



December 10, 2007

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**VIA ELECTRONIC AND U.S. MAIL**

Re: Comments on the Draft Supplemental EIS/EIR for Extending the Environmental Water Account and OCAP Consultations

Dear Ms. Cervantes:

We are writing on behalf of the Natural Resources Defense Council ("NRDC") and its more than 120,000 members in California with regard to the draft supplemental EIS/EIR ("DSEIS/EIR") for the Environmental Water Account ("EWA"). The DSEIS/EIR proposes to extend the existing EWA program, which is currently set to expire at the end of 2007, for another four years, through 2011. The U.S. Bureau of Reclamation and the California Department of Water Resources, the co-lead agencies for the DSEIS/EIR, propose to take this action without providing any analysis of how the EWA has functioned since its inception in 2001 or whether the EWA has succeeded in achieving its stated fish protection purposes. In fact, the EWA has *not* functioned as envisioned and, by placing artificial restraints on the amount of water ostensibly available for fish protection, has contributed to the *decline* of imperiled fish in the Delta, most of which are in worse condition today than they were in 2001. For these reasons, we urge the agencies to discontinue the failed experiment of the EWA, and to devote the taxpayer resources currently dedicated to the EWA to actions that could provide a real benefit to imperiled fish.

In previous biological opinions on the joint operations of the Central Valley Project and State Water Project (i.e., the "Operating Criteria and Plan" or "OCAP"), the agencies have considered the EWA a central feature to mitigate the harmful impacts of the projects on listed fish. The Bureau has reinitiated consultation on those OCAP biological opinions, and those reconsultations are ongoing. Apparently, the agencies have not yet defined the "project" for this reconsultation and it is unclear whether the agencies are contemplating including the EWA in the new project description. Because the EWA has failed to function as a fish protective measure and should not be considered an effective mitigation or conservation tool in the new biological opinions, we seek consideration of these comments in those ongoing consultations as well. Likewise, we request that this information be incorporated, by DWR and DFG, into efforts to comply with the requirements of CESA.

**I. THE EWA HAS NOT FUNCTIONED AS ENVISIONED**

There is no doubt that in past years the water promised for fish protection through both the Environmental Water Account and the CVPIA (b)(2) account has been significantly less than what was promised in the CALFED ROD. *Finding the Water: New Water Supply Opportunities to Revive the San Francisco Bay-Delta*, Environmental Defense, 2005 (appended as Exhibit 1). From 2001-2004, the EWA provided only 29% on average of the expected 195,000 acre-feet of operational assets. *Id.* at 12-13. Collectively, the EWA and b(2) have contributed as much as 500,000 acre-feet *less* water per year towards fish protection and restoration than anticipated in the CALFED ROD. These shortfalls have occurred while exports from the Delta have reached record high levels and the ecosystem has continued spiraling downward. Clearly, the EWA experiment has not performed as planned.

The failure of the EWA to function as envisioned is epitomized in the failure of the agencies to invoke Tier 3 this year – the intended backstop for any shortfall in EWA assets. EWA Tier 3 was supposed to ensure that if EWA was underfunded or failed to perform as anticipated (both of which have happened), sufficient water would be provided to ensure no jeopardy to listed fish. As explained in the Tier 3 Protocol, a copy of which is appended hereto as Exhibit 2:

As part of the MSCS Conservation Agreement and the FWS and NMFS biological opinions, the CALFED agencies have provided a commitment, *subject to specified conditions and legal requirements*, that for the first four years of Stage 1, there will be no reductions, beyond existing regulatory levels, in CVP or SWP Delta exports resulting from measures to protect fish under FESA and CESA. *This commitment is based on the availability of three tiers of assets:*

...

Tier 3 is based upon the commitment and ability of the CALFED Agencies to make additional water available should it be needed.

...

Tier 3 is a fail-safe device, intended to be used only when Tier 1 and Tier 2 are insufficient to avoid jeopardy to the continued existence of an endangered or threatened species.

...

The State and Federal Projects will be responsible for making preparations for the activation of Tier 3.

(Emphasis added). This language makes clear that the assurances provided under CALFED, and the ESA and CESA compliance of the EWA, were dependent upon the existence and availability of these Tier 3 assets.

Unfortunately, when the time came to call upon this Tier 3 “fail-safe”, the agencies failed to trigger it, ensuring that listed species rather than water users would suffer the consequences of the failure of the EWA to live up to its stated purpose. There can be no question that Tier 1 and Tier 2 have been and are insufficient to avoid jeopardy to the threatened delta smelt. A federal court held in May of this year that the “delta smelt is indisputably in jeopardy as to its survival and recovery.” *NRDC v. Kempthorne*, Order on Summary Judgment at 119 (May 25, 2007). This finding echoes the findings of several expert fisheries biologists, including staff of many

state and federal agencies. *See, e.g.*, DSWG Briefing Statement (May 15, 2007) (“the species has become critically imperiled and an emergency response is warranted”) (attached hereto as Exhibit 3); Statement Presented by Ryan Broddrick, Director, CDFG, to House Subcommittee on Water and Power (July 2, 2007) (“it is DFG’s position that actions must be taken to protect as many individual smelt as can be through manipulation of the water projects. Each reproducing organism is important to the survival of the species.”) (appended hereto as Exhibit 4). Despite these findings and the continued take of large numbers of delta smelt at the Project pumps this past summer, *see* delta smelt May, June and July take tables (appended hereto as Exhibit 5), the Project agencies obstinately refused to invoke Tier 3.

Inexplicably, the DSEIS/EIR makes no mention of this breakdown of the EWA’s “fail-safe”, nor does it describe or analyze the historical shortfalls of the EWA or the program’s failure to function as envisioned. These shortcomings are far more relevant to the foreseeable impacts of extending the program than any of the purely hypothetical modeled impacts contained in the DSEIS/EIR. The DSEIS/EIR must be revised to address these issues. Further, these historical realities belie the statement in DSEIS/EIR that “[i]f pumping would be likely to put at risk the continued existence of a species listed as endangered or threatened under the Endangered Species Act (ESA), the Project Agencies would curtail pumping even if purchases already totaled 600,000 acre-feet and all assets were used.” DSEIS/EIR at ES-5. This is precisely the situation that presented itself to the Project Agencies this summer, and the agencies failed to curtail pumping once EWA assets were depleted even though continued pumping threatened the continued existence of the delta smelt.

Moreover, the DSEIS/EIR seeks to utilize the ESA/CESA process for coverage of the EWA initially established in the CALFED ROD, without addressing any of these fundamental failures of the process to operate as envisioned and which were essential to the CALFED analysis. *See generally* DSEIS/EIR Appendix C.<sup>1</sup> For example, Tier 3 no longer exists as a viable “fail-safe device.” Yet, the CALFED assurances were explicitly “based on the availability of three tiers of assets.” Tier 3 Protocol. The DSEIS/EIR makes passing reference to this change, obliquely noting that “[b]ased on current circumstances, these three tiers are no longer an accurate way to describe EWA assets.” DSEIS/EIR at 2-4. But the document fails to acknowledge the implications of omitting this critical “fail-safe device” or to describe the replacement structure of the EWA going forward.

In short, the DSEIS/EIR fails to adequately describe the project to decisionmakers and the public or to disclose the environmental impacts associated with the policy choice of extending the EWA. The document should be revised to correct these shortcomings. We believe that an accurate description and assessment of the EWA will demonstrate that the program should not be extended.

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<sup>1</sup> The DSEIS/EIR also fails entirely to discuss the state court decision finding that DWR lacks the necessary CESA coverage for operation of the SWP, which also likely impacts the CESA analysis in Appendix C. It is unclear, for example, how EWA assets pumped through the SWP facilities at Clifton Court forebay and Banks pumping plant have CESA take authority when the court found that the SWP lacked any take authority for its pumping operations. The DSEIS/EIR must be revised to address this issue.

## **II. THE EWA HAS LIMITED, RATHER THAN EXPANDED, THE AMOUNT OF WATER AVAILABLE FOR IMPERILED FISH**

Since shortly after the first EWA ROD was signed in 2004, the program has been used as an excuse by the agencies to deny needed water to imperiled fish rather than to help protect and recover imperiled fish. For example, in February 2005, when delta smelt populations were at then-record low levels, fishery biologists recommended that exports be curtailed to reduce entrainment. However, because EWA supplies were scarce, project managers did not curtail exports as much or as long as was requested. *Compare* “Data Assessment Team” call notes (Feb. 1, 2005) (recommending combined exports be reduced to 1500 cfs for one week) (appended hereto as Exhibit 6, without attachments) *with* CVO smelt report (February 2005) (showing much higher combined export levels) (appended as Exhibit 7). Hundreds of delta smelt were taken at the pumps as a result. *Id.* The lawful and proper course of action would have been for the agencies to fully implement the recommended action, and then use non-EWA project water to meet fish needs later in the year if EWA supplies ran short. Instead, the program has been implemented to turn this requirement on its head, and to short fish without any consideration given to imposing uncompensated reductions on project contractors and other water users.

Unfortunately, the agencies have continued this pattern of using limited EWA assets to deny needed fish protection actions. In 2006, as the delta smelt continued its unparalleled decline in abundance, the Delta Smelt Working Group (“DSWG”) evaluated a range of protective actions that could be taken to lessen the impacts of water project operations. One action that was evaluated was to address fall (September-December) Delta salinity levels by making releases from upstream reservoirs to increase Delta outflows. The discussions and analyses of this proposed action are reported in DSWG notes for July 10 (see also the notes from August 21, and Sept 26 (appended hereto as Exhibits 8). The DSWG determined that the fall action had a high likelihood of being successfully implemented and that the scientific basis for the action was supported by statistically significant correlations.

Ultimately, the fall action was not taken because it was determined that “the amounts of water needed to demonstrably improve fall habitat quantity/quality [were] unavailable”. Based on analyses provided by DWR, the amount of water necessary for maintaining net Delta outflows at 7000 cfs for the September-December period would range from only 170-433 TAF. DSWG notes (Aug. 21, 2006). As a result of not taking this action, Delta outflows steadily declined, falling below 6000 cfs in October, and salinity levels shifted upstream of 80 km, the critical threshold identified by the DSWG for delta smelt habitat quality and subsequent abundance. Delta smelt abundance plummeted to a new record low the following year, indicating that the fisheries agencies were not sufficiently addressing adverse habitat conditions in the Delta and other stressors to ensure the delta smelt’s survival and recovery.

