

Appendix A
Comments Received on the Draft
Supplemental EIS/EIR

Commentor/Agency Table

Commentor	Agency
Letters	
Jim Brobeck	Butte Environmental Council
Carol Perkins	Butte-Sutter Basin Area Groundwater Users
Dante John Nomellini, Jr.	Central Delta Water Agency
Greg Gartrell	Contra Costa Water District
Sonja A. Anderson	Department of Energy Western Area Power Administration
Katherine S. Poole and Barry Nelson	Natural Resources Defense Council
Valerie C. Kincaid	San Luis & Delta-Mendota Water Authority and Westlands Water District
Paul Olmstead	SMUD
Linda Fiack	State of California – The Resources Agency – Delta Protection Commission
Christopher Huitt	State of California – The Resources Agency – Department of Water Resources
Nova Blazej	U.S. Environmental Protection Agency
Linda Cole	Valley Water Protection Association
Public Hearings – Sacramento	
Paul Olmstead	SMUD
Public Hearings – Los Banos	
None	



Butte
Environmental
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Activities and Events

Environmental Education
Recycling Referrals
Environmental Advocacy
Endangered Species Faire
Bidwell Park Cleanups
Chico Area Creek Cleanups
Wetlands Preservation

Board of Directors

Lynn Barris
Nora Burnham
Armeda Ferrini
Jim Gregg
Chuck Lundgren
Heather Schlaff

Executive Director

Barbara Vlamis

Staff

Maggi Barry
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December 10, 2007

Ms. Sammie Cervantes
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Re: *Supplemental Environmental Impact Statement/Environmental Impact Report to the Final Environmental Impact Statement/ Environmental Impact Report (Draft Supplemental EIS/EIR) of the Environmental Water Account*

Dear Ms. Cervantes,

Thank you for the opportunity to comment on the *Supplemental Environmental Impact Statement/Environmental Impact Report to the Final Environmental Impact Statement/ Environmental Impact Report (Draft Supplemental EIS/EIR) of the Environmental Water Account*. While BEC appreciates the efforts of state and federal agencies to balance the public trust needs of wildlife with the economic desires of water contractors, the EWA has thus far failed to meet the needs of either resulting in a necessary legal action to halt the escalating exportation of water from the Delta.

Reclamation and DWR are responsible for acquiring water assets from willing sellers and storing, conveying, and delivering the assets to the CVP and SWP at appropriate times and locations. Unfortunately the meaning of "willing seller" is difficult to define without stepping on the toes of legitimate interest groups. Sacramento Valley contractors who may be willing to fallow land or substitute groundwater in lieu of surface water deliveries fail to recognize the economic and environmental impacts that are likely to occur to third parties with no interest in the slowing of the agricultural economy or dewatering of the Sacramento Valley watershed.

BEC will address the environmental hazards associated with integrating our groundwater into the state water supply through the EWA accounting method. This Draft Supplement analyzes three alternatives, including two action alternatives that involve the acquisition of EWA assets via stored groundwater and groundwater substitution.

The asset acquisition measures available to the EWA agencies include:

- Groundwater Substitution – Purchasing 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.
- Stored Groundwater Purchase – Purchasing groundwater assets that were previously stored by the selling agency with the intent to sell a portion of those assets at a later date. This option differs from groundwater substitution in that groundwater substitution transfers would not come from water that had been previously stored.

Groundwater Substitution (Upstream from the Delta) would result in a massive increase in the exploitation (purveyors prefer the term "exercise") of aquifer contents that will

lead to increased impacts to the environment associated with dropping groundwater levels. Under the Flexible Purchase Alternative the EWA proposes to purchase up to 340 TAF in dry years, and approximately 50-60 TAF in wet years; groundwater substitution would most likely be exercised in dry years but not in wet years due to pump capacity. While this strategy may temporarily alleviate flow volume problems in the Delta it would obviously exacerbate problems in the Sacramento Valley that occur during dry years. Low precipitation requires groundwater dependent farmers to increase groundwater pumping and inspires homeowners to increase landscape irrigation. Even without these extra demands on the aquifer, recharge is decreased in proportion to the depth of the drought. During the spring of 2007 Butte County identified numerous wells located on the eastern, up-gradient portion of the aquifer system that reached alert stages associated with low water levels as defined by Basin Management Objectives. [http://buttecounty.net/waterandresource/BMO/Summary%20of%20Spring%2007%20GW%20levels%20\(2\).pdf](http://buttecounty.net/waterandresource/BMO/Summary%20of%20Spring%2007%20GW%20levels%20(2).pdf)

These spring measurements were entirely due to poor precipitation patterns rather than extra irrigation demands. Dropping groundwater levels have numerous economic and environmental impacts including increased pumping costs, decreased water quality, decreased streamflow and decreased soil moisture availability for native trees. Plans to ramp up exploitation of our groundwater during dry years exacerbate drought related problems. The Fixed Purchase Alternative also threatens to tap our groundwater for the benefit of water purveyors who would like to participate in the emerging water market. While this alternative limits the take to 35 TAF Upstream from the Delta it would still have inevitable impacts to the environment. While the plan explains that the water extractions “probably would not be exercised in most years because 35 TAF can be obtained from stored water sources” it leaves open the obvious expectation that the groundwater would be tapped if stored surface water runs short during successive years of dry weather. Will you disclose analysis of impacts to Sacramento Valley aquifers that may result from using the aquifer system as a source of water as described in the Flexible Purchase Alternative and the Fixed Purchase Alternative? These potential impacts must be addressed in the final EIR/EIS.

