

9

CLARIFICATIONS TO FRAMEWORK FOR ACTION
(DRAFT – 7-19-2000)

1. Page 5, paras. 1 and 2 -- The first paragraph contains many undefined terms ("stable", "self-sustaining", "diverse", "valuable") which could lead to the conclusion that there are no defined goals for the overall ecosystem program. Paragraph 2, however, seems to infer that the Strategic Plan defines those terms, at least to the extent it defines the proposed Stage 1 action plan. These paragraphs of the Framework for Action could be redrafted to make this connection more clear. In addition, Add the phrase "as modified through the adaptive management process" should be added to clarify that the strategic plan does not create a static priority for ERP actions.

2. Page 5, para. 3 -- The statement concerning fish screens, etc., as forming the basis for *existing* biological opinions is wrong. If the statement is intended to opine that they will, in the future, form the basis for new biological opinions, the statement needs to be rewritten to make that clear.

3. Page 5, para. 3 -- The EWA funding is only referenced as being needed for four years. It is our expectation, and hopefully that of the regulatory agencies, that the EWA and its related water supply assurances will be continued for all of Stage 1. The paragraph, in describing needed financing, should alert the readers to this probability.

4. Page 5, para. 4 -- The term "user fee" needs to be clarified to ensure that it is not read as only applying to consumptive users of water. For example, boaters, fishermen, power plant operators, resort owners, etc. are all users of the system and to greater or lesser extents also impact the resources that are to be restored through the ERP. Also, the discussion of the possible fee needs to include references to credits for others than CVP users. For example, credits for contributions to Category 3 funding, ongoing SWP contributions to the IEP, and environmental work done by many agencies on tributaries to the Delta need to be taken into account. Beyond these clarifications the user fee discussion should remain general, as it will ultimately be for the legislature to determine whether such a fee should be used.

4a. Page 6 -- We assume that some of the undefined terms contained in the page 6 bullets (e.g., "large scale", wildlife friendly agricultural lands", "invasive species") are defined in the Strategic Plan and that the bullets summarize projects that are detailed in that Plan. If this is so, the list of bullets should be preceded by an appropriate explanatory introduction.

4b. Page 6, bullet 3 -- The commitments to use public land and the extent to which private land must be acquired to provide the 8-12,000 of habitat should be clearly stated in the ROD or detailed in the Strategic Plan.

5. Page 6, bullet 5 -- The term "upstream tributaries" is undefined. We assume, however, that it includes upstream reaches of the Sacramento and San Joaquin Rivers, as well as the tributaries of those two streams. Better definition of the term would be useful. The key ambiguity in this bullet, however, is the last sentence. If the water developed under ERP for upstream uses is then used as an EWA supply, this could reduce the need to develop other water sources to meet the 380,000 a.f. goal. If it is not to be so used, then under California law it becomes unappropriated water available for use by others. Clarification of how this water is to be accounted for needs to be developed.

6. General Comment on ERP -- The only reference to the science process is the short phrase "and ongoing science review" at the top of page 6. A much stronger statement is needed here concerning the role of science review in the conduct and evaluation of the ERP and EWA. Both programs need to be subject to science review and adaptive management. The statement should be explicitly ~~cross-referenced~~cross-referenced to the science portion of the Framework. Specific comments on strengthening the science section of the Framework for Action are set out below.

7. Page 9, bullet 1 (Appendix B)

(a) Appendix B, bullet 3 -- We assume that the statement that a portion of the 2-to-1 export/inflow ratio may be met "by the CVP" means that the water will be accounted for as B2 water. This should be explicitly stated as follows: "To the extent not accounted for as EWA water, Reduced CVP exports under this requirement will be accounted for as water dedicated and managed under section 3406(b)(2) of the CVPIA."

(b) Appendix B, bullet 4 -- The ROD needs to include a comprehensive description of the method that will be used to account for reset and offset modifications. To avoid after-the-fact disagreements concerning the accounting process, bullet 4 should be amended as follows:

Full use of 800 TAF Supply pursuant to Section 3406(b)(2) of the CVPIA in accordance with Interior's October 5, 1999 Decision, clarified as follows:

Water remaining from Refill of Reservoirs ("Reset"): Water which is available under the (b)(2) policy as a result of refill of reservoirs following upstream releases ("reset") will not be used in a manner which results in increased export reductions. Water that is available under the (b)(2) Policy as a result of refill of reservoirs following upstream releases ("reset") will be placed in a separate account and used for additional upstream actions or increased Delta outflow, but will not be used in a manner that results in increased export reductions or reduced quantities of CVP water available for delivery to CVP south-of-Delta contractors. Upstream releases of (b)(2) water pumped by the SWP and made available to the EWA will not be subject to the "reset" provision.