Perceived unavailability of water assets was also the reason behind the DSWG rejecting a protective action in winter 2006 intended to set net flows in Old and Middle Rivers to zero cfs to better protect pre-spawning adults. Low San Joaquin River inflows and negative flows on Old and Middle Rivers, concurrent with high export rates, are likely creating hydrodynamic conditions that draw greater numbers of fish to the pumps and correspond to significantly higher

salvage rates. Protection of these biologically valuable spawning adult fish is essential for recovery and sustainability of this at-risk species. Despite the expected benefit of taking this action, it was rejected because “DWR staff have derived estimates of the water costs of the potential actions in the Resources Agency POD Action Matrix and found that the proposed winter action could consume all available environmental water, leaving no assets for spring actions for larvae or juveniles.” DSWG notes (Dec. 11, 2006) (appended as Exhibit 9); *see also* DSWG notes (Oct. 10, 2006) (“The Working Group notes that some of the weaknesses of the DFG plan included the potential to exhaust all EWA and B2 assets in winter, leaving nothing in reserve for spring actions”) (appended as Exhibit 10).

More recently, NMFS’ biologists testified against taking actions to protect delta smelt based on a similar misperception that the total amount of water available to protect imperiled salmonids was limited to a pot of “environmental water” defined by EWA and b(2) assets, and that water used to protect smelt would necessarily deplete the amount of water available to protect salmon. *See* Declaration of Bruce Oppenheim in *NRDC v. Kempthorne* ((June 15, 2007) (appended as Exhibit 11). For example, Mr. Oppenheim explained that “the use of environmental water after VAMP on the San Joaquin River may have consequences later in the year on the Sacramento River.” *Id.* at 3. This statement is only true if there is a limited pot of “environmental water” available to meet all fisheries needs – a position that is contrary to numerous requirements of state and federal law.

All of these decisions are based on the incorrect assumption that the amount of water available to protect listed fish species is limited to the assets of the EWA, CVPIA b(2), and other sources of water “dedicated” to the environment. The Bureau has perpetuated this fallacy, asserting that it must meet the needs of CVP contractors before meeting the needs of listed fish species. *See* Declaration of Ronald Milligan in *NRDC v. Kempthorne* (June 21, 2007) (“Reclamation operates New Melones to meet ... project needs of the East Side Division CVP contractors” which leaves “no additional water available for out of basin releases from New Melones Reservoir” even if needed to prevent jeopardy to listed delta smelt) (appended as Exhibit 12); *see also see also* Transcript of Hearing re Interim Remedies Day 7, *NRDC v. Kempthorne*, Testimony of Ronald Milligan at 1553-54 (Aug. 31, 2007) (explaining that the WOMT rejected some recommendations of the DSWG because of concerns regarding “the ability for the EWA to function in a manner that it could, in essence, pay back the projects for curtailments without impacting operations in the long term sense or allocations to contractors”) (appended as Exhibit 13). Similarly, DWR has asserted that it has no additional water available for fish protection, while simultaneously making hundreds of thousands of acre-feet of surplus “Article 21” and “turnback pool” water available to water users and contractors.

This presumed EWA limitation on the amount of water available to protect fish is simply not correct. Numerous courts have made it abundantly clear that the Bureau and DWR must provide sufficient water to protect and recover listed fish species, whether it exceeds the amount of the water the agencies may have earmarked for that purpose or not. *See, e.g., NRDC v. Kempthorne*, Order on Summary Judgment at 61 (May 25, 2007) (“The EWA is simply a means by which the SWP and CVP can obtain water by purchasing it from willing sellers. ...If money is unavailable to fund the EWA, Defendants are nonetheless required to prevent smelt take from exceeding permissible take limits. ... [I]f all else fails, [additional] assets may be brought to bear, which

include ‘additional purchased or operational assets, funding to secure additional assets if needed, or project water if funding or assets are unavailable.’”) (emphasis in original).

The agencies have turned the EWA on its head and, instead of using it to supplement the resources needed *and required* for fish protection, have used it as an excuse to short the environment and avoid committing those mandatory resources. Unless the agencies make very clear that limited EWA assets cannot be used as a reason not to take an action that would help protect or restore imperiled fish, it should be discontinued.

### **III. THE ANALYSIS FAILS TO DEMONSTRATE THAT THE EWA HELPS PROTECT AT-RISK FISH SPECIES AND CONTRIBUTE TO THEIR RECOVERY**

In addition to the problems discussed above, the DSEIS/EIR fails to provide adequate support for its conclusion that extending the EWA would benefit fish protection and restoration.

First, the document recognizes in several places that a pumping “window” during which EWA assets may be pumped out of the Delta without increasing adverse impacts to listed fish no longer exists. The document explains that “[t]he EWA protects fish at the pumps by reducing pumping when it would help at-risk fish species, then transferring EWA assets across the Delta at other times to repay CVP and SWP users for water lost during pump reductions.” DSEIS/EIR at 2-15. The DSEIS/EIR asserts that EWA assets should be used to reduce export pumping to protect fish from the months of December through July. DSEIS/EIR at 2-10 to 2-11. This proposal allows exports to increase to allow delivery of EWA water during the months of August through November. But several imperiled species are vulnerable to take at the pumps during this late summer/fall period. *See id.* at 2-13, 4-15. Moreover, the document notes that the alarming and continuing decline in four pelagic organisms in the Delta have corresponded to a period of “increased exports during June through December.” DSEIS/EIR at 4-11. In addition, recent studies have indicated that decreased Delta inflows in late fall and winter may result in reductions in fall habitat quality and eastward movement of X2, which may result in adverse impacts to fish. DSEIS/EIR at 4-13. Thus, it is unclear when a safe pumping window exists for EWA to increase Delta exports. Instead, it is likely that an extended EWA would simply help sustain the current record high levels of exports pumped out of the Delta – export levels that have corresponded to many of the declining fish populations in the Delta. *See, e.g., id.* at B-3 to B-4 (Banks pumping would increase in July, August, and September to convey EWA assets).

Second, the DSEIS/EIR assumes with no support that “[w]hile the fish actions in ... revised biological opinions [that are currently being developed for project operations] are unknown, they would likely be less than with the EWA program.” DSEIS/EIR at ES-4. This statement reflects a fundamental misunderstanding of the nature of ESA and CESA requirements, which *mandate* that project operations cause no jeopardy to the existence *or recovery* of listed species, cause no adverse modification of critical habitat for survival *or recovery* of listed species, and that the impacts of project take be minimized and fully mitigated. In addition, Section 7 also imposes an affirmative obligation on federal agencies to “utilize their authorities in furtherance of the purposes of this chapter by carrying out programs for the conservation of endangered species and threatened species listed” under the Act. 16 U.S.C. § 1536(a)(1). A program of “conservation” is one that brings the species to the point of recovery and delisting. *Id.* § 1532(3). In short, the

project agencies are obligated to protect, recover and conserve listed species, whether or not the EWA is in place.

Third, the DSEIS/EIR explicitly bases its analysis of fish actions on the invalidated, reinitiated, and discredited OCAP biological opinions, claiming that it “would be speculative to assume that the fish actions in the BO will be the same as those described by Judge Wanger because the BO will be based on a comprehensive review of all available information and science.” DSEIS/EIR at 1-6. In reality, Judge Wanger’s decision is based on a more comprehensive and current review of the science regarding the delta smelt than the invalidated BO, which failed even to acknowledge the precipitous decline of the delta smelt in recent years. In addition, the OCAP BO on listed salmonids has been discredited by more than three independent science reviews, including a CALFED review panel, which concluded that the BO was not based on the best available science. The DSEIS/EIR’s reliance on the fish actions encompassed in these discredited BOs for the basis of its analysis lacks a reasonable basis.

Fourth, the Bureau has reinitiated consultation with the U.S. Fish and Wildlife Service and the National Marine Fisheries Service on the OCAP. That consultation is ongoing. Until the Bureau meets the requirements of ESA §7 and, among other things, obtains a valid biological opinion at the conclusion of consultation, the ESA § 7(d) prohibition on making any irreversible and irretrievable commitment of resources applies to the Bureau’s actions. Regional Director Kirk Rodgers has correctly recognized that reauthorization of the EWA during the pendency of the OCAP consultations would be a violation of §7(d), and has (twice) sworn to a federal court that such authorization would not occur before completion of the new BOs. *See* Declaration of Kirk Rodgers (Oct. 18, 2006), Declaration of Kirk Rodgers (July 9, 2007) (appended hereto as Exhibit 14). Reauthorization of the EWA as proposed in the DSEIS/EIR runs afoul of the 7(d) prohibition and contradicts Mr. Rodgers sworn statements in the pending OCAP lawsuits.

Finally, the DSEIS/EIR concludes that continuation of the EWA “would have a less than significant impact on X2 location during June through December.” DSEIS/EIR at ES-9. However, as the document recognizes, emerging science indicates that moving X2 westward of its recent historic location in the fall could have a significant beneficial impact on listed species and their habitat. By reducing outflow in the fall, EWA could have a significantly detrimental impact on the ability of agencies to meet this new threshold.

#### **IV. THE ANALYSIS FAILS TO EVALUATE THE EWA’S FAILURE TO ASSIST IN ECOSYSTEM RESTORATION BEYOND ESA/CESA COMPLIANCE**

To date, as discussed above, the EWA has primarily, even exclusively, been operated to limit protective ESA/CESA actions. However, the failure of the EWA extends even farther. The EWA was intended to “provide water for the protection and recovery of fish.” CALFED Programmatic ROD at 54. Note that these benefits are not restricted to listed species. The ROD also states that the EWA will “acquire water for ecosystem and species recovery needs.” CALFED ROD NCCP Determination at 21. Thus, the EWA was intended as a tool to provide restoration benefits beyond the requirements of ESA/CESA for listed species. These benefits were an important part of the Ecosystem Restoration Program and were the justification for

public funding for the EWA. The document does not analyze the failure of the EWA to provide these anticipated benefits.

