



ENVIRONMENTAL DEFENSE

finding the ways that work

July 14, 2000

Honorable Mary Nichols, Secretary
Resources Agency
1416 Ninth Street, Suite 1311
Sacramento, CA 95814

Honorable David Hayes, Deputy Secretary
U.S. Department of the Interior
1849 "C" Street, NW
Washington, DC 20240

Dear Secretary Nichols and Deputy Secretary Hayes:

As interested parties who have followed the CALFED process, Environmental Defense recommends that some parts of the June 9, 2000, "Framework" be clarified before they are incorporated into a Record of Decision. As recent history has clearly shown with the signing of the Bay-Delta Accord, a failure to specify terms clearly can lead to years of constant bickering and disputations. We urge the State and federal governments to make every effort to clarify all aspects of the Record of Decision.

It will come as no surprise to you that we have doubts that the Framework is a balanced solution that will lead to the restoration and long-lasting protection of California's aquatic natural resources. We are very concerned that new environmental impacts from the Framework's proposed storage and conveyance facilities, as well as from its commitment to Delta exports, will undermine the additional level of environmental protection provided by the Ecosystem Restoration Program and the Environmental Water Account.

We have been assured that these concerns are unfounded, that the ERP and the EWA are intended to mitigate for the damages of the existing system and that significant further mitigation will be required before any new facilities are added to the system. Many of the clarifications suggested below are based on these assurances. In some cases, efforts to make these assurances a reality do seem to be on the pages of the Framework document but prudence and experience suggest that the language needs to be very plain and clear or it will be misinterpreted. In other cases, the Framework does not provide all the specific elements that we believe were intended. We address a number of critical issues below that should be substantially clarified so that CALFED's vision of restoration can ultimately be successful, and reserve the right to provide additional comments on these and other issues as we get nearer to a Record of Decision.

Delta Smelt Biological Opinion

The Framework clearly states that ESA protection for Delta smelt is included in the Regulatory Baseline.¹ Yet Appendix B appears to contradict this statement by pronouncing that the 2-to-1 export/inflow ratio (as specified by the Delta Smelt Biological Opinion) will be met by the CVP and EWA. While the CVP's B2 water may be used under some circumstances to meet this BO, there is definite ambiguity as to the State Water Project's obligation. According to the main document, the SWP would have an obligation to meet part of the objective (through the Coordinated Operations Agreement), but Appendix B seems to indicate that the Environmental Water Account would be used to meet the State's obligation. This Appendix should be modified to be consistent with the main document.

CVPIA B2 "Offset" Policy

Appendix B includes an explanation of Interior's "offset" policy for managing its 300,000 AF of dedicated "B2" water. Though this issue has been discussed at length in the last few months, the Framework's language still does not seem clear to some parties.

Interior's policy accounts for B2 water use as the sum of three "metrics", (1) an annual export metric, (2) a storage metric (October-January), and (3) a release metric (February-September). In each case, the metric is defined to be the change from what operations would have been under pre-CVPIA conditions to those that actually occurred as the operational elements of the Anadromous Fish Restoration Plan are implemented. The use of B2 water is defined as the sum of these three metrics.

In the course of the water year, it is widely acknowledged that the daily values for each of the three metrics are expected to fluctuate and, sometimes be negative, representing a credit, or "offset" to the B2 account. This acknowledgement is contained in the first sentence under offset.² The parenthetical statement in this sentence (referring to "forecast delivery") is definitely confusing and presumably should be deleted.

Over the course of the year, however, it is fully expected that none of the three metrics should ever reflect a net credit (offset) to the account. It has been explained to us that the offset policy was introduced in order to clarify this point – that the annual values for each of the three metrics must be positive. This concern was raised because it was pointed out that the Interior's accounting criteria contained a loophole. This loophole would have theoretically allowed, under certain conditions, that the release metric, measured annually, might be negative, possibly allowing (assuming a value of zero for the storage

¹"The Regulatory Baseline consists of the biological opinions on winter-run salmon and delta smelt, 1995 Delta Water Quality Control Plan, and 800 TAF of CVP Yield pursuant to CVPIA Section 3406(b)(2)." (Page 22).

²"Where a prescribed (b)(2) export curtailment results in a reduction in releases from upstream reservoirs and hence increased storage, the charge to the (b)(2) account will be offset to the extent that the increased storage will result in increased delivery to export users in the remainder of the water year." (Appendix B)

metric) the export metric to exceed 800,000 AF. Environmental Defense supports the clarification that an annual release metric that is negative should not be allowed to "offset" Delta exports. This language is essentially included in the last sentence under "offset".³

We understand the language in the Framework to be consistent with this interpretation, and have been assured that this is the case. We are concerned, however, that the language could be interpreted by some to mean that any time exports are reduced and reservoir releases are rescheduled, that the B2 account would be charged twice. The first charge would be for the export reduction and second for the flow increase, even though the operational changes would be accomplished with a single block of water.