Export Curtailments which Result in Increased Storage ("Offset"): 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 (beyond forecast delivery at the time of the export curtailment) to export users in the remainder of the water year, not be offset and the export curtailment will be accounted as (b)(2) water unless the increased reservoir storage results in increased deliveries by a like amount (beyond forecast delivery at the time of export curtailment) to CVP south-of-Delta contractors in the current contract year (March 1 to February 28). Where the delivery to export users in the remainder of the water year will not be increased affected and end-of-year storage will be increased, there will be no offset to the charge of the (b)(2) account.

(c) Appendix B, sentence following last bullet -- The statement that flexible operation will be used to supplement Tier 1 and 2 assets needs clarification. Flexible operations are similar to borrowing and should only be requested if the EWA has assets in hand to make up the potential water lost as a result of the modified operations. If natural makeup occurs, the EWA assets would not need to be used. However, the water users do expect that the EWA assets will be fully in place, and fully encumbered, to provide makeup water if nature does not take care of things. This needs to be explicitly stated.

(d) Appendix B, Trinity River Flows -- The ROD should include a description of the method that will be used to account for the impacts due to the new Trinity River flows and verification that the flows are not affecting the targeted allocations for south of Delta water service contractors.

(e) Appendix B, bullet 2 -- Referring to the 1995 WQCP as the "baseline" needs to be done with the understanding that certain actions now being undertaken, in particular the VAMP experiment, are not strictly within the terms of the Plan, but do provide equivalent protection. The baseline should be defined in a manner which does not undo agreements such as the VAMP experiment or impose requirements beyond those set forth in SWRCB Decision 1641.

8. Page 9, bullets 2 and 3, and Appendix C (EWA) -- The following expansions and clarifications are needed in this area:

(a) The concept of "average" needs clarification in several ways -- (i) average over what period, and (ii) what does "average" set aside "annually" mean in practice.

(b) The third bullet states that the water supply assurance commitment will be "conditioned upon establishment of the EWA." What does "establishment" mean? The EWA will be established at the time of the ROD, but all of the water assets may not be in hand on that date, and, in fact, can not all be in hand by late this summer. Water derived from joint point and so-called windfall water may not be in place until later this year or early next year. The reference to the 200,000 acre feet of water in Appendix C leads us to believe that the water supply assurance will become effective when that amount of water is in the EWA account and the rest of the program is in place. This triggering definition even needs to be more explicitly stated.

(c) The reference in Appendix C to a 200,000 acre foot "initial deposit" is confusing. The wording could be interpreted as increasing the size of the EWA from 380,000 a.f. to 580,000 a.f. As we understand the concept, however, the initial deposit serves two purposes. First, it is first required to trigger the water supply assurances. Second, it may represent the storage needed to assure that an average of 380,000 acre feet is available over the four years the water supply assurances are in place. Exactly how the initial deposit fits into the overall operation of the EWA needs more detail.

(d) Appendix C should be amended to state that the borrowing agreements referenced therein will be in place at the time of the ROD. Clarify that borrowing will only occur to the extent of EWA assets existing at the time of the borrowing, and that such assets shall remain encumbered until the borrowing is repaid. The language should also be amended to clarify that borrowing will not affect current year water allocations in addition to the following year's allocations.

(e) The Framework is silent on what happens to the water supply assurances if, in any year, 380,000 acre feet of water is not derived from the initial assets. Appendix C should be supplemented to state that in such a case, the assurances will remain intact and carryover water or Tier 3 assets will be used to cover ecosystem water shortfalls. As we understand the EWA, the water generated for the Account will be the sum of whatever amounts are provided by the individual assets, which in any particular year may be more or less than 380,000 acre feet. This interpretation is supported by the use of the term "average," which, by definition, means that in some years more than the average will be available and in some years less. A much more complete description of this aspect of the EWA is needed in the ROD.

(f) Add language to Appendix C defining the principles that will guide the "source shifting agreements."