The EWA Project Agencies could obtain water by purchasing groundwater assets that were previously stored by the selling agency with the intent to sell a portion of those assets at a later date. This option differs from groundwater substitution in that groundwater substitution transfers would not come from water that had been previously stored. Groundwater Purchase (Upstream from the Delta) under the Flexible Purchase Alternative purchases of up to 10 TAF in dry and wet years while the Fixed Purchase Alternative is limited to 10 TAF Upstream from the Delta. This strategy fits well with water purveyors’ desire to create artificial recharge facilities as mentioned in the NCWA designed SVIRWMP. The legal ramifications of creating replenishment districts that own the contents of an aquifer system through groundwater banking are a disaster for existing groundwater dependent users who may lose their right to the resource. But willing buyers such as the EWA agencies inspire Sacramento Valley irrigation districts to move ahead with this asset acquisition scheme under the guise of environmental benefits. Furthermore, artificial recharge often requires the conversion of useful habitat into settling basins. Will you disclose potential impacts to overlying landowners and the environment that will occur if the Sacramento Valley aquifer system is converted into a groundwater bank by replenishment districts? The legal and environmental impacts associated with artificially recharged groundwater to supply the EWA must be addressed in the final EIR/EIS.

The Table ES-3 Summary Comparison of Effects of the EWA Action Alternatives claims that the Flexible Purchase Alternative and the Fixed Purchase Alternative which both contain a strategy of integrating Sacramento Valley groundwater into the EWA will have beneficial effects on Fall-Run Chinook, Late Fall-Run Chinook, Winter-Run Chinook, Spring-Run Chinook, and Steelhead. These anadromous animals have a complex life history that is inadequately described in Table 2-1. Anadromous Fish Life History Stages and Locations which utterly fails to discuss rearing stage.

Dr. Paul Maslin et al discuss this critical life stage in their paper “Intermittent Streams as Rearing Habitat for

Sacramento River Chinook Salmon” BEC assumes that Dr. Maslin’s findings are pertinent to all the above mentioned species of anadromous fish. “Nonnatal rearing of juvenile chinook salmon (*Oncorhynchus tshawytscha*) was documented in several intermittent tributaries to the Sacramento River. Condition factors and length measurements of juvenile chinook captured in the intermittent tributaries were compared with those captured in the Sacramento River. The data suggests that juvenile chinook rearing in the tributaries grew faster and were heavier for their length than those rearing in the main-stem. Faster growing fish smolt earlier, and may enter the delta earlier in the year, before low water and pumping degrade rearing habitat. Optimal rearing conditions in the tributaries exist from approximately December through March. By April, conditions may be less favorable as temperatures rise to intolerable levels, and piscivorous fishes enter tributaries to spawn. Juvenile chinook entering the tributaries early in the year, such as winter and spring run, probably derive the most benefit from tributary rearing. Fall run, and especially the late-fall run, may be exposed to warmer than optimal temperatures, predation, and stranding. Documentation of nonnatal rearing is important for management of declining Sacramento River salmon populations. Actions may be necessary to protect intermittent stream habitat, and ensure adequate flows and habitat conditions for rearing.

“The Sacramento River produces four distinct races of chinook salmon (*Oncorhynchus tshawytscha*) : fall, late fall, winter, and spring. All races have declined substantially. The winter run was listed as “endangered” by the State of California in 1989 and by the National Marine Fisheries Service in 1994. The spring run, once the most abundant chinook in the Central Valley (Reynolds et al. 1990), persists at dangerously low numbers in a few tributaries and is the object of a current petition for inclusion on the endangered list. In an effort to reverse the decline of chinook salmon stocks, natural resource managers have focused on the maintenance and restoration of habitat in the Sacramento River and its larger tributaries (Upper Sacramento River Fisheries and Riparian Habitat Advisory Council, 1989). Small, intermittent tributaries have generally been overlooked by fishery resource managers. While few of these tributaries serve as spawning habitat for chinook salmon, our research suggests they provide important rearing habitat , particularly for the imperiled winter and spring runs.

“Rearing of juvenile chinook in nonnatal tributaries has been reported in other river systems. Murray and Rosenau (1989) suggest that the dispersal and migratory patterns of young chinook salmon increase the use of available rearing areas, and that movements of young salmonids from spawning areas to rearing areas consist of complex local migrations (upstream, downstream, or both), that are genetically and environmentally controlled. Scrivener et al. (1994), concluded that seasonally high sediment levels and cold temperatures in the Fraser River may induce juvenile chinook to move into small, nonnatal tributaries to feed and clear their gills of sediment. Researchers from California State University, Chico, have consistently captured wild and hatchery origin chinook salmon juveniles in small, intermittent tributaries of the Sacramento River where there are no records of spawning adults. Juvenile chinook may migrate into the tributaries to exploit food resources (Williams, 1987); and to escape unfavorable environmental conditions which occur periodically in the main-stem, such as high turbidity and cold temperatures (Upper Sacramento River Fisheries and Riparian Habitat Advisory Council, 1989).” <http://www.csuchico.edu/~pmaslin/rsrch/Salmon/Abstrt.html>

The dewatering of streams in the Sacramento Valley has been documented by families with a long history in the region. The family of Bob Hennigan, a farmer in the Chico/Durham area, has lived in Butte County for over 100 years. Personal communication indicates that several of the currently intermittent streams (Mud Creek, Rock Creek and Little Chico Creek) flowed perennially prior to the expansion of the Chico Urban Area and the associated increase in groundwater pumping. A significant increase in pumping of the down-gradient portion of the area groundwater complex is likely to lead to an earlier (and more persistent) dewatering of these critical rearing streams and may even result in the dewatering of larger streams that currently flow year-round and provide anadromous fish with natural spawning opportunities.

