

***Comment:***

We urge the authors to closely examine the actual benefits of the project objectives and to evaluate that against other alternatives including the Fixed Purchase Alternative and the No Project Alternative. We believe that either of these two alternatives would provide equal benefits (in terms of stated project objectives) with fewer redirected impacts to the upstream communities, environments and local governments. We will provide detailed comments illustrating this point in our following detailed comments.

Thank you for the opportunity to provide these comments and we look forward to reviewing the final environmental document which hopefully contains a more acceptable project proposal to the Regional Council of Rural Counties membership.

***Response:***

The Fixed Purchase and Flexible Purchase Alternatives do not supply equal benefits. Benefits to fish and water supply reliability would be greater under the Flexible Purchase Alternative. Section 4.2.7 indicates that the Flexible Purchase Alternative would provide increased water supply reliability in relation to the Fixed Purchase Alternative “because there is an increased probability of reaching Tier 3 under the Fixed Purchase Alternative,” which could trigger uncompensated fish actions.

The Flexible Purchase Alternative would also provide more benefits associated with Fisheries and Aquatic Resources (Chapter 9). Analysis of the Flexible Purchase Alternative includes two scenarios, the Maximum Water Purchase Scenario and the Typical Water Purchase Scenario in the analysis of fisheries and aquatic ecosystems (see response to Comment FA01-12). The following is an example comparison of potential salvage-related benefits to Chinook salmon over the 15-year period of record under each project alternative/scenario:

- No Action/No Project Alternative - zero reduction in salvage (Tables 9-57, 9-66);
- Flexible Purchase Alternative (Maximum Water Purchase Scenario) - 1,123,826 total salvage reduction (Table 9-57);
- Flexible Purchase Alternative (Typical Water Purchase Scenario) - 895,433 total salvage reduction (Table 9-66);
- Fixed Purchase Alternative - 704,528 total salvage reduction (Table 9-72).

### **NP05-9**

***Comment:***

Page ES-3, It is unclear if the EWA acquisitions for water are somewhat mitigated in their potential impacts to upstream users by the application of the Area of Origin statutes. For example, do EWA acquisitions and any resulting water rights amendments before the State Water Resources Control Board open those EWA assets to Area of Origin claims. It appears that the assets being acquired are simply a substitution of State Water Project resources which are implicitly subject to Area of Origin claims. To the extent that these assets are being acquired to, essentially, replace those water resources it should be clarified if the EWA assets are subject to such claims.

***Response:***

The EWA will be carried out in compliance with California Water laws, including the County of Origin Law, Water Code sections 10505 et seq, the Watershed of Origin Law, Water Code section 11460 et seq, the protected area statute, Water Code section 1215 et seq, the Delta Protection Act, Water Code sections 12200 et seq, and other applicable laws. "Claims" by local entities under those statutes must comply with the requirements of water rights laws. EWA purchases will be made from willing water rights holders in the areas where the water is purchased (i.e., those willing to transfer the water rather than use it for their own purposes).

### **NP05-10**

***Comment:***

Page ES-4, The EWA is proposed for an initial period of 4 years with the suggestion that it may be extended (criteria and decision process uncertain). This, at least potentially, impacts the viability of alternatives that were summarily rejected by the proponents as not being able to be available due to time constraints. Please explain if these alternatives will be examined in future, perhaps as they begin to "phase in" as viable alternatives to an extension of the EWA.

***Response:***

If the EWA agencies determine that they are interested in pursuing a long-term EWA program beyond 2007, they would complete a new environmental document for that program. The new document would examine potential alternatives to determine if new alternatives should be added to the analysis.

### **NP05-11**

***Comment:***

Page ES-9, It is unclear what relationship the proposed actions of the "EWA agencies", that is the project proponents, bear to those of local regulatory agencies. "The EWA Agencies would employ conservation and mitigation measures, as described in this EIS/EIR, to minimize effects of this alternative." As the project proponent (applicant) the EWA agencies proposed mitigation measures are not the only mitigation measures that may be imposed on the subsequent actions. It is

reasonable to foresee additional mitigation measures being imposed by local agencies as well.

**Response:**

As discussed in Chapter 6, local entities selling water must comply with local regulations and obtain necessary permits to engage in groundwater substitution transfers to the EWA. This environmental document includes in-depth analysis of these transfers and is intended to serve as the CEQA/NEPA documentation required for approval of county groundwater permits and other permits from responsible agencies. Local regulating agencies may choose to impose additional mitigation measures.

**NP05-12**

**Comment:**

Page ES-10, The proposed acquisition of 600,000 acre feet of water, potentially from upstream areas, appears to only be limited by the Delta pumping capacity. Could you clarify if the additional asset acquisitions now proposed for the EWA are the trigger, or the response to the proposed increase in pumping as part of the CALFED Bay-Delta Program's north and south Delta improvements?

If the acquisitions are indeed a requirement of increase pumping (or if they are substantially linked) why is this document being circulated independent of the South Delta Improvements Project environmental analysis? It is our understanding of the CALFED Program that increased pumping from the Delta is a companion action to the EWA due to the Biological Opinion? The initial finding that the CALFED South Delta Improvements Project (SDIP) may have significant environmental impacts (EIR/EIS is now in preparation) and that this document finds the same for the EWA seems to point to the need to incorporate the review of these two projects into one comprehensive environmental analysis (see CEQA Guidelines Section 15130(a) and (b)).

This then plays into the conundrum of which drives which. If the EWA acquisition strategy is only constrained by Delta pumping this seems to imply a rather myopic view of the water system. That is, the EWA is only focused on export constraints as a management criteria. Does this then mean that when/if Delta exports increase to 10,300 cfs that EWA acquisitions will increase even more? Please clarify the relationship between these two discretionary projects under one CALFED Program. Also please explain the relationship and limitations of the EWA and SDIP CEQA analysis.

**Response:**

The 600,000 acre-feet of potential maximum water acquisitions is based on current pumping capacity available for EWA water assets for movement through the Delta and is not based on proposed projects for increasing the pumping capacity. This document describes the EWA through 2007 or earlier if significant changes, such as the South Delta Improvements Project or in-Delta storage, require significant changes in the EWA. See response to Comment FA01-1 for more information.

### **NP05-13**

***Comment:***

Page ES-13, The major conclusions and findings section states in part, "...and there will be no uncompensated water costs to Project water users." Does this reference mean to imply that Project water users who are upstream are not protected? For example, under conditions where upstream project reservoirs are releasing water for environmental (perhaps fisheries) needs are those upstream project water users provided with any commensurate assurance of uncompensated losses? We suggest that there should be no uncompensated water costs to Project water users regardless of geographic location.

***Response:***

The EWA Statement of Purpose and Need, Section 1.2.1, states that the EWA would "...not result in uncompensated water cost to the Projects' water users." The EWA program would take actions to benefit fish and the environment and would compensate Project water users for water costs associated with these actions. This protection applies not only to users in the Export Service Area, but also to all Project water users.

### **NP05-14**

***Comment:***

Page ES-14, The subject of surface water supply and management contains the following paragraph which is very important but unclear.

"Willing sellers participating in crop idling would reduce consumptive use of the water. Farmers and other water users not participating in the EWA could receive less water because of reduced tail water supplies. The willing seller of water from crop idling would maintain return flows in their system to a level that would not harm downstream users."

We wish to know just how much that water would be? Clearly, if this water is in addition to the other water acquired by the EWA then the total amount of acquisitions and mitigation would be potentially significantly higher than the numbers described in the report. For example, would an EWA acquisition of 10,000 acre feet in this category require an additional 5 acre feet or 5,000 acre feet to "...not harm downstream users."? Please clarify and quantify.

***Response:***

The surface water supply and management paragraph in the Executive Summary (Chapter 2 of this volume) has been revised to include the following clarification: "This water would not be purchased by the EWA; it is part of the water that the willing seller would have diverted without the EWA." The EWA agencies would only purchase the portion of water that would have been consumptively used by the crops. Water agencies divert additional water to account for conveyance losses, on-farm losses, and return flows. The EWA agencies would not purchase this additional water; the local agencies would use this water to maintain return flows in their systems.

This water cannot be quantified because each district must divert a different amount, depending on its system characteristics. For example, conveyance facilities (unlined canals vs. lined canals) differ from district to district, which affects the amount of system losses and therefore the amount that needs to be diverted beyond what the crop would consume. Because the EWA is not purchasing this amount of water, there is no need for it to be quantified.

**NP05-15**

***Comment:***

This same point is relevant to water quality on the same page which attributes EWA carriage water with meeting Delta water quality requirements. Is this total amount of water included within or in addition to total EWA acquisitions? Please clarify and quantify.

***Response:***

Carriage water is included in the total amount acquired by the EWA agencies under the Flexible Purchase Alternative; carriage water would result in less than 600,000 acre-feet of water available for Delta exports.

Carriage water is not included in the total amount acquired by the EWA agencies under the Fixed Purchase Alternative. The CALFED ROD allows for additional purchases from the Upstream from the Delta region to account for carriage losses; under the Fixed Purchase Alternative, a maximum of 35,000 acre-feet could be exported from the Delta after carriage water losses.

**NP05-16**

***Comment:***

Page ES 16, What does the following sentence mean? "To prevent cumulative effects, EWA agencies would consider other reasonable and foreseeable crop idling transfers before idling up to 20 percent of the county crop acreage." What is the significance of the 20% fallowing amount. Further, what does that imply regarding type of crops fallowed either singly or cumulatively? As an example, if north of Delta fallowing is limited to rice fields what impact will that have on water fowl who obtain 40% of their feed from managed wetlands (rice fields)? Please clarify.

***Response:***

Section 11.2.8 further explains this sentence. To clarify, the sentence means that before purchasing water via crop idling, the EWA agencies would research and consider other current crop idling programs, including agricultural land retirement programs. If the idled acreage of all these programs would be more than 20 percent, the EWA agencies would not purchase the water. The 20 percent criterion is designed to reduce economic effects. For rice and cotton, the 20 percent is a quantitative limit.

The EWA agencies would also not purchase water where current idling is already larger than normal. The EWA would give the agricultural economy time to adjust to the decrease of production before purchasing water through crop idling. Chapter 10 discusses effects to waterfowl from decreases in the amounts of rice fields. See

response to Comment NP01-16 for additional information about rice idling effects on waterfowl.

**NP05-17**

*Comment:*

Page ES-17, top of page, is the range of alternatives for transfers permanent and 1 year only? Are multiyear, less than permanent acquisitions also an alternative?

*Response:*

Transfers are for 1 year or a series of multiple years, but no permanent transfers are evaluated in the EWA EIS/EIR.

**NP05-18**

*Comment:*

Page ES-17, Power Production and use. It is expected that there will be increased pumping within the Delta by state and federal projects related to the EWA. Furthermore, some upstream generation by CVP facilities may be foregone. The Counties of Trinity, Calaveras and Tuolumne are all reclamation first preference power customers. What specific assurances does the Bureau provide in this project to assure these first preference power customers that they will not suffer either reduced power availability or increases in power costs as a result of the proposed action?

*Response:*

The EWA program is responsible for mitigating all costs of the program. To that extent, First Preference Customers would be kept whole with respect to non-EWA Project conditions. Although it is not believed that the EWA program would affect Trinity or New Melones operations, Reclamation and Western would be responsible for identifying and subsequently ensuring that any effects on First Preference Customers are mitigated.

**NP05-19**

*Comment:*

Page ES-19, Table ES-3. This table contains no examination of the potential impacts to upstream water supply reliability of non-project users. Why was no such analysis provided?

*Response:*

Chapter 4 in Volume 1 evaluated potential impacts to upstream users caused by EWA actions and found no significant effects.

**NP05-20**

*Comment:*

Page ES-25, Table ES-4. This table indicates that there will be water used from crop idling and groundwater substitution. Further there will be necessary additional water to maintain flows to downstream users. This would seem to indicate that the actual level of groundwater pumping will be greater than the amount needed simply for EWA use? Please clarify.



***Response:***

Under groundwater substitution, no water beyond what is sold to the EWA (i.e., the amount equal to the water diversion at the farmers' headgate) would be pumped. The amount of water leaving the field under groundwater substitution would be the same as the amount of water leaving the field if the farmer had irrigated with surface water. Therefore, no downstream users would have a reduced water supply, and there would be no need for increased groundwater pumping. Under crop idling, the willing seller would be required to divert sufficient flow so downstream users would not have losses in water supply. This requirement would not increase the size of EWA purchases; see response to Comment NP05-14 for additional explanation.

**NP05-21**

***Comment:***

For the purposes of the proposed water transfer(s) are the project proponents declaring this a surface water transfer or a ground water transfer? This is of particular concern due to the Department of Water Resources previously claiming that the same water was simultaneously ground and surface water as a method to avoid State Water Resources Control Board authority and the application of Water Code Section 1220.

***Response:***

In both crop idling and groundwater substitution transfers, the willing seller would transfer surface water to the EWA. Water Code Section 1220 states "No groundwater shall be pumped for export from within the combined Sacramento and Delta-Central Sierra Basins, as defined in Department of Water Resources' Bulletin 160-74, unless the pumping is in compliance with a groundwater management plan...". The EWA program would not purchase water through direct transfer out of an unmanaged groundwater basin, in which groundwater is pumped directly to a user that does not overlie the groundwater basin (as explained on page 1-31 in Volume 1).

**NP05-22**

***Comment:***

Page ES-28, Table ES-5. This table does not contain a statement regarding the potential impacts of the transfers to the local county governments as social service providers, which will be responsible for dealing with resulting third-party impacts to laborers. Please provide.

***Response:***

The crop idling water acquisition strategy includes consideration for reducing effects to local economies, including third-party effects; thus, mitigation is not required. Section 11.2.2.1 addresses crop idling effects, Section 11.2.5.2.3 effects to the local economies, Section 12.1.2 factors related to determining community stability effects, Section 12.2.3 the effects due to the Flexible Purchase Alternative, and Section 12.2.5 the existing community programs that cover employment/unemployment issues.

### **NP05-23**

***Comment:***

Page 1-1, please note that the CALFED ROD, speaking on the point of extending the Environmental Water Account beyond four years, expected there to be an authorized federal participation. To date there is no such expressed federal authorization. We would ask that you clarify, absent a Congressional authorization for CALFED, what specific authority the federal agencies would use to extend the EWA - which is a component of CALFED.

***Response:***

The Federal agencies would take EWA actions under the authorities they are currently operating under:

- Reclamation Act of 1937, as amended;
- Reclamation Act of 1939;
- Central Valley Project Improvement Act, Section 3406(b)(3);
- Endangered Species Act;
- Fish and Wildlife Coordination Act; and
- Magnuson-Stevens Fishery Conservation and Management Act.

### **NP05-24**

***Comment:***

Page 1-8, The first paragraph refers to "...an effective statewide water management program...to reduce water use conflicts." Please note that the CALFED Program is not a statewide water program. CALFED does not include many areas of the state which are located outside the CALFED Solution Area. Please correct.

***Response:***

The term "statewide" has been deleted.

### **NP05-25**

***Comment:***

Page 1-28, Section 1.5.3.3.1. Please note that "short term" transfers which may be exempt from CEQA may still have to undergo discretionary entitlement permitting if they include groundwater substitution. County ordinances regulating transfers of groundwater, or groundwater substitution for surface water transfers, may trigger a local CEQA process (see Section 1.5.3.4 Source of Water for Transfers).

***Response:***

As discussed in Chapter 6, local entities selling water must comply with local regulations and obtain necessary permits to engage in groundwater substitution transfers to the EWA. This environmental document includes in-depth analysis of

these transfers, and serves as the CEQA/NEPA documentation required for approval of county groundwater permits and other permits from responsible agencies. Section 1.10 in Volume 1 identified that the document may be used by counties and other responsible agencies in this fashion. Responsible agencies, including counties that issue groundwater permits, will rely on this EIR unless a subsequent or supplemental EIR is appropriate as described in the CEQA Guidelines.

**NP05-26**

***Comment:***

Page 1-39, Section 1.8.1. Please note that where local governments have discretionary authority to regulate water resources there may be additional environmental analysis required on a site specific basis. This is especially important due to the fact that the EWA agencies are not completely sure where, exactly, all transfers would take place from or the amounts of the transfers. The level of analysis in this report is not adequate to “cover” all specific transfers given that unspecific level of analysis.

Furthermore, to the extent the transfers were to involve any physical modification to lands, these may fall under the jurisdiction of the local land use planning agency. This comment also applies to the intent of the EWA agencies to use this document for individual actions (See Section 1.10).

***Response:***

See response to Comment LA05-25 for information regarding CEQA analysis for responsible agencies.

The EWA asset acquisition methods do not propose to make land use changes; therefore, the local land use planning agency should not need to approve these actions.

**NP05-27**

***Comment:***

Page 1-41, first paragraph. Please note that where the selling agency is a local water district (groundwater substitution) the actual authority to regulate groundwater rests with the County and not the agency. In that situation the County, as Lead Agency, will exercise sole and independent judgment as to whether the EWA EIS/EIR is adequate for the purposes of compliance with CEQA (CEQA Guidelines Section 15040 and 15041).

***Response:***

The Department of Water Resources is the CEQA lead agency for EWA environmental compliance. Counties and other regulatory agencies would be the responsible agencies and, in this capacity, would exercise the independent judgment, as the comment describes. The paragraph at the bottom of page 1-40 in Volume 1 explains the process that permitting agencies would go through to determine if this EIS/EIR is adequate to meet their needs. The first sentence has been edited to clarify the meaning of this paragraph and now reads: “When approving a specific water

acquisition, the permitting agency will consider whether it was analyzed on a site-specific basis in this document.”