(g) Define and clarify the status of the 500 cfs pumping increase asset when Banks capacity is increased to 8500 cfs.

(h) Explicitly state in Appendix C or elsewhere that flow/pumping ratios during the VAMP experiment that are greater than 2:1 are the responsibility of B2 or EWA.

9. Page 9, bullet 3 (Appendix D) -- The following expansions and clarifications are needed in this area:

(a) Neither the bullet nor the Appendix explicitly say that the water supply assurances provided by the Tier 2 and 3 EWA assets extend to incidental take yellow and red light conditions under current and future biological opinions. Explicit The language set forth in paragraph 9(e), below, needs to be included to ensure that, in the future, the EWA assets will be used to protect water supplies from the impacts of incidental take reduction actions.

(b) Appendix D to the Framework for Action (second paragraph) states:

The no-jeopardy finding in turn will rest upon the Services' determination that the combination of assets in the baseline, the EWA and ERP, and if needed the third tier of additional assets are of sufficient magnitude and certainty to support the no-jeopardy finding for the four year period.

This language can be interpreted to call for amending the current biological opinions which now only require the CVP and SWP to meet the Accord (1995 WOCP) operational requirements to obtain no-jeopardy protection. The quoted language can also be interpreted to imply that if any one of these assets turns out to be unavailable, smaller, or less certain than expected, the no-jeopardy opinions could be changed to jeopardy opinions. These potential interpretations need to be eliminated.

Since, during the early years of Stage 1, operations in the Delta will remain essentially the same as they are today, the current no-jeopardy biological opinions should remain the bases for no-jeopardy determinations. The other environmental water assets should be described in the ROD as being dedicated (a) to recovery of listed species and (b) to protecting water supplies from the adverse effects of actions by the fisheries agencies to avoid or reduce incidental take under the no-jeopardy biological opinions, and/or the listing of additional fish species.

This approach properly separates what is needed to provide no-jeopardy opinions (continued operations under the Accord standards) from what the fishery agencies say they need to give water users four years of assurance that their water supplies will be protected from effects of new listings, incidental take reduction actions, and other programs to improve fishery resources.

(bc) The language in Appendix D on extension of the water supply assurance commitment contains the only reference in the Framework to the sharing of future assets "for environmental and water delivery purposes." This concept is critical to an evaluation of the benefits which various stakeholders anticipate from the CALFED program. If there is a current understanding within CALFED that the EWA will be expanded proposes to expand the EWA above the 380,000 acre feet in the future by obtaining part of the increased water yield from various storage and conveyance projects, and if such additions to the EWA are considered prerequisites to continuance of the water supply assurances, that should be explicitly stated and the projects anticipated to be shared and the sharing formulas should be defined in the ROD.

(d) Other than some inferences that can be drawn from the extension of the water supply assurance language discussed above, the Framework for Action is very ambiguous concerning the way the current ESA no-jeopardy opinions will be treated as new water quality and supply projects are brought on line. The following language would fill this gap:

The CALFED Stage I program anticipates the implementation of a suite of projects and programs to improve the quality, quantity, and reliability of water supplies and protect and restore the environment. The CALFED agencies have made an assessment of ESA requirements associated with the implementation of the Stage I facilities and actions. The amount of water available for environmental purposes, including

the current ESA and baseline requirements, CVPIA B2 water, the EWA assets, and water to be developed through the ERP, has been determined to be sufficient to support the continuance of the current no-jeopardy opinions as the regulatory basis for implementing all Stage 1 projects and achievement of anticipated water quality and supply reliability objectives.

(e) During meetings with the USF&WS on the scope of the water supply assurance, it became clear that there was ambiguity concerning what level of protection was being provided. To correct this problem, the following language should be incorporated into the ROD as part of the commitments being made through Appendix D of the Framework for Action:

For the first four years of Stage 1, (i) there will be no reductions in CVP or SWP water deliveries or storage as a result of changes in storage or export operations, or (b) in direct diversions or diversions to storage to meet in-basin water supply needs resulting directly or indirectly from measures to protect fish under FESA, CESA, ERP, or any other program to protect or recover fishery resources within the CALFED solution area. For purposes of this water supply assurance, the baseline that will be used to measure reductions shall be the requirements of the 1995 water quality control plan and, for the CVP, CVPIA B2 actions using the accounting methodology set forth in the Framework for Action.

