

December 23, 2014

Mr. David Murillo
Mid-Pacific Regional Director
United States Bureau of Reclamation
2800 Cottage Way, MP-100
Sacramento, CA 95825-1898

Subject: Request for Extension of the Public Review Period for the Central Valley Project
(CVP) Municipal and Industrial Water Shortage Policy (M&I WSP) Draft
Environmental Impact Statement (Draft EIS)

Dear Mr. Murillo:

The East Bay Municipal Utility District (EBMUD) requests an extension of time for public review of the M&I WSP Draft EIS to **March 13, 2015**.

EBMUD is currently reviewing the Draft EIS and plans to submit comments. While we appreciate Reclamation's recent decision to extend the public comment period deadline from January 12, 2015 to January 30, 2015, the additional 2 weeks is not sufficient for contractors to adequately review and prepare comments on a document as significant and complex as the Draft EIS.

The M&I WSP has been in draft form since 2001, and it has been two years since the stakeholder workshops regarding finalization of the policy substantially ended, with delay in progress resulting from administrative issues associated with Reclamation's consultant contract. Recently, stakeholders were informed that the consultant's work had resumed and that a Draft EIS would be issued in 2014. We were surprised Reclamation elected not to hold a stakeholder workshop prior to the release of the Draft EIS and issued the Draft EIS on November 19, 2014 for a public review period of only 45 days, spanning the end-of-year holiday period when key staff are unavailable to adequately review the document.

The Draft EIS is a document of substantial length and detail that will require approximately 90 days for proper review. Given that Reclamation's current schedule does not show the M&I WSP being finalized in time to affect 2015 CVP allocations, we respectfully request that the review period be extended to March 13, 2015.

Sincerely,



Alexander R. Coate

cc: Tim Rust, USBR
Michael Tognolini, EBMUD
Jonathan Salmon, EBMUD



LA12

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VIA EMAIL (trust@usbr.gov) AND U.S. MAIL

March 13, 2015

Mr. Tim Rust
Program Manager
Bureau of Reclamation
2800 Cottage Way
Sacramento, CA 95825

SUBJECT: Comments on the Central Valley Project Municipal and Industrial Water Shortage Policy Draft Environmental Impact Statement

Dear Mr. Rust:

The East Bay Municipal Utility District (EBMUD) appreciates this opportunity to review and provide comments on the Central Valley Project (CVP) Municipal and Industrial Water Shortage Policy (M&I WSP) Draft Environmental Impact Statement (DEIS) prepared by the U.S. Bureau of Reclamation (Reclamation). EBMUD supplies water to nearly 1.4 million people in the East Bay. EBMUD's 332-square mile water service area encompasses incorporated and unincorporated areas within Alameda and Contra Costa Counties. EBMUD's Mokelumne River and East Bay watershed sources of supply are sufficient in most years. However, to reliably meet the needs of its customers in dry years, EBMUD uses CVP water under its Long Term Renewal Contract (LTRC) with Reclamation¹ in addition to its Mokelumne and East Bay supplies.

EBMUD's LTRC is a unique, dry-year-only contract that resulted from 40 years of planning, negotiations, litigation, and collaboration with stakeholders. EBMUD takes delivery of CVP water in dry years through the Freeport Regional Water Facility (Freeport Facility), which includes an intake located on the Sacramento River. The Freeport Facility was completed in 2010 in partnership with Sacramento County Water Agency and cost EBMUD ratepayers over \$480 million to construct.

CVP water is central to our drought planning. Every EBMUD water supply planning document – including those related to the signing of the LTRC and the construction of the Freeport Facility – relies on the use of CVP supplies integrated with EBMUD's other supplies to meet the water supply reliability needs of its customers. Accordingly, the M&I WSP is of critical importance to EBMUD. We have been involved in the stakeholder process since 2003 and support Reclamation's efforts to finalize a policy that provides detailed, clear, and objective guidelines for the allocation of available CVP water supplies to CVP water service contractors during water shortage conditions. EBMUD's primary interest is to ensure that the finally adopted M&I WSP

¹ Contract No. 1406-200-5183A-LTR1, dated April 10, 2006.

recognizes the unique terms of EBMUD's LTRC and maintains our investment in Freeport. We appreciate Reclamation's efforts to complete environmental review of the M&I WSP as the next step in the process towards finalizing a policy. EBMUD's comments on the DEIS are provided in the following sections.

