

Tier 3 Protocols

Tier 3 is referenced on pages 57 and 58 of the CALFED August 2000 Record of Decision (ROD) in the following context:

ESA Commitments

As part of the MSCS Conservation Agreement and the FWS and NMFS biological opinions, the CALFED Agencies have provided a commitment, subject to specified conditions and legal requirements, that for the first four years of Stage 1, there will be no reductions, beyond existing regulatory levels, in CVP or SWP Delta exports resulting from measures to protect fish under FESA and CESA. This commitment is based on the availability of three tiers of assets:

***Tier 1** is baseline water, provided by existing regulation and operational flexibility as described above. The regulatory baseline consists of the biological opinions on winter-run salmon and delta smelt, 1995 Delta Water Quality Control Plan, and 800 TAF of CVP Yield pursuant to CVPIA Section 3406(b)(2).*

***Tier 2** consists of the assets in the EWA combined with the benefits of the ERP and is an insurance mechanism that will allow water to be provided for fish when needed without reducing deliveries to water users. These assets are shown in the table on the preceding page. Tier 1 and Tier 2 are, in effect, a water budget for the environment and will be used to avoid the need for Tier 3 assets as described below.*

***Tier 3** is based upon the commitment and ability of the CALFED Agencies to make additional water available should it be needed. It is unlikely that assets beyond those in Tier 1 and Tier 2 will be needed to meet ESA requirements. However, if further assets are needed in specific circumstances, the third tier will be provided. In considering the need for Tier 3 assets, the fishery agencies will consider the views of an independent science panel. Although the CALFED Agencies do not anticipate needing access to Tier 3 of water assets, the CALFED Agencies will prepare an implementation strategy for Tier 3 by August 2001, establishing a timely scientific panel process and identifying tools and funding should implementation of Tier 3 prove necessary.*

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- 1. Tier 3 is not an operational reserve for Tier 2.** The CALFED agencies agree that Tier 3 actions are separate from EWA and that the EWA should not rely upon the existence of Tier 3 assets in its planning or operations. Tier 3 is a fail-safe device, designed to be utilized only as a result of unforeseen jeopardy to an endangered species when EWA assets are fully exhausted. EWA will need to carve an operational reserve out of its annual budget for Tier 2.
- 2. Tier 3 responses will attempt to shield Projects and water users from impacts. However, actions to protect fish will not be limited by the “no harm” principle.**

Once Tier 3 is invoked, the fish and Project agencies will take actions as needed to avoid jeopardy. Tier 3 funding and Project flexibility will be used to the extent possible to shield the Projects and their contractors from water or financial losses. However, there is no assurance that all such losses can be fully mitigated.

3. **Tier 3 includes both market and non-market components. The State and Federal Projects will be responsible for making preparations for the activation of Tier 3.** DWR and USBR are responsible for making preparations for the activation of Tier 3, just as they are responsible for acquiring and managing EWA assets. Such preparations could include the acquisition of water purchase options during the fall and winter of 2001/2002 so that, if Tier 3 is invoked, the Tier 3 funds can be converted easily into water. The cost of the options would be borne by the Tier 3 fund. The Projects should work cooperatively with the EWAT and other CALFED related water purchase programs in developing any Tier 3 purchase plan.

A Tier 3 response also could include various ad hoc actions by the Projects and by the water contractors. For example, if Delta smelt take in June were to cause export cuts beyond the capability of the EWA and Tier 3 to buffer through water assets and purchases, then various contractors might be asked to shift to local sources during the summer to maintain storage levels in San Luis Reservoir (this is a "source shift"). After low point is passed, the Projects might be able to repay the shifted water. If the following winter is wet, then the water cost might drop to zero for the Tier 3 action (though there could be additional financial costs). If the following winter is dry, then the Tier 3 action might cost water the following summer. However, in the interim, CALFED might succeed in purchasing additional Tier 3 water to eliminate the water impact.

4. **Tier 3 may be invoked by an ESA agency: (1) when jeopardy exists; (2) only after all EWA collateral is exhausted; and (3) after considering the views of an independent science panel.** Tier 3 will be invoked by one of the ESA agencies only if three conditions are met:
 - The EWA lacks the resources to justify any additional actions to protect an ESA species, and
 - Additional operational actions are necessary in order to avoid jeopardy to a listed species, and
 - The fishery agencies has requested and considered the views of an independent science panel. At a minimum, this science panel will consist of the two EWA science advisors. If sufficient time is available, additional independent scientists may be consulted. The CALFED Science Program will organize the science review process.

This means that Tier 3 will not be invoked in the expectation of a future problem with EWA assets, but only after all EWA assets have been expended or committed.