Indeed, far from facilitating improved ecosystem health, by limiting ESA/CESA actions and by increasing diversions during the August to November period, the EWA has damaged ecosystem health. This failure is indicated by the fact that non-listed species, such as threadfin shad, are showing the same decline affecting listed species such as the delta smelt and that the Pelagic Organism Decline process has identified “water project operations” as a potential cause of the decline of Delta fishes. *See* Interagency Ecological Program 2006-2007 Work Plan to Evaluate the Decline of Pelagic Species in the Upper San Francisco Estuary (January 12, 2007) at 4 (appended hereto as Exhibit 15). The document does include one, inadequate mention of these impacts, by concluding that “(t)he entrainment indices for threadfin shad and American shad would be increase.” DEIS/EIR at 4-36. Clearly, the EWA has undermined, rather than facilitated, the CALFED ecosystem restoration goal.

The document must be revised to fully and adequately evaluate the failure of the EWA to contribute to fisheries and ecosystem restoration beyond the requirements of ESA/CESA.

## **V. THE ANALYSIS FAILS TO EVALUATE THE EWA’S FUTURE USEFULNESS TO FACILITATE “REAL TIME” MANAGEMENT**

The EWA was also intended to provide “real time diversion management” of Delta flows and the CVP and SWP Delta pumps. CALFED ROD NCCP Determination at 29. Such real time management assumes that the EWA has enough flexibility to modify Delta flows and the management of the projects beyond the relatively fixed prescriptive requirements of ESA/CESA compliance. The document fails to analyze the extent to which the EWA will provide such flexibility to achieve additional ecosystem or protective measures. Unless the management priorities or assets of the EWA are changed dramatically (a change that this document does not anticipate) it appears unlikely that the EWA will have much, if any, flexibility to provide additional protective measures. To the contrary, to the extent that the EWA provides real time management, this flexibility is designed to increase pumping, potentially causing additional impacts to the ecosystem, and designed solely to provide additional water supplies for South of Delta CVP and SWP contractors.

## **VI. THE FAILURE TO ANALYZE PAST PERFORMANCE UNDERMINES A FUNDAMENTAL PURPOSE OF THE EWA -- TO FACILITATE ADAPTIVE MANAGEMENT**

The CALFED ROD was designed with science-based adaptive management as a “central feature.” CALFED Programmatic ROD at 4. This document repeats this assertion that “(a)daptive management is a key component of the EWA,” and that “(a)daptive management provides a process to change fish actions or asset acquisitions.” DSEIS/EIR at page 2-24. The careful evaluation of the past performance of management tools is the defining feature of adaptive management, in order to allow improved, adaptive future management. Indeed, the ROD explicitly commits CALFED agencies to “assess the success of EWA operations.” CALFED ROD EWA Operating Principles Agreement at 4. Without such analysis, agencies



cannot “adapt” the management of the program in a manner that builds on past successes and responds to failures. The analysis of past performance of the EWA as an adaptive management tool is critical to the central purpose of this document – extending the EWA into the future. Such analysis is also important to agencies, such as the Delta Vision Task Force, the Bay-Delta Conservation Plan process, the Department of Fish and Game, NOAA Fisheries and the Fish and Wildlife Service, which may consider the merits of incorporating the EWA into future management for the Delta. Finally, such analysis is essential to the legislature and the Administration as they consider the justification for public funding for the EWA. An analysis of the past performance of the EWA will reveal that there is no justification for such continued public funding. As discussed above, the document fails to analyze past performance, a failure that cuts to the core of the purpose of the EWA as an adaptive management tool. The document must be revised to fully and accurately analyze the effectiveness of the EWA as an adaptive management tool.

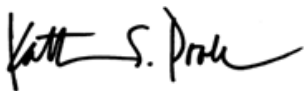
## **VII. THE DOCUMENT FAILS TO DESCRIBE ACCURATELY THE PROJECT PURPOSE**

As discussed above, the document does not adequately analyze the EWA’s failure to engage in real time management and adaptive management, to ensure ESA/CESA compliance and to contribute to broader ecosystem restoration. The document also does not include any meaningful provisions to address these failures. The document, however, largely maintains the old, inaccurate description of the purpose of the EWA. DSEIS/EIR at page 2-3. Thus, the document fails to adequately describe the purpose of the project. At the moment, the actual purpose of the EWA appears to be to limit protective actions under ESA and CESA, and to provide additional water supplies to south of Delta water contractors. The document should be revised to include an accurate description of the project.

## **VIII. CONCLUSION**

In light of these many shortcomings in the operation of the EWA and the analysis of the DSEIS/EIR, we urge you to reject the proposal to extend the program beyond the end of 2007. In the alternative, we urge you to withdraw this document and issue a new, adequate draft that addresses the concerns outlined above.

Sincerely,



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December 10, 2007

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***Re: Comments on Environmental Water Account Draft Supplemental  
Environmental Impact Statement/Environmental Impact Report***

Dear Ms. Cervantes:

Through this letter, the San Luis & Delta-Mendota Water Authority ("Authority") and Westlands Water District ("Westlands") comment on the Environmental Water Account Draft Supplemental Environmental Impact Statement/Environmental Impact Report ("Draft Supplemental EIS/EIR").

The Authority was established in 1992 as a joint powers authority and consists of 32 water agencies.<sup>1</sup> Each of the Authority's member agencies contract with the United States Department of the Interior, Bureau of Reclamation ("Reclamation") for water

<sup>1</sup> The member agencies of the Authority are: Banta-Carbona Irrigation District; Broadview Water District; Central California Irrigation District; Centinella Water District; City of Tracy; Columbia Canal Company; Del Puerto Water District; Eagle Field Water District; Firebaugh Canal Water District; Fresno Slough Water District; Grassland Water District; James Irrigation District; Laguna Water District; Mercy Springs Water District; Oro Loma Water District; Pacheco Water District; Pajaro Valley Water Management Agency; Panoche Water District; Patterson Water District; Plain View Water District; Pleasant Valley Water District; Reclamation District 1606; San Benito County Water District; San Luis Canal Company; San Luis Water District; Santa Clara Valley Water District; Tranquillity Irrigation District; Turner Island Water District; West Side Irrigation District; West Stanislaus Irrigation District; Westlands Water District; and Widren Water District.

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supplied from the federal Central Valley Project ("CVP"). In total, the Authority's members are entitled to receive approximately 3.8 million acre-feet of CVP water. Approximately 2.7 million acre-feet of this CVP water is used on agricultural lands within California's western San Joaquin Valley, San Benito County, and Santa Clara County. Of the remaining allotted CVP water, 200,000 to 250,000 acre-feet is used for municipal and industrial uses, including those within the Silicon Valley; and approximately 300,000 to 350,000 acre-feet is used for environmental purposes, including for waterfowl and wildlife habitat in the San Joaquin Valley.

Westlands is a California water district and member of the Authority. It holds rights to receive from Reclamation up to 1,150,000 acre-feet of CVP water annually. Westlands utilizes its water supply for municipal and industrial purposes, as well as for irrigation of approximately 500,000 acres on the west side of the San Joaquin Valley in Fresno and Kings Counties. Westlands' farmers produce more than 60 high quality commercial food and fiber crops in both the domestic and export sectors of fresh, dry, canned, and frozen food markets. More than 50,000 people live and work in the communities that are dependent on Westlands' agricultural economy.

The Authority and Westlands are concerned that the Draft Supplemental EIS/EIR fails to place into a historical context and thoroughly evaluate the proposed extension of the Environmental Water Account ("EWA"). Therefore, the Draft Supplemental EIS/EIR may mislead the decision-makers and the public by avoiding consideration of otherwise potentially significant impacts.

**Background of the EWA**

The EWA is part of the CALFED program. As explained in the Record of Decision for the CALFED program:

The CALFED Bay-Delta Program began in May 1995 to address the complex issues that surround the Bay-Delta. The CALFED Bay-Delta Program is a cooperative, interagency effort of 18 State and Federal agencies with management or regulatory responsibilities for the Bay-Delta.

(CALFED ROD, p. 1.) The State and Federal agencies, commonly referred to as the "CALFED agencies," designed the CALFED program to:

- 1) restore the ecological health of a fragile and depleted Bay-Delta estuary;
- 2) improve the water supply reliability for the State's farms and

**DIEPENBROCK HARRISON**

Ms. Sammie Cervantes

Bureau of Reclamation

Re: Comments to Environmental Water Account EIS/EIR

December 10, 2007

Page 3

growing cities that draw water from the Delta and its tributaries, including 7 million acres of the world's most productive farmland; 3) protect the drinking water quality of the 22 million Californians who rely on the Delta for their supplies; and 4) protect the Delta levees that ensure its integrity as a conveyance and ecosystem.

(CALFED ROD, p. 2.) The need for such a comprehensive effort originated from a recognition by the CALFED agencies that "diversions, along with the effects of increased population pressures throughout California, exotic species, water pollution, and numerous other factors have had a serious impact on the fish and wildlife resources in the Bay-Delta estuary." (*Id.*)

Although the CALFED agencies contemplated the CALFED program to be a 30-year program, the Record of Decision for the CALFED program set forth only those actions that would proceed during the first seven years (2000-2007) – the period commonly referred to as "Stage 1." Critical components of Stage 1 include: Governance, Ecosystem Restoration, Watersheds, Water Supply Reliability, Storage, Conveyance, EWA, Water Use Efficiency (conservation and recycling), Water Quality, Water Transfers, Levees, and Science. (CALFED ROD, pp. 3-4.) The CALFED agencies recognized that "[a]ll aspects of the CALFED Program are interrelated and interdependent." (*Id.* at p. 4.) The goal of the CALFED program was to achieve balanced solutions in all program areas. (*Id.* at p. 5.)

The CALFED agencies further recognized that a great challenge for the CALFED program was improving water supply within the first four years of Stage 1. The challenge presented itself because:

Actions initiated in the first four years of Stage 1 to improve storage and conveyance capacity (see following sections on Storage and Conveyance) will substantially increase water supply reliability in the later years, but these benefits will not be realized until the new facilities come on line. Similarly, it will take years to implement and fully realize the water supply benefits of water use efficiency, recycling and other conservation measures.