Separate process for finalizing M&I WSP once environmental review is complete

Section 12(d) of EBMUD's LTRC authorizes Reclamation to amend or modify the M&I WSP "only through a public notice and comment procedure." We understand that Reclamation has not yet committed to initiate that procedure before adopting a final M&I WSP. We acknowledge that Reclamation held stakeholder scoping meetings in 2003-2005 and again in 2010-2011, and that it is now soliciting public comment on the DEIS. Both public processes are important milestones on the path to a final M&I WSP. But neither is a substitute for a public notice and comment process that occurs after environmental review is complete. Following completion of environmental review, Reclamation should initiate a separate, transparent public process to elicit comment on policy alternatives before a final M&I WSP is adopted.

EBMUD and other M&I contractors participated in Reclamation stakeholder meetings on the M&I WSP beginning in 2003. Efforts in 2003-2005 produced a draft revised policy and a National Environmental Policy Act (NEPA) environmental assessment (2005 EA). However, the policy proposed in those documents was not adopted. In reinitiated efforts towards a final M&I WSP in 2010, Reclamation held a number of stakeholder workshops and NEPA scoping meetings that extended into 2011. Reclamation abruptly put these discussions on hold due to contracting issues with Reclamation's consultant. Without further public process, stakeholders were informed in 2014 that a DEIS on the M&I WSP would be released for public comment. EBMUD believes the stakeholder scoping process was a beneficial exchange of ideas, but we do not view those workshops as an adequate or complete "public notice and comment procedure" called for in the LTRC that could serve as the basis for Reclamation to select a policy alternative and adopt a final M&I WSP.

Furthermore, the DEIS comment period is not the appropriate vehicle for final stakeholder input on the policy. The DEIS inadequately describes the alternative policies, makes erroneous assumptions, and contains other technical deficiencies identified in this letter. Therefore, we have been able to form only an inadequate and incomplete understanding of the impacts of each proposed policy alternative on the environment and our water supply. The alternatives proposed in the DEIS also remain subject to change. While we are fully prepared to comment on the environmental analysis set forth in the DEIS, we strongly believe that CVP contractors should be allowed the opportunity to comment on the policy implications of the various alternatives after all environmental documentation is final and the impacts of each policy alternative have been fully disclosed and analyzed. The process would also benefit from Reclamation's identification of the specific alternative it proposes to adopt as the final policy.

Inaccurate, inconsistent and incomplete description of alternatives

The DEIS does not include complete descriptions of the policy as it would read under each proposed alternative. For example, the DEIS describes Alternatives 1, 4 and 5 as previous versions of the draft M&I WSP but did not include the text of these previous versions of the draft M&I WSP. The full text of the M&I WSP, as it would read under each proposed alternative, should be included in the EIS so the assumptions for each alternative are clearly identified and we can understand exactly how the policy would be implemented and what is being modeled and analyzed for each alternative.

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The narrative description of the alternatives also includes inaccurate and inconsistent statements that do not match the referenced draft policies. These inaccuracies and inconsistencies should be corrected and the environmental analysis revised accordingly as appropriate. The inaccuracies and inconsistencies include the following:

- Alternative 1 (No Action Alternative): The DEIS includes multiple statements that the concept of “unmet” contractor public health and safety (PHS)² is incorporated within the No Action Alternative (NAA) because it is in the baseline of the draft M&I WSP dated September 11, 2001 as modified by Alternative 1B from the 2005 EA (see, e.g., DEIS §§ 2.3 and 2.3.5). This is inaccurate. The DEIS describes “unmet need” as “the difference between a contractor’s PHS demand and its available non-CVP supplies.” Neither the 2001 nor the 2005 documents mentions this concept. In addition, neither the 2001 nor 2005 versions of the M&I WSP allow for a reduction in PHS deliveries based on the availability of non-CVP supplies to the CVP contractor. The concept of unmet PHS was not introduced until a 2010 draft policy that has never been adopted nor been subject to NEPA review. If Reclamation continues to describe the NAA as the current 2001 draft M&I WSP as modified by Alternative 1B of the 2005 EA, then the NAA should not include any reduction in PHS deliveries by the amount of non-CVP supplies.