Will you disclose potential impacts to anadromous rearing, spawning and migration habitat associated with the increase in groundwater extractions expected under the action alternatives presented in the final EIR/EIS?

Impacts to streamflow dependent anadromous fish in Butte and Tehema counties must be addressed in the final EWA Supplemental EIR/EIS.

Valley oaks tolerate cool wet winters and hot dry summers, but requires abundant water for its thirsty root system. A young (10-40 years old) valley oak's tap root can reach 60 feet deep, to search for groundwater. But as the tree matures, the tap root sloughs off and the tree develops a tiered root system with feeder and sinker roots that permeate different layers in the soil profile, generally from two to four feet below the soil surface. Some of these roots extend out more than twice the drip line. This allows the tree to avoid, rather than endure drought. Valley oaks and other native trees such as cottonwood and sycamore provide humans with irreplaceable esthetic values and are critical ecosystem components that require careful management, preservation and restoration. The lack of valley oak regeneration throughout much of its historical range appears to be related to soil moisture availability. The demise of great numbers of valley oaks in the Cosumnes River watershed are due, in part, to the pumping of ground water (Griggs 1990).

Will you disclose impacts to valley oaks and other riparian hardwoods associated with the increase in groundwater extractions expected under the action alternatives presented in the final EIR/EIS? These impacts must be examined and disclosed.

Thank you for the opportunity to comment.

A handwritten signature in black ink, appearing to read "B. Vlamis". The signature is fluid and cursive, with a prominent initial "B" and a long, sweeping underline.

for Jim Brobeck, Water Policy Analyst
Butte Environmental Council

12/10/2007

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Dear Ms, Cervantes;

Thank you for soliciting comments regarding the Supplemental EIS/EIR for the Environmental Water Account (EWA). As stakeholders in the Sacramento River Hydrologic region "Upstream from the Delta," Butte-Sutter Basin Area Groundwater Users (Butte-Sutter) are concerned about the processes involved in increasing water supply reliability for State Water Project (SWP) and Central Valley Project (CVP) contractors: specifically groundwater substitution.

Butte-Sutter's purpose is to provide a representative voice for all groundwater-dependent citizens in the Sacramento River Hydrologic region. When Butte-Sutter was formed in 1992, the most productive aquifers of the Tuscan Formation were believed to end at the Sacramento River in the west and near the Sutter Buttes in the south; thus our name. For Butte County, we represent 90% of its citizens who are groundwater dependent; meaning that 195,800 people have no other source of water than what is accessible through groundwater pumping. In addition, almonds, the largest economic commodity for the entire Northern Sacramento Valley requires the quality of water only found in aquifers.

Butte-Sutter refutes the fact that changes to environmental or regulatory settings regarding water and groundwater resources are insignificant enough to warrant further analysis. We believe the Lawrence Livermore National Laboratory report released in January 2005, "Groundwater Ambient Monitoring and Assessment (GAMA) Results for the Sacramento Valley and Volcanic Provinces of Northern California" does highlight information of substantial importance. The GAMA program involved sampling 121 public supply wells and 39 monitoring wells widely spaced across the Sacramento Valley. The following key points from the report beg for further scientific investigations prior to the state's implementation of EWA actions that involve groundwater substitutions in the "Upstream from the Delta" region:

- a. The presence of paleowater especially west of the Sacramento River and a majority of the water to the east of the river indicates a recharge period prior to 1955.
- b. Big Chico Creek has a significant influence on the water recharged to local wells, indicating a significant interaction between streams of the area and our groundwater supplies
- c. Very little interaction is occurring between the waters of the unsaturated zone and the deeper waters found at groundwater depths. This means that most recharge occurs naturally through stream and water table interactions, and most recharge occurs from mechanisms other than

deep percolation of applied water.

Why have the results of this report gone unaccounted for in this document? How can you ignore the environmental implications involved knowing that streams and groundwater are so intricately connected? With little recharge happening in the valley, what will the impacts be on groundwater quantity and quality in light of the changes in climate and loss of snow pack?

Under the Natural Community Conservation Program (NCCP) the Department of Fish and Game requires the appropriate documentation before any activity substantially modifies a river, stream, or lake. A 1995 Northern District DWR report, released through the SWP Planning Branch, states that nearly 60% of the water derived in a near-stream production well came from the Sacramento River. Upon comparing the specific capacity of numerous wells of similar construction in the study, it is reported that "approximately 2,000 gpm of the 3,500 gpm discharge from 11K01 (the production well) can be attributed to the subsurface withdrawal of Sacramento River water, with the remaining 1,500 gpm being attributed to withdrawal from aquifer storage." In our estimation, both the GAMA and DWR reports demand further analysis of aquifer/stream interactions before groundwater substitutions can be safely folded into water export portfolios.

Several hydrologic studies indicate the 'experts' still don't have enough science to justify further exploitation of the aquifer systems here in the Sacramento River Valley. For example, the following statements come from Tehama County's 2003:

- In 2003, Tehama County (AB3030 Annual Report) indicated that groundwater declines were occurring (a 5-year trend resulting in 95 TAF of storage lost) with no appreciable cause - during wet years with no changes in agricultural demands
- There is a growing depression in groundwater levels under the city of Chico and the farming community of Durham. Toccoy Dudley reported that this decline was occurring at a rate of 0.3' per year: again with no appreciable cause.