**NP05-28**

***Comment:***

Page 2-4, development of alternatives. Did the EWA Agencies seek the advice of any advisory body or group in the development of the proposed project? While working to “...interpret the ROD...” did those agencies seek the advice or input of individual stakeholders, local agencies, elected officials or potential beneficiaries of the EWA? Please clarify if meetings to develop the alternative were advertised and open to the general public. This goes to the epicenter of the matter of development of the proposed project and implicitly the rejection of alternative methods to achieve project objectives.

***Response:***

As mentioned in Chapter 23 in Volume 2 and the July 2001 Public Scoping Summary Report, the lead agencies held public informational and environmental process scoping meetings for the project. Public scoping meetings for the EWA were held throughout the State of California in the following locations and dates: Sacramento, July 19, 2001; Chico, July 19, 2001; Oakland, July 23, 2001; Tracy, July 24, 2001; Bakersfield, July 25, 2001; and Los Angeles, July 24, 2001. At each public scoping meeting, the EWA agencies presented a project overview and accepted public comments. The EWA agencies prepared a scoping report to summarize the public comments received at the scoping meetings. The EWA agencies used information from these meetings to develop alternatives.

**NP05-29**

***Comment:***

Page 2-5, we wish to reiterate our point that should the EWA extend longer than four years, many rejected alternatives may in fact be more feasible and could at a minimum displace some of the water needed in Delta export areas. Will this aspect of the EWA alternatives selection be revisited if the program is extended?

***Response:***

See response to Comment NP05-10.

**NP05-30**

***Comment:***

Page 2-7, reference is made to the Colorado River supplies. We urge the authors to closely follow the activity in this arena as it may result in additional water supplies to the Delta export areas and could displace some of the water proposed to be exported from the Delta. That in turn could reduce EWA size and scope.

***Response:***

The recent resolution regarding Colorado River supplies will not result in additional water that could offset needed supplies to the Export Service Area. The amount of

water that Metropolitan WD received before the Department of the Interior reduced flow is similar to the amount that Metropolitan WD and San Diego will now receive.

**NP05-31**

***Comment:***

Page 2-11 final paragraph. Please note that if the anticipated “average” purchase of EWA water under the ROD was 185,000 acre feet there would by necessity be years in which the actual purchases were significantly less. Especially given the reports assertion that “...higher amounts were anticipated in subsequent years.” The authors can’t have it both ways in terms of average. Please clarify and provide specific reference to the ROD and the CALFED Administrative Record of the Programmatic EIS/EIR.

***Response:***

“Average” has been deleted.

**NP05-32**

***Comment:***

Page 2-15, item #2). This paragraph is confusing. Please redraft so that it is understandable.

***Response:***

The first two sentences of item 2 are revised as follows:

“2) During the first 3 years of operation, the EWA agencies have not found it feasible to acquire 200,000 acre-feet of storage in the Export Service Area as described in the CALFED ROD. Under the concept of functional equivalency, the EWA agencies instead have developed an option to borrow up to 100,000 acre-feet from the SWP. Only 100,000 acre-feet of water in storage was expected to be used in any given year; therefore, borrowing this water (100,000 acre-feet) from the SWP would provide approximately the same annual quantity of water as the 200,000 acre-feet of storage in the CALFED ROD.”

**NP05-33**

***Comment:***

Page 2-16, item 2.2.2.4. This section alleges that both alternatives are based upon the CALFED ROD. We take exception to that claim. A careful reading of the ROD makes no mention of the very ambitious EWA program as described in this document. Indeed, a reasonable person may argue that to reach the amounts being proposed a more prudent path would have been to formally amend the ROD. Please specifically document where in the ROD the propose project alternative is described.

***Response:***

The CALFED ROD identified that EWA actions would result in an average of 380,000 acre-feet of water available annually (page 58). This total included acquisitions of 35,000 acre-feet upstream from the Delta, but these acquisitions had a footnote: “This is the amount of water targeted for the first year; higher amounts are

anticipated in subsequent years.” In addition, the CALFED ROD included 200,000 acre-feet of storage, initially full. Although this initial storage would not likely last into subsequent years, the capacity would help to manage assets more effectively. The asset acquisition plus water in storage totals 580,000 acre-feet, and the CALFED ROD indicated that these totals may increase in subsequent years.

The Environmental Water Account Operating Principles Agreement (Attachment 2 to the CALFED ROD) identified that the EWA agencies could purchase water in ways that are functionally equivalent to the methods identified in the CALFED ROD (page 3).

Section 2.2.2.3, Flexibility, Reliability, and Managing Uncertainty, includes information about why the EWA agencies incorporated additional flexibility into the Flexible Purchase Alternative. The 600,000 acre-feet includes variable assets, and is not substantially greater than what was envisioned in the ROD.

#### **NP05-34**

***Comment:***

Page 2-27, section 2.4. The following sentence gives us grave concern in the larger context of the selection of project alternatives. “Any alternative has to be able to allow the EWA agencies to use water for a broader range of fish actions than envisioned in the CALFED ROD.” This flat assertion that the ROD is flawed then raises the question of why, during the Project Alternatives selection process, wasn’t it recognized by the agencies that the ROD should be amended to reflect their best recommendation and why wasn’t an amendment to the ROD included within the project description?

***Response:***

The cited sentence was intended to indicate that changes in the amounts of fish actions may be necessary because of changes to the regulatory baseline; therefore, any alternative must be able to address these changes. The sentence is confusing, however, and incorrectly implies that new types of fish actions are included. All fish actions in both action alternatives were identified in the EWA Operating Principles Agreement (CALFED ROD Attachment 2). The point this sentence intended to make regarding fish actions and the regulatory baseline is also included in the second paragraph of this section; therefore, the sentence has been deleted.

#### **NP05-35**

***Comment:***

Page 2-25/2-26, Sections 2.3.2.1.1 - 2.3.2.2. There appear to be viable short term (less than four years) alternatives to the EWA which are described as local water user actions in these sections. It appears that a combination of accepted shortages (to some level) combined with accelerated permitting for desalination plants, water use efficiency investments and more active ground water management in the export areas offer a less environmentally damaging and less expensive method to achieve the objectives of the proposed project. The range of project alternatives analysis does not do justice in applying the rule of reason implicit in CEQA alternatives selection and comparison. First the alternative should reduce environmental consequences, second

it should achieve the objectives of the project (this is not necessarily the proposed project, see CEQA Guidelines Section 15124(b) and 40 C.F.R Section 1508.20). The requirement under the National Environmental Policy Act for a rigorous evaluation of alternatives and detailed comparison of those alternatives is lacking in this document. We do not believe the record shows a complete and thorough examination - in the record - of what could be achieved in meeting all or part of the EWA objectives, by implementing aggressive local water management actions as outlined in the above referenced sections. Absent this detailed level of analysis the draft document is inadequate in terms of both NEPA and CEQA. Please correct.

We suggest a new draft be prepared with the necessary comparison of alternatives in detail that the reader may render an informed judgment on the consequences of selecting one alternative over another, or in the development of a yet to be described modified (scaled down) EWA, when combined with local water management actions and managed shortages for the short-term.

We are concerned that the focus of the draft document is simply to avoid having the export interests pay for water to make up for water not received by the projects. "...the Joint Point of Diversion could provide additional capacity to pump water into the Export Service Area, but the Projects would need to provide the water to be pumped."

**Response:**

Section 2.3.2.1 states, "In the No Action/No Project Alternative, these actions [Joint Point of Diversion, Relaxation of the Section 10 Constraint, and Relaxation of the Export/Inflow Ratio] would be unlikely to provide enough water or capacity to replace the water lost during fish actions." This alternative would not be a viable short-term alternative because, as the EIS/EIR states, it would not likely meet the purpose and need of no uncompensated water loss. "Accepted shortages" are not considered because they would not meet the project purpose and need and objectives of no uncompensated water loss.

The commentor suggests that a combination of actions including desalination would be less costly and less environmentally damaging; however, desalinization is costly and has several potentially significant environmental impacts, including those associated with producing additional power and disposal of the brine byproduct. More importantly, a desalinization plant was not an immediate solution because permitting, design, and construction would have taken several years; the timeframe of the document extends only through 2007. Likewise, there would not be sufficient water use efficiency investments and more active groundwater management in the export areas achieved before 2007 to replace the need for the EWA program within this timeframe.

The No Action/No Project, Fixed Purchase Alternative, and Flexible Purchase Alternative represent a range of alternatives. The Fixed Purchase Alternative allows transfer of a significantly reduced amount of water compared with the Flexible Purchase Alternative, thereby reducing the potential for impacts. The evaluation of alternatives, however, indicates that there would be no unmitigable significant

impacts as a result of either alternative. Therefore, any additional alternatives would not serve to lessen significant impacts.

#### **NP05-36**

*Comment:*

Page 2-28, third paragraph. We wish to point out that there may also be regulatory hurdles and processes that limit the attractiveness of ground water storage as described in this section. That may result in the EWA not being able to obtain storage access necessary. In that eventuality what is the proposed management response?

*Response:*

Both the Flexible Purchase and Fixed Purchase Alternatives recognize that groundwater storage may be more difficult to obtain than envisioned by the CALFED ROD. The CALFED ROD specified that the EWA agencies should acquire 200,000 acre-feet of full storage for two primary functions:

- The water in storage could be used as collateral so that as export pumping is reduced, the Projects would be confident that they would be repaid; and
- The water could be stored in between years (after some of the water in storage is depleted) to enable the EWA to carry over unused assets.

Both alternatives include other options to store water in between years, including borrowing storage from the Projects and pre-delivery. Borrowing storage from the Projects may be risky because the EWA water could spill during the winter if the facility fills with Project water. Pre-delivery would send this water to willing participants, who would store the water through the rest of the winter.

The EWA agencies could borrow water from the Projects to provide the collateral envisioned in the CALFED ROD, but the water would need to be paid back within a specified period of time. In addition, the Flexible Purchase Alternative has the flexibility to acquire additional assets if needed, but not more than the 600,000 acre-foot maximum evaluated in this EIS/EIR.

#### **NP05-37**

*Comment:*

Page 2-31, section 2.4.1.1.3. It is unclear why the State Water Project (SWP) could not obtain (from willing sellers at market prices) water to participate in the Vernalis Adaptive Management Plan, unless we assume a subsidy of SWP users in an objective of the proposed project. Please explain why the EWA would be able to purchase water but the SWP couldn't. The record of the 1991 Governor's Drought Water Bank showed that the DWR could be very creative in obtaining water for transfer and avoiding the usual legal review processes present in SWRCB authority.

*Response:*

DWR voluntarily agreed to participate in VAMP, which is described in Section 2.3.1.1 as a study plan that examines the effects of San Joaquin River flow on fish. This plan



decreases exports below D-1641 and other regulatory requirements. DWR and Reclamation agreed to participate in this program, but DWR's agreement was contingent upon receiving compensation for water losses that may come from participation in VAMP from available (b)(2) water or any other source that may become available in the future. The EWA program has been introduced since the VAMP agreement was executed. In the No Action/No Project Alternative, EWA assets (water) would not be available, which could cause some difficulties with the current VAMP process if other sources of water were not identified to compensate SWP water users. Section 2.3.1.1 indicates that (b)(2) water could be used to compensate SWP users. If (b)(2) water or other water sources were not available, however, the SWP may not likely to participate in VAMP and could instead operate to the regulatory requirements relative to the amount of water exported during the VAMP time period.

**NP05-38**

***Comment:***

Page 2-33, paragraph 1. It is not clear if the paragraph is attempting to make the point that the EWA is an "interim" project for acquiring in stream flows that could be "rolled over" at some point and called the EWP. Please clarify that the EWP would need to go through its own environmental review process. If this document, however, is intended to address the long-term impacts of the EWP where that is done should be clarified.

***Response:***

This document is not intended to evaluate the effects of the Environmental Water Program (EWP); the EWP will be responsible for describing its specific actions and complying with NEPA and CEQA. Increasing instream flows is a secondary objective of the EWA. The cited paragraph is intended to explain that this objective is shared with other programs, including the EWP and CVPIA Section 3406(b)(2). When the EWP becomes active, it would not replace this objective of the EWA. The EWA agencies, however, would coordinate with other programs to avoid duplication of efforts and make sure that efforts complement each other.

**NP05-39**

***Comment:***

Page 2-33, Section 2.4.1.4. Are the additional "...actions to augment Delta outflow in addition to outflows required by the SWRCB's Decision 1641 and existing baseline...fishery protection" more water than the maximum 600,000 or does this imply higher annual acquisitions to accomplish this objective, or is the amount of water just what is described for the EWA?

***Response:***

As part of the Flexible Purchase Alternative, the EWA agencies could purchase a maximum of 600,000 acre-feet to use for actions to protect fish and benefit the environment. Augmenting Delta outflow is one of these actions, but it is a secondary fish action (see page 2-2 in Volume 1). The EWA agencies would only take direct

actions to augment Delta outflow if additional water remained after they had taken the primary fish actions in the Delta (reducing export pumping and closing the Delta Cross Channel gates over the regulatory baseline). The EWA agencies would release water as Delta outflow if the release would benefit outmigrating fish or water quality. EWA agencies' actions, including pump curtailment, would also indirectly serve to augment Delta outflow as described in Section 2.4.1.4.

**NP05-40**

***Comment:***

Page 2-36, paragraph 2. The paragraph asserts that additional environmental review for EWA transfers that meet certain environmental tests and mitigation as described in the subject document is not necessary. The proposed mitigation measures in this document are in many cases "punted" to the local seller and county for mitigation. Further, the nature of the location and amounts of the transfers are generally defined but not to the level necessary to actually determine and mitigate for local source area impacts. Thus, the local permitting and regulating agencies and the county (in the case of groundwater resources) would be the lead agencies and they reserve the right to make the determination based on the details of the actual application before them (see CEQA Guidelines Section 15064(a)(b)(c)(d)).

***Response:***

While many mitigation measures in this document would be the responsibility of the willing seller, the EWA agencies will contractually require the mitigation measures and will monitor to ensure that the sellers complete the measures. If the selling agencies do not meet their mitigation responsibilities, the EWA agencies will not participate in transactions with those agencies. In addition, the EWA agencies anticipate that the willing sellers would factor the price of these measures into the water sale price. Therefore, these measures are not simply passed off to local groups; the EWA agencies would be involved in the mitigation measures. Chapter 6 of this volume includes mitigation and monitoring guidelines, which include additional information on agency responsibilities for each measure.

As described in Section 1.10, local agencies and counties that permit groundwater substitution transfers could use this EIS/EIR to satisfy CEQA and NEPA requirements if they determine that it meets their needs.

**NP05-41**

***Comment:***

Page 2-38. Are carriage water totals included within the total amount of EWA transfers or in addition to the amount? For example is an acquisition of 10,000 acre feet from the Merced Irrigation District 10,000 acre feet or 11,000 acre feet, or perhaps another amount? Is there any plan by the EWA agencies to negotiate with downstream riparian users to assure that EWA water is actually moving through the system as intended? Please clarify.

**Response:**

Table 2-5 includes the maximum purchase amounts that this EIS/EIR analyzes. The amounts of water that the Project Agencies could pump at the Delta export pumps would be less than the amounts in Table 2-5 because of conveyance losses and carriage water requirements.

On the Sacramento River, Project releases would be sufficient so that riparian water users would have sufficient supply and EWA water would reach the Delta. On the San Joaquin River, EWA water would be released in October and November when it would be unlikely that riparian users would need much supply.

**NP05-42**

**Comment:**

Page 2-39, Section 2.4.2.1.1. It appears that the use by the EWA of stored reservoir water, subject to the refill conditions, could actually limit the ability of Areas of Origin to make claims for water rights due to reservoir reoperations. That is, upstream refill could be restricted making facilities unavailable for Area of Origin use. Please explain.

**Response:**

See response to Comment NP05-2.

**NP05-43**

**Comment:**

Page 2-43, paragraph 1. The determination regarding groundwater overdraft by the transferring agency is part of the truth. Also true is that most EWA transfers involving ground water substitutions will be subject to local county ground water regulatory authority, which is independent of the transferring agency's determination. Please correct.

**Response:**

The cited paragraph addresses groundwater overdraft and explains when groundwater substitution transfers could occur in a basin that is in a state of overdraft. Local regulations are applicable whether or not the basin is in overdraft; therefore, adding information about local regulations in this paragraph could be misleading.

Instead, a sentence was added to the first paragraph on page 2-44 before the section on the Sacramento River. After listing the agencies that may participate, the following sentence was added: "Several of these agencies would need to obtain permits pursuant to local groundwater regulations; Chapter 6 describes these regulations in detail."

**NP05-44**

**Comment:**

Page 2-47. This page discusses the role of crop idling as a water acquisition tool. What is not clear is whether the purpose of limiting the amount of fallowing to 20% in any

single county is to avoid local socio/economic impacts or to avoid the public hearing required under Water Code Section 1745(b). Please clarify.

**Response:**

The 20 percent threshold for crop idling minimizes socioeconomic effects, as stated in the first sentence of the first full paragraph on page 2-47 in Volume 1. The section describes two factors (historical variation and Water Code Section 1745.05(b)) that explain why idling is limited to 20 percent instead of a greater or smaller percentage. Section 11.2.3.1 in Volume 2 includes a fuller discussion of these two factors. "Water Code Section 1745.05(b) requires a public hearing under some circumstances where the amount of water made available for land idling exceeds 20 percent of the water that would have been applied or stored absent the water transfer. Presumably, third parties would be able to attend the hearing and could argue to limit the transfer based on its economic effects."

The text on page 2-47 in Volume has been clarified to explain that the two bullets established the 20 percent criterion.

**NP05-45**

**Comment:**

Page 2-48, Section 2.4.2.1.4. The first paragraph of this section describes that EWA agencies "may purchase...groundwater from the Sacramento Groundwater Authority...". The second paragraph states, "The EWA Project Agencies would purchase water from the SGA.." Are these two statements in conflict - that is may vs. would? Please clarify.