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Alternative 4 (Updated M&I WSP): The DEIS states that Alternative 4 is the October 21, 2010 Updated Working Draft Policy (Working Draft Policy). However, the description for calculating PHS in the DEIS for Alternative 4 is inconsistent with the referenced Working Draft Policy. Section 3.3.1 of the Working Draft Policy includes a detailed explanation of the PHS calculation which does not include the concept of unmet PHS or reduction in PHS deliveries based on a contractor’s availability of non-CVP supplies. The Working Draft Policy was, at most, ambiguous as to any role that non-CVP supplies would have in the PHS calculation. Alternative 4 is inconsistent with the Working Draft Policy in that it fully incorporates the concepts of unmet PHS and reductions in PHS deliveries based on a contractor’s availability of non-CVP supplies into the PHS calculation.

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² The DEIS explains that PHS water is “water that is needed for consumption, for operation of necessary water and wastewater facilities, and to avoid economic disruption.” (DEIS § 2.3.5.)

- Alternative 5 (M&I Contractor Suggested WSP): The DEIS states that Alternative 5 is the November 22, 2010 M&I contractor redline-strikeout of the October 18, 2010 draft M&I WSP. The DEIS states that Alternative 5 requires reservoir reoperation, whereas the actual redline-strikeout does not, and the modeling analysis does not indicate whether there is any reservoir reoperation.

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CVP as a secondary supply for purposes of identifying unmet contractor PHS need

EBMUD has significant concerns with the language in the DEIS and referenced policies that suggest that CVP M&I water supplies are secondary, or backup water supplies for purposes of identifying unmet contractor PHS needs. The DEIS (p. 4-8) states “CVP supplies are considered secondary or supplemental for the purpose of identifying unmet PHS need. CVP supplies are provided to satisfy PHS demands after the contractor has utilized all other available non-CVP supplies.” We strongly dispute Reclamation’s relatively recent notion that CVP supplies are a supply of last resort. We also believe this method of calculating CVP deliveries is fundamentally inconsistent with EBMUD’s unique, dry-year-only LTRC contract. Furthermore, it unnecessarily risks the reliability of the East Bay’s drought water supplies and undermines the substantial investment EBMUD made in the Freeport Facility in reliance on the LTRC. EBMUD believes that, provided water is available to be allocated, the M&I WSP should ensure that EBMUD will be allocated at least its full documented PHS need.

EBMUD’s unique, dry-year only LTRC represents decades of working with Reclamation to develop a contract that provides EBMUD with additional water reliability in dry years and addresses stakeholder concerns. EBMUD first entered into Contract No. 14-06-200-5183A with Reclamation dated December 22, 1970 for a water supply of up to 150,000 acre-feet (AF) every year from a point of diversion on the Folsom South Canal. For over 30 years, EBMUD made payments in accordance with its water service contract without receiving water. After decades of litigation and negotiation, Reclamation and EBMUD executed Amendatory Contract No. 14-06-200-5183A-1 dated July 20, 2001 (superseded by the LTRC in 2006).

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The LTRC, as compared with the 1970 contract, places major limits on the delivery of CVP water to EBMUD. First, it allows EBMUD to take CVP water only in dry years when EBMUD’s total system storage is forecasted to be below 500,000 AF. Second, the LTRC reduces the quantity available to EBMUD from 150,000 AF to 133,000 AF in any single year, not to exceed a total of 165,000 AF during any consecutive three-year period. EBMUD agreed to sacrifice access to CVP water during normal and wet conditions, reduce its total CVP contract amount, and take delivery from the Sacramento River in exchange for a predictable and reliable quantity of CVP water during dry years when it is needed most.

EBMUD’s CVP supply is a key component of our overall portfolio approach to meeting the current and future water supply needs of our customers. EBMUD’s Mokelumne system is severely limited during droughts. The CVP supply is intended to provide additional drought supply that reduces the potential for severe water rationing and economic losses during droughts,

in combination with continued use of stored Mokelumne supplies and aggressive conservation and recycling programs.