The groundwater substitutions in 1994 (approximately 114 TAF) created significant financial losses for many land owners and farmers in the area; how will the potential withdrawal of 2 to 3 times this volume affect the citizens and environment of the Sacramento River Valley?

Productivity of the Tuscan Aquifer system is still under question, the state continues to push for projects that would exercise the aquifer, yet the citizens of this area have no guarantees that this process will not carry adverse affects. In addition, the state has no way of currently defining the sustainability of increased extractions for replacement water supplies to SWP contractors' impacted by EWA project actions.

This Supplement does not address mitigation measures or alternatives available to the citizens of this area due to increased exploitation. Our way of life, the unique ecosystems of this region, the very fish and wildlife habitats that the EWA program hopes to protect, are constantly under attack by multiple projects depending on the same water: Conjunctive Use; Drought Water Bank; Drought Planning; EWA; proposed open market sales - out of our basin - to address the 25 yr. requirement for proof of firm water supply for housing projects over 500; and water plans

throughout the state (and the west) that are predicated on buying more water from northern California.

Not enough is done in an effort to understand the aquifer systems of this valley before they become the "new, unequivocal source" to support the water supply reliability element of the EWA. Comparisons must continue between the San Joaquin Valley and the Northern Sacramento Valley and lessons must be learned by the mistakes already endured throughout the Great Central Valley. Davis has begun efforts to acquire Sacramento River water to replace its decimated/depleted high quality groundwater supplies. This Valley is known for its Cretaceous saline waters that underlie all of its potable groundwater supplies. The Sacramento River is quickly becoming a losing stream to the lowered groundwater tables that line the Sacramento River from Princeton to Red Bluff. The Supplement must disclose how long before we destroy the quality and quantity of the last "new" source of water this state has. How will the loss of the water quality in this supply affect the entire state over time?

If the state and Bureau of Reclamation continue their efforts without addressing these questions they will jeopardize the only source of water for the mass majority of citizens in this region as well as destroying the economic foundation of the Northern Sacramento River Valley in an effort to "understand" the groundwater aquifers. Can the state risk damaging the mechanism that produces this supply?

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Robert Hennigan, Director - V.P., Butte-Sutter Basin Area Groundwater Users
Greg Sohnrey, Director, Butte-Sutter Basin Area Groundwater Users
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December 10, 2007

Via E-mail: scervantes@mp.usbr.gov
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Re: Central Delta Water Agency's Comments on the "Draft Supplemental Environmental Impact Statement/Environmental Impact Report – to the EWA Final EIS/EIR."

Since the above-referenced Supplemental EIS/EIR (hereinafter "Supplement") relies on and incorporates the prior 2004 EWA Final EIS/EIR (and 2003 EWA Draft EIS/EIR), the Central Delta Water Agency ("CDWA") hereby incorporates, and attaches hereto, its prior comments on the 2003 EWA Draft EIS/EIR dated September 15, 2003 as well as the comments on said Draft EIS/EIR submitted by the South Delta Water Agency. The CDWA continues to believe that the instant Supplement, which relies on and incorporates said EIS/EIRs, continues to suffer from each of the inadequacies set forth in those comments.

The CDWA hereby supplements those comments with the following additional comments.

1. **The Supplements' Mandatory Range of Reasonable Alternatives is Legally Inadequate; A Reduced Export Alternative, in Addition to Other Potentially Feasible Alternatives, Should be Added to that Range.**

CEQA Guidelines section 15126.6, subdivision (a), provides:

"An EIR shall describe a range of reasonable alternatives to the project, or to the location of the project, which would feasibly attain most of the basic objectives of the project but would avoid or substantially lessen any of the significant effects of the project, and evaluate the comparative merits of the alternatives."

While “there is no ironclad rule governing the nature or scope of the alternatives to be discussed in an EIR, other than the rule of reason” (Citizens of Goleta Valley v. Board of Supervisors (1990) 52 Cal.3d 553, 576), the mandatory “range” is not just any range, it must be an objectively “reasonable” range. (Id., p. 566.)

The instant “range” of alternatives in the Supplement is not objectively reasonable. The instant range consists of a single alternative that meets the requirements of Guidelines section 15126.6, subdivision (a). (The mandatory “no-project” alternative cannot be included in the range since it does not meet said requirements.)

No reason has been articulated why additional alternatives could not have been developed and added to the Supplement’s range of alternatives. CEQA imposes the burden to develop a reasonable range of alternatives on the lead agencies. Given the numerous articulated project objectives and numerous identified significant effects of the project, there should be no difficulty in generating additional “potentially feasible” alternatives that could “feasibly attain most [and not necessarily all] of the basic objectives of the project” and, at the same time, “avoid or substantially lessen any of the significant effects of the project . . .” (Guidelines, § 15126.6, subd. (a).)

As the Supplement explains at pages 1-4 and 1-5:

“The purpose and need/project objectives for the proposed action remain unchanged from the 2004 EIS/EIR and are to: 1) provide a highly flexible, immediately implementable, water management strategy that protects the at-risk native Delta-dependent fish species affected by SWP/CVP operations and facilities, 2) contribute to the recovery of these fish species, 3) allow timely water management responses to changing environmental conditions and changing fish protection needs, 4) improve water supply reliability for water users downstream from the Delta, and 5) does not result in uncompensated water cost to the Projects’ water users. This water management strategy must also be consistent with the preferred program alternative selected by the CALFED agencies in the CALFED ROD.”

