September 15, 2003

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2800 Cottage Way, MP-140
Sacramento, CA 95825

Ms. Dolores Brown
California Department of Water Resources
3251 "S" Street
Sacramento, CA 95816

Subject: CALFED Environmental Water Account Draft Environmental Impact Report/Environmental Impact Statement (Draft EIR/EIS) [CEQ #030323]

Rating: EC-2 -- Environmental Concerns-Insufficient Information

Dear Ms. Osborn:

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 Implementation Regulations at 40 CFR 1500-1508, and Section 309 of the Clean Air Act.

We have rated this Draft EIR/EIS as EC-2 -- Environmental Concerns- Incomplete Information (see enclosed "Summary of Rating Definitions"). While EPA supports the Environmental Water Account (EWA) and agrees that a flexible purchase approach has merit, we do have concerns, including the following:

1. The EWA, as characterized in this NEPA document, does not capture the current evaluations regarding potential uses of the EWA and redefinition of EWA assets in conjunction with other proposed CALFED projects, such as South Delta Improvements.

2. The EIR/EIS would benefit by including more information from the recent Science Panel review of EWA which, among other matters, raised questions about the scientific basis for focusing EWA actions on managing "take" at the export facilities. The Panel provided recommendations for improving science-based assessment and management of EWA, including a broader range of asset use. Given that the alternatives evaluated in this EIR/EIS are limited to readily available water acquisition tools which

can provide flexibility in Delta pumping to protect at-risk fish species, we believe the EIR/EIS should explain how the EWA can incorporate the Panel's suggestions in the future.

3. The Draft EIR/EIS contains incomplete information regarding potential relationships between EWA actions and quality of water within the Delta and exported from the Delta by the Central Valley Project and State Water Project.

The EWA was initiated through the CALFED Program to assist population recovery for at-risk native fish species and to increase reliability of water supplies exported from the Bay-Delta. Since its inception in 2000-2001, the EWA has been operated through the collaborative efforts of two "project agencies" (the California Department of Water Resources and U.S. Bureau of Reclamation) and three "management agencies" (the California Department of Fish and Game, U.S. Fish and Wildlife Service, and U.S. National Oceanic and Atmospheric Administration Fisheries). The project agencies acquire, store and convey water assets for the EWA, while the management agencies direct use of these assets. Previous NEPA compliance has relied on annual environmental assessments, based on the 2000 CALFED Programmatic EIR/EIS.

EWA's purpose is to provide for protection and recovery of fish, beyond water available, through existing regulatory actions. To do so, EWA is provided with water assets, including operational commitments from the CALFED project agencies. Since its inception, the EWA has enabled resource management agencies and the water project agencies to conduct Delta operations in ways which provide fisheries benefits without impairing water supplies to export users. However, the program faces challenges which can undermine future viability, including maintenance of an adequate baseline level of protection and provision of assets needed to convey and store acquired environmental water. With respect to the baseline for EWA, compared with conditions anticipated in the CALFED Record of Decision (ROD), there has been a loss of the assets requisite to the Tier 1 Level of Protection – notably, a reduction in the water available under the Central Valley Project Improvement Act Section b(2) [p. 1-35]. The implications are a reduced level of protection to fish provided by regulatory tools, reduction in variable assets, and increased costs to the EWA and the public to provide fisheries protection and enhancement.

The EWA assets depend on not only Tier 1 protections and water acquisitions, but a set of operational and conveyance assets to manage water into and through the Delta for fisheries benefits. The Draft EIR/EIS makes assumptions about potential ranges of conveyance and pumping capacity for EWA use but does not examine previous decisions about these assets in the alternatives. Availability of excess pumping capacity for EWA purposes has been less than initially estimated in the 2000 CALFED Programmatic EIR/EIS. We are concerned that an alternative which depends on greater transfer capability without reexamination of ways of providing that capacity for EWA purposes will not be viable. Pending proposals to increase conveyance and export capacity in the South Delta such as those enumerated in the Cumulative Impacts section will require re-examination and possible reconfiguration of EWA assets. This

Draft EIR/EIS (p. ES-13) suggests that future supplemental EIR/EISs will be sufficient for longer-term use. EPA is concerned with this approach because future EIR/EISs will need to incorporate upcoming proposed facilities and operations, continuously strengthen the scientific basis for EWA actions, and take a closer look at water-quality related operations. Please see our detailed comments (attached) for more specific suggestions on contents for the Final EIS/EIR.