With these considerations in mind, we turn to Reclamation's proposal to treat CVP water as a "secondary" source and providing only "unmet" PHS needs during critical droughts. Our comments are as follows:

- EBMUD's unique, dry-year only contract should be recognized in the DEIS and any M&I WSP. As described above, EBMUD's LTRC has terms and conditions for quantity that are specific to EBMUD and providing additional water to meet EBMUD customer needs in dry years only. Based on the expectation of a reliable and predictable supply from the CVP, EBMUD invested over \$480 million to construct the Freeport Facility. EBMUD's entire drought planning process is based on using CVP water alongside Mokelumne water. Our planning contemplates the use of enough CVP water during all years of a multi-year drought to ensure that sufficient stored Mokelumne water will be available in the last year of the drought. This concept was understood by Reclamation when it signed the EBMUD LTRC as a dry year only contract with a 3-year delivery cap of 165,000 AF. Based on this understanding, EBMUD designed and built its Freeport Facility with a capacity reflecting the water available under contract. As a practical matter, if EBMUD uses all its non-CVP supplies first, its Freeport system does not have sufficient capacity to meet all of EBMUD's needs once the other supplies are gone. Therefore, as described in the Freeport EIR/EIS, EBMUD's CVP and other supplies must be used in an integrated way during all stages of a drought to meet the public health and safety needs of EBMUD customers. An M&I WSP that requires EBMUD to use all other sources of water before it can access CVP water under its LTRC to meet PHS needs would undermine four decades of careful planning and negotiations, severely diminish the significant investments made by EBMUD ratepayers to construct the Freeport Facility, and result in a significant impact to water supply reliability for EBMUD customers.
- There is no basis for an M&I WSP that treats CVP water as a "secondary or supplemental" supply. We are aware of nothing in the authorizing legislation for the CVP that would suggest that CVP water supplies are "secondary or supplemental" to other water sources. Nor are we aware of anything in any existing duly-adopted Reclamation policy or our LTRC that so characterizes the priority of CVP M&I water supplies. In fact, as far as we are aware, this concept is novel, with no precedent in law or contract. Accordingly, Reclamation should revise the DEIS to delete the referenced language on page 4-8 and clarify that the M&I WSP is not intended to serve as a shift in federal policy nor to imply that the CVP is a "secondary" or "supplemental" source of supply.
- Treating CVP M&I supplies as "secondary or supplemental" is inconsistent with California water policy and actions. To the extent the M&I WSP and DEIS purposely identify CVP M&I supplies as "secondary or supplemental" they are inconsistent with existing California water policy. California water policy encourages the diversification of

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water supplies through conjunctive use, recycling and reclamation, increased storage, and conservation. The M&I WSP is incompatible with California water policy to the extent it functions in a manner that relegates CVP water to “secondary” status to be used only as a supply of last resort during drought, rather than conjunctively with other sources as part of a diversified portfolio. Moreover, a policy that mandates the use of all non-CVP supplies first to meet PHS needs discourages contractors from developing additional, likely higher priced, water supplies if Reclamation’s response will be to allocate even less CVP water to M&I contractors for PHS needs. Ultimately, Reclamation’s policy harms both the CVP and future water supply reliability of the state by providing a disincentive for M&I contractors to properly plan and manage for future water supply shortages.

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- The environmental impacts of contractors relying more heavily on non-CVP supplies to meet PHS needs should be properly analyzed in the DEIS. Reclamation’s policy of treating CVP water as a secondary supply and requiring contractors to rely more heavily on non-CVP supplies to meet PHS needs will foreseeably result in adverse environmental impacts that have not been analyzed in the DEIS.
- There is not enough detail in the DEIS and policies to understand how the actual PHS calculation would be performed. On a practical level, the quantity of CVP water provided for PHS needs to be predictable. The PHS methodology described in the DEIS is not detailed enough for agencies, like EBMUD, to calculate the quantity of CVP water that would be provided to meet EBMUD’s unmet PHS need. We recognize that the working draft version of M&I WSP dated October 18, 2010 outlines implementation guidelines, and Appendix A of DEIS includes M&I Contractor Data Summary with planning data. However, there are ambiguities on how the actual calculation would be performed, including how, when, how often, and by whom a contractor’s non-CVP supplies would be calculated, and the source of data that would be used for the calculation. Additional process detail is required in the DEIS and M&I WSP to understand the calculations and assumptions for unmet PHS that are being used to analyze the potential environmental effects of the alternatives.