An example of an alternative which should be added to the Supplements’ existing “range,” is an alternative that does not attempt to make up for a reduction in exports at certain times of the year to protect fish by increasing exports at other times of the year. Accordingly, such a “reduced export alternative” would be designed to result in an overall reduction in total annual exports from the Delta.

The Supplement acknowledges at length that exports cause harm to numerous at-risk Delta-dependent fish species. In fact, reducing exports at various times of the year to protect such species from further harm is one of the major components of the project (i.e., the “Flexible Purchase Alternative”). Moreover, exports, i.e., “water project operations,” are one of the three

primary areas targeted by the POD work team as actions that “may be acting individually or collectively to lower pelagic productivity” (Supplement, p. 1-5.)

The Supplement further acknowledges that attempting to offset such reductions by increasing exports at other times of the year, as both the “Flexible Purchase Alternative” and “Fixed Purchase Alternative” seek to do, will adversely impact the threadfin and American shad. (See e.g., Supplement, pp. 4-43 thru 4-46.) For the proposed project, i.e., the “Flexible Purchase Alternative,” the Supplement concludes that such impacts will be “[s]ignificant and unavoidable” (See e.g., Supplement, pp. 4-44 & 4-45.)

The so-called “unavoidable” impacts are due to “increased entrainment . . . created by increased Delta export pumping during drier years in July and August to make up water that was not exported earlier in the year as a result of EWA fish actions.” (Supplement, p. 4-46.) Such impacts can obviously be avoided by not increasing such export pumping.

The Supplement also acknowledges that increasing exports at certain times of the year to offset reductions in exports at other times of the year will also result in potentially significant impacts on outflow and the location of X2 (which result in adverse impacts to fish). (See e.g., Supplement, pp. 4-34 thru 4-36, and 4-25 thru 4-29.) The Supplement suggests that such impacts can be reduced to a less than significant level by adopting the mitigation measure set forth in section 4.2.4 of the Supplement. (See *ibid*; Supplement, p. 4-33.) Once again, such impacts can also be lessened, in this case entirely avoided, by an alternative that does not attempt to make up for a reduction in exports at certain times of the year by increasing exports at other times of the year.

The 2003 EWA Draft EIS/EIR (upon which the Supplement relies) also identified numerous potentially significant impacts which the suggested reduced export alternative could “avoid or substantially lessen . . .” (Guidelines, § 15126.6, subd. (a)), since such impacts result from actions to offset any reductions in exports at various times of the year to protect fish. These include the following:

- Change in the rate and timing of Delta inflows and the amount and timing of diversions at the SWP and CVP pumps lowering South Delta water levels;
- Reduction in return flows from fields to agricultural and other water users not participating in EWA;
- Reductions in groundwater levels in excess of seasonal variations;
- Reductions of flows neighboring surface water channels;
- Increase of emissions from use of groundwater pumps;

- Temporary decrease in the amount of land categorized as prime, statewide importance or unique farmland; and
- Shift in export pumping times to periods of higher electricity costs;

(See e.g., 2003 EWA Draft EIS/EIR, pp. ES-19 thru ES-23.)

For the foregoing reasons, the above-described reduced export alternative would have the clear potential to meet the criteria in Guidelines section 15126.6, subdivision (a), for inclusion in the Supplement's range of reasonable alternatives. While alternatives in that range need only meet "most of" the project's basic objectives, it would appear that such a reduced export alternative could be easily designed to meet all of such objectives. Such a reduced export alternative need only be "potentially feasible," and, thus far, there has been no demonstration why such an alternative does not have the potential to feasible meet all of such objectives, must less most of them.

To the extent the "no uncompensated water cost to the Project's water users" objective is legal (see discussion below), then a reduced export alternative can meet this objective by offsetting any reduction in exports by the development of additional water supplies for the Project's water users from areas that do not require increased exports from the Delta to deliver such water to such users. None of the project objectives specify how much reduction in exports to benefit fish must be provided and, thus, if the lead agencies determine that only "X" amount of water can be provided to the Project's water users from sources that do not require increased exports from the Delta to deliver such water to such users, then the amount of reduced exports to benefit fish under the reduced export alternative can simply be set to correspond to that "X" amount of water.

While it may be the lead agencies, and ultimately the decision maker's, preference to offset reductions in exports by increasing exports at other times of the year, what is at issue is whether there is a legally adequate "reasonable range" of alternatives to that preferred course of action which will "foster informed decision making and public participation." (Guidelines, § 15126.6, subd. (a).) Thus far, the Supplement lacks such a range of alternatives and the above-described reduced export alternative in addition to others should be added to the Supplement and presented as potentially feasible choices which the decision makers can ultimately choose after giving due consideration to the comparative merits of all of the alternatives.

Finally, such a reduced export alternative is also particularly appropriate in light of the EWA agencies' failure to renew the prior regulatory commitment that will expire in 2007 that "there would be no additional CVP or SWP export reductions from actions conducted to protect fish under the Federal ESA, California ESA, or NCCPA beyond the regulatory baseline of fishery protection." (Supplement, p. 2-4.) Thus, while the existence of such a commitment may have directed the lead agencies in the 2004 EWA EIS/EIR to lean towards alternatives that did not result in any overall reduction in exports, in light of the non-renewal of that commitment, it

appears more appropriate than ever that the instant renewal of the EWA consider an alternative that does seek to reduce overall Project exports.