**Response:**

Both "may" and "would" imply conditional actions; however, the first sentence of the second paragraph has been changed to "could" for clarity.

**NP05-46**

**Comment:**

Page 2-53, paragraph 1. On the issue of whether the sales by SWP contractors outside their service area had adverse impacts on other SWP contractors we note the following. That analysis only examined the potential impacts to other SWP contractors. It did not examine what potential impacts could result on Area of Origin claims against existing SWP water. Please note in final document.

**Response:**

This comment relates to the discussion of the Monterey Amendment and the turnback pool. The comment refers to the sentence "Although SWP contracts prohibit sale of SWP water by contractors, DWR concluded that sale of stored SWP water from the 1995 to 1999 period did not have any adverse impacts on other SWP contractors." The intention of this sentence is to explain that Kern County Water Agency banked a portion of its SWP allotment from 1995 to 1999. DWR determined that Kern County Water Agency could sell this water to the EWA because other SWP users had not

needed it during that period. This analysis did not carry forward into the timeframe of this EIS/EIR.

See response to Comment NP05-2 for information regarding Area of Origin laws.

#### **NP05-47**

***Comment:***

Page 2-64, Section 2.4.4.1. "...potential supplies in the export service areas are decreasing...". Please amplify and give examples.

***Response:***

The cited section is referring to the potential for stored groundwater to diminish in the future. Page 2-54 in Volume 1 discusses this issue in more detail and explains that less stored groundwater could be available from Kern County Water Agency in the future. Section 2.4.4.1 (page 2-64) has been clarified.

#### **NP05-48**

***Comment:***

Page 2-65 footnote 35. It appears that the carriage water amount for the 35,000 acre feet would be in addition to the 35,000 acre feet. It is presumed that this then holds true for the EWA proposal for 600,000 acre feet (if all acquired upstream of the Delta). If correct it would be helpful if the document would account for the total amount being targeted for acquisition, including carriage water.

***Response:***

See response to Comment NP05-15.

#### **NP05-49**

***Comment:***

Page 2-66, Table 2-8. This table presumes the implementation of the CALFED ERP. As noted earlier there is no present federal authorization for carrying out the CALFED program. Under what specific authority and funding would the federal agencies carry out the ERP? Lacking either what is the implication for the EWA of a nonfunctional ERP? What if the ERP is implemented to a lower level than the amounts identified? Please provide detailed response.

***Response:***

The Federal agencies involved in the EWA (Reclamation, USFWS, and NOAA Fisheries) are implementing the CALFED ERP under the following authorities:

- Central Valley Project Improvement Act;
- Bay-Delta Act;
- Endangered Species Act;
- Fish and Wildlife Coordination Act;

- North American Wetlands Conservation Act;
- Migratory Bird Conservation Act;
- Fish and Wildlife Act of 1956;
- Migratory Bird Hunting and Conservation Stamp Act;
- Refuge Recreation Act of 1962;
- Emergency Wetlands Resources Act of 1986;
- Land and Water Conservation Fund; and
- Magnuson-Stevens Fishery Conservation and Management Act.

ERP funding from these Federal agencies is provided through:

- Central Valley Project Improvement Act funds (including restoration funds);
- Water and Related Resources appropriations; and
- Bay-Delta appropriations.

The CALFED ROD specifies a link between ERP funding and the effectiveness of the EWA program. The EWA Management Agencies would consider ERP funding each year when determining if they could provide regulatory commitments. See comment LA08-12 for more information about regulatory commitments.

#### **NP05-50**

***Comment:***

Page 3-12, Section 3.5. The EWA is described as a 4 years time frame and only holding the potential for short-term water supply reliability. We therefore conclude that earlier discussions regarding the EWA agencies seeking multiyear purchases would be for no longer than four years? Clarify.

***Response:***

Transfers would be for 1 year or a series of multiple years, but no permanent transfers are addressed in the current EWA EIS/EIR. Multi-year transfers could not extend beyond 2007 (the end of the timeframe that this document covers).

#### **NP05-51**

***Comment:***

Page 4-20, Section 4.2.2. Is the threshold for significance of any of these items to, say, .0001%? .001%? 1%? It is unclear how a change that is statistically insignificant (let's say a .0001% decrease in water) could be found significant. Is this threshold (i.e. any change) consistent throughout the document or does it only apply to export water supplies?

**Response:**

The threshold of significance is any decrease in the amount of water supply to all water users, not only those in the Export Service Area. The changes in river flows are presented quantitatively (Table 4-3); however, the chapter analyzes effects on agencies and water users qualitatively. The term “significant” in this case is based on the qualitative assessment and threshold, not the mathematical definition of “statistically significant.” Because the assessment is qualitative, a numeric value is not given to the significance threshold. Overall, any decrease that could be determined qualitatively is a significant impact. Each resource area’s thresholds are set at a level at which the lead agencies consider impacts to be less than significant; this threshold differs between resource areas.

**NP05-52**

**Comment:**

Page 4-20, Section 4.2.2. How is the receipt of money by non-project and project water sellers a mitigation measure for water shortages? If this assumption is indeed valid wouldn't it be potentially feasible to simply pay the exporters to take, for example, 20% less water (scheduled to avoid fishery impacts) and thus reduce the amount of activity under EWA acquisitions? Please explain.

**Response:**

Page 4-20, Section 4.2.2 states, “Non-Project and Project contractors who participate as sellers to the EWA would receive less supplies. Because these sellers receive monetary compensation for their water, however, the reduction in their supply is not significant.” This statement is made at the end of the Significance Criteria section to clarify that although willing sellers would have a decrease in their supply, they are doing so on a voluntary basis and the effect would not be considered significant. This section does not describe mitigation measures.

Reclamation and DWR considered reimbursement to SWP and CVP contractors for voluntary export cutbacks. The agencies concluded that the proposed reimbursement action was not contractually feasible under current SWP and CVP contracts, that SWP and CVP contractors were not willing to accept the proposal, and that the SWP and CVP contracts could not be amended in the time available for the EWA Stage I program that ends in 2007. In addition, DWR concluded that a reimbursement proposal could conflict with settlement of litigation involving SWP contract amendments.

**NP05-53**

**Comment:**

Page 4-22, Section 4.2.5.1. Does the amount of described flow include carriage water? If not what is the total amount?

**Response:**

Yes, the maximum flow of 600,000 acre-feet includes carriage water. See also response to Comment NP05-15.

**NP05-54**

***Comment:***

Page 4-43, Section 4.2.8.1. Is this amount of water (drainage system flows) included in the total acquisition amount or in addition to it? Please clarify and quantify.

***Response:***

The required maintenance of drainage system flows is not included in the acquisition amount under the Flexible or Fixed Purchase Alternatives. The EWA agencies would only purchase water that would have been consumptively used by the crop. See response to Comment NP05-14 for more information.

**NP05-55**

***Comment:***

Page 4-44, Section 4.2.10. We disagree with your assertion that cumulative impacts would definitely be non-significant. Past experience (Governor's Drought Water Bank of 1991) has demonstrated that a presumption of management coordination and consideration for local "source" area impacts should not be assumed, but rather assured. Please rephrase to reflect that reality.

***Response:***

EWA agencies will coordinate EWA operations with other programs. Many of the same agencies are involved in several of the programs. Reclamation and DWR would be involved in all of the transfers because most of the transferred water must go through the State and Federal facilities and pumps. These connections between programs would facilitate the oversight and coordination of multiple transfer programs.

**NP05-56**

***Comment:***

Page 6-1. We would like to offer a general comment on this section. Generally, the report assumes acquisitions will be mitigated by local management and regulatory actions. However, if the EWA were to continue for multiple years and local impacts were too significant, some acquisitions would likely be stopped. What would the replacement acquisition strategy be?

***Response:***

If mitigation did not reduce impacts to a less-than-significant level, then groundwater substitution in that area would be stopped; however, groundwater substitution in areas with no impacts could continue. Potential sellers to the EWA are geographically dispersed; if groundwater substitution became infeasible in one area, it is likely that other areas with varying physical conditions would be able to continue groundwater substitution. The EWA agencies also have various acquisition and management methods including crop idling, purchase of stored reservoir water, purchase of stored groundwater, and source shifting. The EWA agencies could obtain assets through other means besides groundwater substitution, such as crop idling or purchase of stored reservoir water.



**NP05-57**

***Comment:***

Page 6-45, Section 6.2.2. We do not understand why the significance criteria for this section is more lenient in its approach to impacts to the Section 4.2.2 levels of significance. It certainly looks as if the standard of significance is much lower for Section 6.2.2 than 4.2.2. Please explain the different standard and the justification.

For example, if local ground water levels dropped 1% (again using the Section 4.2.2 criteria) then a significant impact would occur. However, Section 6.2.2 seems to apply a less stringent standard for impacts.

The reader is left with the impression that impacts to export water users are considered a much higher concern to the authors than impacts to the areas transferring the water. Please explain this reasoning. Is there a different standard of analysis under this environmental document for export interests and source area interests?

***Response:***

The significance criteria in Chapter 4, Surface Water Supply and Management, and in Chapter 6, Groundwater Resources, have similar thresholds. In Chapter 4, a decrease in supply that would have an adverse effect on the environment or water users is an impact. A decrease in river flow, for example, would not be significant unless it causes a decrease in supply to a water user. In Chapter 6, a decrease in groundwater levels that would have an adverse effect on the environment or water users is also a significant impact. In both cases, the significance criteria do not include a quantitative threshold set at the point an impact is determined. A significant impact is determined in Chapters 4 and 6 at the point when there is a decrease in supply (either surface water or groundwater).

**NP05-58**

***Comment:***

Page 6-47, first paragraph. If the withdrawals of an area exceeded recharge in sequential EWA acquisition years those transfers could have a significant impact on local ground water levels and recharge ability. We question the assertion of the DWR Northern District and ask for their supporting data to be presented in the Administrative Record.

***Response:***

Page 6-52 includes an analysis of multi-year groundwater substitution transfers in the Redding basin and states, "...if EWA groundwater transfers were to occur for several consecutive years during a dry period, the transfer could contribute to groundwater level declines over a period of several years." This section concludes that impacts could be potentially significant, but incorporates a mitigation measure (the Pre-Purchase Evaluation) to reduce the effects to less-than-significant levels. The Pre-Purchase Evaluation would review historic water-level information to avoid groundwater level declines and the associated impacts. As discussed in the Groundwater mitigation measures (Section 6.2.7.2), the EWA Review Team will assess

the potential for impacts based on the hydrologic conditions in the area. If the preceding years have been dry or groundwater levels are low and the Review Team determines that the potential for impacts is high, the EWA Project Agencies would not buy groundwater from that seller for that hydrologic year.

**NP05-59**

***Comment:***

Page 6-51, final paragraph. The word "...address..." is a meaningless term in the context of CEQA analysis. The proper phrase is mitigate to a non-significant level, if that is what is meant. If not please clarify. As we stated in the beginning of our comment letter, our objective is that the Administrative Record for the proposal will comply with the California Environmental Quality Act and provide decision makers and the general public with a clear understanding of the consequences of this proposal. Please use terms which are definitive and not ambiguous.

***Response:***

The text has been revised to state, "...have a monitoring and mitigation program in place to assess potential land subsidence effects and reduce effects to a less-than-significant level."

**NP05-60**

***Comment:***

Page 6-52, fourth paragraph. The phrase "...however, the mitigation measures would reduce any potential effects to less than significant levels." (in reference to groundwater quality) is misleading. The actual response is demonstrated on page 6-53 in which County ordinances are referred to which will "...address adverse effects...". Again, the actual response under CEQA is mitigate, not address. Please refer to CEQA Guidelines Section 15126.4 with special attention to Section 1526.4(a)(2).

***Response:***

The text on page 6-53 has been changed: "The groundwater mitigation measures further stipulate that all sellers to the EWA Project Agencies have a monitoring program to prevent adverse effects and a mitigation program to mitigate adverse effects should they occur."

**NP05-61**

***Comment:***

Page 6-59, second paragraph. The proposed ground water monitoring implies that the only impacts will occur within the two local agencies mentioned. At this time, there is at least a potential for the actual impacts to occur outside the boundaries of the referenced agencies. It is not clear if the two agencies would be actively monitoring ground water levels on lands outside their service area and if so how (specifically) they would identify and mitigate impacts. What authority would they use to operate and perhaps regulate outside their legal boundaries? Please clarify.

**Response:**

Under the requirements discussed in Groundwater Mitigation Measures (Section 6.2.7.2), willing sellers are required to conduct a Pre-Purchase Evaluation to investigate potential adverse regional effects. The Draft EIS/EIR has been updated to state that this evaluation is not confined to the seller's legal boundaries and will provide the Review Team with sufficient information to evaluate the potential regional effects of the proposed acquisition. Furthermore, although the Monitoring Program implemented by sellers may be confined to their jurisdiction, the Mitigation Program is not.

**NP05-62**

**Comment:**

Page 6-61, second paragraph. We recommend that any groundwater mitigation measures stipulate that all sellers to the EWA Project Agencies in cooperation with the County(s) with jurisdiction, have a monitoring and mitigation program in place to identify and mitigate to a non-significant level potential land subsidence effects. Again, we urge that the authors understand the relationship of selling agencies involved in ground water substitution transfers and the County's regulatory authority. Further, emphasize the need for definitive mitigation statements which provide clarity of purpose.

**Response:**

As discussed in the Groundwater Mitigation Measures (6.2.7.2), sellers transferring water to the EWA Project Agencies via groundwater transfers need to demonstrate to the Review Team that they have a Monitoring Program to identify potential effects before they become significant. The requirements of the monitoring programs will not be the same for each area. For example, as stated in the document, "areas that are susceptible to land subsidence may require extensometers." Evaluating factors such as historical subsidence monitoring records, the degree of aquifer confinement and consolidation of the aquifer material, and the range of historical groundwater levels will assess the potential for land subsidence. In addition to the Review Team's requirements for a Monitoring Program, willing sellers have the responsibility to coordinate their activities with counties that have jurisdiction and comply with applicable local ordinances. Chapter 6 identifies the groundwater management ordinances in place in the different counties.

**NP05-63**

**Comment:**

Page 6-71. It is not clear what the relationship between EWA Project Agencies and their Review Team and local agency and County authority is. It seems that mitigation is intended but the vague term "address" again confounds the reader as to the authors intent. This confusion is perpetuated on page 6-71 in reference to mitigation and the relationship of the local selling agency and the County regulating the ground water. Please clarify.

**Response:**

As a willing participant in an EWA purchase, a selling agency is responsible for coordinating with local counties with jurisdiction and complying with applicable local ordinances. The EWA Project Agencies and the Review Team are responsible for ensuring the selling agency complies with the Groundwater Mitigation Measures outlined in the document. These measures are not intended to enforce or supplant existing local groundwater management ordinances, but are intended to provide a level of protection appropriate to local conditions.

The reference to “address” has been changed to “reduce.”

**NP05-64**

**Comment:**

Page 6-73. Second paragraph (Local Groundwater Management and Monitoring). It appears that the sellers in the Butte sub basins would self regulate for any impacts and respond with mitigation. Does this imply the sellers are monitoring lands and ground water resources outside their jurisdiction and service area? If so, under what authority is that carried out? What relationship does this action have to county permit conditioning and environmental review?

**Response:**

The Groundwater Mitigation Measures (Section 6.7.2.7) require willing sellers to conduct a Pre-Purchase Evaluation to investigate potential adverse regional effects. The Draft EIS/EIR has been updated to state that this evaluation is not confined to the seller’s legal boundaries and will provide the Review Team with sufficient information to evaluate the potential regional effects of the proposed acquisition. Furthermore, although the Monitoring Program implemented by sellers may be confined to their jurisdiction, the Mitigation Program is not. In addition to the Monitoring Program requirements of the Review Team, willing sellers have the responsibility to coordinate their activities with counties that have jurisdiction and comply with applicable local ordinances. The document identifies the groundwater management ordinances in place in the different counties.

**NP05-65**

**Comment:**

Page 6-142, first paragraph. The proposal to have the selling agency and the EWA Agencies responsible for identifying and mitigating potential third party impacts is not the most effective way to assure impacts are identified and mitigated. The population of the county in some part are the potentially impacted parties. It would seem more prudent and effective to have the county(s) from which the water is transferred participate in the monitoring and determination of impacts. As the 1991 Governor’s Drought Water Bank demonstrated, third party impacts are most readily apparent to the agency charged with providing social services (to laborers who lose their jobs as a result of the project).

**Response:**

The agency that sells water to the EWA is responsible for monitoring and for determination of impacts. The EWA Project Agencies would be responsible for ensuring that the seller fully adheres to the monitoring and mitigation programs. The EWA agencies cannot assign responsibility for monitoring to agencies or counties that are not a partner to the EWA.

The mitigation program identified in Chapter 6 only mitigates for adverse effects to the groundwater resource. The comment refers to other potential third-party effects such as job losses, but different chapters analyze these effects.

**NP05-66**

**Comment:**

Page 6-147, first paragraph. We wish to reiterate our concern that the Authors fail to recognize the role of the local County in regulating ground water authority. While the willing seller may have a vested interest in not finding that an impact is significant, it is more likely that the impartial evaluation of the County regulatory body would provide a clearer assessment of relative significance. We do not believe the proposed self identification of impacts by sellers is an effective method to either identify or mitigate impacts. Further, the report fails to explore the opportunities to resolve this matter in a way consistent with County regulatory authority. This mistake is perpetuated in Section 6.2.7.2.3 of the report. Please correct.

In general the report's reliance on sellers to self-regulate potential third party impacts and ground water impacts is overly optimistic. We urge the authors to consider the ramifications of a model for project proponents who will self identify potential impacts, determine significance and mitigate, when the affected resources are not solely within their jurisdiction. This is a major failing of the report.

