



September 15, 2003

Mr. Kirk Rodgers
Regional Director
U.S. Bureau of Reclamation
2800 Cottage Way, Room E-1604
Sacramento, CA 95825-1898

Mr. Mike Spear
Interim Director
Department of Water Resources
1416 Ninth Street, Room 1115-1
Sacramento, CA 95814

Dear Directors Rodgers and Spear:

The Northern California Water Association (NCWA) provides the following comments on the Environmental Water Account (EWA) Environmental Impact Statement/Report (EIS/EIR) and the Stage 1 review of the EWA. As the CALFED Framework for Action and the subsequent Record of Decision (ROD) were developed in 2000, NCWA supported the EWA concept to provide increased water supply reliability to water users while helping to provide water to meet certain fishery objectives in the Bay-Delta. We particularly support flexible water management to meet these various needs and to avoid conflict rather than a rigid, prescriptive approach. Northern California support, however, was and remains premised on the protection of Northern California water rights and Central Valley Project (CVP) project water supplies. Our overriding concern is the ability to manage water supplies in Northern California – for the benefit of Northern California – without interference from the CALFED agencies.

Our comments will focus on certain broad themes that apply throughout Northern California and will build upon other, more specific, comments provided by Northern California water users.

I. Northern California water rights must be respected – the agencies must commit to a meaningful Tier 1 regulatory baseline.

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.

II. The EWA should not be used as a tool to dictate water management in Northern California.

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.

III. The EWA should have no linkage to ecosystem spending.

The ROD currently specifies that \$150 million must be spent annually on ecosystem projects for the EWA to be effective. This linkage was and remains arbitrary and it does not serve any valuable purpose in implementing the EWA. We urge the CALFED agencies to remove this linkage as the program advances.

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.

We look forward to working with you to make the EWA a successful program that will avoid conflict in the Bay-Delta and lead to greater water supply reliability in Northern California and other areas in the State.

Sincerely yours,

A handwritten signature in black ink, appearing to read "David J. Guy". The signature is fluid and cursive, with the first name "David" being the most prominent.

David J. Guy
Executive Director

cc: Patrick Wright
Bob Hight
Jim Lecky
Steve Thomson
Sammie Cervantes
Delores Brown