2. **As Currently Designed, The Proposed Project and Its Alternative are Contrary to Law and, Hence, Cannot Be Feasibly Implemented.**

At page ES-10, the Supplement states:

“The Proposed Action/Proposed Project, as defined herein, would comply with all Federal, State, and local laws and permitting requirements.”

a. **The Proposed Project and Alternative are Contrary to Goodman v. County of Riverside and Water Code section 11900 et seq. (The Davis-Dolwig Act).**

In CDWA’s comments on the 2003 EWA Draft EIS/EIR (attached hereto), CDWA explained how the proposed EWA actions are contrary to law to the extent they involve the use of public taxpayer dollars to mitigate the Projects’ adverse impacts on fish. Pursuant to Goodman v. County of Riverside (1993) 140 Cal.App. 3d 900 and Water Code section 11900 et seq., public taxpayer dollars should not be used to pay for the costs to mitigate such impacts.

In one of its responses to such comments, the 2004 EWA Final EIS/EIR states at page 4-43:

“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.”

Thus far, the lead agencies have not provided substantial evidence to support the conclusion that some (or all) of the EWA actions are not in fact mitigation measures for the Projects.

In the SWRCB’s 1978 Water Right Decision 1485, at page 13, the SWRCB recognized and held the following:

“To provide full mitigation of project impacts on all fishery species now would require the virtual shutting down of the project export pumps.”

If the lead agencies continue to contend in this Supplement that one or more of the various EWA actions sought pursuant to the proposed project or its alternative are not mitigation measures which offset the Project’s impacts on fishery species, then the lead agencies must

provide sufficient facts and analysis to support such a contention. In particular the lead agencies should demonstrate what has changed since the SWRCB's 1978 Decision 1485 which would lead them to fairly conclude that the Projects have already fully mitigated their impacts on fisheries and that the various EWA actions are merely actions which improve or enhance the fisheries beyond such mitigation.

For any EWA actions that do in fact constitute mitigation for the Project's impacts on fisheries, the proposed project, together with all of the alternatives thereto, must be redesigned to ensure that they are in fact potentially feasible, i.e., legally implementable, in light of Goodman v. County of Riverside and Water Code section 11900 et seq.¹

b. The Proposed Project and Alternative are Contrary to the Delta Protection Act.

Section 12200 of the Delta Protection Act of 1959 provides:

"The Legislature hereby finds that . . . the State Water Resources Development System has as one of its objectives the transfer of waters from water-surplus areas in the Sacramento Valley and the north coastal area to water-deficient areas to the south and west of the Sacramento-San Joaquin Delta via the Delta; water surplus to the needs of the areas in which it originates is gathered in the Delta and thereby provides a common source of fresh water supply for water-deficient areas."

From review of the Supplement (as well as the 2004 EWA EIS/EIR) it is clear that the lead agencies believe that the Projects are oftentimes exporting water that is not truly "surplus" to the needs of the areas of origin. Instead, the entire EWA program is in large part designed to cut back exports and keep that exported water within the areas of origin for the benefit of fish in the form of increased outflow, or otherwise.

This again raises the question of why are the Projects being compensated by public taxpayer dollars to offset reductions in exports when such exports are not surplus to the areas of origin, and, hence, such exports are contrary to one of the major objectives of the State Water Resources Development System? (Wat. Code, § 12200.) If the lead agencies believe the proposed reductions in exports involve a reduction in the exportation of surplus water, then the lead agencies should demonstrate, with sufficient facts and analysis, their basis for such a conclusion. It would be appear to be highly inconsistent to contend, as the Supplement does, that

¹ "An EIR shall describe a range of reasonable alternatives to the project . . . which would feasibly attain most of the basic objectives of the project . . ." (Guidelines, § 15126.6, subd. (a), emphasis added.) "Feasible" is defined as "capable of being accomplished in a successful manner within a reasonable period of time, taking into account economic, environmental, legal, social and technological factors." (Guidelines, § 15364, emphasis added.)

such reductions provide substantial benefits to numerous threatened and endangered fish, yet also contend that such reductions are reductions of water that is surplus to the needs of those fish.

c. The Proposed Project and Alternative are Contrary to the Watershed Protection Statutes.

Section 11460 of the Watershed Protection Statutes provides:

“In the construction and operation by the department of any project under the provisions of this part a watershed or area wherein water originates, or an area immediately adjacent thereto which can conveniently be supplied with water therefrom, shall not be deprived by the department directly or indirectly of the prior right to all of the water reasonably required to adequately supply the beneficial needs of the watershed, area, or any of the inhabitants or property owners therein.”

Section 11460 applies to the “construction and operation” of both the SWP and CVP. (See United States v. State Water Resources Control Bd. (1986) 182 Cal.App.3d 82, 138-139.)

Once again, the lead agencies must adequately explain why the proposed reductions in exports pursuant to the project for the benefit of the deteriorating fisheries within the areas of origin involve the reduction in exports of water that is not “reasonably required to adequately supply the beneficial needs of the [areas of origin].” It would once again appear to be highly inconsistent to contend, as the Supplement does, that such reductions provide substantial benefits to numerous threatened and endangered fish, yet also contend that such reductions are reductions of water that is not “reasonably required to adequately supply the beneficial needs of the [fish within the areas of origin].”

If the Projects are prohibited from exporting such non-surplus water from the areas of origin pursuant to Water Code section 11460, then how can a program be developed and ultimately implemented in a manner that uses public taxpayer dollars to compensate the Projects for reductions in the export of water that the Projects are not legally entitled to export?