(CALFED ROD, p. 40.) Notwithstanding, the CALFED agencies identified critical actions that could be implemented during the first four years of Stage 1. These actions included projects to increase the pumping capabilities of SWP facilities, to establish an intertie between the SWP and CVP facilities at or near Tracy, and to construct a bypass

**DIEPENBROCK HARRISON**

Ms. Sammie Cervantes

Bureau of Reclamation

Re: Comments to Environmental Water Account EIS/EIR

December 10, 2007

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canal to the San Felipe Unit at the San Luis Reservoir. (CALFED ROD, pp. 48-50, 52, 53.)

Within that context, the CALFED agencies created the EWA. The CALFED agencies intended the EWA to primarily provide protection to at-risk native fish species of the Bay-Delta estuary through environmentally beneficial changes in State Water Project ("SWP") and Central Valley Project ("CVP") operations at no uncompensated cost to water users. (CALFED ROD, p. 54; Draft Supplemental EIS/EIR, p. 2-1.) The CALFED agencies anticipated that the EWA would help resolve conflict between fisheries and water diversions by the CVP and SWP. (CALFED ROD, p. 54.)

As noted above, at the time the CALFED agencies approved the CALFED program, they contemplated the EWA would extend only to September 30, 2004. (Environmental Water Account Operating Principles Agreement, p. 3.) The CALFED agencies contemplated the potential extension of the EWA's term beyond that date, but only after assessing the success of EWA operations and analyzing the potential impacts from new facilities and expanded conveyance capacity. (*Id.*) That assessment occurred in part through independent science reviews.

In October 2001, an EWA technical review panel ("Review Panel") formed to evaluate the efficacy and progress of the EWA. The Panel was specifically charged to "consider the overall concept of EWA and the plans, EWA actions, and justifications for actions that took place during the [period October 1, 2000 to September 30, 2001]." (2001 EWA Review Panel, p. 1, citing Appendix 1 EWA Technical Review Panel Charge.) During that review, the Panel recognized that the EWA was reducing conflict, but still needed to improve upon its ability to document biological successes. (*Id.* at p. 8.) Thereafter, the Panel reconvened annually in 2002 and 2003 to evaluate the EWA's progress during the previous water year (October 1, 2001 to September 30, 2002 and October 1, 2002 to September 30, 2003, respectively), and provide additional recommendations to the CALFED program.

After its 2002 and 2003 reviews, the Panel arrived at the same overall conclusion that it arrived at after its 2001 review: the EWA successfully reduces conflicts among the water users, but is not able to produce demonstrable biological benefits for fisheries. For example, after the 2002 review, the Panel noted: "The most immediate sign of improvement has been a reduced level of conflict." (2002 EWA Review Panel, p. 5.) The Panel, however, criticized the EWA for the "sparseness of scientific data and analysis" supporting EWA actions. (*Id.* at p. 2.)

**DIEPENBROCK HARRISON**

Ms. Sammie Cervantes

Bureau of Reclamation

Re: Comments to Environmental Water Account EIS/EIR

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The next year, the Panel noted the same successes and shortcomings. "Many of the recommendations and topics of concern made in the previous two Panel review reports remain highly relevant to EWA operations in 2003 and beyond. Previous recommendations will continue to require attention." (2003 EWA Panel Review, p. 2.) The Panel once again questioned the scientific basis for the EWA's water management decisions. (2003 EWA Review Panel, p. 18.)

In September 2004, a Memorandum of Understanding between the CALFED agencies extended the term of the EWA through December 31, 2007. Shortly after the 2004 EWA extension, the Panel convened again. The 2004 Panel focused on the first four years as a whole and proposals for a long-term EWA. The Panel noted that "[t]he most compelling issue . . . is the challenge of expanding the research base and upgrading the quality of the science underlying program decisions." (2004 EWA Review Panel, p. 2.) The Panel saw the "current status of the science in support of the EWA as a potential Achille's heel." (*Id.*) The Panel continued to meet annually to assess the efficacy of the EWA. Most recently, in 2007, the Panel issued its findings and recommendations related to EWA operations from October 1, 2005 to September 30, 2006. The Panel's findings did not change significantly. Now, the CALFED agencies are considering an additional extension of the EWA. This time, the CALFED agencies propose the EWA continue through 2011.

**Comments on Draft Supplemental EIS/EIR****1. The Draft Supplemental EIS/EIR Fails To Place Into Context To EWA**

The Draft Supplemental EIS/EIR fails to disclose and evaluate the context in which the EWA will be extended. As explained above, although the CALFED program is a multi-faceted program, planned for long-term implementation, the CALFED ROD only addressed Stage 1; a period extending through 2007. The EWA was developed as part of the suite of CALFED actions to be implemented during Stage 1. Other actions to be implemented during Stage 1 included increasing pumping capabilities of SWP facilities, possibly establishing an intertie between the SWP and CVP facilities at or near Tracy, and constructing a bypass canal to the San Felipe Unit at the San Luis Reservoir. None of those actions have occurred. The EWA is now set to expire on December 31, 2007. The Draft Supplemental EIS/EIR evaluates the extension of the EWA without thoroughly discussing the remainder of the CALFED program. That is particularly troublesome since it is unclear if or how the next phase of the CALFED program will be implemented. To appreciate the proposed EWA extension, including its potential environmental impacts, the Draft Supplemental EIS/EIR should be revised to

**DIEPENBROCK HARRISON**

Ms. Sammie Cervantes

Bureau of Reclamation

Re: Comments to Environmental Water Account EIS/EIR

December 10, 2007

Page 6

disclose the challenges of and possible changes to the CALFED program during the period of the proposed EWA extension.

2. Unique Circumstances Warrant A Supplemental EIS/EIR

The Draft Supplemental EIS/EIR states that a supplement is necessary for two reasons. The Draft Supplemental EIS/EIR states that it is needed to evaluate "the effects associated with extending the EWA through 2011," (Draft Supplemental EIS/EIR, p. 1-1), and due to changes in the environmental and regulatory settings. (*Id.*) The statement is misleading. It confuses the basis for the supplement with the information that should be used when preparing the supplement.

The Authority and Westlands appreciate the need for a supplement because previously prepared environmental documentation for the EWA did not consider the impacts of the EWA from January 1, 2008 through December 31, 2011 – the period of the proposed extension. Because of that circumstance, the law requires additional environmental review. The lack of review during the period of the proposed extension, however, is the sole basis for the supplement. Changes in the environmental and regulatory setting only become relevant when considering in the supplement the potential environmental effects of the extension. The Draft Supplemental EIS/EIR should be revised to make that clarification.

3. The Draft Supplemental EIS/EIR Fails To Adequately Analyze The Proposed Project, To Ensure That It Will Satisfy The Primary Purpose Of The EWA

The Authority and Westlands support the EWA and endorse its primary objectives of improving fisheries and reducing conflict among water users. However, the success of the EWA has been in reducing conflict, not recovering at-risk native Delta-dependent fish species. As presented in more detail above, an independent panel of experts who reviewed the EWA over the past 5 or more years has consistently stated that the CALFED agencies has not demonstrated that the EWA has population-level benefits to at-risk fish species. The analysis presented in the Draft Supplemental EIS/EIR to support an extension of the EWA contains the same defect. It provides little, if any scientific data and analysis to support its conclusions.

For example, the Draft Supplemental EIS/EIR reiterates a primary purpose for the extension is to allow the EWA to continue to protect and recover at-risk native fish species. (Draft Supplemental EIS/EIR, pp. 1-1, 1-4 to 1-5.) The Draft Supplemental

**DIEPENBROCK HARRISON**

Ms. Sammie Cervantes

Bureau of Reclamation

Re: Comments to Environmental Water Account EIS/EIR

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EIS/EIR conducts its effects analysis by comparing results of hydrologic modeling. Three modeling parameters were selected to be part of the analysis:

- Delta outflow;
- Change in location of the 2 parts per thousand (ppt) salinity isohaline (X2); and
- Entrainment of fish at CVP and SWP Delta facilities.

The Draft Supplemental EIS/EIR presumed that at-risk fish species would benefit from (1) increases in Delta outflow, (2) westward movement of X2, and (3) reductions in entrainment. (Draft Supplemental EIS/EIR, pp. 4-31 to 4-33.) The Draft Supplemental EIS/EIR provides no analysis of why those presumptions are valid or how those presumptions relate to increases in the population levels of the at-risk fish species. As a result, the Draft Supplemental EIS/EIR does not evaluate whether the methods employed to benefit fisheries will achieve the stated purpose and need for the extension. As has been recommended by the independent panel of experts, the Draft Supplemental EIS/EIR must be revised to include an analysis of the potential impact of the EWA on the populations of at-risk native Delta-dependent fish species.

4. The Draft Supplemental EIS/EIR Fails To Consider How The CALFED Agencies Will Implement Proposed Project, And Therefore Potentially Significant Environmental Impacts May Be Ignored

The Draft Supplemental EIS/EIR states that the "EWA project agencies can use any of the acquisition methods" to purchase water. (Supplemental EIS/EIR, p. 2-14.) That general statement is insufficient to meet legal requirements under the National Environmental Policy Act or California Environmental Quality Act. For example, under Flexible Purchase Alternative (the propose action/preferred alternative), the EWA would have up to 600,000 acre-feet of water assets. Although the Authority and Westlands appreciate that some of the water can be acquired through the use of variable assets, it is unrealistic to assume the majority of assets needed by the EWA will be developed in that manner. Water will need to be purchased. Other than water that may be purchased under the Yuba River Accord, the Draft Supplemental EIS/EIR does not discuss or evaluate the source of funding for those additional purchases. At a minimum, the final Supplemental EIS/EIR must recognize that the acquisition of assets for the EWA will comply with the EWA's objective of no uncompensated cost to water users; that the EWA, during the extended period, will not result in any uncompensated adverse impact to water users, whether through increased rates or supply reductions.



**DIEPENBROCK HARRISON**

Ms. Sammie Cervantes

Bureau of Reclamation

Re: Comments to Environmental Water Account EIS/EIR

December 10, 2007

Page 8

Thank you for your consideration of the Authority's and Westlands' comments.