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Mischaracterization of American River Division contractors’ position on Term 14

Section ES.7. Issues of Known Controversy (p. ES-34) of the DEIS lists issues and concerns raised during the public scoping process as documented in the M&I WSP Public Scoping Meeting Summary Report (Reclamation 2011). The last bullet incorrectly states, “The American River Division contractors disagree with Reclamation’s interpretation of Term 14 of SWRCB Decision 893 and believe it should provide them with additional supply reliability beyond what the M&I WSP provides in their water service contracts.” EBMUD, an American River Division contractor, strongly agrees with Reclamation’s interpretation of Term 14 and furthermore believes that this issue has already been settled and has no place in the M&I WSP. The statement on Term 14 should be revised to correctly identify the contractors within the American River Division who disagree with Reclamation’s interpretation of Term 14.

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DEIS Alternatives

Reclamation previously stated that it would consider a contractor's access to non-CVP supplies when making PHS allocations only during "extraordinary circumstances during severe and continuing drought" and that Reclamation "would consider public health and safety to be a priority." (December 19, 2005 FONSI.) Each alternative proposed in the DEIS deviates unacceptably from that standard. In fact, the alternatives proposed in the DEIS would require that CVP deliveries be reduced in proportion to the quantity of non-CVP supplies available to the contractor *each and every time a PHS calculation is done*, even if water exists in the Project to satisfy the PHS need. EBMUD believes this goes well beyond the purpose of the M&I WSP, and that it is not consistent with Reclamation's contract obligations, especially as relates to our unique dry-year contract. Therefore, EBMUD cannot fully support any DEIS alternative as currently proposed. However, EBMUD would support a modified version of Alternative 5 (M&I Contractor Suggested WSP) that clarifies that a contractor's access to non-CVP supplies will not be taken into account as part of PHS calculations except during severe water shortage conditions when it is determined there is not enough CVP water physically available to meet even the minimum PHS needs of the M&I contractors. To lend clarity and predictability to that determination, the M&I WSP should include a clear, objective process that Reclamation will follow to determine whether sufficient water is available for PHS needs and, if it is not, how Reclamation will quantify and impose cutbacks below the level of a M&I contractor's demonstrated PHS need.

EBMUD opposes Alternative 2 (Equal Agricultural and M&I Allocation) and Alternative 3 (Full M&I Allocation Preference) in the DEIS. Alternative 2 does not give priority to delivering water to meet M&I public health and safety requirements and does not reflect Reclamation's long-standing policy of recognizing a municipal preference when allocating shortages between M&I and Agricultural contractors. Neither Alternative 2 nor 3 represent a reasonable methodology for allocating water shortages among CVP contractors.

Limitations on Modeling Tools to Identify Impacts

Appendix B of the DEIS describes modeling tools and assumptions used in the analysis of the DEIS alternatives. Each alternative was simulated in a CalSim II model of the CVP and State Water Project (SWP) to determine effects on water supply to CVP contractors, operations of CVP and SWP facilities, and environmental effects. Although CalSim II is a widely accepted "simulation by optimization" model, it is more suitable for comparative analyses but not for absolute analyses. The DEIS should recognize and describe the limitation of CalSim II in quantifying the water supply impacts for each alternative. Specific EBMUD comments on the review of the modeling analysis and results are provided as Attachment 1.

Similarly, the Least Cost Planning Simulation Model (LCPSIM) was used to estimate the economic benefits and costs of water supply for the Bay Area, including EBMUD. Limitations to the LCPSIM model and its aggregation assumption underestimates impacts of water supply

shortages to the Bay Area. Appendix G recognizes this limitation, but Chapter 13 of the DEIS should also describe this tendency to underestimate economic impacts from water shortages.

We appreciate this opportunity to provide comments on the M&I WSP DEIS. If you have any questions about these comments, please contact me at 510-287-0125.

Sincerely,



Michael T. Tognolini
Manager of Water Supply Improvements

Attachment

ATTACHMENT 1

CVP M&I Water Shortage Policy DEIS Modeling Review & Comments

The following are comments specific to the modeling analyses of the DEIS with particular focus on Appendix B.