We appreciate the opportunity to review this Draft EIR/EIS. Please send a copy of the Final EIR/EIS to this office when it is officially filed with our Washington, D.C., office. In the meantime, if you have any questions, please call Jeanne Geselbracht, the lead reviewer for this project, at (415) 972-3853.

Sincerely,

Lisa B. Hanf, Manager
Federal Activities Office

MI# 003715

Enclosures

cc:
Jerry Johns, California Department of Water Resources
Dave Robinson, U.S. Bureau of Reclamation
Victoria Poage, U.S. Fish and Wildlife Service
Brian Kinear, National Oceanic and Atmospheric Administration Fisheries
Scott Cantrell, California Department of Fish and Game

1. The Draft EIR/EIS states that there could be supplements to the document if there are future acquisitions not encompassed in this analysis (ES-13). As our cover letter explains, we are concerned that the EWA alternatives analyzed here explicitly exclude assets which are not immediately available and/or cannot be directly used for providing flexibility at the Delta export facilities. Furthermore, the Draft EIR/EIS alternatives do not address other kinds of assets essential to an effective EWA, such as storage, conveyance, and use of the export facilities.

> **Recommendation**: The Final EIR/EIS should provide more detail on related CALFED project planning and analyses which affect the EWA, such as the South Delta Improvement pumping capacity increases and the proposed Intertie, and disclose work being done to effectively integrate EWA actions. Explain whether potential changes in EWA assets and operations are being considered, and describe plans and schedule for future NEPA compliance.

2. For new projects affecting the Delta, it will be important to evaluate the adverse impacts, individually and cumulatively, and to assure that water users assume the costs of mitigation as appropriate per the CALFED agreement. Some statements in the Draft EIR/EIS give the impression that the EWA might be used to mitigate water project impacts which should be the responsibility of water users (see p. 22-11, for example). Additionally, with less system "surplus" and greater competition for water, costs of EWA actions such as increasing outflow would likely rise. The Draft EIR/EIS does not evaluate EWA funding needs or sources, or principles for determining appropriate contributions from specific water users versus public funding.

> **Recommendation:** To the extent information is available, the Final EIR/EIS should discuss funding plans and options for funding sources.

3. As the 2002 EWA Science Review Panel pointed out, there does not appear to be strong scientific justification to moderate export pumping activities for fisheries benefits. A better understanding of the Delta ecosystem and role of upstream conditions may result in a broader range of tools and actions to benefit fish populations. Improved measures of biological performance are needed to help gauge the appropriate overall levels and kinds of investment in the EWA.

> **Recommendation**: The Final EIR/EIS should summarize recommendations from the 2002 EWA Review and describe work being carried out in response. Plans for future EWA assessments and adaptive management of EWA assets should be completely described.

4. The Draft EIR/EIS is inconclusive regarding the effects of the EWA on water quality within the Delta and exports from the Delta (see p. 5-49). However, it is clear that under some circumstances shifting pumping away from the spring and into the July-September window will reduce export water quality (that is, increase salinity and bromide concentration). Furthermore, reductions in pumping can impair in-delta water quality by reducing the mixing of fresher Sacramento water with San Joaquin River water. Insofar as the operational focus of the EWA is fishery benefits, there is likely to be less opportunity to manage project operations for water quality. It is important to recognize that degradation of existing water quality with respect to key constituents such as salinity can have significant effects on uses, including drinking water – even if quality meets established objectives. We note that CALFED established a policy of "continuous improvement" of Delta water quality for the drinking water program.

> **Recommendation:** The Final EIS/EIR should discuss more completely CALFED policy and current discussions regarding monitoring and protecting Delta water quality for drinking water and other uses. Provide information on potential impacts which increased salinity and organic carbon have on use of Delta water for drinking water.

