

## MEMORANDUM

**SUBJECT:** Review of Admin Draft of Response to Comments  
(Draft Dated November 1999)

**FROM:** Tom Hagler

**DATE:** December 16, 1999

### 1. "Summary of Changes" document

I had NO changes to this document. However, I do note that a lot of this involved extensive changes to both the Water Quality document and the ERP document, and I did NOT review those sections under the assumption that others will do so.

### 2. Volume I (Impact Analysis)

#### A. Sections that I did NOT review

IA Section 5.3 - Water Quality - page 2 of 33, et seq

6.1 Fisheries and Aquatic Ecosystems, et seq

#### B. Sections that I DID review

**General Comments.** This was the least comprehensible of the three documents. We may need to wait for the next, edited version of the document to see if we have problems. Also, when I note below that something is "NONRESPONSIVE," it means that the answer seems unrelated to the comment. Although sometimes you don't really care about such "surplusage," it can lead to a "legal" problem if a court would see too many "nonresponsive" answers.

Also, there are a lot of comments that are not answered or that indicate further analysis necessary. This is an awfully drafty draft.

#### Specific Comments (organized start to finish).

**CR2.2, page 4, first full paragraph:** The second sentence is improper, because this IS the final EIS. The last sentence (on 404) is incorrect for two reasons: first, it incorrectly implies that the 404 MOA is where ALL of the linkages will be explained. Second, it refers to a "conditional programmatic assurance on the need for storage facilities" which is an incorrect characterization of the MOA. I recommend deleting the entire last sentence and don't bother replacing it.

**CR2.2, page 4, 3d full par.:** This whole paragraph is NONRESPONSIVE. Delete it.

**CR2.3, page 5, 4th full par.:** The second sentence, “the majority” needs to be changed to “a large part”. We do not have any backup of the conclusion (which is partially a legal conclusion) about “a majority” not being subject to reallocation.

**CR2.3, page 6, first par. Under Urban:** Either delete the tail end of the paragraph discussing reduced flexibility or move it to further down in the discussion. Not everyone agrees with this statement (see Mary Selkirk and participants in the EEWMA analysis); it is not appropriate as part of the lead-in paragraph.

**CR2.4, page 11:** Delete this long list of examples. It overemphasizes something that is fundamentally a minor or irrelevant subject.

**CR14.4, WQ, page 4, 2d full par.:** IMPORTANT. This paragraph needs to be edited. Specifically, “near

**IA-2.1.2-6, 2d par. (No page numbers here):** Add at the end of the last sentence “having agencies adopt additional disclosure requirements, or achieving similar milestones.” As currently written, it suggests a decision that has not yet been made.

**IA-5.1-1, page 13-5.** I only note that these conclusions about the EWA are premature and are most likely going to need to be rewritten later.

**IA-5.1-85, page 13-26.** This is incorrect. The Ag WUE program is NOT evaluating ag water rights or contracts for “economic or allocation efficiency.” If someone thinks we have, please have them show us where this analysis is.

**IA-8.1.4-1, page 8-2.** This response is not only nonresponsive but misleading. I suggest that Rick Sohren/Tom Gohring take a crack at it from scratch.

### **3. Volume II (Program Plans and Other Appendices)**

#### **General Comments:**

IMPORTANT: Attachment A (Draft Early Implementation Actions Descriptions)(about 148 pages long) does NOT belong in this RTC document.

Second, as I said in today’s meeting, I thought the Phase II Report Comment Responses and the “tracie billington” IP section that immediately follows are both very good, and someone should pass that on to whoever wrote them.

#### **Specific Comments:**

**PH2:3.6.4-5, page 22:** IMPORTANT. This whole response need to be replaced with the Hood Diversion language we were working up in the Small Group.

**PH2:3.6.6-1, et seq, page 32 et seq:** Note that ALL of these EWA responses are fairly speculative and are far more specific than any agreements we have at the policy level. I'd leave them as is for now, but there will be major revisions later as we get closer to the ROD.

**IP-1.1-2, page 2, carryover bullet at bottom of page.** IMPORTANT. The phrase that says "to provide a degree of regulatory certainty as is currently provided by the 1994 Bay-Delta Accord and the 1995 Water Quality Control Plan" Although many people in CALFED, including me, believe that it will be useful to come up with an assurances package that does this, there is no policy agreement at this time about exactly what level of "assurances" will be included in the ROD. Delete this phrase and leave it vague.

**IP-1.1-10, page 7, first full paragraph, second to last sentence.** IMPORTANT. Same issue as above. We haven't agreed on the nature of the assurance package in the ROD, so its incorrect to say that it will "extend" the Accord. I would delete this sentence. ALSO, I'm not sure Interior will agree to the last sentence. Refer that one to Alf Brandt.

**IPF 5.4.6-5 on finance.** IMPORTANT. Delete the second sentence in the response ("It may be true that the Water Quality Program actions...."). This sentence is not essential to answering the comment and is definitely not one that some of the CALFED agencies will agree to.

**WUE2.2.1-2, page 7:** IMPORTANT. The response says that CALFED will not mandate measurement. That is NOT true. Delete this part of the sentence.

**WT00-1, first paragraph:** Review this paragraph to reflect current CALFED thinking. Ask Tom Gohring and Greg Young regarding levels of water use efficiency expected for buyers and sellers to participate in transfers. It is true that the WUE Program lists "compliance with applicable urban or agricultural water council agreements and applicable state law" as a precondition for "water suppliers" obtaining CALFED benefits, such as transfers (p. 2-14). However, assurance requirements may differ for sellers, as contrasted with buyers.

**WT00-16, page 6.** Same issue as preceeding comment.