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APR 0 8 2003

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By this letter, the Project Agencies (Department of Water Resources and the Bureau of Reclamation) are requesting concurrence from the CALFED Environmental Water Account Management Agencies (U.S. Fish and Wildlife Service, National Marine Fisheries Service, and the Department of Fish and Game) regarding continued Endangered Species Act (ESA) commitments in the CALFED Record of Decision (ROD). The Project and Management Agencies tentatively agreed how to use the Environmental Water Account (EWA) and Central Valley Project Improvement Act (CVPIA) 3406(b)(2) assets in the 2003 operations plan. This letter describes the foundation for the agencies to collectively provide protections for fish and ESA commitments for project water users.

The CALFED ROD specifies that three tiers of assets must be available in order for the CALFED Agencies to provide a commitment that no reductions in the Central Valley Project (CVP) or the State Water Project (SWP) Delta exports, beyond existing regulatory levels, will result from measures implemented to protect fish. The Project Agencies believe that hard work and cooperation by everyone involved has generated sufficient assets in all three tiers to merit such commitments. In support of this statement, we provide the following information regarding the status of the assets.

Tier 1: Tier 1 is the regulatory baseline and includes (1) existing biological opinions for winter-run chinook salmon and delta smelt; (2) Delta protective criteria contained in State Water Resources Control Board Decision 1641; and (3) water provided for environmental uses pursuant to the CVPIA including Sections 3406(b)(1)(B), 3406(b)(2), and 3406(b)(3). The Tier 1 regulatory parameters remain in

place and Tier 1 assets are being used to implement fishery measures in the Delta consistent with CALFED ROD. The Project Agencies believe adequate fishery protection can be provided with the (b)(2) assets, in conjunction with EWA assets, in the hydrologic and biological conditions likely to exist this year.

Tier 2: Tier 2 consists of the assets of the EWA combined with the benefits of the Environmental Restoration Program. The CALFED ROD identified a funding threshold as the measure of successful implementation for the Multi-Species Conservation Strategy-ERP during Stage 1 of the CALFED program. This level of funding was made available this year and is being managed by CALFED Agencies. The ERP is functioning and the Project agencies also believe a functional EWA is in place for 2003.

The EWA includes fixed assets 185,000 acre-feet (185 TAF), variable assets, source shift (100 TAF), stored water to be used as collateral (extractable at 100 TAF per year if needed) and other considerations (including the science review panel). An acquisition strategy has been developed to satisfy the requirements for fixed assets. We have enclosed both a summary and the details of the strategy for you to reference. Procedures are in place to allow accumulation of variable assets consistent with the CALFED ROD. In addition, interim protocols for the operation of the EWA have been updated and are enclosed.

This year's EWA funding is about equal to last year's funding. Contracting activities have progressed to the point that needed assets will likely be fully in place this year when needed. The EWA Acquisition Strategy relies on providing the fixed assets (about 200 TAF) for the EWA in a manner consistent with the functional equivalency provisions set forth in the CALFED ROD. Specifically, the Project Agencies are placing greater emphasis on water purchases upstream of the Delta in critical to dry years when Delta conveyance capacity exists to transfer EWA water; and water purchases south of the Delta in below normal to wet years when Delta conveyance capacity is limited. The Project Agencies also propose to use the functional equivalency[1] provision to provide for the portion of the stored water that was to be used as collateral for EWA actions.

In order to provide the functional equivalent for the stored water asset envisioned in the ROD, DWR is willing in 2003 to allow EWA to carryover up to 100 TAF of water

[1] The concept of functional equivalency applies to the fixed and stored water assets. The Project Agencies believe that if the necessary fixed or stored water assets cannot be fully provided in any given year, the Project Agencies may choose to augment these assets through functional equivalent operations. The Project Agencies also believe that if such functionally equivalent operations are provided, ESA commitments would be continued and the water supply liability under Tier 2 for the SWP and CVP would be limited to the amount of water needed to ensure the fixed and stored water assets are provided as defined in Article I, Section 2.e-f of the EWA Operating Principles (as modified by the Interim EWA Protocols).

supply expenditures not covered by variable and fixed assets. If annual EWA operations require the use of this capability, the debt taken on by the EWA would be extinguished with variable assets as they become available or as a first priority when purchasing water for the EWA in the following year. DWR and Reclamation made this determination after weighing water supply risks against the overall benefits of having a fully endowed EWA for this year. If similar actions are needed in the future, they will be considered on a case-by-case basis. Coupling this action (carryover of 100 TAF of EWA water supply expenditures) with existing EWA source-shifting agreements will ensure no adverse effects on the San Luis Reservoir low point. This 100 TAF of carryover, together with other EWA fixed and variables assets, define the extent of the EWA.

Tier 3: Tier 3 assets are budgeted in Fiscal Year 2003-04 at $6.25 million. The enclosed Interim EWA Protocols include a protocol that defines when and how Tier 3 operations commence. If needed, Tier 3 funds will be used to purchase unexercised options developed as part of the EWA Tier 2 asset acquisition strategy. Also, Tier 3 assets will be used to purchase water late in the year to the extent such water is needed for Tier 3 and such water is available.

Managing EWA and (b)(2) Assets to Allow Continuation of ESA Commitments: The Project and Management Agencies continue to work cooperatively on a plan to provide sufficient assets in order to implement necessary fishery actions in 2003. The Project Agencies' staff continue to review and update hydrologic and operations forecasts to reflect changed conditions and new information. Enclosed are the latest Water Year 2002/2003 EWA Accounting Summary tables based on the March 1 90 percent and 50 percent exceedance studies. The tables show placeholders for EWA and (b)(2) actions are sufficient to meet the objectives identified by the Management Agencies if water supply for the rest of the year is consistent with the 90 percent exceedance study. If water supply for the rest of the year is consistent with the 50 percent exceedance study, additional variable EWA assets may be needed to fully meet the fishery objectives. Should such variable assets not accrue as expected, the Project and Management Agencies will take appropriate steps to stay within the CALFED ROD expectations for levels of protection and, given today's scientific knowledge, use of Tier 3 assets, if needed.

In summary, the Project Agencies believe sufficient Tier 1 and Tier 2 assets are available to undertake the fishery actions anticipated for the rest of the water year. Furthermore, we have implemented a Tier 3 strategy that meets the requirements of the CALFED ROD. We acknowledge the Management Agencies' continued concern about the future functionality of the EWA given limited funding and resources. To reduce potential risks, we believe it is essential the Project and Management Agencies assess what the EWA may look like beyond year 4 as set forth in the CALFED ROD; such an

assessment will allow the Project and Management Agencies to prepare for operation of the EWA if CALFED decides to continue the program through the remainder of Stage 1.

If you have any questions regarding this letter, please contact Curtis Creel at DWR (916) 574-2722 or Paul Fujitani at Reclamation (916) 979-2197.

Sincerely,

for Tom Glover
Deputy Director
Department of Water Resources

for John F. Davis
Deputy Regional Director
Bureau of Reclamation

Enclosures