**Response:**

As stated in response to Comment NP05-65, the willing seller would be responsible for monitoring and mitigating impacts; however, the Project Agencies would ensure that the monitoring and mitigation programs are adequate and adhered to correctly. Chapter 6 of this volume includes mitigation and monitoring tables that identify, for each mitigation measure, the agency responsible for implementation and the agency responsible for oversight.

Also, as stated in Comment NP05-61, the Pre-Purchase Evaluation to investigate the potential for adverse effects is not confined to the seller's legal boundaries. Although the monitoring program implemented by the sellers may be confined to their jurisdiction, the mitigation program is not.

**NP05-67**

**Comment:**

Page 9-255 through 9-259. This section of the report suggests that the preferred EWA alternative will reduce average annual fish salvage by about 136,000 delta smelt, 1.1 million salmon, 29,000 steel head, 1 million split tail and 9 million striped bass. These

numbers are incorrect. Tables 9-56, 9-57, 9-58, 9-59 and 9-60 clearly show that these numbers are total estimated salvage reductions over the complete 15 year modeling period. Therefore the actual approximate average annual reductions in fish salvage are about 9,000 delta smelt, 75,000 salmon, 1,900 steel head, 68,000 split tail and 596,000 striped bass. Please correct.

The above approximate benefits are based on 1979-1993 historical fish salvage, and are likely to be overestimates (Attachment 1, pages A1-60 and A1-61). They estimate the total salvage and not adult equivalent salvage. Because of the high natural mortality of juvenile fish, many salvaged fish would not live to maturity even assuming EWA functioned as hoped. The importance of adult equivalent salvage for striped bass is mentioned in Chapter 9 on page 260, but the issue of adult equivalence is not properly presented. Please correct.

**Response:**

See responses to Comments LA03-23 (regarding the 15-year averages for salvage data) and LA15-13 (regarding salvage estimates).

**NP05-68**

**Comment:**

Page 9-127 through 9-249. The detailed analysis of EWA effects upstream from the Delta should be moved to an appropriate appendix. The analyses make it clear that the EWA will produce no significant effects on fish upstream from the Delta. That conclusion should be highlighted early on in the Executive Summary as well as in the discussion of project benefits. The implications of this are significant in terms of EWA strategies to multiply benefits through acquisition strategies. Please clarify.

**Response:**

See response to Comment LA15-14 (relative to level of detail for the Upstream from the Delta analysis).

**NP05-69**

**Comment:**

Page 11-24, Section 11.2.1

We believe that the description relating to CEQA and NEPA responsibilities are accurate in terms of the minimum required for analysis. However, we are disappointed in the analysis, in that it fails to address the EWA and its potential for redirected significant impacts in the context of the greater CALFED Program. By failing to do so we do not believe the analysis is consistent with the requirements of the Record of Decision.

The purpose of the analysis within this report is to identify significant impacts. By failing to do so on the narrow legal basis of NEPA and CEQA analysis for Socio/Economic consequences is to be inconsistent with the stated "Solution Principles" of the CALFED Bay-Delta Program as defined in the ROD.

“Have No Significant Redirected Impacts Solutions will not solve problems in the Bay-Delta system by redirecting significant negative impacts, when viewed in their entirety, within the Bay-Delta or other regions of California.”

It is impossible for the reader to determine if the CALFED Solution Principle has been violated when the CALFED Agencies privately and collectively choose not to conduct the necessary analysis. This report would have been the logical venue in which to have carried out the referenced analysis.

Is the analysis going to be conducted out in another, perhaps post project venue? Or, alternately have the EWA Agencies reinterpreted the ROD to mean that the Solution Principles mean something else, or nothing at all? Please clarify.

This question also strikes to the very heart of the so-called CALFED assurances, or protections from an inequitable, biased and/or harmful program implementation.

We find the absence of the requisite identification within the CALFED Solution Principles of any “...significant negative impacts...” to be a fatal flaw in the implementation of the program and inconsistent with the Record of Decision.

***Response:***

See response to Comment NP05-76 for discussion of CALFED solution principles. The CALFED solution principles were developed early in the planning process to provide an overall measure of acceptability of the CALFED Program as a whole; the measures were not intended to be applied to individual parts of the CALFED Program.

**NP05-70**

***Comment:***

Page 11-28, Section 11.2.3.1. The specific reference to Water Code Section 1745.05(b) has no bearing on the potential for significant economic impacts that may occur for land fallowing. Rather, it is a threshold for holding a public hearing. The use in the report is a mischaracterization of the law and actually misleads the reader. Please correct.

***Response:***

The document clearly explains the reference to Water Code Section 1745.05(b). EWA agencies considered this law when setting the 20 percent crop idling acreage measure. It is not a significance threshold. It is merely a precedent in that the law has established a threshold for a the public hearing.

**NP05-71**

***Comment:***

Page 11-30, Table 11-24. The table underscores the main concern of water transfer source area communities and their political leadership. That is, it is possible to craft a water transfer strategy that is beneficial to some water sellers and to exporters and/or the EWA. However, those transfers, and the economic benefits that do accrue are not the same as those that accrue from agricultural production. The amount of money

earned per acre may be the same - to the seller - but the impact of that revenue as part of an economic base income is different. The Table underscores the inequities created by such a situation and the most likely parties to be adversely affect are not the willing sellers.

The third parties not represented in the negotiations, and in this analysis, are local governments, other businesses, laborers and service industries.

The subject report does an injustice to this subject matter by failing to conduct a more detailed analysis of potential third party impacts by narrowly limiting analysis to NEPA/CEQA minimums and ignoring the duty of the EWA Agencies to conduct the analysis necessary to reconcile compliance with the Solution Principles in the CALFED ROD

***Response:***

The regional analysis provides detailed, state-of-the-art quantitative analysis of these types of effects. The analysis uses direct effect from California crop budgets and includes a variety of forward linkages that characterize the effects to post-production of crops. Economic models do not often include these linkages. The analysis is not limited to "NEPA/CEQA minimums." As noted, CEQA does not require this analysis, and NEPA does not require an analysis that examines impacts to this depth. The analysis does not include a variety of factors such as the current farm program provisions that are improving rice and cotton production economics and associated communities in California. Also, the EWA EIS/EIR cannot cover all CALFED actions.

Please refer to Comment NP05-76 for discussion of CALFED solution principles.

**NP05-72**

***Comment:***

Page 11-56, Section 11.2.7.1. We find your analysis of the relative consequences of the Fixed Purchase Alternative a compelling argument, from the perspective of upstream local communities and governments, that this alternative results in fewer impacts and potential adverse consequences to those areas. We strongly recommend that the EWA Agencies implement the Fixed Purchase Alternative, with local mitigation protections as the chosen alternative. We believe that the Flexible Purchase Alternative results in more significant impacts redirected to the source areas which are avoidable by adopting the Fixed Purchase Alternative. Further, the Flexible Purchase Alternative, we believe is inconsistent with the CALFED Solution Principle regarding redirecting "...significant negative impacts."

***Response:***

CEQA does not consider economic or social changes resulting from a project as adverse effects on the environment. NEPA requires that economic and social effects be disclosed, but does not require they be evaluated for significance. While the EWA agencies are not required by CEQA or NEPA to mitigate for economic effects, they have incorporated two measures into the project to reduce potential effects:



1. EWA agencies would not purchase water via crop idling if more than 20 percent of recently harvested rice or cotton acreage in the county would be idled through EWA water acquisitions. This measure is consistent with the historical fluctuations in crop acreages. Therefore, crop idling by the EWA agencies would not result in economic effects above those that the region has experienced in the past.
2. EWA agencies would acquire less water by crop idling when the level of land idling is already larger than historically normal. This measure also protects economies that have experienced recent land retirement, such as in Westlands Water District.

The Fixed Purchase Alternative does not have fewer environmental impacts. According to Table ES-3, the Fixed Purchase and Flexible Purchase Alternatives have the same environmental impacts in that neither alternative has any significant unavoidable impacts. The EWA agencies chose a preferred alternative that, on balance, produced the most benefits and met the purpose and need/project objectives to the greater degree. As described in Section 2.7, the Flexible Purchase Alternative results in greater benefits.

#### **NP05-73**

***Comment:***

Page 11-58, Table 11-43. This table is misleading because it doesn't show comparative likely scenarios for each alternative, but rather looks at each County singly as if accommodating all actions. I would be much more helpful to craft likely scenarios and include them in an accompanying table.

***Response:***

This table shows the "worst-case scenario" for EWA-related crop idling in each county. EWA agencies do not want to mislead readers by not showing the maximum potential effects of the program. It is correct that these effects would not occur during most years; however, it is not possible to know the actual actions that would occur annually because of varying hydrologic conditions, fish behavior, or economic conditions. Section 11.2.7 provides a qualitative analysis that compares alternatives and discusses the most likely actions. The most likely EWA actions would have smaller effects than those shown in the table.

#### **NP05-74**

***Comment:***

Page 11-59, Table 11-43, Footnote 4. This footnote incorrectly identifies the amount of water to be acquired upstream from the Delta as 50,000 acre feet. The ROD specifically limits that amount to 35,000 acre feet.

***Response:***

The footnote text has been corrected to 35,000 acre-feet.

**NP05-75**

***Comment:***

Page 12-5, Section 12.1.4. It is unclear if the 20% per county is a cap or if it a matter for consideration along with other land idling. Is the 20% a total (all methods) cap, or just an EWA cap?

***Response:***

Section 11.2.3 describes the 20 percent threshold that the EWA agencies incorporated into the project. Section 11.2.8.11 discusses how this threshold would limit idling to 20 percent in conjunction with other cumulative programs. The text in the comment refers to the EWA cap on crop idling; the EWA agencies would not purchase water through crop idling if such purchases would cumulatively cause idling to be greater than 20 percent in a county.

**NP05-76**

***Comment:***

Page 12-9, Section 12.2.1. Please refer to our earlier comments on the need for evaluation of this subject to comply with CALFED Solution Principles.

***Response:***

The comment inaccurately portrays the role of the CALFED solution principles. The solution principles were developed early in the planning process for a long-term Bay-Delta solution as a way to ensure that potential Bay-Delta solutions would be acceptable for the competing interests and that the solutions would not create problems for one sector or geographic area as it solved them for a different sector or geographic area. The solution principles provided an overall measure of the acceptability of the programmatic alternatives and helped guide the design of the alternatives. They were intended to be evaluated against the Bay-Delta Program as a whole, not to be applied to individual parts of the program.

Accordingly, looking at the EWA program alone against the solution principles does not provide the view of the entire CALFED Program and how the CALFED Program conforms to the solution principles.

The solution principle referred to in several letters as “pose no significant redirected impacts” states that “solutions will not solve problems in the Bay-Delta system by redirecting significant negative impacts, when viewed in their entirety, within the Bay-Delta or to other regions of California.” Again, this particular solution principle is intended to apply to the Bay-Delta Program as a whole, not to individual components such as the EWA.

The solution principles represent a policy issue for the lead agencies. Neither CEQA or NEPA require the lead agencies to evaluate the EWA against the solution principles in this EIS/EIR. The EIS/EIR does provide information and analysis that agencies can use to assist them in making policy determinations. For example, the primary issue in the Agricultural Social Issues chapter is the temporary job loss associated with rice and cotton idling. For both the Fixed Purchase and Flexible

Purchase Alternatives, crop idling effects on farm labor do not exceed historic farm labor employment variations. Therefore, crop idling would not redirect impacts to a substantial degree related to job loss or community stability.

**NP05-77**

***Comment:***

Page 12-11, second paragraph. What is the potential for other programs to be implemented following additional lands within a county (or counties) after multiyear EWA contracts are in place? What is to prevent a county from going over the 20% amount in that circumstance?

***Response:***

EWA agencies would consider other reasonably foreseeable crop idling water transfers before making a purchase through crop idling. If a multi-year contract were in place with the EWA, and other transfer programs result in idling more than 20 percent of the rice or cotton acreage, those programs are responsible for addressing their contributions to any subsequent physical cumulative effect. As stated in Chapter 22, Cumulative Effects, EWA will try to coordinate with other transfer programs to the extent possible to avoid cumulative effects. Reclamation and DWR will be involved in coordination of water transfer programs.

**NP05-78**

***Comment:***

Page 12-16, Section 12.2.4. We agree with your findings regarding the lesser impacts of the Fixed Purchase Alternative and support that alternative as a method to easily and simultaneously avoid serious significant impacts to source area communities and local governments and to assure compliance with the CALFED Solution Principles. Comments would be identical on Section 12.2.5.1.

***Response:***

The EWA agencies chose a preferred alternative that, on balance, produced the most benefits and met the purpose and need/project objectives to the greater degree. As described in Section 2.7, the Flexible Purchase Alternative results in greater benefits.

**NP05-79**

***Comment:***

Page 13-20, paragraph 1. This paragraph does not seem to recognize the potential for multiyear contract EWA acquisitions which have previously been identified as an option earlier in the document. Please include an analysis of the potential for multiyear acquisition strategies related to following.

***Response:***

Section 13.2.4.3 discusses multi-year acquisitions related to agricultural land use.

#### **NP05-80**

***Comment:***

Page 13-20, paragraph 2. Crop idling is recognized as an influence by the report in that it "...would change the classification to levels less than Prime Farmland...". However, later in the same paragraph the mitigation response is "...the EWA agencies could implement mitigation...". CEQA demands a more declarative and concise certainty for mitigation. We suggest that the mitigation measures be identified in the analysis and the proper term would be "...the EWA agencies, along with local agencies and governments shall implement mitigation as defined...". We therefore disagree with your assertion that "No mitigation is required."

***Response:***

EWA agencies will implement mitigation measures for any potential significant impacts. The cited language on page 13-20 in Volume 2 has been changed from "could implement" to "shall implement." Chapter 6 of this volume includes tables that detail who must carry out the mitigation measure, who will oversee mitigation, and what the timeframe is for completing the mitigation. The EWA program would not convert any lands to incompatible uses; therefore, mitigation is not required for the second impact discussed in Sections 13.2.4.1 and 13.2.4.2.

#### **NP05-81**

***Comment:***

Page 13-21, Section 13.2.4.3. This section identifies the potential consequences of multiyear acquisitions predicated on crop idling. However, it finds the impacts would be non-significant due to mitigation measures that are not identified within the report. CEQA does not allow the applicant or project proponent to make promises of mitigation and then allow the lead agency(s) to beg off on findings of significance. The impact remains significant until adequately mitigated. Promises are not mitigation. See CEQA Guidelines Section 15126.4(a)(1)(B).

***Response:***

Section 13.2.7 identifies mitigation measures. To clarify text, a reference to this section has been added to Section 13.2.4.3 (page 13-22). Additionally, Chapter 6 of this volume includes tables that detail who must carry out the mitigation measure, who will oversee mitigation, effectiveness criteria, and the timeframe for completing the mitigation.

#### **NP05-82**

***Comment:***

Page 13.2.6.1, Section 13.2.6.1. We agree with your findings regarding the lesser impacts of the Fixed Purchase Alternative and support that alternative as a method to easily and simultaneously avoid serious significant impacts to source area communities and local governments and to assure compliance with the CALFED Solution Principles.

***Response:***

As discussed in Chapter 13, neither action alternative results in unmitigated significant effects on agricultural land use. The EWA agencies chose a preferred alternative that, on balance, produced the most benefits and met the purpose and need/project objectives to the greater degree. As described in Section 2.7, the Flexible Purchase Alternative results in greater benefits.

**NP05-83**

***Comment:***

Page 13-25, Section 13.2.7. CEQA requires clear intent on mitigation not that the EWA "...would consider the following measures:". See CEQA Guidelines Section 15126.4(a)(1)(B). Likewise, in the absence of clear mitigation measures we disagree with the unfounded assertion of Section 13.2.8. Absent clear mitigation the impacts are significant. This report contains no clear mitigation definition. Please correct.

***Response:***

EWA agencies will implement mitigation. Language in the Draft EIS/EIR has been changed from "the EWA would consider" to "the EWA agencies will implement." In addition, Chapter 6 of this volume includes tables that detail who must carry out the mitigation measure, who will oversee mitigation, effectiveness criteria, and a timeframe for completing the mitigation.

**NP05-84**

***Comment:***

Page 16-4, final paragraph. Reclamation First Preference Power Customers (counties of Trinity, Calaveras and Tuolumne ) are not identified in reference to preference customers. First Preference customers are unique among Preference customers. Please correct

***Response:***

See response to Comment NP05-18 pertaining to mitigation of effects on First Preference Customers.

**NP05-85**

***Comment:***

Page 16-26 and 16-27. There is not clear identification as to what the EWA actions would have in terms of power availability and cost to Reclamation First Preference Power Customers. Please clarify. Identical comment applies to Section 16.3.9.

***Response:***

See response to Comment NP05-18 pertaining to mitigation of effects on First Preference Customers.

**NP05-86**

***Comment:***

Page 22-5, first paragraph. This paragraph is essentially speculation about what may happen regarding projects that are not yet permitted or completed. The statements should be redrafted and tempered with judicious restraint.

***Response:***

At the time that the Draft EIS/EIR analysis was conducted, many of the other water transfer programs discussed in the Cumulative chapter were not fully developed. Many of the same agencies, however, are involved in the development of several of these programs. Therefore, assumptions made in the EWA Draft EIS/EIR are not speculation, but are reasonable and based on direct program knowledge.

**NP05-87**

***Comment:***

Page 22-14, Section 22.2.3. It appears from the discussion in this Section that the Delta “improvements” will probably result in; increased exports from the Delta, increased demands for EWA water to service exporters and an increase in the amount and frequency of EWA purchases. The latter point is key inasmuch as the amount and frequency of EWA purchases, unconstrained by single region acquisition, would mean additional upstream counties would be targeted for purchases. At what point in the CEQA process will full disclosure of these potential impacts be examined?