3. The Analysis in the Supplement and 2004 EIR/EIS are Too Broad and General to Constitute “Site-Specific” Analysis of an Specific Water Acquisition.

At page 1-8, the Supplement states:

“When approving a specific water acquisition, the permitting agency will consider whether it was analyzed on a site-specific basis in the Supplement and 2004 EIS/EIR. If so, the agency may make a finding to that effect and rely on these two documents, unless there have been other significant changes that would

trigger the need for yet more supplemental analysis and documentation.”

The analysis in both this Supplement and the 2004 EIS/EIR with regard to water acquisitions is very broad and general. There does not appear to have been any attempt to analyze any specific water acquisition at a “site-specific” level of analysis. If the lead agencies believe any specific water acquisitions have been analyzed in the Supplement and/or 2004 EIS/EIR, then the lead agencies should clearly disclose that belief and identify those specific water acquisitions. To the extent such acquisitions are subsequently identified, the CDWA hereby objects that such acquisitions have been properly subjected to the requisite site-specific analysis required by CEQA. As noted, CDWA contends the existing analysis is far too broad and general to fulfill CEQA’s requirements for site-specific environmental review.

4. The Supplement’s New Proposed Mitigation Measure is Inadequate.

The Supplement sets forth the following new mitigation measure at page 4-33:

“The EWA agencies will avoid acquisition and transfer of water that would reduce flows essential to maintaining populations of native aquatic species in the source river.”

Apparently, this mitigation measure will ensure Delta Outflow is not substantially reduced under the Flexible Purchase Alternative, e.g., in December (see Supplement, at p. 4-34), and X2 is not substantially moved eastward in November and December (see Supplement, at p. 4-35).

CEQA requires that mitigation measures “must be fully enforceable through permit conditions, agreements, or other legally-binding instruments.” (CEQA Guidelines, § 15126.4(a)(2).) To be “fully enforceable,” such measures must provide something that can be meaningfully enforced.

With the instant mitigation measure it is not clear what constitutes “flows essential to maintaining populations of native aquatic species in the source river.” Nor is it clear what is meant by the “source river.”

Sufficient outflow, for example, is recognized to be important to many native aquatic species. Accordingly, will EWA agencies allow acquisitions and transfers of water that reduce outflow so long as that reduced outflow does not impair the native aquatic species in the river where the acquisition and transfer is taking place, despite the fact that such acquisitions and transfers impair the native aquatic species in other rivers that are dependant on sufficient outflow?

Moreover, the Supplement should clarify what “flows essential to maintaining populations of native aquatic species” means. Since the Supplement has articulated “significance thresholds” for both outflow and X2 (see pages 4-31 & 4-32), and since the Supplement has identified significant impacts from the Flexible Purchase Alternative on both outflow and X2 (see pp. 4-34 thru 4-36), presumably this mitigation measure will ensure, at a minimum, that outflow and X2 will not exceed those significance thresholds?

Clarification of precisely what this mitigation measure is intended to ensure is not only essential to its meaningful enforcement, but also to support the decision makers’ ultimate finding that the significant impacts from the Flexible Purchase Alternative have indeed been “mitigate[d] or avoid[ed] . . . whenever it is feasible to do so.” (Pub. Resources Code, § 21002.1(b).) As it stands, reliance on this mitigation measure for such a finding is misplaced since it is far too vague and lacks any concrete performance standards to provide any meaningful assurance that such significant impacts will in fact be adequately mitigated or avoided.

5. Additional Comments.

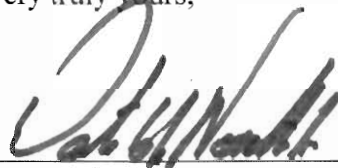
Finally, the current operations under the EWA have coincided with record exports and an increase in fall salinity (per CCWD information submitted in the POD process). During this time, smelt and other species have declined to the point where they may be nearing extinction. It would appear that increased outflow at certain times of the year (from approximately 1-2 million acre feet per year, per The Bay Institute) is needed to recover the estuary and protect these species. It does not appear that the “science” supports the EWA efforts at protection and recovery. Moving forward on the proposed program/project to protect certain levels of exports would appear to threaten these species, not protect them. Until DWR applies for and receives a take permit under CESA, and until the CVP receives the necessary “updated” BO’s it is premature to make any biological or environmental conclusions about how the EWA may or may not affect these species.

6. Conclusion.

Please note that the South Delta Water Agency joins in these comments and these comments are hereby also submitted on its behalf.

Thank you for your consideration of these comments.

Very truly yours,



Dante John Nomellini, Jr.
Attorney for the Central Delta Water Agency



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Re: Central Delta Water Agency's Comments on the Draft Environmental Impact Statement (EIS)/Environmental Impact Report (EIR) - Environmental Water Account; State Clearinghouse #1996032083

Dear Ladies and Gentlemen:

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.

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.

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.

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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.

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

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

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.

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.

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.

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.

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.

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.”

The code governing the Central Valley Project includes Water Code sections 11900 et seq. and, thus, the project to be entirely paid by the contractors includes preservation of fish and wildlife. (See also Goodman v. County of Riverside, *supra*, 140 Cal.App. 3d 900, 909-910.)

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.

(Please also see “Supplemental Comments on the DEIS/EIR for the EWA” attached hereto and incorporated herewith.)