Very truly yours,

**DIEPENBROCK HARRISON**

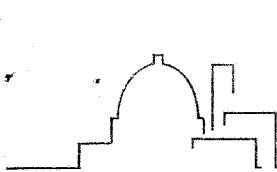
A Professional Corporation



By: Valerie C. Kincaid

Attorneys for the San Luis & Delta-Mendota  
Water Authority and Westlands Water District

cc: Daniel Nelson  
Thomas Birmingham  
Jason Peltier

**SMUD****SACRAMENTO MUNICIPAL UTILITY DISTRICT**  
The Power To Do More.<sup>SM</sup>*P.O. Box 15830, Sacramento, CA 95852-1830; 1-888-742-SMUD (7683)***DRAFT COMMENTS**

ET&amp;C 07-096

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

**Subject: Draft supplemental Environmental Impact Statement / Environmental  
Impact Report – to the EWA Final EIS/EIR**

Dear Ms. Cervantes:

The Sacramento Municipal Utility District (SMUD) is both a Central Valley Project (CVP) power and water customer. SMUD, as one of the largest CVP preference power customers, provides not only payments into the Restoration Funds but repayment of the CVP plant-in-service and Operations and Maintenance (O&M) costs allocated to power. SMUD has significant concerns regarding the policies and programs that may modify the operations, management and physical facilities of the CVP.

SMUD thanks you for this opportunity to comment on the Draft Supplemental Environmental Impact Statement / Environmental Impact Report - to the Environmental Water Account (EWA) Final EIS/EIR. In addition to the verbal comments submitted at the November 14, 2007 public hearing in Sacramento, we would like to submit the following written comments.

SMUD supports the EWA. SMUD supports the regional strategy to maximize the efficiency of water use for beneficial uses where institutionally and financially feasible.

EWA is used to reduce conflicts between environmental needs and water project operations by providing water and operational flexibility while protecting fish and critical habitats. By continuing to provide water in a flexible manner, EWA will increase water supply reliability by allowing projects to meet environmental and water supply needs at the same time. SMUD concurs that the EWA program should reduce conflicts in the system, be equitable to all, be affordable, be long lasting, is implementable, and has no significant redirected impacts.

**General comments:**

SMUD applauds the efforts made by the EWA agencies in dealing with bypassing the power penstocks at Folsom Dam to meet the cold water needs of the fisheries in the Lower American River. These efforts have been successful and supported by all parties.

Classification	ENV 300
Project	3437
Control No.	07099229
Folder ID	1024380
Date Input & Input	11-20-07

The proactive implementation by the individuals within the EWA agencies has mitigated the impact of the bypassed generation.

The EWA Program should continue to minimize redirected impacts and to maintain linkage between the beneficiaries of actions and the costs of those actions.

### **Specific comments**

SMUD has the following specific comments on the EIS/EIR:

1) In the Executive Summary Table ES-3 the effect determination for power is identified as less than significant and no mitigation is required. The reader is unaware of what constitutes the significance criteria supporting this conclusion. Please describe the criteria that made impacts to power less than significant.

Previous EWA environmental documentation has stated that the conveyance of EWA Water purchases and EWA Actions may affect day-to-day CVP power scheduling and the potential impact of additional cost born by the CVP. SMUD agrees with the ongoing EWA policy of mitigating adverse economic reliability, capacity or operation impacts to CVP/SWP or CVP Preference Project power users as a result of implementing the EWA Program. To the extent that any of the EWA actions causes an adverse impact to CVP power, in kind dollar for dollar compensation should continue to be provided to Western Area Power Administration.

SMUD supports the conclusion in the EWA Final EIR/EIR - January 2004, which states on page ES -18, "In accordance with CALFED ROD, the EWA would be required to compensate the Projects for and net costs to power caused by management of EWA assets". This is the mitigation that should be included in Table ES -3 for the mitigation to impacts to power generation. Please update table ES-3 to reflect this change.

2) The EIS/EIR separately analyzed the effects of the EWA. However all parties recognize that the CVP operations will be impacted by the recent Wanger Decision, future changes in the OCAP, the San Joaquin River Settlement, possible new storage projects, and future CVP reoperation. To the extent possible elaborate how EWA will integrate its needs into future programs, projects and reoperation.

3) In Table 2 of the technical appendices makes the statement "EWA agencies will be responsible for covering additional power costs....." Please specifically identify who these agencies are.

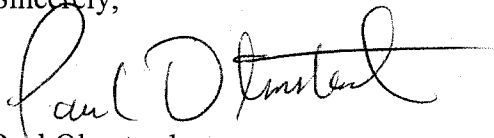
Future EWA Program Financing / Cost Allocations need to be included in the Record of Decision to compensate for power purchases associated with EWA program and assure that EWA is funded each year to an appropriate level. The CVP Preferred Power customers support the EWA actions and do not want to see the program fall short of its goals due to a lack of funds available to purchase power necessary to support the EWA actions.

4) Under the current EWA program, agricultural districts have the opportunity to fallow their lands, provide water to the EWA program and be financially compensated for that water.

Under current Reclamation policy, CVP agricultural customers can request and be relieved their capital repayment obligations under the "irrigators ability to pay" criteria. If CVP Agricultural customers sell their water to the EWA, it is our recommendation that Reclamation list those agricultural customers who are compensated under EWA and when they request "the inability to pay" they are first to use the monies received from the EWA fund to repay their CVP obligations.

Thank you for the opportunity to comment.

Sincerely,

A handwritten signature in cursive script, appearing to read "Paul Olmstead". The signature is written in dark ink and is positioned above the printed name.

Paul Olmstead  
Water and Power Resource Specialist  
916-732-5716



ARNOLD SCHWARZENEGGER  
GOVERNOR

STATE OF CALIFORNIA  
GOVERNOR'S OFFICE *of* PLANNING AND RESEARCH  
STATE CLEARINGHOUSE AND PLANNING UNIT



CYNTHIA BRYANT  
DIRECTOR

December 12, 2007

Stephani Spaar  
California Department of Water Resources  
901 P Street, 4th Floor  
Sacramento, CA 95814

Subject: Environmental Water Account  
SCH#: 1996032083

Dear Stephani Spaar:

The enclosed comment (s) on your Supplemental EIR was (were) received by the State Clearinghouse after the end of the state review period, which closed on December 10, 2007. We are forwarding these comments to you because they provide information or raise issues that should be addressed in your final environmental document.

The California Environmental Quality Act does not require Lead Agencies to respond to late comments. However, we encourage you to incorporate these additional comments into your final environmental document and to consider them prior to taking final action on the proposed project.

Please contact the State Clearinghouse at (916) 445-0613 if you have any questions concerning the environmental review process. If you have a question regarding the above-named project, please refer to the ten-digit State Clearinghouse number (1996032083) when contacting this office.

Sincerely,

Terry Roberts  
Senior Planner, State Clearinghouse

Enclosures  
cc: Resources Agency

**DELTA PROTECTION COMMISSION**

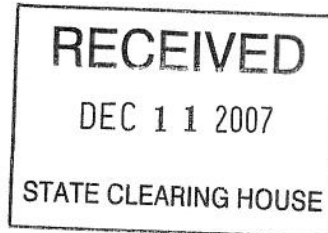
14215 RIVER ROAD  
P.O. BOX 530  
WALNUT GROVE, CA 95690  
Phone (916) 776-2290  
FAX (916) 776-2293  
E-Mail: dpc@citlink.net Home Page: www.delta.ca.gov



December 7, 2007

State Clearinghouse  
P.O. Box 3044  
Sacramento, California 95812

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Dear Project Manager:

Subject: Draft Supplemental Environmental Impact Statement/Environmental Impact Report for the Environmental Water Account (SCH #1996032083)

The staff at the Delta Protection Commission (Commission) has reviewed the Supplemental EIS/EIR to the Environmental Water Account (EWA) Final EIS/EIR (2004). From the information provided, the proposed project would be located in the Primary and Secondary Zones of the Legal Delta. Staff of the Commission understands the purpose of the Supplemental EIS/EIR is to provide an evaluation of the effects associated with extending the current EWA through 2011 which the five EWA agencies found necessary in order to take into account the multiple environmental and program related documents including on-going investigations into the apparent Delta pelagic organism decline and ongoing planning for the proposed Bay-Delta Conservation Plan. From the information provided, it appears the proposed action is consistent with the Land Use and Resource Management Plan for the Primary Zone of the Delta.

The Delta Protection Act (Act) was enacted in 1992 in recognition of the increasing threats to the resources of the Primary Zone of the Delta from urban and suburban encroachment having the potential to impact agriculture, wildlife habitat, and recreation uses. Pursuant to the Act, a Land Use and Resource Management Plan (Management Plan) for the Primary Zone was completed and adopted by the Commission in 1995.

The Management Plan sets out findings, policies, and recommendations resulting from background studies in the areas of environment, utilities and infrastructure, land use, agriculture, water, recreation and access, levees, and marine patrol/boater education/safety programs. As mandated by the Act, the policies of the Management Plan are incorporated in the General Plans of local entities having jurisdiction within the Primary Zone. The Act and Management Plan are available at the Commission's website, [www.delta.ca.gov](http://www.delta.ca.gov).

Sincerely, -

A handwritten signature in black ink that reads 'Linda Fiack'.

Linda Fiack  
Executive Director



ARNOLD SCHWARZENEGGER  
GOVERNOR

STATE OF CALIFORNIA  
GOVERNOR'S OFFICE of PLANNING AND RESEARCH  
STATE CLEARINGHOUSE AND PLANNING UNIT



CYNTHIA BRYANT  
DIRECTOR

December 11, 2007

Stephani Spaar  
California Department of Water Resources  
901 P Street, 4th Floor  
Sacramento, CA 95814

Subject: Environmental Water Account  
SCH#: 1996032083

Dear Stephani Spaar:

The State Clearinghouse submitted the above named Supplemental EIR to selected state agencies for review. On the enclosed Document Details Report please note that the Clearinghouse has listed the state agencies that reviewed your document. The review period closed on December 10, 2007, and the comments from the responding agency (ies) is (are) enclosed. If this comment package is not in order, please notify the State Clearinghouse immediately. Please refer to the project's ten-digit State Clearinghouse number in future correspondence so that we may respond promptly.