***Response:***

The South Delta Improvements Project (SDIP) EIS/EIR will present the effects of any increased exports involved in that project. The EWA EIS/EIR describes the EWA through 2007 or until significant changes, such as South Delta Improvements, require significant changes in the EWA. The EWA agencies released the Draft EIS/EIR before the most recent proposal was complete regarding actions in the south Delta. It does not include project-level analysis of how the EWA would function in cooperation with the South Delta Improvements Project because the details were not available when completing this document. The EWA agencies will complete new environmental analysis before the EWA program could be used in conjunction with increased pump capacity at the Delta export pumps or before the agencies begin to implement a long-term EWA program that would extend beyond 2007.

**NP05-88**

***Comment:***

We assume additional analysis for EWA acquisitions of that magnitude will be examined as part of the South Delta Improvements Project environmental analysis since the two activities appear to be directly linked. Please respond with a detailed explanation of how analysis will be carried out.

***Response:***

See response to Comment NP05-87.

## NP05-89

### *Comment:*

Page 22-15, Section 22.3. We wish to dispute the flat statement of the first sentence regarding the effectiveness of mitigation measures. In our previous comments within this letter, we have documented numerous cases in which mitigation measures are unclear, deferred to local sellers of water, or even unidentified. Under such uncertain mitigation strategies it is impossible for the authors, or any other party to reasonably assert that "Mitigation measures would minimize the potential for EWA acquisitions to significantly contribute to cumulative effects." We urge you to either clear up the mitigation problems or restate the obvious: that absent a coherent mitigation strategy, impacts are very likely to be significant.

Page 22-15, Section 22.4.1 and 22.4.2. Both of these sections contain assertions of no significant impacts occurring based upon mitigation measures that may be implemented by other agencies. That is not a mitigation measure, it is wishful thinking. Please change to reflect the facts of the situation. Either more specific definitive mitigation or a finding of significance must be provided.

Page 22-19, Section 22.4.8. The mitigation of this section is actually delegated to local agencies and we presume local counties. The EWA doesn't really implement mitigation measures as much as it depends on the sellers and others to mitigate for its actions. This must be cleared up in the administrative record.

Page 22-19, Section 22.4.9. This section also presumes upon mitigation that is not supported, in sufficient detail to elicit certainty, within the record. Please clarify to more accurately reflect the actual situation.

### *Response:*

Chapter 6 of this volume includes a mitigation and monitoring table that addresses many of the concerns noted in this comment. The table includes the agency responsible for implementing mitigation, the monitoring/reporting action, effectiveness criteria, and a general timeframe for implementation.

The final two paragraphs in the comment discuss mitigation measures for Socioeconomics (Chapter 11) and Agricultural Social Issues (Chapter 12). CEQA and NEPA do not require the EWA agencies to mitigate for effects associated with these resource areas; however, the EWA agencies have chosen to incorporate measures into the project to reduce effects. The EWA agencies would work to reduce crop idling to stay within upper limits established in Chapter 11 even if other cumulative programs idled land in the same county.

## NP05-90

### *Comment:*

Appendix E, page 2. Table 1 outlines year 2003 EWA purchase goals. The amounts identified in this table call for greater amounts of acquisitions than what is identified in the CALFED Record of Decision. Under what specific existing authority do the

Federal agencies have to make such adjustments to the Record of Decision? What public forum or public input and review was offered for input on this decision?

What specific EWA flexibility is actually stated in the ROD and what if any limitations are there on acquisitions?

Are EWA acquisitions simply a following spiral of water transfers from north to south, following in the “wake” of anticipated increased Delta exports?

Is there any anticipated upper limit to this spiral other than the physical capacity of the Delta pumps?

**Response:**

Appendix E includes the Acquisition Strategy for the EWA during the 2003 water year, which has already been completed. It is included as an appendix as an example of what an acquisition strategy might look like, but the actual strategy would change after this EIS/EIR is finalized. For clarity, the first reference to Appendix E (in Section 2.4.3) is deleted, and the second reference (in Section 2.4.4), is clarified to indicate that this Acquisition Strategy is just an example. Information contained in the strategy was only applicable to past EWA operations.

**NP05-91**

**Comment:**

Appendix E, page 4. Reference is made to the need to await the completion of the “...long-term EIS/EIR on the EWA Program.” When was the decision made to extend the EWA into perpetuity? Who made the decision and under what specific authority? This is a key question as it raises the very real prospect of precedent being set in the interim document which is not disclosed except in this appendix.

**Response:**

No decision has yet been made to create an EWA program beyond 2004. The Acquisition Strategy, Appendix E, indicated that some goals could not be completed unless the EWA agencies implement a long-term program. It does not indicate that a decision has already been made. This EIS/EIR could support the agencies’ decision to continue the EWA until 2007. Additional environmental documentation would be necessary to extend the timeframe past 2007 and create a long-term EWA program.

**NP05-92**

**Comment:**

Appendix E, page 5. Please explain the following sentence with reference to the comment immediately preceding. “Pursue longer-term arrangements as soon as the EIS/EIR is completed and a decision is made regarding the future of the EWA Program beyond the four-year initial phase.”



**Response:**

This sentence explains that the EWA agencies could pursue multi-year transfers if this EIS/EIR is approved and the agencies make a decision to extend the EWA until 2007. The EIS/EIR includes analysis of these transfers.

**NP05-93**

**Comment:**

Appendix E, page 6. "Although an independent CALFED program, the EWA can be viewed as the reoperation of the CVP and SWP to provide protection and enhancement to sensitive fish species of the Bay/Delta Estuary." This sentence appears to be the authors having the best of both worlds with the EWA. It appears, simultaneously to be part of, but independent of the CALFED Bay-Delta Program. "One of the major challenges of the EWA is to coordinate its water purchases with those of other CALFED programs. Could you explain a bit more clearly what exactly EWA is from a strictly administrative and existing authority point of view? Knowing what the project is, or is not, is most helpful in any CEQA action. At times it appears the EWA is part of CALFED. However, the CALFED Bay-Delta Program has not been authorized by the Congress and therefore, the EWA must be being carried out under existing agency authorities - and therefore not part of CALFED. Please clarify per CEQA Guidelines Section 15124 and *County of Inyo v. City of Los Angeles* (1977) 71 Cal.App.3d 185

**Response:**

The EWA program is considered a part of the overall CALFED Program (now called the California Bay-Delta Program in State statute). The CALFED Program is a cooperative program among agencies who exercise their existing authorities under State or Federal law.

**NP05-94**

**Comment:**

Appendix E, Section IV.B. This section identifies additional water as being available upstream of the Delta for acquisition in excess of what is identified in the ROD. That "found" water and its relatively cheap price (compared to south of Delta) is characterized as placing an avoidable cost burden on the EWA. It should be understood that all Area of Origin water needs, north of the Delta, have not been met. To the extent EWA would depend, either in the short term or in the long-term on the same water which is needed for Area of Origin supplies it could be displaced to accommodate upstream needs.

This would be consistent with the intent of the Area of Origin regarding the state and federal projects. We know that EWA water is essentially project water: "...EWA water that is stored in facilities of the CVP and SWP is considered Project water with an EWA label." Truth in labeling points aside, EWA water is by the agencies own admission project water and therefore subject to Area of Origin claims. It is unclear whether the EWA agencies recognize this in their operational strategy.

**Response:**

See response to Comment NP05-2.

**NP05-95**

**Comment:**

Volume 3, page 2-3. The EWA purpose is described to "...provide protection to at-risk native fish species of the Bay-Delta Estuary...". We are not sure that the EWA actually delivers on that purpose.

**Response:**

See response to Comment NP05-8 (regarding benefits of fish actions).

**NP05-96**

**Comment:**

Simply reducing take at the pumps by fractions of 1% does not necessarily translate to increased populations, much less the survival of species. For example, EWA effects on the population level effects of direct mortality (take) of salmon are small. Sheila Greene's (DWR biologist) presentation at a recent Salmon Workshop documents this. According to Sheila, 2002-3 EWA actions reduced the direct mortality to winter run out migrants by 0.014% of the estimated number entering the Delta. In 2001-2, the corresponding number was 0.009% of those entering the Delta and 0.12% of those leaving the Delta (surviving to Chipps Island). In that year, 0.07% of older juvenile salmon leaving the Delta were saved by EWA actions and 0.03% of the fry/smolt. Corresponding numbers in 2000-1 were, for winter run, 0.02% of those entering the Delta, 2.8% of those leaving, for older juveniles, 1.7% of those leaving the Delta, and for fry/smolt, 0.51% of those leaving the Delta. At the same workshop, NOAA Fisheries reported a 20% harvest-related mortality to winter run.

Engineers and scientists who have studied the correlation between actions in the Delta and fish populations/survival have concluded that there is considerable uncertainty about fish benefits, particularly when compared to the high cost of EWA resources. Therefore, the question of how the objectives of the project are being achieved vs. the project is a key element of this CEQA analysis. Please see Sections 15124 and Sections 15126.6 (a)(b)(c)(d) and (e).

**Response:**

See responses to Comments LA15-7 (regarding Ms. Green's results), LA15-11 (pertaining to uncertainty in estimation of how take at pumps will affect fish populations), and FO01-5 (related to the EWA's cost and performance).

**NP05-97**

**Comment:**

We urge the authors to closely examine the actual benefits of the project objectives and to evaluate that against other alternatives including the Fixed Purchase Alternative and the No Project Alternative. We believe that either of these two alternatives would provide equal benefits (in terms of stated project objectives) with

fewer redirected impacts to the upstream communities, environments and local governments.

***Response:***

The Fixed Purchase and Flexible Purchase Alternatives do not supply equal benefits. Benefits to fish and water supply reliability would be greater under the Flexible Purchase Alternative. As stated in Section 4.2.7, "The Flexible Purchase Alternative would acquire more assets than the Fixed Purchase Alternative; therefore, the Flexible Purchase Alternative would be able to repay the Projects for a greater number of pump reductions for fish actions. If the Fixed Purchase Alternative used its assets and fish actions were still needed, Tier 3 would be implemented. Under Tier 3, either additional EWA assets could be acquired or pump reductions would continue uncompensated, resulting in less water supply reliability. Because there is an increased probability of reaching Tier 3 under the Fixed Purchase Alternative, the Fixed Purchase Alternative would provide less water supply reliability compared to the Flexible Purchase Alternative." See response to Comment NP05-8 for a discussion of benefits to fish.

## **NP06 – State Water Contractors**

### **John C. Coburn**

#### **NP06-1**

***Comment:***

Our main concern with the EWA EIR/S is that its description of EWA assets and operation is dated in light of current discussions about the 2004 OCAP and how best to extend the EWA. We are also concerned that 1) the projected size of the EWA is potentially much larger than needed; 2) the discussion of the rationale for the EWA is premised on outdated assumptions; and 3) the projected duration of the EWA is too short in light of current discussions to establish it permanently.

***Response:***

See response to Comment FA01-1 regarding environmental analysis by EWA agencies to address operation of EWA beyond 2007.

#### **NP06-2**

***Comment:***

The Proposed Action is to implement the "Flexible Purchase Alternative," which would allow the EWA agencies to purchase up to 600,000 acre-feet of water (page ES-8), depending on the hydrological circumstances. While we understand that this number is intended as an upper bound on the amount of purchases contemplated, it is not clear from the discussion when or why such a large amount would be needed. In light of the fact that the EWA has been used to accomplish its goals during the last three years with a quantity averaging about half of this amount, we believe that the projection of 600,000 acre-feet as an upper bound is well beyond the range of reasonable alternatives. At a minimum, the EIS/R must clarify that the likelihood of the EWA needing this large an amount is very low. It should also provide a clearer

discussion, earlier in the document, as to the average amount likely to be needed by the EWA in the near-term future.

**Response:**

See response to Comment LA08-13 pertaining to the size of the Flexible Purchase Alternative.

**NP06-3**

**Comment:**

We are also concerned that the description of the rationale for the EWA is not entirely accurate, which may have led to an exaggerated projection of the amount of water needed. The EIS/R states that, “The CALFED agencies established an EWA to provide water for the protection and recovery of fish beyond that which would be available through the existing baseline of regulatory protection” (page 2-1, emphasis added). While it may be true that the EWA provided additional protection beyond the level assumed to exist at the time of the ROD, we do not agree with the implied conclusion that a certain size of EWA is needed in order to meet regulatory requirements. The EWA has been and should continue to be used as a tool to avoid “take” without imposing additional supply impacts on water users, but it is clear from the last few years’ of experience that most of the EWA has been used for actions to promote recovery, and such actions are not required as part of the CalFed regulatory baseline. Therefore, we disagree with the conclusion that additional EWA acquisitions might be needed because “There has been a loss in the flexibility to manage the CVPIA (b)(2) water that contributed to the existing regulatory baseline of fishery protection” (page 2-15).

**Response:**

The EIS/EIR is not implying that the EWA program is necessary to meet regulatory requirements. The regulatory baseline, or “Tier 1,” includes actions to protect fish and the environment that are mandated and would occur without a project. The EWA program would provide additional protection and promote recovery on top of this baseline. There is no intent to imply that a portion of the EWA is not included in Tier 1. The “regulatory commitments,” described in Section 2.1.3, are based on three levels of protection that build on each other, and the EWA program would be Tier 2.

**NP06-4**

**Comment:**

We are surprised that the description of the rationale for the EWA simply repeats the description of all the old “fish actions” for which the EWA has previously been used, without any reference to any of the new thinking that has emerged from the CALFED science program’s peer review of the EWA and Delta operations fish impacts. In particular, there should be a reference to the growing recognition that pumping impacts on Chinook salmon population levels are probably minimal, that so-called “indirect impacts” on salmon survival appear somewhat questionable, and that pumping impacts on Delta smelt population levels may range from negligible to significant depending on certain factors. All of these findings suggest that, while the

EWA may be valuable for overall habitat improvement, it may not be at all essential for endangered species protection. The EIR/S should at least reference the fact that the size and usage of the EWA may change adaptively over time depending on the results on continuing scientific peer review.

***Response:***

Chapter 2 in Volume 1 has been updated to reference the adaptive management process identified in the CALFED ROD. Sections 2.4.5 and 2.5.4 include the types of recommendations the Review Panel has made previously. Future recommendations would be incorporated into the manner in which EWA agencies make purchases and take fish actions.

**FO01 - Chowchilla Water District  
Douglas Welch**

**FO01-1**

***Comment:***

The Draft EIS/EIR fails to quantify the benefits expected to be achieved by the EWA. The Proposed Action generally describes the types of actions to be taken and ascribes general statement of fishery benefits, but does not provide supporting data to correlate the proposed actions with any quantifiable benefits to the fishery. The discussion in Chapter 9 regarding the Sacramento-San Joaquin Delta Region describes some numeric improvements in X2, E/I ratio, Reverse Flows, and Salvage, but provides no relevant context for the gross annual numbers, nor any correlation with fish abundance or overall condition of the species. The EIS/EIR should include tables that show the relevant percentage changes and describe how that level of change will enhance the condition of the target fisheries.

***Response:***

See responses to Comments FA01-10 (Science Panel review and adaptive management), LA08-13 (Flexible Purchase Alternative upper limit), LA15-11 (salvage vs. population effects), and NP01-19 (fish benefits).

**FO01-2**

***Comment:***

In one section, the Draft EIS/R overstates the benefits of the EWA actions to fish populations. On pages 255 through 259 in Chapter 9, the document text states that the preferred alternative will reduce average annual salvage by about 136,000 delta smelt, 1.1 million salmon, 29,000 steelhead, 1 million splittail and 9 million striped bass. However, on Tables 9-56, 9-57, 9-58, 9-59 and 9-60 these numbers are shown to be total estimated salvage reductions over the 15 year modeling period. This error should be corrected.

***Response:***

See response to comment LA03-23.

### FO01-3

**Comment:**

In addition, simply reducing take at the pumps by fractions of 1 percent does not necessarily translate to increased populations, much less the survival of species. For example, EWA effects on population levels as a result of reduced direct mortality (take) of salmon are small. Sheila Greene's presentation at a recent Salmon Workshop documents this. According to Ms. Greene, 2002-3 EWA actions reduced the direct mortality to winter run outmigrants by 0.014 percent of the estimated number entering the Delta. In 2001-2, the corresponding number was 0.009 percent of those entering the Delta and 0.12 percent of those leaving the Delta (surviving to Chipps Island). In that year, 0.07 percent of older juvenile salmon leaving the Delta were saved by EWA actions and 0.03 percent of the fry/smolt. Corresponding numbers in 2000-1 were, for winter run, 0.02 percent of those entering the Delta, 2.8 percent of those leaving, for older juveniles, 1.7 percent of those leaving the Delta, and for fry/smolt, 0.51 percent of those leaving the Delta. At the same workshop, NOAA Fisheries reported a 20 percent harvest-related mortality to winter run. The EIR/S needs to specify how such small reductions in take can justify the high cost and potential adverse impacts of implementing the EWA at the proposed levels.

**Response:**

According to the CALFED ROD, the EWA has been established to provide water for the protection and recovery of fish beyond water available through existing regulatory actions related to project operations (page 54). Under the Federal ESA, USFWS and NOAA Fisheries are only required to estimate the amount of incidental take that a proposed project is expected to incur; this take may not jeopardize the continued existence of any listed species. While it is desirable to link incidental take with population-level effects, this is not a requirement of ESA. Also, under ESA, all Federal agencies have a duty to minimize incidental take and conserve listed species to the extent that their authority extends; in fact, minimization of incidental take is one of the non-discretionary "terms and conditions" of the Project's incidental take statement. See also responses to Comments LA15-7 regarding Sheila Greene's studies, LA15-11 regarding EWA's potential effects to fish populations, and FO01-5 regarding EWA's costs and performance.

