



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION IX  
75 Hawthorne Street  
San Francisco, CA 94105

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."

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,

/s/

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.