Please note that Section 21104(c) of the California Public Resources Code states that:

"A responsible or other public agency shall only make substantive comments regarding those activities involved in a project which are within an area of expertise of the agency or which are required to be carried out or approved by the agency. Those comments shall be supported by specific documentation."

These comments are forwarded for use in preparing your final environmental document. Should you need more information or clarification of the enclosed comments, we recommend that you contact the commenting agency directly.

This letter acknowledges that you have complied with the State Clearinghouse review requirements for draft environmental documents, pursuant to the California Environmental Quality Act. Please contact the State Clearinghouse at (916) 445-0613 if you have any questions regarding the environmental review process.

Sincerely,

Terry Roberts  
Director, State Clearinghouse

Enclosures  
cc: Resources Agency

**Document Details Report  
State Clearinghouse Data Base**

**SCH#** 1996032083  
**Project Title** Environmental Water Account  
**Lead Agency** Water Resources, Department of

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**Type** SIR Supplemental EIR

**Description** The Bureau of Reclamation (Reclamation) is the National Environmental Policy Act federal lead agency, and the U.S. Fish and Wildlife Service (Service) and National Marine Fisheries Service (NMFS) are the federal cooperating agencies. The California Department of Water Resources (DWR) is the California Environmental Quality Act State lead agency, and the California Department of Fish and Game (DFG) is the State Responsible and Trustee Agency. Together, these five agencies have made the Draft Supplemental EIS/EIR available for public review and comment.

The EWA Program provides for fish protection and recovery in the San Francisco Bay/Sacramento-San Joaquin Delta while at the same time improving water supply reliability for Central Valley Project and State Water Project water users. The Draft Supplemental EIS/EIR addresses changes to the regulatory and physical environment that have occurred since completion of the Final EIS/EIR in January 2004 and the Records of Decision in March 2004 and September 2007.

---

**Lead Agency Contact**

**Name** Stephani Spaar  
**Agency** California Department of Water Resources  
**Phone** (916) 651-0178 **Fax**  
**email**  
**Address** 901 P Street, 4th Floor  
**City** Sacramento **State** CA **Zip** 95814

---

**Project Location**

**County**  
**City**  
**Region**  
**Cross Streets** statewide  
**Parcel No.**  

<b>Township</b>	<b>Range</b>	<b>Section</b>	<b>Base</b>
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**Proximity to:**

**Highways**  
**Airports**  
**Railways**  
**Waterways**  
**Schools**  
**Land Use** Various

---

**Project Issues** Aesthetic/Visual; Agricultural Land; Air Quality; Archaeologic-Historic; Biological Resources; Cumulative Effects; Drainage/Absorption; Economics/Jobs; Flood Plain/Flooding; Geologic/Seismic; Landuse; Public Services; Recreation/Parks; Soil Erosion/Compaction/Grading; Vegetation; Water Quality; Water Supply; Wetland/Riparian

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**Reviewing Agencies** Resources Agency; Department of Parks and Recreation; Native American Heritage Commission; Reclamation Board; Department of Fish and Game, Headquarters; Department of Conservation; California Highway Patrol; Department of Boating and Waterways; Delta Protection Commission; Caltrans, Division of Transportation Planning; State Water Resources Control Board, Division of Water Quality; State Water Resources Control Board, Clean Water Program; State Lands Commission; State Water Resources Control Board, Division of Water Rights; San Francisco Bay Conservation and Development Commission; Department of Water Resources



**Document Details Report**  
**State Clearinghouse Data Base**

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**Date Received** 10/26/2007

**Start of Review** 10/26/2007

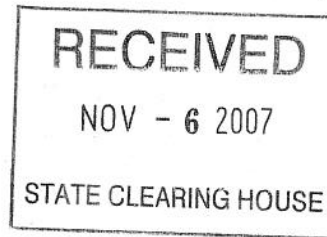
**End of Review** 12/10/2007

**DEPARTMENT OF WATER RESOURCES**

1416 NINTH STREET, P.O. BOX 942836  
SACRAMENTO, CA 942360001  
(916) 653-5791



October 31, 2007



*clear  
12-10-07  
p*

Stephani Spaar  
California Department of Water Resources  
901 P Street, Fourth Floor  
Sacramento, California 95814

Environmental Water Account: Draft Supplemental Environmental Impact  
Statement/Environmental Impact Report to the Final...  
State Clearinghouse (SCH) Number: 1996032083

The project corresponding to the subject SCH identification number has come to our attention. The limited project description suggests your project may be an encroachment on the State Adopted Plan of Flood Control. You may refer to the California Code of Regulations, Title 23 and Designated Floodway maps at <http://recbd.ca.gov/>. Please be advised that your county office also has copies of the Board's designated floodways for your review. If indeed your project encroaches on an adopted food control plan, you will need to obtain an encroachment permit from the Reclamation Board prior to initiating any activities. The attached Fact Sheet explains the permitting process. Please note that the permitting process may take as much as 45 to 60 days to process. Also note that a condition of the permit requires the securing all of the appropriate additional permits before initiating work. This information is provided so that you may plan accordingly.

If after careful evaluation, it is your assessment that your project is not within the authority of the Reclamation Board, you may disregard this notice. For further information, please contact me at (916) 574-1249.

Sincerely,

A handwritten signature in black ink, appearing to read "CH Huitt".

Christopher Huitt  
Staff Environmental Scientist  
Floodway Protection Section

Enclosure

cc: Governor's Office of Planning and Research  
State Clearinghouse  
1400 Tenth Street, Room 121  
Sacramento, CA 95814



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION IX

75 Hawthorne Street  
San Francisco, CA 94105-3901



December 7, 2007

Sammie Cervantes  
U.S. Bureau of Reclamation  
2800 Cottage Way  
Sacramento, CA 95825

**Subject:** Draft Supplemental Environmental Impact Statement/Environmental Impact Report (EIS/EIR) to the Environmental Water Account Final EIS/EIR [CEQ #20070441]

Dear Ms. Cervantes:

The U.S. Environmental Protection Agency (EPA) has reviewed the document referenced above. Our review and comments are provided pursuant to the National Environmental Policy Act (NEPA), the Council on Environmental Quality's NEPA Regulations at 40 CFR 1500-1508, and our NEPA review authority under Section 309 of the Clean Air Act.

This document supplements a Final EIS/EIR (2004) which evaluated implementation of the Environmental Water Account (EWA) through 2007. This Draft Supplemental EIS/EIR considers short-term extension of the EWA to 2011 and recommends, as the preferred alternative, continuation of a "flexible purchase" approach that would allow acquisition of up to 600,000 acre feet of water assets annually. New and additional information is provided where environmental and management conditions have changed, notably with respect to significant declines in Delta fish populations (the "Pelagic Organism Decline"), scientific efforts to understand underlying causes, and legal and regulatory changes.

EPA recognizes the difficulties which the present circumstances, with heightened scientific, planning, and regulatory activities bearing on the future of the Delta, present for program planning and implementation. For this reason, we concur with a short-term and adaptable approach to the EWA. However, given the intentionally circumscribed scope of the supplemental Draft EIS/EIR, concerns raised during our earlier evaluation have not changed. Therefore, we have assigned this Draft Supplemental EIS/EIR the same rating we assigned the 2003 Draft EIS/EIR -- EC-2 (Environmental Concerns - Insufficient Information). Please see the enclosed "Summary of Rating Definitions and Follow-Up Actions."

NOTICE: IF YOU DETACH  
ENCLOSURE PLEASE INSERT  
CODE NO. \_\_\_\_\_  
INITIAL \_\_\_\_\_  
DATE \_\_\_\_\_

Classification	ENV-6.00
Page	2/4
SOI NO.	07146782
PROJECT	1624387
DATE	12/13/2007

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Changing conditions and management context for the EWA raise new questions regarding its role and relevance. A better understanding is needed regarding how management actions affect the Delta environment and how species respond to these changes. We recommend the Final Supplemental EIS/EIR include additional information regarding EWA fisheries costs and benefits, recent legal and regulatory activities, water quality conditions and management, project funding, and whether the Flexible Purchase alternative can be realistically implemented. Our detailed comments are attached.

We appreciate the opportunity to review this Draft Supplemental EIS/EIR. Please send a copy of the Final Supplemental EIS/EIR to this office when it is officially filed with our Washington, D.C., office. In the meantime, if you have any questions, please contact me at (415) 972-3846 or Jeanne Geselbracht, of my staff, at (415) 972-3853.

Sincerely,



Nova Blazej, Manager  
Environmental Review Office

Enclosures:

"Summary of Rating Definitions and Follow-Up Action"  
EPA Detailed Comments

cc:

Jerry Johns, California Department of Water Resources  
Jim White, California Department of Fish and Game  
Maria Rea, National Marine Fisheries Service  
Roger Guinee, U.S. Fish and Wildlife Service

**Environmental Water Account Draft Supplemental  
Environmental Impact Statement/Environmental Impact Report**

**EPA Detailed Comments – December, 2007**

The changing conditions and management context for the EWA raise new questions regarding its role and relevance. Our chief concerns are the following:

1. Documentation of the fisheries benefits, which are explicit purposes of the EWA, is very limited. Two of the chief goals of the EWA are protection of “at-risk native Delta-dependent fish species affected by SWP/CVP [State Water Project and Central Valley Project] facilities” and contribution to fish species recovery. The Pelagic Organism Decline highlights the issue of EWA effectiveness in protecting at-risk species and assisting in their recovery. Ability to measure and document effects of the EWA has been identified as an issue in CALFED Science Board reviews (2006 Review Panel). As the Draft Supplemental EIS/EIR acknowledges, there is an urgent need to advance our understanding of how management actions affect the Delta environment and how species respond to these changes. Overall, the benefits of the EWA from a fisheries perspective, relative to the costs of implementing the program, are unclear.

Although the Draft Supplemental EIS/EIR concludes that the two action alternatives are beneficial for a number of target species (p. ES-10, Table ES-3), this conclusion is based on a comparison with a ‘no action’ baseline. For an understanding of whether the EWA would achieve stated fishery purposes, a biological baseline would be needed.