We recommend that CALFED be very clear on this matter. Perhaps it would be most simple, as well as abundantly clear, if the Record of Decision were to stipulate the following:

- none of the metrics could be negative for the entire water year,
- any of the metrics were allowed to be negative for part of the water year, and
- any negative values would "offset" positive values at another time of the year.

Export/Inflow Ratio Contribution to the Environmental Water Account

The Framework estimates that flexibility in the Export/Inflow Ratio will contribute 30,000 AF to the Environmental Water Account. This flexibility is already contained in the Water Quality Control Plan and is therefore not part of the EWA. It should not be counted as part of the EWA and the total size of the EWA should be correspondingly reduced to 350,000 AF.

Clarify the Size of the Environmental Water Account

Footnote 4 in Appendix C notes that the operational components of the EWA are estimates only and may vary widely from year to year. This information should not be relegated to a footnote and should be clearly explained, perhaps with a range of values that has been estimated through CALFED's "gaming" exercises.

A caution should be added to the purchase elements of the EWA as well. The Framework should explain that these water volumes are based on two critical assumptions. First, that funding of the Environmental Water Account will be available in specific amounts and, second, that the purchases will be available at assumed prices.

³ "Where the delivery to export users in the remainder of the water year will not be increased and end-of-year storage will be increased, there will be no offset to the charge to the (b)(2) account." (Appendix B)

Guarantees for Endangered Species Act Assurances

The Framework states clearly that the ESA will not be used to curtail Delta exports (in unspecified amounts) beyond the Regulatory Baseline.⁴ The Framework goes on to state that this commitment will last four years and will be based on three "tiers" of assets, including the Regulatory Baseline, the Environmental Water Account and "Tier 3". Any implementation of Tier 3 will be based on the recommendations of an independent science panel.

The Framework does not address what minimum threshold of resources for the EWA is necessary to warrant the Endangered Species Act assurances. Will the assurances remain if funding is at less than the specified level? Will they remain if willing sellers are, for one reason or another, not found? We have been verbally assured that the ESA assurances are based on a working EWA, but the Framework is not clear on this point. The Framework should make clear that the ESA assurances are contingent on a viable EWA as described in the Framework (after adjusting for the E/I ratio error). The EWA must have access to storage (see below) and the purchase options must be funded and operational.

Access to Storage for the Environmental Water Account

The Framework states that in order to be effective, the EWA must have access to storage. The "gaming" exercises, in evaluating how big an EWA must be to achieve environmental objectives, have assumed that the EWA would have junior storage rights. ("Junior rights" is intended to mean that the EWA water would "spill" when project water fills a reservoir.)

The Framework should make clear that the EWA would, at a minimum, indeed have these junior rights. Also, the Framework notes that a bypass of San Luis Reservoir to the San Felipe project will not only improve water quality for the Santa Clara Valley Water District, but it will also effectively increase the storage capacity of the reservoir by 200,000 AF. The Framework does not directly specify how this new storage would be allocated. Since the Framework clearly observes that the EWA needs storage and has none, we assume that it intends that this new storage be allocated to the EWA. We suggest that the ROD make clear that, if newly usable storage space in San Luis Reservoir is made available, it be allocated to the EWA.

Mitigation Criteria for Proposed Storage and Conveyance Facilities

Finally, we have also been assured that the environmental aspects of the Framework are based on the levels of protection that are necessary within the existing system and that CALFED understands that further mitigation is likely to be necessary with the addition of new storage and conveyance. Indeed, the Framework acknowledges this need with regard

⁴ "There will be no reductions, beyond existing regulatory levels, in CVP or SWP Delta exports resulting from measures to protect fish under the federal and state Endangered Species Act."(page 22)

Secretary Nichols and Deputy Secretary Hayes
July 14, 2000
Page 5

to the proposed increases in export capability at the Banks pumping plant.⁵ We urge CALFED to be even more clear on this point, and to state it clearly and specifically in the Conveyance, Storage and Environmental Water Account sections.

We hope that you are able to incorporate these clarifications into CALFED's Record of Decision. Of course, we are available to discuss these issues at any time. Thank you for the opportunity to comment on the CALFED framework and for your significant efforts to build a viable CALFED package

Sincerely,



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⁵ "Such increased pumping is conditional upon avoiding adverse impacts to in-Delta water supply reliability."(page 17)