Actions taken to protect or recover fishery resources that are within this water supply assurance include, but are not limited to, cross-channel gate closures, reductions in pumping, modification of storage operations, or any other actions to reduce incidental take or to avoid jeopardy to any existing or future listed species.

AgUrban recognizes that this language needs to be complemented by other language that states that modified project operations can be requested and will be accommodated if adequate EWA assets are in place to eliminate water delivery or storage impacts.

10. Page 9, bullet 4 -- this reference to JPOD and the sharing between CVP and the EWA should be clarified as to the description of JPOD used in Appendix F (Water Supplies for Wildlife Refuges). In Appendix F it is stated that JPOD benefits will be shared equally between EWA and refuge supplies. It also states that implementation of a refuge supply plan may not be implemented until 2002. JPOD for general CVP use can begin immediately and be shared with EWA.

11. Page 10, para. 1 -- The ROD needs to describe an accounting process that will allow the federal contractors to determine if, from an agreed upon baseline, the "15 percent (or greater)" increase in CVP water supplies is being achieved. This process should be developed through a process that includes the CVP export water users.

12. Page 10, para. 1 -- Towards the end of this paragraph is the following sentence: "Substantial progress toward implementation of other program elements, such as development of EWA assets, is also necessary." This sentence should be removed. Development of EWA assets is provided for in other sections of the Framework. The quoted sentence, in a section devoted to water supply reliability, makes it sound like the CVP water supply improvement is somehow related to the success of the EWA effort or on acquisition of additional EWA assets, neither of which is correct.

13. Page 10, Governor's Drought Contingency Plan -- It is our understanding that this Plan was included to recognize that while the EWA was receiving its assets out the outset of Stage 1, water

users, other than CVP export water users, will not experience any water supply improvements until four or more years after the ROD is issued. The description of the Drought contingency Plan set forth in the Framework for Action does not make this clear. Language should be added clarifying that the water developed through the Governor's plan will be for water users and not for the ERP and/or EWA.

13a. Page 14, Groundwater Storage -- The Framework language implies more CALFED control over groundwater projects than some believe is intended. The first two sentences could be amended as follows to provide clarification: "Facilitate and fund locally supported, managed, and controlled groundwater and conjunctive use projects with a total of 50 TAF to 1 MAF of additional storage capacity by 2007. Groundwater/conjunctive use projects will be implemented through locally supported and managed projects or through partnerships with local and regional interests to obtain local and CALFED program benefits." The Stage 1 actions list should include completion of environmental documentation which should be accomplished by the end of 2003.

14. Page 15, paras. 1 and 2 -- The language on ground water management has been read by some as substituting State level control over ground water basins for existing local control. We do not believe that was the intent and suggest the following clarifications to avoid otherwise serious concerns:

(a) The Framework states that "Groundwater should be managed at the basin level. Such a management system would avoid multiple, potentially conflicting sub-basin groundwater management plans." This section should be clarified to be consistent with Steve Ritchie's 7/10/00 letter to NCWA where basin-wide management is discussed.

(b) The Framework proposes in Appendix H that "county groundwater management ordinances must be consistent with groundwater management plans adopted by water agencies under AB 3030 or other statutory authority." We strongly suggest that CALFED focus its efforts to encourage cooperation and coordination among local agencies and affected landowners with authority over groundwater. The Framework should state that county ordinances or groundwater management plans should not be subordinate to the other.

(c) Appendix H refers to the need for amendments to Water Code section 1220 to facilitate conjunctive use, groundwater banking and groundwater transfers in the Delta-Sierra Basin. While we acknowledge that this is an ambiguous provision in law, we do not understand how it is unique in this regard for the Water Code. The Framework should state that CALFED will support legislation that will provide remedy for uncertainties, while maintaining all of the existing protections for water users in the Sacramento and San Joaquin valleys.

(d) The framework requires local agencies to have groundwater management programs to receive program benefits. We fully agree with the concept posed by the Framework that local agencies should be strongly encouraged to develop and implement AB 3030 groundwater management plans. We believe, however, that the most effective way to accomplish this is for the CALFED agencies to provide technical and financial incentives to these entities. Appendix H should be consistent with earlier CALFED publications that promote cooperative and incentive based locally controlled groundwater management. CALFED's Framework should also acknowledge efforts to develop plans that "address both groundwater and surface water" are already underway throughout the CALFED study area.