**Recommendation:** The Final Supplemental EIS/EIR should provide more discussion of the issues surrounding measurement of fisheries benefits from the perspectives of protection and recovery, and should include information regarding how project benefits and costs can be meaningfully compared.

2. Current legal and regulatory actions regarding the Delta are likely to significantly affect use of the EWA by changing the operational options available to the EWA and redefining whether a given management action is considered part of the EWA or is incorporated in other agreements or requirements. The recent Court decision regarding the Biological Opinion for Delta Smelt (cited in the Supplemental Draft EIS/EIR, p. 1-3) is an immediate example of changed operational parameters; a ruling on the Biological Opinion covering salmon and steelhead is pending.

**Recommendation:** The Final Supplemental EIS/EIR should update information on how the EWA is affected by recent legal and regulatory activities.

3. We continue to have concerns, identified in our September 15, 2003, comment letter on the Draft and reiterated in our letter on the Final EIS (February 24, 2004), regarding the relationships between certain EWA actions and the quality of water in and exported from the Delta. Delta water quality is an extremely complex subject, given the range of beneficial uses and contaminants within the system, but in the immediate context two

issues are central: (a) conditions needed for ecosystem health (e.g., salinity at varying times and geographic scales), and (b) priority parameters for source drinking water, such as salinity and bromides.

There are currently a number of efforts to improve characterization and management of Bay-Delta water quality, including the Delta Regional Ecosystem Restoration Implementation Program and activities of the Water Boards (see "Consideration of a Resolution specifying actions the Water Boards will take to protect beneficial uses of the San Francisco Bay-Delta Estuary," Dec. 4, 2007). Additionally, water quality underlies strategies under consideration in the Delta Vision process.

**Recommendation:** The Final Supplemental EIS/EIR should discuss the status of water quality planning for the Bay-Delta and explain how new information regarding water quality conditions and management could affect the EWA.

4. Obtaining sufficient funding to operate an effective EWA has been, and remains, an issue. The most recent Science Board review suggested, for example, that either the EWA needs to obtain sufficient water to genuinely advance fish protection and recovery, or it should redefine its goals (2006 Review Panel). The chief distinction between the two action alternatives in the Supplemental Draft EIS/EIR is magnitude of implementation (Flexible Purchase up to 600,000 acre feet annually, versus purchases up to approximately 185,000 in Fixed Purchase). However, in the past the annual EWA water purchases have averaged 210,000 acre feet ("EWA Accounting and Water Cost in Water Years 2001-2006"). The Draft Supplemental EIS/EIR does not explain how the program will be funded, and based on past experience, the Flexible Purchase alternative appears unrealistic.

**Recommendation:** The Final Supplemental EIS/EIR should discuss options and prospects for Program funding and the practicability of annual purchases of up to 600,000 acre feet.

# SUMMARY OF EPA RATING DEFINITIONS

This rating system was developed as a means to summarize EPA's level of concern with a proposed action. The ratings are a combination of alphabetical categories for evaluation of the environmental impacts of the proposal and numerical categories for evaluation of the adequacy of the EIS.

## ENVIRONMENTAL IMPACT OF THE ACTION

### *"LO" (Lack of Objections)*

The EPA review has not identified any potential environmental impacts requiring substantive changes to the proposal. The review may have disclosed opportunities for application of mitigation measures that could be accomplished with no more than minor changes to the proposal.

### *"EC" (Environmental Concerns)*

The EPA review has identified environmental impacts that should be avoided in order to fully protect the environment. Corrective measures may require changes to the preferred alternative or application of mitigation measures that can reduce the environmental impact. EPA would like to work with the lead agency to reduce these impacts.

### *"EO" (Environmental Objections)*

The EPA review has identified significant environmental impacts that must be avoided in order to provide adequate protection for the environment. Corrective measures may require substantial changes to the preferred alternative or consideration of some other project alternative (including the no action alternative or a new alternative). EPA intends to work with the lead agency to reduce these impacts.

### *"EU" (Environmentally Unsatisfactory)*

The EPA review has identified adverse environmental impacts that are of sufficient magnitude that they are unsatisfactory from the standpoint of public health or welfare or environmental quality. EPA intends to work with the lead agency to reduce these impacts. If the potentially unsatisfactory impacts are not corrected at the final EIS stage, this proposal will be recommended for referral to the CEQ.

## ADEQUACY OF THE IMPACT STATEMENT

### *Category 1" (Adequate)*

EPA believes the draft EIS adequately sets forth the environmental impact(s) of the preferred alternative and those of the alternatives reasonably available to the project or action. No further analysis or data collection is necessary, but the reviewer may suggest the addition of clarifying language or information.

### *"Category 2" (Insufficient Information)*

The draft EIS does not contain sufficient information for EPA to fully assess environmental impacts that should be avoided in order to fully protect the environment, or the EPA reviewer has identified new reasonably available alternatives that are within the spectrum of alternatives analysed in the draft EIS, which could reduce the environmental impacts of the action. The identified additional information, data, analyses, or discussion should be included in the final EIS.

### *"Category 3" (Inadequate)*

EPA does not believe that the draft EIS adequately assesses potentially significant environmental impacts of the action, or the EPA reviewer has identified new, reasonably available alternatives that are outside of the spectrum of alternatives analysed in the draft EIS, which should be analysed in order to reduce the potentially significant environmental impacts. EPA believes that the identified additional information, data, analyses, or discussions are of such a magnitude that they should have full public review at a draft stage. EPA does not believe that the draft EIS is adequate for the purposes of the NEPA and/or Section 309 review, and thus should be formally revised and made available for public comment in a supplemental or revised draft EIS. On the basis of the potential significant impacts involved, this proposal could be a candidate for referral to the CEQ.

\*From EPA Manual 1640, "Policy and Procedures for the Review of Federal Actions Impacting the Environment."

Re: Supplemental EIS/EIR for the Environmental Water Account (EWA)  
From: Valley Water Protection Association

Thank you for the opportunity to comment on the Supplemental EIS/EIR for the Environmental Water Account. Valley Water Protection Association aspires to point out concerns involving the groundwaters of the Butte Basin aquifer. Information developed since 2003 point to the vulnerabilities to our Area of Origin/ Watershed of Origin involving your assumption of conjunctive use or fallowing activities to provide waters for replacing State or Federal project contract deliveries which may be cutback due to environmental regulation.

Valley Water Protection Association has been watching evolving water management proposals since the impacts of the 1994 Drought Water Bank in Butte County. As a Watershed & Area of Origin we expect protections barring the imposition of any impacts resulting from the operations of the EWA or future projects to acquire supplemental water for export. The issues include protection for:

:

- Local Environment whose many niches support habitats for endangered species
- Public Safety from changes in economic access for self-suppliers whose private wells are their only source of safe drinking water.
- Socio-Economic security due to displaced work opportunities

What are the implications of potential risks or the opportunities for mitigation, offered assurances, and/or criteria for evaluation of the significant variables suggested in the documents and reports listed below?

- 2004 GAMA report age dating the waters of the Tuscan aquifer composing the Butte Basin Aquifer.
- The Northern District of Department of Water Resources report assessment of the poor efficiency of the Tuscan aquifer.
- Butte County's annual water conditions report showing continual small declining levels in many sub-basins of the County through various water years.
- The Department of Water Resources' Northern District new evaluation of cross sections showing the complexity of the Tuscan aquifer which point to questions about recharge and groundwater migrations. These bare on past assumptions about the sustainability of increases in groundwater extractions for your project. (The M&T study, among others suggest significant stream and aquifer interactions also impacting aquifer capacity assumptions).
- Initial presentations by CSUChico economist David Gallo, at the League of Women Voters, Butte County forum, show the application of economic-industry-wide standard modeling tools applied to increased fallowing practices for our communities. Any assessments which discount economic impacts of fallowing as insignificant due to economic migration (itself an impact) are inadequate. Rand studies indicate fallowing beyond one year does generate impacts. Crops subject to fallowing use seasonal labor not migrant labor.



The document is inadequate without consideration of this new information as well as a discussion of standards of “significance” in rural communities. Yours is the burden of developing the research to scientifically investigate these looming questions affecting the sustainability of the EWA as it would be applied in this water source area.

The Draft for the Monterey EIS/EIR is out for comment, and its acceptance or changes in its proposed operation will further impact the viability of the EWA as presented. The proposed actions to increase the water portfolio for out-of-basin water contractors may take an entirely different course.

Considering these variables and questions, along with new water conservation technologies currently on the market please justify why there is not a level of significance which begs for a Draft “No Project” Alternative EIS/EIR for this and other Bay/Delta Projects. At the very least, the Environmental Water Account deserves a full investigation including the new information listed above.

Regards,  
Linda Cole, Director  
Valley Water Protection Association.

ENVIRONMENTAL WATER ACCOUNT  
DRAFT SUPPLEMENTAL EIS/EIR  
PUBLIC HEARINGS

ORIGINAL

Wednesday, November 14, 2007  
2800 Cottage Way, Conference Room  
Sacramento, California  
10:00 a.m. to 12:00 p.m.

Taken before STACY L. LOZANO, CSR No. 12831  
a Certified Shorthand Reporter  
for the State of California

---oOo---

EMERICK & FINCH (925) 831-9029

1 PROCEEDINGS

2 Wednesday, November 14, 2007

3 ---oOo---

4 ON THE RECORD AT 10:35 A.M.

5 MR. WOODLEY: Before we get started, I wanted to  
6 make sure just to verify, do we have any elected officials  
7 in the room?

8 Doesn't appear so. Okay.

9 Welcome to today's public hearing on the  
10 Environmental Water Account, Draft Supplemental  
11 Environmental Impact Statement/Environmental Impact Report  
12 to the Environmental Water Account Final Environmental  
13 Impact Statement Environmental Impact Report -- and don't  
14 make me say that three times.

15 This is one of two hearings being held relative  
16 to the National Environmental Policy Act, and the  
17 California Environmental Quality Act.