Yours very truly,



DANTE JOHN NOMEILLINI
Manager and Co-Counsel of the
Central Delta Water Agency

DJN:ju

“Supplemental Comments on the DEIS/EIR for the EWA”

1. The DEIS/EIR Fails to Adequately Address the EWA Actions’ Impacts on Surface and Subsurface Return Flows to the River Systems.¹

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 is 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.

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¹ 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.

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.

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.

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.

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.

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.

2. Other Concerns Regarding the DEIS/EIR's "Analysis" of the Merced and San Joaquin River Systems:

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 natural mask the "worst case" scenarios).

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.

3. Alternative Analysis.

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.

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.

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.

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 stipulated 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.



**CONTRA COSTA
WATER DISTRICT**

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December 10, 2007

Sent via email and USPS

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Ms. Sam Cervantes
United States Bureau of Reclamation
2800 Cottage Way
Sacramento, CA 95825

RE: Comments on Environmental Water Account Draft Supplemental EIS/EIR

Dear Ms. Cervantes:

Contra Costa Water District (CCWD) appreciates this opportunity to provide public comments to the participating agencies on the draft supplemental Environmental Impact Statement/Environmental Impact Report (EIS/EIR) for the Environmental Water Account (EWA).

CCWD supports the objectives of the EWA program as it seeks to help satisfy the multiple demands for waters of the Sacramento-San Joaquin Delta. An extension of the existing EWA program is appropriate and called for at this time, given the current uncertainty surrounding the future of the Delta's facilities and operations. The flexibility of the EWA will allow the program to continue to benefit Delta fisheries while minimizing impact to water supplies as additional solutions are developed to the Delta's current problems.

The supplemental EIS/EIR document supports and complements the ongoing studies on surface storage, and their application to the EWA. Dedicated surface storage would increase the operational flexibility of the EWA program, allowing it to provide greater benefits to fisheries and resulting in a higher degree of reliability for water supplies. As planning moves forward for both the EWA program and the Los Vaqueros Reservoir Expansion Project, we look forward to continuing to work together to design and implement strategies to meet these diverse needs.

If you have any questions regarding CCWD's comments, please contact me at (925) 688-8100.

Sincerely,

Greg Gartrell
Assistant General Manager

GG/MM



Department of Energy
Western Area Power Administration
Sierra Nevada Customer Service Region
114 Parkshore Drive
Folsom, California 95630-4710

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Ms. Sammie Cervantes
U.S. Bureau of Reclamation
2800 Cottage Way
Sacramento, CA 95258

Sammie
Dear Ms. Cervantes:

Thank you for the opportunity to provide you with our comments on the Bureau of Reclamation's Draft Supplemental Environmental Impact Report/Environmental Impact Statement (EIR/EIS) for the Environmental Water Account (EWA). The Western Area Power Administration (Western) is interested in the outcome of any environmental process which has the potential of affecting the quantity and timing of the net hydropower generation capability of the hydropower generation facilities owned and operated by the Bureau of Reclamation.

Our specific comments on the supplemental document are as follows:

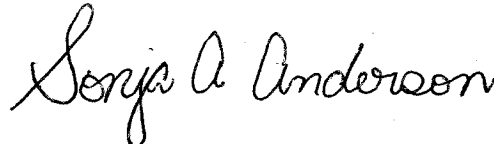
1. The technical appendices qualitatively summarize the projected impacts of the various alternatives for specific evaluation categories. We are, however, unclear and unsure as to the relative magnitude of those projected impacts because numerical ratings and/or equivalents which could provide context and which might compare/contrast the qualitative definitions does not appear to have been defined within the supplemental report. At the margins, we are unclear as to the difference in magnitude between an impact which has been identified as being less than significant as opposed to one that has been identified as being potentially significant.
2. The EWA program (past, present, and future) has and will undoubtedly continue to affect the water and power operations of the Central Valley Project (CVP). We assume that the project still has available flexibility and capability to modify its water and power operations to meet potential new operational demands. To what extent has re-operation of the CVP over time caused a change in the relative proportion of benefits received by each of the authorized project beneficiaries and, as a result, affected their respective financial repayment obligations and liabilities? Although this environmental analysis evaluates the impact of the EWA program, to what extent (in the baseline, as well as in the other alternatives), are other potential operational changes reflected (e.g., re-consultation with the fish and wildlife management agencies for the operating criteria and procedures for the CVP, San Joaquin River Settlement, Federal participation in proposed new CALFED storage projects, and other environmentally sensitive issues affecting CVP water and power operations).

Classification	KES 3/10
Project	214
Contract No.	07/10/946
Task ID	73001
Let's Input & Include	DU 11/29/07

3. Under the EWA program, irrigation entities may have the opportunity to fallow their lands from time to time and receive payments for their water. Given that a number of irrigators in the CVP have requested and received consideration for capital repayment relief under the "irrigators ability to pay" criteria, in the event this class of irrigators sell their water to others as part of the EWA program, does Reclamation plan to monitor and provide sufficient safeguards so that in the event such irrigators in fact do sell their water to the EWA program, that they will not be eligible for "irrigators ability to pay" relief?
4. Western notes that under Table 2 of the draft EWA EIR/EIS technical appendices that the "EWA agencies will be responsible for covering additional power costs" Western would like to confirm that this statement means that in the event EWA water transfers result in lost opportunities for foregone generation, that in past instances, and similar to what transpired on the American River, that the EWA agencies would be financial responsible for ensuring that the power function is made whole for any lost and/or foregone generation as a result of the transfer.

If you have any additional questions or comments, please feel free to contact me at (916) 353-4421.

Sincerely,



Sonja A. Anderson
Power Marketing Manager