### FO01-4

**Comment:**

The discussion and conclusions of the 2002 EWA Science Panel make it clear that the Science Panel has not been able to identify any ecological significance to reducing take at the levels achieved by EWA. They, in fact, note that the choice of focusing on take may be one of policy rather than science. Notwithstanding the creative language of the report, it is clear that there are questionable benefits for fish and fishery protection actions taken by EWA. Since the Science Panel has failed to identify any quantifiable benefit from the EWA actions for the first two years, there is little justification for continuing the program at current levels and certainly no justification for expanding the program to 600,000 AF.

**Response:**

In the 2002 EWA Review Panel discussion of benefits for fish and fishery protection, the Review Panel did not indicate that there was no identifiable ecological significance to reducing take at the levels achieved by the EWA. The Review Panel recognizes that the largest issue of scientific uncertainty that requires attention is the issue of how take at the pumps will affect fish populations. The Panel strongly supports an “experimental approach to resolving scientific uncertainties through both system level and field experiments.” At this time the Science Program staff is limited by a lack of data, but acknowledges that the EWA “provides a valuable opportunity for experimentation that could lead to improved protection of fish species” and intends to move forward to examine uncertainties. In the 2002 discussion, the Science Panel outlines six venues of new scientific investigation, including using models and data collection to successfully meet biological objectives.

**FO01-5**

**Comment:**

The preferred environmental alternative and associated Action Specific Implementation Plan lack the quantifiable measures of performance that would be expected with such a broad reaching program. These documents have no apparent accountability for effective use of water or financial resources. The lack of these performance measures raises a question as to whether the Draft EIS/R has fully considered the range of impacts and appropriate mitigation measures that will be required to implement such a program and the associated costs and benefits. Given the proposed size of the program and associated significant costs, a determination should be made as to whether EWA is the most suitable use of limited financial resources for fish protection activities (relative cost/benefit analysis).

**Response:**

The EWA agencies plan to continuously monitor the effectiveness of the EWA program and incorporate adaptive management principles to improve the effectiveness where possible. Each year, the Management Agencies would evaluate the EWA fish actions and purchases to determine if the money spent has met the EWA purpose and need/project objectives. The EWA Program has a limited budget, and the Management Agencies would ensure that the money was spent in a way to produce the greatest benefits to fish and the environment. In addition, Chapter 2 has been revised to indicate that the Science Panel reviews would continue as outlined in the CALFED ROD. As a part of these reviews, noted scientists would examine how the EWA was operated in the previous year and suggest improvements in operations and monitoring for the following year.

**FO01-6**

**Comment:**

In the DEIS/R, the EWA is not proposing any new sources of water. The program is, in effect, a reallocation of supplies from existing uses to the environment. The DEIS/R fails to adequately evaluate the economic impacts of this reallocation on agriculture from two perspectives. The DEIS/R does not evaluate the full geographic scope of the

potentially impacted area and fails to adequately address the impact of purchasing water at such unreasonably high prices that agricultural users who currently rely on water transfers to meet their needs are faced with reduced availability of water supplies and increased costs. The economic analysis limits its analysis of economic impacts in the San Joaquin Valley to Fresno, Kern, Kings and Tulare Counties in the Export Service Area. Madera and Merced Counties could be impacted by the EWA both from the perspective of fallowed lands and reduced supply availability. The EIS/R must evaluate impacts in all areas that could be impacted.

**Response:**

The EIS/EIR does evaluate the full geographic scope of the potentially affected area for regional and agricultural economics. The document analyzes the statewide effects on the water market, but does not delineate between counties. The analysis for county crop idling specifies 10 counties in which rice or cotton acreage could be idled because of available acreage and the presence of willing sellers. Crop idling effects would not occur in counties without EWA crop idling actions.

As explained in Section 11.2.5.5, the EWA would not have a substantial effect on water transfer prices or availability. Other types of water transfers would usually be much larger, and other factors such as farm prices, commodity programs, and normal hydrologic variability would have much more influence on prices and availability than the EWA. Because the EWA would not have any substantial effect on water prices, there would not be any indirect effects to groundwater levels or water supply. For the above reasons, the EWA program would not affect Madera or Merced Counties.

The commentor specifically refers to effects to Central Valley water users that purchase water through transfers. The EWA program would not have effects on water supply to other water users because it would not likely have substantial effects on prices in the water transfer market. However, as an additional note, the EWA agencies would not be purchasing water from the same places at the same times as Central Valley water agencies. The purchase strategy of the EWA agencies would be to obtain as much as possible of annual water needs from willing sellers upstream from the Delta, based on cross-Delta transfer capacity available for EWA assets. In the drier years when there may be a higher demand for transfer water by agencies other than the EWA, the EWA agencies' purchases would be concentrated upstream from the Delta. Most purchases by Central Valley water users would be concentrated in the Central Valley; therefore, they would not compete with the EWA agencies for water.

In wetter years, when the EWA agencies would purchase greater amounts of water and a higher proportion would be purchased in the Export Service Area, the EWA agencies would buy only from the sources evaluated in this document. Many of these sources may not be in conflict with other local exchanges. For example, the banked groundwater that has been purchased by the EWA to date has only been available to the EWA and to the member agencies of KCWA. That water was not eligible for export out of Kern County. The crop idling transfers that are contemplated in this document may not directly compete with other local transfers.



### **FO01-7**

***Comment:***

More importantly, the economic analysis admittedly does not address the potential impacts of increasing water/energy costs and/or impacts of groundwater overdraft upon water-short agricultural users and their supporting communities as a result of an aggressive and well funded water purchaser entering the market. In Section 11.2, the DEIS/R uses some convoluted logic regarding CEQA and NEPA requirements to justify not addressing the significance of economic impacts. Furthermore, the DEIS/R discusses the concept of impacts based on reduced supply and higher cost to those who rely on water transfers, but does not consider it an impact worth quantifying. We disagree.

***Response:***

Section 11.2 describes the requirements in NEPA and CEQA for an EIS/EIR to discuss economic issues. CEQA and the CEQA Guidelines direct that economic and social changes in and of themselves shall not be regarded as significant changes in the physical environment. While economic changes that may result from a project can be described in an EIR, CEQA does not require that the significance of an economic change be characterized. Similarly, NEPA does not require that the significance of an economic change be characterized.

When a project causes economic changes, which in turn create other physical changes in the environment, these changes are indirect impacts of the project. CEQA and NEPA require that an EIS/EIR discuss indirect physical impacts of a project that are reasonably likely to occur, but need not discuss changes that are speculative or unlikely.

Additional indirect physical impacts on the environment from the economic changes created by water transfers are considered not reasonably likely to occur because the economic effects of EWA water transfers would not be substantial. That is, the price and availability of water for transfers would not be much affected. (See Section 11.2.5.5.)

Section 11.2.5.5 provides a detailed, qualitative analysis of potential price effects of EWA purchases. The water transfer market is still developing; therefore, there is not enough history to quantify any price effects. The qualitative analysis demonstrates that the price effects because of implementation of the EWA would likely be small relative to other variations.

### **FO01-8**

***Comment:***

The impacts on water availability and pricing are real and will result in more than just economic impacts to farmers. If farmers are unable to purchase water at affordable prices, there will be adverse impacts to groundwater levels, with resultant subsidence in some areas.

**Response:**

Section 11.2.5.5 discusses potential effects on water availability and pricing. The economic effects of EWA water transfers would not be substantial; that is, the price and availability of water for transfers would not be much affected. In the Export Service Area, the EWA program would increase water supply reliability because the EWA would replace water needed for fish protection in the Delta. In the counties where EWA water transfers would occur, landowners would have another economic opportunity for use of their water assets. Therefore, the EWA could be a benefit to many agricultural communities.

The comment also suggests that the EWA would create indirect impacts in the form of decreasing groundwater levels and more subsidence because farmers would be unable to purchase surface water at affordable prices. Because the EWA would not have a substantial effect on the price and availability of water, the possibility of additional indirect lowering of groundwater levels and subsidence from farmers switching to groundwater is unlikely.

**FO01-9**

**Comment:**

The EIR/S must consider the cumulative and long-term impacts to agriculture and associated communities that will result from reduced availability of currently available water supplies.

**Response:**

Section 11.2.5.5 discusses potential effects on water availability and pricing. EWA water transfers would not have a substantial effect on water availability. As discussed in the response to Comment FO01-8, the EWA would increase water supply reliability in the Export Service Area and provide economic benefits to willing sellers. Therefore, the EWA would be a benefit to many agricultural communities and would not reduce available water supplies.

In addition, the EIS/EIR describes the EWA's contribution to cumulative impacts on water supply availability and reliability, water quality, groundwater resources, and the use of agricultural lands, when considered in conjunction with other projects that are creating similar impacts. See Chapters 4, 5, 6, 11, 12, and 13 for the EWA's impacts and Chapter 22 for a discussion of the EWA's cumulative contribution to impacts in conjunction with other past, present, and reasonably foreseeable future projects.

**FO01-10**

**Comment:**

The funding mechanisms and the potential reimbursement by water contractors are not explicit in the Draft document. Without an understanding of the funding source it is impossible to understand financial impacts of the program on CVP and SWP water contractors. For example, use of CVPIA and Water and Related Resources funds may have a direct economic impact upon CVP water contractors and should be addressed in the EIS/EIR.

**Response:**

NEPA and CEQA do not require a discussion of funding issues. The EWA agencies have explored a variety of financing options, but have not yet made final decisions. Sufficient public funding is available for the next 2 years of EWA operation from Proposition 50 (funds are earmarked for the EWA) and other general water resources funds. The EWA agencies are developing a plan for long-term funding.

**FO01-11**

**Comment:**

There are numerous unavoidable impacts to groundwater levels and local economies which could be severe for the San Joaquin Valley. These impacts are inadequately addressed in the Draft EIS/EIR. The document assumes that impacts of any purchases of banked groundwater in the Export Service Area will be evaluated by the environmental documentation associated with that groundwater bank. This piecemeal approach to environmental documentation does not adequately address the cumulative impacts of multiple groundwater banks working in the same area. As most of those that live and work in the current overdrafted areas of the San Joaquin Valley realize, the removal of significant supplies of water to the region will result in a long term cumulative impact.

**Response:**

The direct impacts of purchasing water from a groundwater bank would be addressed by the environmental documentation for that bank. Cumulative impacts regarding stored groundwater purchase are discussed in Volume 1 Chapter 6, Section 6.2.9.3. The text makes reference to Section 6.2.4.2 that contains agreements, MOUs, and plans of the various groundwater banks. The text further states that with adherence to these documents, there would be no cumulative impacts.

**FO01-12**

**Comment:**

In addition, the chapter on groundwater clearly indicates impacts to groundwater levels as a result of EWA purchases. The impacts of the "Flexible" purchase alternative are greater than for the Fixed Purchase Alternative. Groundwater level declines of the EWA purchases are compared to groundwater declines during droughts, but ignore the fact that the groundwater declines caused by EWA purchases are not confined to drought years and simply assume that wetter years will allow groundwater basins to recover. In areas like the San Joaquin Valley that are chronically overdrafted, any reduction in the net supply to the region is a long-term impact.

**Response:**

In general, the potential effects of the Flexible Purchase Alternative would be greater than the Fixed Purchase Alternative, such as a greater decline in groundwater levels. However, a decline in groundwater levels as a result of the purchases in itself is not necessarily a significant impact. Potential groundwater level declines are compared to both historical fluctuations in groundwater levels in drought and wet years and to the

typical well construction depths in the area. This comparison is used to ascertain whether the potential groundwater level declines are significant. However, additional requirements discussed as groundwater mitigation measures (Section 6.2.7) are required to be met before any acquisition is approved. The groundwater mitigation measures include a Pre-Purchase Evaluation to investigate potential adverse regional effects. If the proposed seller overlies an overdrafted subbasin, then the selling agency needs to demonstrate that they have adequate groundwater management plans, recharge facilities, monitoring programs or other documents that will ensure the proposed transfer does not contribute to conditions of long-term overdraft.

### **FO01-13**

***Comment:***

The analysis in the DEIS/R fails to consider the potential air quality impacts from land idling or increased groundwater pumping that result from reduced availability of water to agricultural users that rely on water transfers. The San Joaquin Valley has significant and well publicized air quality problems, and any program of this size that has the potential to worsen the problem should carefully evaluate and identify all of the potential ways that air quality could be impacted.

***Response:***

As stated in Section 11.2.5.5, the EWA would not have a substantial effect on water transfer prices or availability. Other types of water transfers would usually be much larger, and other factors such as farm prices, commodity programs, and normal hydrologic variability would have much more influence on prices and availability than the EWA. Because EWA actions would not limit other's access to water transfer supplies, EWA acquisitions would not indirectly create air quality impacts because of other parties' land idling or groundwater pumping.

### **FO01-14**

***Comment:***

The DEIR/S identifies and evaluates potential impacts related to groundwater substitution and increased pumping at the SWP, CVP and other major pumping facilities. However, it fails to address impacts of energy use for increased pumping that may result from reduced availability of transfer water to those who rely on water markets for a portion of their supply. It also fails to address the impacts of pumping from groundwater banks.

***Response:***

As stated in Section 11.2.5.5, the EWA would not have a substantial effect on water transfer prices or availability. Other types of water transfers would usually be much larger, and other factors such as farm prices, commodity programs, and normal hydrologic variability would have much more influence on prices and availability than the EWA. Because EWA actions would not limit other's access to water transfer supplies, EWA acquisitions would not create indirect effects to energy use from increased pumping. Pumping from groundwater banks has components of capacity

and energy use that are identified in the development of the individual banks and captured in the costs of acquiring the resource.

#### **FO01-15**

*Comment:*

The CVPIA (Section 3408 J)) mandates that the Secretary of the Interior develop a least-cost plan to replace the yield of the CVP by the amount dedicated to fish and wildlife purposes. The Draft EIS/EIR should address if and how the EWA impacts the CVPIA yield replacement requirement.

*Response:*

The goal of a CVP Yield Replacement Plan is to develop a permanent solution to replace the yield of the CVP by the amount dedicated to fish and wildlife purposes. The shorter-term EWA (being analyzed in this EIS/EIR) would not be expected to have long-term effects on Reclamation's ability to replace CVP yield.

During the shorter-term EWA program, the potential exists for the EWA program to affect Reclamation's ability to acquire additional supply. The document includes an analysis of these potential effects. The EWA program could potentially compete for conveyance capacity at Banks Pumping Plant. Sections 4.2.5.3 and 4.2.6.3 analyze these effects for the Flexible Purchase and Fixed Purchase Alternatives, respectively. Additionally, the EWA program would compete on the open water market with CVP replacement purchases. Section 11.2.5.5 analyzes the effects of the EWA on the water transfer market.

#### **FO01-16**

*Comment:*

New to EWA activities is the inclusion of physical infrastructure as assets to be utilized by EWA based in part on comments made by DWR staff at the August 28, 2003 public meeting in Fresno. If EWA is in fact contemplating acquiring storage or conveyance facilities, the Draft EIS/EIR should adequately state what type of infrastructure is being considered, the potential cost and benefits, and the impacts upon water users and the environment.

*Response:*

Physical infrastructure assets are currently not a component of the EWA proposed action described in this EIS/EIR. Therefore, this EIS/EIR does not address acquiring physical assets.

### **FO03 – Friant Water Users Authority**

#### **Ronald D. Jacobsma**

#### **FO03-1**

*Comment:*

In the 2002 EWA Science Panel discussion one of the EWA's four biggest issues was the need for more scientific analysis and synthesis to provide a better foundation for management. There seems to be questionable benefits for fish and fishery protection

actions taken by EWA. The Draft EIS/EIR overstates the benefits of the EWA actions to fish populations.

**Response:**

See response to Comment FO01-04.

**FO03-2**

**Comment:**

On pages 255 through 259 in Chapter 9, the document suggests that the environmentally preferred alternative will reduce average annual salvage by about 136,000 delta smelt, 1.1 million salmon, 29,000 steelhead, 1 million splittail and 9 million striped bass. However, on Tables 9-56, 9-57, 9-58, 9-59 and 9-60 these numbers are shown to be total estimated salvage reductions over the 15 year modeling period.

**Response:**

See response to Comment LA03-23.

**FO03-3**

**Comment:**

In addition, recently conducted analysis of the EWA affects on fish, such as the winter run salmon, indicate negligible positive impacts. The document should include additional supporting information relative to biological benefits to be derived by the EWA.

**Response:**

See responses to Comments FA01-10 (Science Panel review and adaptive management), LA08-13 (Flexible Purchase Alternative upper limit), LA15-7 and LA15-11 (salvage vs. population effects), and NP01-19 (fish benefits).

**FO03-4**

**Comment:**

The preferred environmental alternative and associated Action Specific Implementation Plan lack the quantifiable measures of performance that would be expected with such a broad reaching program. These documents have no apparent accountability for effective use of water or financial resources, The lack of these performance measures raises a question as to whether the draft EIS/EIR has fully considered the range of impacts and appropriate mitigation measures that will be required to implement such a program and the associated costs and benefits. Given the proposed size of the program and associated significant costs, a determination should be made as to whether EWA is the most suitable use of limited financial resources for fish protection activities (relative cost/benefit analysis).

**Response:**

See response to Comment FO01-5.

### FO03-5

**Comment:**

In this Draft EIS/EIR, the EWA is not proposing any new sources of water. The program intends to purchase 'assets' from willing sellers and in doing so, the EWA could "corner the market" with respect to acquiring limited water available from willing sellers. The economic analysis admittedly does not address the potential impacts of increasing water/energy costs and/or impacts of groundwater overdraft upon water short districts/growers and their supporting communities as a result of an aggressive and well funded water purchaser entering the market. In addition, based upon statements made by DWR personnel at the August 28, 2003 public meeting in Fresno, the reference to 600,000 acre feet is not necessarily a maximum quantity of water that could be acquired by the EWA, but rather, water acquisition will be driven in part by the cost and quantity available. This statement leaves a greater uncertainty as to the size and potential economic impact of the program, especially upon third parties. Potential economic impacts to third parties that otherwise rely on the same sources of water needs to be fully and adequately addressed in the document.