5. In Chapter 9 of the Draft EIR/EIS, Fisheries and Aquatic Ecosystems, the modeling outputs and analyses include information on impacts of the two alternatives (fixed purchase, and flexible) with respect to salvage (pp. 9-281-283). Although the text concludes that the flexible "typical water purchase" scenario would be more beneficial overall because of higher upstream volumes, the salvage data show a more complex situation. The flexible approach clearly benefits salmonids but not striped bass or splittail.

> **Recommendation:** The Final EIR/EIS should examine this information more closely and, if possible, suggest explanations. The discussion should distinguish the potential benefits and impacts for the different species.

6. Several sections of Chapter 9 of the Draft EIR/EIS do not reflect recent source information. In the splittail discussion, the description and citations relate to the mid-1990s. Similarly, the description of the entrapment zone/X2 uses data up through 1996, although substantial recent work from the U.S. Geological Survey, University of California-San Francisco, and others is available. In covering the Yolo Bypass, there is no mention of the ecological dynamics and role the Bypass plays for natives such as salmonids and splittail. It appears that the Draft EIR/EIS relied on the 1996 Interim South Delta documentation, without more recent material. As a result, the evaluation of effects is incomplete.

> **Recommendation**: The Final EIR/EIS should provide an updated evaluation of the ecological impacts of the system to specific native fish species, including the ecological dynamics and role of flood plains, including the Yolo Bypass.

7. In the discussion of water quality in Chapter 22 of the Draft EIR/EIS, there is reference to increasing total organic carbon (TOC) above "Delta water quality standards." However, there are no water quality standards for TOC, nor are there drinking water Maximum Contaminant Levels (MCLs). There is a CALFED Program Record of Decision "target" value for organic carbon (3 mg/L measured at the intakes). Also, under the Interim Enhanced Surface Water Treatment Rule and the Long-Term 1 Enhanced Surface Water Treatment Rule there are requirements for treatment if organic carbon is elevated.

Recommendation: The Final EIR/EIS should include this correction.

8. The Draft EIR/EIS does not report any water quality acceptance criteria for the Central Valley Project, other than the groundwater acceptance criteria for the Delta Mendota Canal (p. 5-9).

Recommendation: The Final EIR/EIS should explain what criteria, if any, the Bureau of Reclamation has in place to protect Central Valley Project water quality in the context of conveying non-project water.

9. The Draft EIR/EIS (p. 5-12) discusses trihalomethanes. Trihalomethanes are a treatment issue, not a constituent issue per se.

Recommendation: In the Final EIR/EIS, the discussion of water quality constituents of concern for drinking water should distinguish trihalomethanes as a treatment issue and be consistent with the more complete and accurate information on page 5-26.

10. The Draft EIR/EIS states that EWA groundwater substitution in the upstream-from-delta region potentially could decrease groundwater levels and affect wells on tribal lands. Effects could include increasing the costs of pumping from tribal wells, or drying out of the wells. If potential effects to Indian trust assets are identified, then EWA agencies have committed to consult with the affected tribes before the acquisition is finalized in order to minimize effects to those assets. Mitigation measures include discontinuing groundwater pumping if groundwater levels are drawn down to a level of concern.

Recommendation: We recommend that the EWA agencies consult with the potentially affected tribes now so that the Final EIR/EIS includes specific information regarding the identified levels of concern on tribal lands and the groundwater pumping rates within the areas of influence that could draw down wells to these levels. This would not only provide appropriate information in the EIR/EIS on the potential impacts of the proposed project on Indian trust assets, but facilitate in a timely manner the implementation of EWA groundwater pumping activities in these areas when they are selected in the future.

11. The Draft EIR/EIS identifies the potential air emissions of the action alternatives if left unmitigated. Diesel pumping of groundwater and crop idling could contribute to existing air quality violations in several counties. The proposed action, however, would include one, or a combination of, the mitigation measures identified in Section 8.2.7. The potential impacts of the proposed alternative with any of these mitigation measures are not quantified in the Draft EIR/EIS. The document indicates only that the measures would reduce impacts to air quality to less than significant levels.

> **Recommendation:** The Final EIR/EIS should quantify the range of potential emissions of criteria pollutants for the action alternatives with mitigation measures so the potential impacts of the alternatives are more fully understood. The Final EIR/EIS should also discuss whether and how the project would conform with the State Implementation Plans for the air pollution control districts affected by the project.