15. Page 16, bullet 1 -- The concept of a programmatic biological opinion for the entire CALFED program, to be in place by the time of the ROD, seems to be a laudable goal. There needs to be, however, a more complete discussion of how such an opinion would affect the "site specific impacts or mitigation issues" that will need to be addressed for storage and conveyance projects. The definition of "site specific," for example, needs clarification. We have heard suggestions that site specific may include the service areas of such projects. Given that the CALFED program will not provide any increase in total water supplies, but will only replace some of the water lost to prior environmental actions, a service area ESA requirement associated with CALFED storage and conveyance projects would be unacceptable.

16. Page 16, bullet 1 -- There needs to be a more complete discussion of how a good neighbor policy will be implemented to protect agricultural and other operations adjacent to ERP habitat restoration areas. In upstream areas, federal agencies and local participants should be encouraged to enter into agreements that further the federal agencies' Bay-Delta conservation goals and provides assurances that: (i) protect parties who voluntarily engage in conservation activities by ensuring that the Federal Government will not interfere with their present farming, ranching, irrigation, flood control or other activities. (ii) protect local participants' privacy interests, and (iii) preserve local participants' property rights. NCWA is working with other agricultural and water supply interests to develop a safe-harbor strategy for the CALFED program.

17. Page 16, bullet 3 -- This paragraph contains the following sentence: "The MOU will outline a programmatic 'alternatives analysis' process which will support any project-specific determinations." This language is ambiguous, but can be interpreted as requiring each CALFED storage or conveyance project to undergo its own LEDPA test. We do not believe that this is the proper interpretation. Other sections of the Framework for Action specifically define the nature and extent of the nonstructural alternatives to storage and conveyance. A process that would allow the Corps or EPA to modify the CALFED nonstructural program requirements through the Section 404 LEDPA process would be unacceptable. The ROD needs to explicitly state that the LEDPA analysis will occur at the program level and individual projects will not have to undergo a separate evaluation of need.

18. Page 16, bullet 3 -- The ROD should contain a project definition for the suite of storage and conveyance projects that is not tied to water supply only, but recognizes that their purpose also includes water quality protection, emergency reliability, and fishery recovery and enhancement.

19. Page 16, bullet 4 -- As discussions continue on the permit clearinghouse program, more detail concerning its operations and conditions should be included in the ROD.

20. Page 17, South Delta Actions -- The language excluding December 15 through March 15 from the time when Banks pumping is increased to 8500 cfs should be deleted. Language has been included in this portion of the Framework stating that the operations plan for SDF will be developed through an open CALFED process. Per conversations with Mike Spier, this language was to supercede prior language which predetermined when the 8500 cfs capacity would be available. Through oversight the limiting language was not deleted.

21. Page 17, South Delta Actions -- Every effort should be made to develop operating criteria for both the 8500 cfs and 10300 cfs prior to issuance of the ROD so that the water supply benefits can be accurately estimated. Technical work is proceeding and its results should be included.

22. Page 18, 10300 Banks -- A more complete description is needed on how 10,300 Banks pumping will be correlated with construction of new screens. For example, 10300 pumping should be authorized when screens are committed in place equal to the increased pumping rate as compared to the entire 10,300 pumping rate.

23. Page 18, 10,300 Banks -- There are implications in this section that 10,300 pumping at Banks might be approved only if some of that capacity is made available for non-SWP purposes. This section should reiterate that such capacity would be available for non-SWP purposes only when it is not needed for SWP purposes.

24. Page 18, 8500 and 10,300 Banks -- Clarification is needed ~~as to that~~ permissible operations under the SWP's existing Corps permit would continue during at-times when the operating plans for 8500 and 10300 Banks do not authorize increased pumping rates. Clarification is also needed that pumping increments provided by the Corps permit would continue to be in effect when Banks permitted capacity is increased to 8500 cfs, that is, the total amount of Banks permitted capacity from December 15 through March 15 could exceed 8500 cfs by the amount allowable under the Corps permit.

25. Pages 18-19, operable barriers -- It seems likely to all involved that the operable barriers can be installed prior to the 2006 and 2007 dates estimated in the Framework. Language should be included to reflect that these facilities will be on a fast track and may likely be in place before the deadlines set forth.