**Response:**

Refer to responses to Comments FO01-6, FO01-7, and FO01-8.

In addition, 600,000 acre-feet is the maximum quantity of water that the EWA agencies would purchase. It is true that purchases would be driven by needs, quantity available, and cost, but the maximum amount purchased would not exceed 600,000 acre-feet.

### FO03-6

**Comment:**

The funding mechanisms and the potential reimbursement by water contractors are not explicit in the Draft document. Without an understanding of the funding source it is impossible to understand financial impacts of the program on CVP and SWP water contractors. For example, use of CVPIA and Water and Related Resources funds may have a direct economic impact upon CVP water contractors and should be addressed in the Draft EIS/EIR.

**Response:**

See response to Comment FO01-10.

### FO03-7

**Comment:**

There are numerous unavoidable impacts to groundwater levels and local economies which could be severe for the Southern San Joaquin Valley. These impacts are inadequately addressed in the draft EIS/EIR. The document assumes that impacts of any purchases of banked groundwater in the export service area will be evaluated by the environmental documentation associated with that groundwater bank. This piecemeal approach to environmental documentation does not adequately address

the cumulative impacts of multiple groundwater banks working in the same area. As most of those that live and work in the current overdrafted Southern San Joaquin Valley realize, the removal of significant supplies of water to the region will result in a long term cumulative impact.

**Response:**

See response to Comment FO01-11.

**FO03-8**

**Comment:**

The current extent of the Study Area includes all portions of the Central Valley Project's Friant Division. It should be noted and the map(s) modified accordingly to reflect that the Friant Division receives its supply from Friant Dam and is not associated with south of the delta exports (except by virtue of the exchange of water with the Exchange Contractors), Friant irrigation districts that may receive a portion of their water supplies via delta exports (e.g., Cross Valley CVP contractors) could be noted as delta exporters

**Response:**

The EWA agencies note that the EWA Study Area includes all portions of the Friant Division. The EWA agencies also note that Friant irrigation districts receive their primary water supply from Millerton Reservoir. The districts in the Friant Division, however, have system connections with the Delta exporters and transfer water through these connections. Therefore, they are included in the Export Service Area for analysis purposes.

**FO03-9**

**Comment:**

The CVPIA (Section 3408 (j)) mandates that the Secretary of the Interior develop a least-cost plan to replace the yield of the CVP by the amount dedicated to fish and wildlife purposes. The Draft EIS/EIR should address if and how the EWA impacts the CVPIA yield replacement requirement.

**Response:**

See response to Comment FO01-15.

**FO03-10**

**Comment:**

Recently, federal and state water contractors developed a proposal (the Napa Proposal) to increase water supplies for south of delta contractors. While much work on The proposal will undoubtedly occur over the next few months, implementation of the proposal could have profound affects on the delta and fish. The Draft EIS/EIR should evaluate potential impacts associated with the Napa Proposal and the affect upon the EWA, or alternatively, delay finalizing the EIR/EIS until certainty exists with respect to revised water operations in the delta.



**Response:**

See response to Comment FA01-1.

**FO03-11**

**Comment:**

New to EWA activities is the inclusion of physical infrastructure as assets to be utilized by EWA based in part on comments made by DWR staff at the August 28, 2003 public meeting in Fresno. If EWA is in fact contemplating acquiring storage or conveyance facilities, the Draft EIS/EIR should adequately state what type of infrastructure is being considered, the potential cost and benefits, and the impacts upon water users and the environment.

**Response:**

See response to Comment FO01-16.

**FO05 – Madera Water District**

**Stephen H. Ottemoeller**

**FO05-1**

**Comment:**

The DEIS/R fails to quantify the benefits expected to be achieved by the EWA. The Proposed Action generally describes the types of actions to be taken and ascribes general statement of fishery benefits, but does not provide supporting data to correlate the proposed actions with any quantifiable benefits to the fishery. The discussion in Chapter 9 regarding the Sacramento-San Joaquin Delta Region describes some numeric improvements in X2, E/I ratio, Reverse Flows, and Salvage, but provides no relevant context for the gross annual numbers, nor any correlation with fish abundance or overall condition of the species. The EIR/S should include tables that show the relevant percentage changes and describe how that level of change will enhance the condition of the target fisheries.

**Response:**

See response to Comment FO01-1.

**FO05-2**

**Comment:**

In one section, the DEIS/R overstates the benefits of the EWA actions to fish populations. On pages 255 through 259 in Chapter 9, the document text states that the preferred alternative will reduce average annual salvage by about 136,000 delta smelt, 1.1 million salmon, 29,000 steelhead, 1 million splittail and 9 million striped bass. However, on Tables 9-56, 9-57, 9-58, 9-59 and 9-60 these numbers are shown to be total estimated salvage reductions over the 15 year modeling period. This error should be corrected.

**Response:**

See response to Comment LA03-23.

### FO05-3

*Comment:*

In addition, simply reducing take at the pumps by fractions of 1 percent does not necessarily translate to increased populations, much less the survival of species. For example, EWA effects on population levels as a result of reduced direct mortality (take) of salmon are small. Sheila Greene's presentation at a recent Salmon Workshop documents this. According to Ms. Greene, 2002-3 EWA actions reduced the direct mortality to winter run outmigrants by 0.014 percent of the estimated number entering the Delta. In 2001-2, the corresponding number was 0.009 percent of those entering the Delta and 0.12 percent of those leaving the Delta (surviving to Chipps Island). In that year, 0.07 percent of older juvenile salmon leaving the Delta were saved by EWA actions and 0.03 percent of the fry/smolt. Corresponding numbers in 2000-1 were, for winter run, 0.02 percent of those entering the Delta, 2.8 percent of those leaving, for older juveniles, 1.7 percent of those leaving the Delta, and for fry/smolt, 0.51 percent of those leaving the Delta. At the same workshop, NOAA Fisheries reported a 20 percent harvest-related mortality to winter run. The EIR/S needs to specify how such small reductions in take can justify the high cost and potential adverse impacts of implementing the EWA at the proposed levels.

*Response:*

See response to Comment FO01-3.

### FO05-4

*Comment:*

The discussion and conclusions of the 2002 EWA Science Panel make it clear that the Science Panel has not been able to identify any ecological significance to reducing take at the levels achieved by EWA. They, in fact, note that the choice of focusing on take may be one of policy rather than science. Notwithstanding the creative language of the report, it is clear that there are questionable benefits for fish and fishery protection actions taken by EWA. Since the Science Panel has failed to identify any quantifiable benefit from the EWA actions for the first two years, there is little justification for continuing the program at current levels and certainly no justification for expanding the program to 600,000 AF.

*Response:*

See response to Comment FO01-4.

### FO05-5

*Comment:*

The preferred environmental alternative and associated Action Specific Implementation Plan lack the quantifiable measures of performance that would be expected with such a broad reaching program. These documents have no apparent accountability for effective use of water or financial resources. The lack of these performance measures raises a question as to whether the DEIS/R has fully considered the range of impacts and appropriate mitigation measures that will be required to implement such a program and the associated costs and benefits. Given

the proposed size of the program and associated significant costs, a determination should be made as to whether EWA is the most suitable use of limited financial resources for fish protection activities (relative cost/benefit analysis).

**Response:**

See response to Comment FO01-5.

**FO05-6**

**Comment:**

In the DEIS/R, the EWA is not proposing any new sources of water. The program is, in effect, a reallocation of supplies from existing uses to the environment. The DEIS/R fails to adequately evaluate the economic impacts of this reallocation on agriculture from two perspectives. The DEIS/R does not evaluate the full geographic scope of the potentially impacted area and fails to adequately address the impact of purchasing water at such unreasonably high prices that agricultural users who currently rely on water transfers to meet their needs are faced with reduced availability of water supplies and increased costs.

The economic analysis limits its analysis of economic impacts in the San Joaquin Valley to Fresno, Kern, Kings and Tulare Counties in the Export Service Area. Madera and Merced Counties could be impacted by the EWA both from the perspective of fallowed lands and reduced supply availability. The EIS/R must evaluate impacts in all areas that could be impacted.

**Response:**

See response to Comment FO01-6.

**FO05-7**

**Comment:**

More importantly, the economic analysis admittedly does not address the potential impacts of increasing water/energy costs and/or impacts of groundwater overdraft upon water-short agricultural users and their supporting communities as a result of an aggressive and well funded water purchaser entering the market. In Section 11.2, the DEIS/R uses some convoluted logic regarding CEQA and NEPA requirements to justify not addressing the significance of economic impacts. Furthermore, the DEIS/R discusses the concept of impacts based on reduced supply and higher cost to those who rely on water transfers, but does not consider it an impact worth quantifying. We disagree.

**Response:**

See response to Comment FO01-7.

**FO05-8**

**Comment:**

The impacts on water availability and pricing are real and will result in more than just economic impacts to farmers. If farmers are unable to purchase water at affordable

prices, there will be adverse impacts to groundwater levels, with resultant subsidence in some areas.

***Response:***

See response to Comment FO01-8.

**FO05-9**

***Comment:***

The EIR/S must consider the cumulative and long-term impacts to agriculture and associated communities that will result from reduced availability of currently available water supplies.

***Response:***

See response to Comment FO01-9.

**FO05-10**

***Comment:***

The funding mechanisms and the potential reimbursement by water contractors are not explicit in the Draft document. Without an understanding of the funding source it is impossible to understand financial impacts of the program on CVP and SWP water contractors. For example, use of CVPIA and Water and Related Resources funds may have a direct economic impact upon CVP water contractors and should be addressed in the EIR/S.

***Response:***

See response to Comment FO01-10.

**FO05-11**

***Comment:***

There are numerous unavoidable impacts to groundwater levels and local economies that could be severe for the San Joaquin Valley. These impacts are inadequately addressed in the DEIS/R. The document assumes that impacts of any purchases of banked groundwater in the export service area will be evaluated by the environmental documentation associated with that groundwater bank. This piecemeal approach to environmental documentation does not adequately address the cumulative impacts of multiple groundwater banks working in the same area. As most of those that live and work in the current overdrafted areas of the San Joaquin Valley realize, the removal of significant supplies of water to the region will result in a long term cumulative impact.

***Response:***

See response to Comment FO01-11.

### **FO05-12**

***Comment:***

In addition, the chapter on groundwater clearly indicates impacts to groundwater levels as a result of EWA purchases. The impacts of the “Flexible” purchase alternative are greater than for the Fixed purchase alternative. Groundwater level declines of the EWA purchases are compared to groundwater declines during droughts, but ignore the fact that the groundwater declines caused by EWA purchases are not confined to drought years and simply assume that wetter years will allow groundwater basins to recover. In areas like the San Joaquin Valley that are chronically overdrafted, any reduction in the net supply to the region is a long-term impact.

***Response:***

See response to Comment FO01-12.

### **FO05-13**

***Comment:***

The analysis in the DEIS/R fails to consider the potential air quality impacts from land idling or increased groundwater pumping that result from reduced availability of water to agricultural users that rely on water transfers. The San Joaquin Valley has significant and well publicized air quality problems, and any program of this size that has the potential to worsen the problem should carefully evaluate and identify all of the potential ways that air quality could be impacted.

***Response:***

See response to Comment FO01-13.

### **FO05-14**

***Comment:***

The DEIR/S identifies and evaluates potential impacts related to groundwater substitution and increased pumping at the SWP, CVP and other major pumping facilities. However, it fails to address impacts of energy use for increased pumping that may result from reduced availability of transfer water to those who rely on water markets for a portion of their supply. It also fails to address the impacts of pumping from groundwater banks.

***Response:***

See response to Comment FO01-14.

### **FO05-15**

***Comment:***

The CVPIA (Section 3408 (j)) mandates that the Secretary of the Interior develop a least-cost plan to replace the yield of the CVP by the amount dedicated to fish and wildlife purposes. The Draft EIS/EIR should address if and how the EWA impacts the CVPIA yield replacement requirement.

**Response:**

See response to Comment FO01-15.

**FO05-16**

**Comment:**

New to EWA activities is the inclusion of physical infrastructure as assets to be utilized by EWA based in part on comments made by DWR staff at the August 28, 2003 public meeting in Fresno. If EWA is in fact contemplating acquiring storage or conveyance facilities, the Draft EIS/EIR should adequately state what type of infrastructure is being considered, the potential cost and benefits, and the impacts upon water users and the environment.

**Response:**

See response to Comment FO01-16.

**FO05-17**

**Comment:**

The necessary revisions will be of such significance that the document must be release again for public comment as a draft. In addition, the document needs to provide adequate biological justification for the significant water and financial costs of the EWA.

**Response:**

According to the CEQA Guidelines Section 15088.5(a), a lead agency is required to recirculate an EIR when significant new information is added to the EIR before final certification. "New information" is not "significant" unless the EIR is changed in a way that deprives the public of a meaningful opportunity to comment upon a substantial adverse effect of the project or a feasible way to mitigate or avoid such an effect (Sec. 15088.5(a)). However, under Section 15088(b), recirculation is not required where the new information added to the EIR merely clarifies or amplifies or makes insignificant modifications in an adequate EIR. NEPA Section 1502.9(a) states, "The draft statement must fulfill and satisfy to the fullest extent possible the requirements established for final statements in section 102(2)(C) of the Act. If a draft statement is so inadequate as to preclude meaningful analysis, the agency shall prepare and circulate a revised draft of the appropriate portion." The information added to the Final EIS/EIR does not include identification of any new impacts or substantial new information; therefore, a recirculation is not required. See also response to Comment NP01-17.

## **PH01 – Public Hearings, Fresno**

**Ronald D. Jacobsma**

**Friant Water Users Authority**

### **PH01-1**

*Comment:*

Two primary areas of concern that we have are: One, is whether the fishery benefits have adequately been identified and scientifically proven and substantiated so that the -- the benefits given the costs of the program are able to be adequately assessed. And I think we'll just leave that at that part right now.

*Response:*

See responses to Comments NP05-8 (related to fish benefits for each alternative), FA01-10 (pertaining to an update of the EIS/EIR to include Review Panel recommendations and a description of the adaptive management process), NP01-19 (related to effects on fish populations), FO01-5 (regarding EWA's costs and performance), and FO03-1 (regarding 2002 EWA Review Panel discussion of benefits for fish and fishery protection).

### **PH01-2**

*Comment:*

More fundamental to our service area, which is consistent with some of our concerns in the map that was presented earlier, is that we are not in the export area or would not consider ourselves in the export area.

*Response:*

See response to Comment FO03-8.

### **PH01-3**

*Comment:*

We have our water supply from the San Joaquin river and as such, the impacts to our service area are not directly felt, but we are more concerned with some of the indirect impacts. There's been concerns in our service area in the past that when EWA was purchasing water, that it has a price impact on the market for our districts to purchase water in dry years, particularly in a multiple dry year type of scenario. We're a conjunctive use area so in certain dry years we have available water supplies. But as dry years become cumulative in nature, that supply becomes exhausted and there's additional pressures to seek outside water. And now there's a large purchaser in the water market in Reno, and that can have impacts to our districts even though we're not involved, pressures in selling or purchasing or facilitating EWA transfers.

*Response:*

See response to Comment FO01-6 and FO01-7.

#### **PH01-4**

***Comment:***

And some of our concerns is that the economic data that's included in the report doesn't address those type of third party impacts. If water prices go from \$100 an acre foot up to \$400 an acre foot as a result of EWA being in the market, particularly in the market at maybe two, three or four times the levels that they've been in the past, that can have a devastating effect to our local economics and our local districts that aren't acknowledged. And aren't acknowledged or addressed in the document. And that is not only to the districts, it's to the farms and the farmworkers and the local economics, you know, which could also cause land fallowing and other types of activities, that if they were involved in the sale of water, would have mitigation associated with them. But because they're outside of that, those mitigation effects aren't necessarily taken into account.

***Response:***

Section 11.2.5.5 discusses potential effects on water availability and pricing. The economic effects of EWA water transfers would not be substantial; that is, the price and availability of water for transfers would not be much affected. In the Export Service Area, the EWA program would increase water supply reliability because the EWA would replace water needed for fish protection in the Delta. In the counties where EWA water transfers would occur, landowners would have another economic opportunity for use of their water assets. Therefore, the EWA could be a benefit to many agricultural communities.

The comment also suggests that the EWA would create indirect impacts in the form of increasing socioeconomic effects on farmers and farmworkers because farmers would be unable to purchase surface water at affordable prices. Because the EWA would not have a substantial effect on the price and availability of water, indirect effects that would cause farmers to idle land and lay off workers would be unlikely.

#### **PH01-5**

***Comment:***

And so I guess our comment in that regard is to have additional work done, or at least the issue, address some of the third party impacts, particularly if price elasticity becomes closely associated with the volume of water anticipated to be purchased under -- under the -- this new proposal.

***Response:***

Chapter 11 includes a detailed analysis on third-party impacts. Section 11.2.5.5 addresses price effects of EWA water purchases.

#### **PH01-6**

***Comment:***

The final thing I'd just like to comment briefly on today is when CVPIA was passed, it took a great deal of water out of the CVP contracted communities. Over 800,000 acre feet of water from CVPIA, and with ESA location, several 100,000 acre feet more. So



more than a million acre feet have come out of the service area of the supply, and that has immediately impacted prices. CVPIA was supposed to replace that yield. And in 1995 actually a plan was put together, but what we're seeing now is efforts on EWA and we're seeing very little effort on moving towards yield replacement. And that's a continuing concern. Even though that yield replacement doesn't affect Friant, because we're not tied to the delta, it does affect us from a cost perspective in taking that water out has caused our water rates to increase by approximately 20 percent just having that water being removed. And that's an economic impact that if EWA is affecting the ability to replace that water, and that continues to put financial pressures on our districts that isn't necessarily what's been addressed.