Comments

- Page B-5, Appendix B, 2nd paragraph, 2nd sentence. A key piece of language from EBMUD's LTRC was omitted from the description in Appendix B of the DEIS. EBMUD requests that additional text be added (as indicated by the bold text) as consistent with the corresponding section of the LTRC³. Accurate representation of this key constraint of the LTRC is critical to modeling the terms of the contract correctly and understanding the unique terms and conditions of EBMUD's dry-year only contract.
"..., and not more than 165 TAF in any period of three consecutive years **that EBMUD's total system storage forecast remains below 500,000 acre-feet.**"
- Table B-3, page B-15, Appendix B. Numerical results presented in this table are in error and need to be corrected. Since this table represents the results for the No Action Alternative (NAA), the sections that follow where modeling results are presented for each alternative are, therefore, in question. Furthermore, the data presented in the table is not adequately defined or described; e.g., are these representing long-term averages over the full period of hydrology simulated? In order to properly interpret impacts, results should be summarized by year-types similar to the water quality modeling results in Appendix C.
- Inappropriate Presentation of Modeling Results. In wetter year-types where supplies are plentiful and allocations to both irrigation and M&I contractors are relatively high, there is not much difference in the alternatives, and thus the results appear to be quite similar. However, once water supplies are constrained by hydrologic conditions (i.e. in Below Normal to Critically Dry year-types) we expect to find the maximum differences in the results among the alternatives as this is where the various assumptions under each of the alternatives differ the most. Hence, presenting results that are averaged over all year-types – from wettest to driest – obfuscates expected changes in drier periods. The results discussion would benefit from summarizing changes in model results by year-types (as in Appendix C) or to focus the analysis on drought periods when supplies are limited over the hydrologic period-of-record.

³ LTRC § 3.1, page 13, lines 257-259.

- General comment on Appendix B modeling results from CalSim II output. Additional discussion on the results of each alternative in Appendix B is needed. The modeling results data presented are not adequately defined as described in the previous comment. A narrative results discussion is needed that explains where and why differences occur under each of the alternatives relative to the NAA and specifically how these differences relate to the key M&I WSP assumptions that are unique to each alternative. In particular, a discussion of the key differences represented by the two bookend alternatives, Alternatives 2 and 3 is needed. The narrative discussion of the results needs to adequately describe model output and figures and/or tables included in the document that are relied upon to summarize the potential environmental impacts of the alternatives.

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- Appendix B plots provided on pages B-41 through B-79, general comment. Several comments follow from the plots that are included in the DEIS as **Attachment B Comparison of No Action Alternative with Action Alternatives.**

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- A narrative discussion of these results is needed to accompany the figures presented that describes what is plotted, why, and what the results show especially in the context of the policy analyzed under a given alternative. The results discussion is foundational to understanding the environmental impacts discussed elsewhere in the document.
- The figures need to be reformatted so the modeling results information can be clearly understood. For example, in the case of Figure 9 for Alternative 2 page B-49, the two dashed lines representing Delta Exports for the NAA (red dashed line) and the Equal Allocations Alternative 2 (blue dashed lines) are plotted on the chart in such a way that it is difficult to understand if the solutions are identical (plotting on top of each other) in WY1922 and then they deviate from each other in WY 1923 or if the “Delta Exports – NAA” timeseries is simply missing in WY1922 but then included in WY1923 which would appear to be an error or typo. In contrast with this example, the comparison chart for X2 includes an additional timeseries within the figure that represents the difference in X2 for the alternative shown relative to the NAA with its own ordinate scale on the right side of the figure. Similar to the X2 chart, all figures should be formatted in such a way that the modeling results can be clearly identified and understood.
- Inspection of these charts suggest that a careful review and quality check is necessary. For example, see Figure 10 on page B-50 that represents Jones Pumping for the NAA with Alternative 2. Upon visual inspection the two timeseries appear to be identical; any differences are relatively small. Figure 23 on Page B-63 shows the same chart, but replaces Alternative 2 results with Alternative 3. Visual inspection of Figure 23 *also* suggests the two solutions are identical, any changes are negligibly small; however, a cross comparison of Figure 10 and 23 which purportedly represent the same NAA show pumping patterns that differ (see for examples WYs 1926, 1933, and 1934-1935). Either the NAA is different or the plots are ineffective in properly conveying the results.

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