26. Page 19, through-Delta screen -- The study plan for this facility should be in place at the time of the ROD rather than in December.

26a. Page 21, bottom partial paragraph -- The phrase "assuring the availability of sufficient water to meet fishery protection and restoration needs" can be misinterpreted as saying that only water is needed to meet fishery needs, thus inferring that the ERP is not an important part of the restoration program. This can be cured either by dropping the phrase "the availability of sufficient water to meet" or by adding language to clarify that water is just one of the assets needed for fishery restoration purposes.

27 Page 22, paragraph 1 -- It is stated that EWA assets will be managed by the state and federal fishery agencies in coordination with operators and stakeholders. The EWA should be managed in an open process along with Tier 1 (baseline) operations, which include B2 operations. Since operational changes due to EWA will need to be closely coordinated with baseline and B2 (Tier 1) actions, the entire process should be open to stakeholder participation and input.

27a. Page 22, paragraph 1 -- The EWA management entities should also have the authority to "market" EWA water; particularly in dry years when such actions may provide water for other purposes and provide significant financial assets which can be used for other fishery programs.

27b. Page 22, paragraph 1 -- This paragraph contains the following sentence:

EWA assets will be managed by the state and federal fishery agencies (FWS, NMFS, and CFDG) in coordination with project operators and stakeholders, through the CALFED Operations Group.

This sentence contains a fair number of assumptions about governance and operations that may or may not be correct as a permanent governance structure is put in place. First, once long term governance is established, the individual fishery agencies may not be the managers, as compared to those agencies as part of the CALFED governance process. Further, it is unclear today how a successor to the Ops Group will be formed or managed. The ROD should reflect these uncertainties, and the possible short-term life of the quoted sentence. Second, and perhaps more important, the details of how the EWA will be managed on a day-to-day basis needs more consideration and exposition in the ROD. While it may be true that certain advance planning can be carried out through the Ops Group or its successor, at other times EWA actions will be opportunistic and will need to be decided upon perhaps in less than a day. We believe that the ROD should describe an annual planning process that involves the Ops Group or its successor, and a periodic, after-the-fact, review of operations by the Ops Group or its successor and the CALFED science program. This review would comprehensively look at water costs, benefits assumed, benefits derived, and similar data that will allow the EWA program to, over time, become more efficient and science based.

28. Page 22, para. 3 -- Tier 1 and 2 assets are intended to be used "to avoid the need for Tier 3 assets." Therefore, Tier 1 and 2 assets should be reserved, in part, for predictable occurrences such as the need to initiate pumping cutbacks in December for Spring Run Salmon and in May/June to reduce Delta smelt take. The ROD should spell out the planning process that will be used, and the scientific review that will be provided, to annually plan the use of Tier 1 and 2 assets.

29. Page 22, para. 4 -- This paragraph states that Tier 3 actions will be evaluated by the independent science panel. By implication, it appears that the science panel will not be evaluating the way Tier 1 (the 1995 WQCP baseline plus B2) and Tier 2 water is being utilized. The ROD should specifically state that all environmental water use (the 1995 WQCP baseline, B2, EWA, and ERP) will be subject to periodic review by the science panel to ensure that the requirements and actions being taken have sound

scientific bases. These operations should be subject to the adaptive management process and peer review for water use efficiency.

30. Page 22, para. 5 -- This first sentence of this paragraph ends with the clause "based on the assets available in that period." This apparent modifier of the ESA water supply commitment should be deleted as ambiguous and not in keeping with the description of the commitment in other sections of the Framework.

31. Page 23, water use efficiency -- This section needs to be revised to make clear that the success of the water use efficiency program is measured by the fact that the actions called for are taken and not by trying to measure the amount of water saved. As everyone knows, measurements of this type are not possible. Nonetheless, the mere inclusion of the target numbers on page 23 means that they are likely to achieve a significance much greater than the intended purpose of illustrating the broad magnitude of potential savings. Language needs to be added to the ROD to better reflect the uncertainties inherent in achieving such levels, and the fact that the accuracy of such numbers will be tested after the first four years of Stage 1.

32. Page 24, numbered para. 1 -- The last sentence of this paragraph can be interpreted to create a Catch 22 for water users. The purpose of the loan program is to provide financing so water users can implement programs to fully implement the "applicable water management plans." Yet, this sentence can be interpreted as requiring full implementation before one is eligible for a loan. This sentence needs modification to state that the purpose of the loans is to assist in the implementation process.