**Response:**

See response to Comment FO01-15 for information on how the EWA would interact with the CVPIA Yield Replacement Program.

**Kane Totzke**  
**Kern County Water Agency**

**PH01-7**

**Comment:**

The first one has to do with Endangered Species Act Commitment. The initial CalFed ROD established the EWA with the specific commitment that there would be no reductions in CVP and State Water Project Delta exports due to the Endangered Species Act as long as the tiers of water remained available to the EWA as needed. Although the preferred alternative in this current EIR mentioned that the CVP and state water supply commitments will be addressed -- that is, there'll be no loss of water -- there is no mention in this EIR of whether the ESA commitments will be continued. So we're concerned that there should be some language in there to that effect similar to what was in the ROD, that if the EWA is going to continue and have - - provide supply to offset reductions in state's water and federal purchasing, that there should also be similar commitments that ESA will be -- will continue.

**Response:**

See response to Comment LA08-12 for information regarding regulatory commitments.

**PH01-8**

**Comment:**

Second comment is the flexible purchase alternative targets, you know, a larger EWA program than the original ROD. But the flexible alternative is identified -- is the preferred alternative, but the statement needs project makes no mention of the biological needs for significantly larger EWA program. And we appreciate the need for the EIR to evaluate this program, large enough to accommodate the potential changes to EWA during the four to seven years. However, the CalFed science program consistently reports that the at-risk fish species are improving, or have improved. And so when you look at the improvement in the fisheries -- and yet EWA is asking for more water. And there is no discussion in the draft EIR about the

biological needs of the increase. We'd like to see you know, a better discussion of that in there.

**Response:**

See responses to Comments FA01-10 (pertaining to an update of the EIS/EIR to include Science Panel recommendations and description of the adaptive management process), LA08-13 (regarding the size of the Flexible Purchase Alternative), and LA08-14 (regarding benefits to fish).

**PH01-9**

**Comment:**

This, I think, third comment's in reference to ground water. And -- and we think that this section mischaracterizes the amount of transferable water available from a support ground water transfer, because it ignores losses. In our Kern county ground water banking programs, this is assessed at 15 percent for out of county transfers. Which would -- EWA would be considered as such. The EIR -- some acknowledge that there are losses on ground water purchases from Kern county and they should take that into account.

**Response:**

See response to Comment LA08-7.

**PH01-10**

**Comment:**

This section [Section 1.6.2.1] states that the series of judgments in the... Wanger decision, resulted in a change to Tier 1 as described in the CALFED ROD. It may reduce the amount of variable assets under the EWA operating principles. Well, our agency really doesn't agree with that interpretation. The CVPIA water was being misused in the beginning... The Wanger decision just clarified that they were using more than they were supposed to in the first place. Their methodology for using that water was wrong to begin with, and [they] should acknowledge [the error].

**Response:**

Section 1.6.2.1 describes recent decisions affecting CVPIA (b)(2) water. This section does not imply a value judgment that DOI's 1999 decision was correct or incorrect. The section explains that the CALFED ROD's description of the EWA included this decision in the regulatory baseline. Recent decisions have changed DOI's policy on implementation of (b)(2); therefore, these decisions may have also affected the EWA's regulatory baseline. DOI's new policy may result in fewer upstream actions, which could result in reduced variable assets from what was discussed in the CALFED ROD.

**Stephen Ottemoeller**  
**Madera Irrigation District**  
**PH01-11**

*Comment:*

Fundamentally, we've got a real concern about the EWA and what it is and what it does. It involves neither new sources of water, nor new construction to make any new water available. So in effect, the EWA is a de facto reallocation of water to environmental purposes that impacts other water users while providing questionable benefits to the fisheries.

*Response:*

The EWA purpose and need/project objectives do not include creating new sources of water. The EWA program was designed to incorporate additional flexibility into system operations to reduce conflicts at the Delta pumps between fish and water users. Other CALFED programs may increase water supply, including the water storage and water use efficiency programs. CALFED agencies are concurrently implementing these programs.

The EWA purpose and need and project objectives include "no uncompensated water loss to Project water users." Chapter 4 of the EWA EIS/EIR evaluates the effects of the EWA actions and concludes that there would be less than significant impacts on water users.

**PH01-12**

*Comment:*

The immediate impact that we have noticed, as identified by Ron Jacobsma earlier, is that as soon as the EWA began purchasing large quantities of water at much higher prices than have been paid for water, at least for those volumes of water in the San Joaquin Valley, we noticed an increase in the cost of water that we had to buy on the market during the last couple of years. Our district has a certain amount of good, reliable water, but we do have some lands that require or rely on our ability in drawing below normal years to buy water from other sources, and we've seen this impacted by purchases of EWA water. EWA is financed with public funds. They have incredibly deep pockets; therefore, they can buy the water at prices that farmers can't even afford to -- to touch. It might be said, "Well, that's not water the farmers would buy." But that is water that would otherwise be, or could otherwise be, available at a lower cost if you didn't have such a -- if you didn't have a buyer who was willing to spend as much as -- I know in one day in 2001 EWA spent \$566 an acre foot for 10,000 acre feet of water. EWA has demonstrated that it's not constrained by limits.

*Response:*

See response to Comment FO01-6 for information related to the water transfer market.

In the first year of the EWA, EWA agencies purchased water at varying prices. After the first year, a water transfer market has developed and prices are more defined. EWA agencies have also gained experience and knowledge in purchasing water and

would not pay prices higher than the market value. Additionally, EWA funding is more limited than in the first year of operation. Therefore, prices paid by the EWA agencies would not be unreasonably high.

The cumulative and long-term impacts to agriculture and associated communities would not be adverse. In the Export Service Area, more water supply would be provided because the EWA would replace water needed for fish protection in the Delta. In the counties where EWA water transfers would occur, landowners would have another economic opportunity for use of their water assets. In some regions, landowners may use EWA profits to develop new water supply capabilities such as conjunctive use facilities that would provide new, developed water for the EWA and other water users. Therefore, the EWA would benefit agricultural communities.

### **PH01-13**

***Comment:***

Now, it's been our understanding in the past, although you've indicated tonight that we weren't correct in that understanding, but our thought that 135,000 acre feet was a limit, at least at the tier two. Now we found that it's been termed as a minimum, and EWA is buying a whole lot more than that. By our research on the internet -- we didn't have access to the numbers of provided us tonight for 2003 -- but in 2001 and 2002, EWA purchased 443,000 acre feet from north and south of the delta. That's two-and-a-half times the amount specified by the ROD. So given those facts and the uncertainty that we have now about what the described increases mean, whether those are now going to be new minimums or maximums or what, an increase to the 600,000 acre feet as described in the flexible plan is totally unacceptable and we don't think supportable. It's been mentioned, and we will reiterate, that we don't see the justification for the additional water in terms of necessity for fish, either for recovery or preservation of the fish. The Endangered Species Act consultations have defined what it takes to keep the fish from -- the term escapes me -- to preserve the fish to keep them from going extinct. EWA actions go beyond that. And my understanding from information that I have heard about, and I have not read all of the scientific panel reports, I did read the first one and -- before it got modified, and basically they found they couldn't determine what benefits EWA had had.

***Response:***

See responses to comments FA01-10 (pertaining to an update of the EIS/EIR to include Science Panel recommendations and description of the adaptive management process), LA08-13 (regarding the size of the Flexible Purchase Alternative), and LA08-14 (regarding benefits to fish).

### **PH01-14**

***Comment:***

Looking just to -- as an example, in a presentation that was made by Sheila Green, the last I heard she was a DWR biologist. I'm not sure what her position is now, but anyway, she made a presentation at a recent salmon workshop and identified some reduced mortalities as a result of EWA actions. And the reduced mortality winter

runout migrants was .014 percent of the estimated number entering the delta. And in 2001-2002 corresponding number was .009 percent of those entering the delta, and .12 percent of those leaving the delta. Similar numbers for 2000-2001. And at the same time, or at the same workshop, the NOAA Fisheries reported a 20 percent harvest related mortality to winter run salmon. They're talking about such a small piece of the total picture of the salmon survival, we don't believe that the incredibly large amount of water that you're purchasing and taking off the market reallocating from agricultural uses or even potentially urban uses is justified by the -- the benefits that the fish might achieve.

**Response:**

See response to Comment LA15-7.

**PH01-15**

**Comment:**

Very significant concerns about the economic impacts. Again, Ron Jacobsma touches on those.

**Response:**

Chapter 11 discusses economic effects. EWA agencies would not acquire water at unreasonably high prices, and EWA would not affect prices in the water transfer market. Section 11.2.5.5 includes discussion of effects on the water transfer market. Madera and Merced Counties should not be affected by land idling or supply availability.

**PH01-16**

**Comment:**

A couple of key points. First of all, the economic analysis totally ignored -- or actually intentionally -- they said they weren't even going to evaluate the impacts in Madera and Merced county. It's not clear to me why that's the case, other than that the EIR doesn't even really try to evaluate the kinds of economic impacts we've seen, and that's what makes it unacceptable.

**Response:**

The Draft EIS/EIR does evaluate the full geographic scope of the potentially affected area for regional and agricultural economics. The county analysis specifies 10 counties in which rice or cotton acreage could be idled because of available acreage and the presence of willing sellers. The analysis did not include Merced and Madera Counties for crop idling. The document does analyze the statewide effects of the water market, but does not delineate between counties.

Section 11.2.5.5 includes discussion of effects on the water transfer market. EWA agencies would not acquire water at unreasonably high prices, and EWA would not affect prices in the water transfer market. The EWA program would not affect Madera or Merced Counties because the EWA agencies would not purchase water through crop idling in these counties, and the EWA program would not likely substantially affect water prices in the water transfer market.

**PH01-17**

***Comment:***

The -- just looking at how the EIR talks about what CEQA and NEPA look at from an economic perspective was pretty disturbing. It said that CEQA doesn't evaluate economic effects unless those economic effects change the physical environment. And they go on to say that the economic effects of EWA don't effect the physical environment. I don't know that I -- or I don't agree with that conclusion.

***Response:***

As stated in CEQA regulations Section 15131, CEQA does not require consideration of economic effects to be environmental impacts. Therefore, it is not necessary to determine significance of economic effects. NEPA allows economic effects to be discussed if they are related to effects on the environment, but NEPA also does not require that economic effects be judged for significance.

**PH01-18**

***Comment:***

Then it says NEPA does not require that economic effects be judged for significance. Therefore, this chapter describes a description of economic effects, but does not attempt to determine significance of economic effects. So basically what the EIR is saying is that the economic impact of EWA actions are basically irrelevant in the decision-making process. And that is totally unacceptable.

***Response:***

The EWA agencies believe that economic effects are relevant to the decision-making process. Chapter 11 provides a detailed analysis of economic effects of the EWA. Additionally, measures have been incorporated into the project to specifically reduce economic effects.

**PH01-19**

***Comment:***

While the economic impacts from idling land and changing crops appear to be evaluated to some extent, and I'm no economist so I don't know exactly -- or I can't comment on how correctly that was done -- there's no impact of -- no assessment of the impact to those who rely on the water that is now unavailable because EWA has cornered the market. In fact, it specifically says that it's not going to evaluate those impacts because it doesn't consider those impacts worth quantifying. Again, that's unacceptable in terms of a document that's going to support decisions that have such a significant impact on -- on our farmers and our taxpayers.

***Response:***

See responses to Comments FO01-6 (price effects to the water transfer market), FO01-7 (quantifying price effects), and NP01-30 (the limitations to a quantitative analysis of the water transfer market effects).

## PH01-20

### *Comment:*

With respect to impacts on ground water, clearly if there are going to be any purchases from the -- from the San Joaquin Valley, you need to understand it is an overdrafted area. Based on our reading, there's no service water to be purchased from what you call the delta export area, but as Ron described, some of it is just the San Joaquin that has other water supplies. It indicates that they will buy banked water, or in effect our ground water. If we're already overdrafted any purchase of ground water, whether banked or not, are going to further deplete the water resources, the ground water resources in the San Joaquin valley.

### *Response:*

The EWA agencies would only acquire water from the Export Service Area (which includes the Friant Division as discussed in the response to Comment FO03-8) from stored groundwater purchase or crop idling. The EWA agencies could also acquire groundwater storage space (or use of groundwater storage facilities) within this area. Section 6.2.4.2.2 states, "EWA groundwater purchase and direct extraction from these banking facilities could result in declines of groundwater levels; however, the levels would generally remain higher than they would have been absent the banks...Groundwater banking agencies have policies that do not allow greater extraction of groundwater than the project has banked." The section evaluates impacts and concludes, "Consequently, all potential impacts associated with the groundwater purchase and direct recovery operations conducted in accordance with local groundwater management requirements for the EWA program would be less than significant."

## PH01-21

### *Comment:*

The EIR also identifies negative impacts to air quality from land fallowing in the San Joaquin Valley. At least so far I'm not a -- I've not seen where the EIR recognizes that the San Joaquin Valley is in a severe non-attainment for air quality, so you're proposing to do actions that you say recognize have impacts on air quality in the San Joaquin Valley? We're already having a significant problem meeting air quality requirements. It's unacceptable from our perspective to impact the health and the lives of thousands or millions of people for the benefit of -- or for the questionable benefit to some fish who are already protected by ESA at levels that are supposed to ensure their survival and recovery absent these additional actions.

### *Response:*

Section 8.1.5 discusses and Figures 8-6, 8-7, and 8-8 show the air quality conditions in the Export Service Area and the fact that the area is in nonattainment for PM10 and severe nonattainment for ozone.

Actions taken under the EWA would contribute to the air quality problems in the Valley; however, mitigation measures are included to reduce this contribution to a less-than-significant effect.

**Chris White**  
**Central California Irrigation District**  
**PH01-22**

**Comment:**

But there's two other things I just wanted to point out, or -- or comment on, and one is that the program set up the way it is, it's very difficult to understand how effective the program is relative to what the targets are. There are really no targets. You get into this mindset that if a little bit of water is good, then a whole bunch of water is better, and pretty soon it leads you down the track, and you might as well take all the water and use it for the same objective.

**Response:**

See response to Comment FO01-5 regarding monitoring and accountability.

**PH01-23**

**Comment:**

The other one is relative to past actions, when they're done. These -- we need to really learn how much -- how many fish were saved. That's on one side, the biological parts of it, what the positive impacts are.

**Response:**

See response to Comment FA01-10 (pertaining to an update of the EIS/EIR to include Science Panel recommendations and description of the adaptive management process).

**PH01-24**

**Comment:**

But also from the aspect of, if you allowed additional pumping to go on, what was the -- what was the water benefits, through net water gain, if any? See, and that's part of my problem is, see, if you're purchasing water on the south side of the delta, on the other side of the pumps, I don't understand, net-wise, how that yields any more water for the full area. It's not real clear that in my mind that it does.

And as an example of that, this year and last year also, if you look at San Luis, relative to the EWA, San Luis reservoir. EWA this year was -- I heard was something around 3- or 400,000 acre feet of purchases for use program. Well, San Luis exceeded its low point this year by about 400,000 acre feet, and that water was not utilized, so... Maybe this type of a program is partially on the right track, but we're certainly not being as effective as we should be in this area. There's no reason for that amount of unused water to be sitting at the San Luis at this time of the year. It should be down to about 100,000, 150,000 acre feet. Instead we're up about half a million, 600,000.

**Response:**

The EWA purpose and need/project objectives do not include increasing yield for the Export Service Area. The EWA program was designed to incorporate additional flexibility into system operations to reduce conflicts at the Delta pumps between fish



and water users. Other CALFED programs may increase water supply, including the water storage and water use efficiency programs. CALFED agencies are concurrently implementing these programs.

## **PH02 - Public Hearings, Sacramento**

**Paul Olmstead**

**SMUD**

**PH02-1**

*Comment:*

I'd like to state for the record that the environmental documentation for the Environmental Water Account does address the impacts of power. And specifically they say the EWA agencies must develop a financial plan to identify the cost incurred from the Environmental Water Account transactions. We recognize that the environmental documentation does address the impacts of power, although it does not make them significant, they are impacts. And that the mitigation mesmerists, who develop the financial plan to cover the Environmental Water Accounts, including those impacts to power costs. We support that. We recognize that you have addressed our comments and put those protocols in formal documentation. Thank you very much. But in order to make an informed decision on the action, we recommend that as part of this mitigation plan that you intend -- or financial plan, that you intend to implement. First of all, we see something drafted up to be included these principals in the final EIR for us to review. Also assure that the Western Area Power Administration is brought into the activity as part of this plan too so we can have a chance to view it before the final EIS/EIR and the record of decision.

*Response:*

The EWA agencies would work with Western to develop the financial plan.

**PH02-2**

*Comment:*

As we all know that the cost of power can sometimes overcome or cost more than the cost of the water itself. Therefore, sometimes it could be a cost limiting action so if to assure that these actions do take place -- which the power of customers do support these actions -- please identify the amount of money available for the transactions at the start of the year. We don't want to see these transactions not take place because there hasn't been an adequate amount of money set aside to support the environmental water transaction.

*Response:*

See response to Comment LA01-2 regarding interim protocols for operating the Interim EWA program.

**John S. Mills**

**John Mills for Regional Council of Rural Counties**

**PH02-3**

*Comment:*

You have had a departure of what people thought was in the ROD. We have had a decisionmaking process that changed that, modified it, adaptive management, whatever you want to call it.

We need to know exactly how that took place, what the parameters were, where the bookings are, and what response to comments comes back in the administrative record.

*Response:*

See the response to Comment NP05-33 regarding clarification of average amount of water available annually as a result of EWA actions.