



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

April 20, 2004

Rob Schroeder
U.S. Bureau of Reclamation
Central California Area Office
7794 Folsom Dam Road
Folsom, CA 95630

Subject: Freeport Regional Water Project Final Environmental Impact
Statement/Environmental Impact Report (Final EIS/EIR) [CEQ # 040164]

Dear Mr. Schroeder:

The Environmental Protection Agency (EPA) has reviewed the document referenced above. Our review and comments are pursuant to the National Environmental Policy Act (NEPA), Council on Environmental Quality (CEQ) regulations (40 CFR Parts 1500-1508), and Section 309 of the Clean Air Act. Our detailed comments are enclosed.

We rated the Draft EIR/EIS as Environmental Concerns - Insufficient Information (EC-2) (see enclosed "Summary of Rating Definitions"). On February 17, EPA met with the project team to discuss our comment letter and project concerns. Specifically, we had expressed concern that the water plans relied on surface and ground water supplies that may not be available.

While we appreciate the opportunity to meet with you, we note that our comments, like those of the U.S. Army Corps of Engineers, and the U.S. Fish and Wildlife Service, have not led to substantive additions or changes to the document. In particular, EPA recommended that the Final EIR/EIS include an analysis of all delta water uses, cumulative and indirect impacts; justification for the identification of Alternative 5 as the environmentally preferred alternative; results of consultation with the US Fish and Wildlife Service for protection of species of concern; and if required, Clean Water Act 404 (b)(1) compliance for impacts to wetlands and waters of the United States (waters).

We appreciate the opportunity to review this Final EIR/EIS. Please send one copy of the Record of Decision (ROD) to this office when it is signed. In the meantime, if you have any questions, please call Summer Allen, the lead reviewer for this project, at (415) 972-3847.

Sincerely,

Lisa B. Hanf, Manager
Federal Activities Office

MI# 003927

Enclosures:

EPA's Detailed Comments

cc:

Gregg Ellis, Freeport Regional Water Project

Tad Berkebile, Freeport Regional Water Authority, Sacramento County Water Agency

Maria Solis, Freeport Regional Water Authority, East Bay Municipal Utility District

Wayne White, US Fish and Wildlife Service, Sacramento Field Office

John Brooks, US Fish and Wildlife Service, Sacramento Field Office

Jim Bybee, National Marine Fisheries Service, Santa Rosa Office

Corps of Engineers, Sacramento District Office

Banky E. Curtis, California Department of Fish and Game, Sacramento Valley and Central
Sierra Region

Katherine Kelly, State Department of Water Resources

Cumulative Impacts

Projects that were determined to be within a reasonable proximity to the FRWP were included in the cumulative impacts evaluation. However, EPA identified multiple projects in the area that were not addressed in the Draft EIR/EIS. These have not been addressed in the Final EIS/EIR. EPA is concerned that ongoing groundwater overdraft will contribute to significant negative impacts to the viability of aquatic, riparian, and wetland habitats in the lower Cosumnes/Mokelumne area. Secondary and cumulative impacts to waters were not estimated, which is an essential component to a Least Environmentally-Damaging Practicable Alternative (LEDPA) determination, pursuant to the Clean Water Act, Section 404. The LEDPA is the alternative that has the fewest direct, indirect, and cumulative impacts to aquatic resources that still meets the project purpose [40 CFR 230.10(a)]. The estimate of 8 to 10 acres of impacts to wetlands does not fully describe the extent of impacts from the project. It is important to recognize that the project may result in impacts larger than its footprint. The proposed activities may contribute to changes downstream in the hydrologic regime, as well as disturb downstream riparian habitat. Project activities as proposed may further contribute to cumulative impacts that have already occurred in the watershed.

While the response to comments acknowledges that the FRWA Draft EIR/EIS is related to the activities of the California Bay Delta Authority (the Authority) and agencies participating in the CALFED Program, it does not explain the relationship to the Central Valley projects in detail and it is not clear how this program will achieve the CALFED objectives of increased water quality and ecosystem conditions. The FRWP may cause incremental erosion of Bay-Delta ecosystem conditions and water quality, leading to significant cumulative impacts on these resources in combination with other water projects being pursued by CALFED and other parties.

Recommendations:

EPA continues to recommend that the ROD include a discussion of how the FRWP supports the goals outlined in the August 2000 Record of Decision for the CALFED Program. In particular, it should discuss how it will meet the established objectives of “continuous improvement” of drinking water source quality and ecosystem restoration. It should also provide updated information on the Operating Criteria and Plan (OCAP) consultation for Central Valley Project water operations and related impacts to the Bay-Delta system.

The ROD should document recent or proposed changes in Delta operations associated with the CALFED program and how this could contribute to impacts in the Delta. The ROD should discuss monitoring for project impacts and identify types of mitigation responses which may be undertaken in the event specific impacts are detected. Mitigation for waters should address impacts for direct, secondary, and cumulative impacts.

Alternatives Analysis

The Final EIR/EIS identifies Alternative 5 as the environmentally preferred alternative. Alternative 2 appears to have fewer impacts on prime agricultural lands, grasslands, vegetative communities, and production values. It is comparable with Alternatives 3, 4, and 5 with regard to impacts on fish, water quality, recreation, and construction-related traffic. The alignments proposed for Alternative 2 and Alternative 3 have fewer impacts to western spadefoot, fairy and tadpole shrimp, swainson's hawk, native vegetation, pasture, water, vineyards, open/agricultural land, and archaeological sensitive areas than the other proposed alignments. We continue to recommend that Alternative 2 or Alternative 3 be identified as the environmentally preferred alternative.

The Corps of Engineers (COE) has anticipated the need for an individual permit and has determined that Alternative 5 would most likely not be the least environmentally damaging practicable alternative (LEDPA). The 404 (b)(1) Guidelines (Guidelines) published under 40 CFR 230.10 allow COE to issue a permit when an applicant has clearly demonstrated that a proposed project represents the LEDPA to achieve the project purpose. With regard to the information presented in the FEIS, we have two main concerns: (1) the proposed project may result in substantial adverse impacts to aquatic resources, and (2) it may be difficult for COE and EPA to make the determination that the proposed project complies with the Guidelines. Should these concerns not be addressed in the Section 404 permitting process, EPA can request the elevation of an individual permit decision to the Assistant Secretary of the Army for Civil Works.

Recommendations:

Consultation with the COE should be initiated to avoid possible delays in the CWA 404 permit process. Applicants for CWA 404 permits need to demonstrate compliance with the Guidelines, including the identification of the LEDPA, based on a COE approved wetland delineation.

Habitat and Wildlife Consideration

The project will cause potential impacts to coldwater and warmwater fisheries; additional fisheries in the lower reaches of the American, Feather, Trinity, Mokelumne, and Sacramento rivers; and various riparian and terrestrial habitat. These impacts are confirmed by the U.S. Fish and Wildlife Service in their letter, dated December 15, 2003. For this reason, it is important to address aquatic impacts at this stage of planning and identify conservation measures that will be incorporated from the Biological Opinion.

Recommendations:

For impacts to terrestrial and aquatic resources that cannot be avoided, the ROD should

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address mitigation. To the extent that it is relevant, the ROD should include information on the ESA consultation for the Operating Criteria and Plan, which may provide specific measures for Freeport-related operations.