33. Water Use Efficiency -- General -- Language needs to be added to this section stating that water conserved under the programs stays with the water user carrying out the conservation programs.

34. Prior to the ROD, more detail needs to be provided on the structure and procedures that will be used to implement the water use efficiency programs. This language needs to be developed with significant input from the water users who will be carrying out the programs.

34a. Page 25, para. 1 -- Clarify that the 50 percent cost share is a general Stage 1 target, but actual cost sharing would vary based on the detailed finance proposal being developed by July 2001 and the nature of the projects developed by local agencies.

35. Water Quality -- General -- The Record of Decision (ROD) needs to include commitments to develop Stage I water quality performance measures and indicators for evaluating the success of water quality measures, and to implement a comprehensive water quality monitoring program early in Stage I. The ROD should also clarify the role of the Delta Drinking Water Council in the evaluation of Water Quality Program progress and decision making.

35a. Page 31, para. (5) -- The Framework for Action describes the potential for water quality exchanges in the San Joaquin Valley in two places: Page 21, Interties, System Flexibility -- (3) Facilitate water quality exchanges and Page 31, Major Elements of Water Quality Program (5) Facilitate water quality exchanges.... To respond to concerns that there is some sort of "done deal" regarding MWDSC and FWUA relative to FWUA member water supplies, the wording on page 31 should be changed to reflect the true nature of the discussions as follows:

Facilitate water quality exchanges and similar programs using high quality Sierra water in the eastern San Joaquin Valley to improve the quality of water available to urban southern California interests. The Metropolitan Water District of Southern California and the Friant Water Users Authority and its member agencies have commenced discussions to explore ways to accomplish these objectives, as well as improving water supply reliability for the agricultural districts. CALFED will work to facilitate any identified programs and to assure that these efforts are consistent with overall CALFED principles as well as efforts to restore the upper San Joaquin River.

- Initiate evaluations and studies of current capabilities and potential infrastructure improvements by December 2000.
- Complete feasibility studies and reach agreement on potential projects, if any, by the end of 2001.
- If agreement is reached by MWDSC and Friant members, complete environmental review and begin implementation of a long term program, including necessary infrastructure, by the end of 2004

36 Science Program – General -- There needs to be a more complete discussion in the Rod committing the regulatory agencies to integrate their science processes into the CALFED science process. There is a statement in Appendix D (bottom of first page) the states that in “issuing its opinion, the Service would consider all available information, including the views of the independent science panel, and would specifically address the view of the panel” This hints at the proper process, but needs expansion. There cannot be a parallel science process for the Bay-Delta system. Therefore, an explicit description needs to be included in the ROD as to how ESA actions will develop their science back up, and how that science will be reviewed.

37. Page 37, bullet 2 -- Strike the words “for the EWA.” The science panel should have a broader scope than just the EWA.

38. Definition of CALFED benefits -- There is ambiguity between the Framework for Action and the last version of the EIS/EIR with respect to the concept of “CALFED benefits. The Framework only references this concept with respect to eligibility for water conservation grants and loans. The EIS/EIR has the concept spread throughout the programs. We do not believe that any of the Stage 1 programs (for example, South Delta facilities, Governors drought program, and Prop 13 and 204 projects) should be limited by the so-called CALFED benefits concept. This needs to be explicitly addressed in the ROD.

39. Page 26, Water Transfer -- The Framework states that one barrier to an effective water transfer market is the lack of incentive for individual landowners to utilize available water conservation technologies because any water savings frequently accrue not to the landowner but to the irrigation district or water supply agency. This is a confusing and misleading statement, which can be clarified by CALFED’s acknowledgement that the actual water right holder should determine the disposition of water to be transferred. CALFED should encourage water rights holders, with participation by their water customers, to develop water transfer programs that facilitate district or agency transfers.

40. FERC -- FERC actions remain a potential outlier that could upset the overall CALFED program and the regulatory assurances that are critical to Stage 1 success . The following language should be added to the ROD:

No CALFED agency will, in any FERC proceeding, appear and recommend operation or reoperation of a regulated power facility for the purpose of providing additional Delta inflow or outflow over and above the Tier 1 baseline.