18 The court reporter will be recording these  
19 proceedings.

20 My name is Rick Woodley. I'm the Regional  
21 Resources Manager for the Bureau of Reclamation  
22 Mid-Pacific Region. I'll be serving as the hearing  
23 officer.

24 The comment period for the draft supplemental  
25 EIS/EIR began on Friday October 26th, 2007, with a notice

1 of availability appearing in the federal register and  
2 filing with the state clearinghouse.

3 Comments will be accepted on the draft  
4 supplemental EIR/EIS through Monday, December 10th, 2007.  
5 We are accepting both verbal and written comments at these  
6 hearings.

7 To provide verbal comments you will need to  
8 complete and submit a speaker's card, and I have a copy of  
9 one of those here for you. It looks like this  
10 (indicating), and I think they're available on the table  
11 back there.

12 Speaker cards are available at the registration  
13 desk, and if you have not submitted your speaker card to  
14 the registration table, please do so immediately so that  
15 your name can be added to the speaker's list.

16 You may also submit written comments today by  
17 completing a comment card, and they look like this  
18 (indicating.) He's holding one up there also.

19 That's also available at the registration table,  
20 and if you're using your written comments to speak from,  
21 and would like to submit them, just complete the top  
22 portion of the comment card, and attach your comments and  
23 submit them to us before you leave.

24 Both written and verbal comments received at  
25 these hearings will become part of the hearing record.

1 You may also provide written comments after today's  
2 hearing. You can submit them by fax, e-mail or by mail.  
3 Please see the hearing process handout for the fax number,  
4 e-mail and mailing addresses. If you look at the hearing  
5 process, you'll find those at the bottom there.

6 Please understand that the purpose of these  
7 hearings is to receive comments on the environmental water  
8 account draft supplemental EIS/EIR.

9 We will proceed in the following manner: I will  
10 call speakers to the microphone, and with some exceptions  
11 in the order their speaker cards that were returned to the  
12 registration table.

13 If I call your name and you're not present,  
14 you'll be moved to the end of the speaker's list. And  
15 since we have a very limited number of speakers, and so  
16 far I think I have one, I will not impose a time limit.  
17 However, if additional speakers arrive, and it becomes  
18 necessary, we will limit the amount of time to accommodate  
19 all the speakers.

20 When I call you to the microphone, clearly state  
21 your name and affiliation. Spell both your first and last  
22 name for the court reporter, and please remember that the  
23 court reporter will be recording your comments, and your  
24 comments are part of the official record for these  
25 proceedings.

1           It's important that you speak clearly so that  
2   your comments can be captured accurately. Please note  
3   that the court reporter will interrupt us as needed in  
4   order to clarify your comment or capture it accurately.

5           With that, I think we'll start and we can have  
6   our first speaker. I believe it's Paul Olmstead.

7           MR. OLMSTEAD: Thank you very much.

8           My name is Paul Olmstead, P-a-u-l  
9   O-l-m-s-t-e-a-d. I am representing the Sacramento  
10   Municipal Utility District. And since I have all the time  
11   in the world, I can just say whatever I want -- no.

12          SMUD and our cohorts, NCPA, represent the lion's  
13   share of the preference power customers of the Central  
14   Valley Project, and so these comments are going to weigh  
15   towards the power side of the impact -- commissions.

16          First of all, I think it's important to note that  
17   the actions by the EWA under last year's -- we support the  
18   actions that have been taken to support the power bypasses  
19   that have taken place at Folsom Reservoir, both upon the  
20   individual actions by the Fish and Wildlife Service and  
21   Resource Agencies to expedite these actions.

22          As a matter of fact, today we have a power bypass  
23   going on in, which the Western Power Administration is  
24   being compensated monetarily for the power that's lost  
25   generation -- to EWA but to support the cold water

1 temperatures in the American River as we speak.

2 So I want to go on record and say that we support  
3 those actions that are taken and today it's been very  
4 successful.

5 In regards to the document that was presented for  
6 review, first of all, although power was noted as not  
7 having a significant impact in the evaluation of the  
8 environmental document, we do not see an evaluation it was  
9 dated as less than significant. We did not see what was  
10 that significance criteria, which identified as thus being  
11 significant.

12 As power customers, we'd like to -- we want to  
13 maximize all opportunities to make the operations of the  
14 CVP as efficient and profitable, and help us pay off the  
15 project as much as possible. So please identify what was  
16 the significance criteria used as that in your  
17 identification in that -- under "Power" right there.

18 And that was -- as Tim pointed out, the  
19 environmental -- this document analyzed the impacts of  
20 environmental water account separately, not in the big  
21 picture as identifies other actions that were brought up  
22 such as the San Joaquin Restoration Fund activity, South  
23 Delta Actions, OCAP, a future CVP operation.

24 Although we recognize that's -- the flexibility  
25 and the importance of the flexibility in the environmental

1 account, we'd like to at least elaborate a bit on how the  
2 interaction with the environmental water account will be  
3 with the possible and expected future programatic and  
4 project actions under the CVP. Just simple statements  
5 will help us understand that a lot better.

6 Another item -- this is important -- a third item  
7 is to assure in the future environmental water account  
8 program financing that costs are allocated to support the  
9 power functions like they have been in the past.

10 This was not elaborated on in the document. We  
11 certainly would like to see it in the record of decision  
12 to assure that we -- those power allocations are  
13 supported, and your sister agency, Western Power  
14 Administration's ability to continue to do business is  
15 kept whole.

16 And that leaves the third one, or the next one is  
17 that as the preference power customers we want to assure  
18 that the power function is made whole through EWA.

19 The last item I'd like to bring up is a little  
20 interesting in complex, but it was pointed out in your  
21 document. You stated that irrigators may be allowed --  
22 will be allowed to have lango fallow (sic), and then those  
23 irrigators will be paid monies for that water which will  
24 be used to support the EWA, and that's a great idea.

25 However, many of these irrigators in the ag



1 community under CEP also fall under a certain division,  
2 which is called the "ability to pay." That is if they  
3 cannot pay their portion of capital now, and OEM operation  
4 costs under CVPIA, they are -- those -- obligations are  
5 waived. And what happens when those obligations are  
6 waived, the power community picks up that portion of the  
7 cost of CVPIA.

8 Therefore, if those irrigators, or if irrigators  
9 are given monies to fallow their land, that money is used,  
10 we'd like to have the Bureau of Reclamation track those  
11 irrigators, and maybe make a -- our idea is we'd like to  
12 see that those irrigators have to help repay the cost of  
13 CVPIA under their obligations under CVPIA.

14 And that is the basis of my comments.

15 MR. WOODLEY: Thank you, Mr. Olmstead.

16 MR. OLMSTEAD: Thank you.

17 MR. WOODLEY: Were there any other speakers?

18 Okay. At this point, I think we may temporarily  
19 just go off the record.

20 We'll be here until noon. You're welcome to stay  
21 if we have any other speakers show up, or if somebody  
22 decides they want to speak.

23 (OFF THE RECORD 10:46 A.M. TO 12:00 P.M.)

24 MR. WOODLEY: Since we don't have any other  
25 speakers we'll go ahead and close out this hearing and

1 start again tomorrow.

2 (CONCLUSION OF PROCEEDINGS AT 12:00 p.m.)

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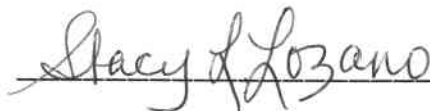
1 CERTIFICATE OF REPORTER

2 I, STACY L. LOZANO, hereby certify the following:

3  
4 That said proceedings were taken in shorthand by  
5 me, a Certified Shorthand Reporter of the State of  
6 California, and was thereafter transcribed into  
7 typewriting, and that the foregoing transcript constitutes  
8 a full, true and correct report of said proceedings which  
9 took place;

10  
11 That I am a disinterested person to the said  
12 action.

13  
14 IN WITNESS WHEREOF, I have hereunto set my hand  
15 this 28th day of November , 2007.

16  
17 

18 STACY L. LOZANO, CSR No. 12831

19 ---oOo---

ORIGINAL

ENVIRONMENTAL WATER ACCOUNT  
DRAFT SUPPLEMENTAL EIS/EIR  
PUBLIC HEARINGS

Thursday, November 15, 2007  
830 6th Street  
Los Banos, California  
5:00 p.m. to 7:00 p.m.

Taken before STACY L. LOZANO, CSR No. 12831  
a Certified Shorthand Reporter  
for the State of California

---oOo---

1 PROCEEDINGS

2 Thursday, November 15, 2007

3 ---oOo---

4 ON THE RECORD AT 6:48 p.m.

5 MR. WOODLEY: I'm opening the record on the  
6 public hearing for the Environmental Water Account, Draft  
7 Environmental Impact Statement to the Environmental Impact  
8 Report to the Environmental Water Account Final  
9 Environmental Impact Statement/Environmental Impact  
10 Report.

11 This is the second of two hearings being held  
12 relative the National Environmental Policy Act, the  
13 California Environmental Quality Act.

14 The court reporter is recording this proceeding.

15 My name is Rick Woodley. I'm the Regional  
16 Resources Manager of the Bureau of Reclamations  
17 Mid-Pacific Region. I've served as the hearing officer.

18 We were prepared to open the hearing at  
19 5:00 p.m. here in Los Banos. We didn't have anybody that  
20 was prepared to offer any verbal comments, and it is  
21 approximately 7:00 o'clock here at the present time.

22 And since we have no speakers, we will go ahead  
23 and close this hearing.

24 (CONCLUSION OF PROCEEDINGS AT 6:50 P.M.)  
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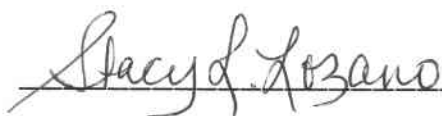
CERTIFICATE OF REPORTER

I, STACY L. LOZANO, hereby certify the following:

That said proceedings were taken in shorthand by me, a Certified Shorthand Reporter of the State of California, and was thereafter transcribed into typewriting, and that the foregoing transcript constitutes a full, true and correct report of said proceedings which took place;

That I am a disinterested person to the said action.

IN WITNESS WHEREOF, I have hereunto set my hand this 28th day of November, 2007.



STACY L. LOZANO, CSR No. 12831

---oOo---