The EWA is Designed for Fishery Recovery

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At the April meeting of the California Bay Delta Authority questions were raised about the environmental water account (EWA) that I thought deserved a response. In my opinion, some policies are so central to Bay/Delta success the members of the Authority should not be left in any doubt about them. During a discussion of my concern with Crawford Tuttle he commented that since so many members of Administration and Authority are new and do not have the history of the EWA, it would be useful for me to document how it was portrayed in the original CALFED documents. This brief paper will provide a little history and some associated questions and answers.

Prior to the CALFED Record of Decision of August 2000 endangered fish protection was provided though the 1993 winter run salmon opinion and the 1995 delta smelt opinion (B.O.'s). Both opinions had limits for take of fish at the pumps. When those limits were approached or exceeded, pumping could be reduced or shut down as needed. Due to excessive take of fish, pumping restrictions occurred in spring of 1998 and 1999 resulting in a great uproar from the water users. Immediately CALFED was confronted with the obvious dilemma that any long-term solution to Bay/Delta would not be stable if it relied on the traditional prescriptive limits of the B.O.'s. Another refrain from the water user community was, "we have to put the fisheries on a water budget." Tim Quinn and I were appointed by Secretary Babbitt to assemble a team of agency and stakeholder representatives to try to develop what was termed an "environmental water account."

This concept was readily endorsed by water users but was met with skepticism from fish agencies used to the traditional prescriptive approach. However, the fish agencies were the first to recognize the traditional approach was not working for fish. By the time the take levels were exceeded too many fish were near the pumps and the corrective action of reducing or stopping the pumps did little to help the fish. Every one knew actions were needed much earlier, but there was no mechanism within the B.O.'s to implement them.

The technique used to develop and size the EWA was to collect all we knew about water and fish movements from several previous years, determine the places and times of most fish problems, and then reconstruct how water could have been used differently to avoid those problems. The EWA was developed assuming existing standards of the '95 Delta Water Quality Control Plan and the 800,000 AF of water from the '92 CVPIA Sect. 3406(b)(2) were baseline conditions. These simulations, or games, were run several times in various year types to determine how much annual water on average (assuming year to year borrowing and carryover) it would take to protect fish at their most vulnerable times. Or viewed from water user perspective, how much water would be needed to assure there was a low probability of reduced pumping from Delta?

It was at that time we faced the issue of what level of protection should the EWA provide. Water users argued the proper protection was the ESA jeopardy level, the same level provided by the prior opinions. While the matter bounced around for months it became clear to the fish agencies the only reasonable level of fisheries protection for the EWA was recovery. That view was based on two considerations. First, the Ecosytem Restoration Program (ERP) was by its very name aimed at restoration. What rationale could be justified to protect fish at a jeopardy level while expending $100s of millions to restore the ecosystem? Second, no biologist could "game" a scenario, which kept fish at the jeopardy level. The EWA was developed to maintain water conditions (flows, salinity, and timing) to support recovery of delta smelt and salmon.

The EWA recovery policy is incorporated in CALFed documents in many places. The Aug. 2000 ROD, Section 2.2.7 Environmental Water Account, page 54,states:

"An essential goal of the CALFED Program is to provide increased water supply reliability to water users while at the same time assuring the availability of sufficient water to meet fishery protection and restoration\recovery needs as part of the overall ERP."

Similar statements can be found in the FWS and NMFS B.O.'s, and the EWA Operating Principles Agreement.

Q & A on EWA

In addition to the issue of jeopardy or recovery as the objective of the EWA, other questions or statements are repeatedly heard. Below are some examples with appropriate responses.

Q1 The original four year EWA is just mitigating for water user caused problems. How can we be sure the long term EWA as contemplated in the Delta Improvements Package will support recovery?

A1 The EWA for the first four years was designed to support recovery (as discussed above). The long term EWA will continue the recovery policy. However, there can be at least three situations where, despite the policy of recovery, mitigation, or little more, is actually achieved and therefore fish are constrained by water conditions from following a recovery trajectory.

1. Annual science reviews demonstrate it was sized wrong. The EWA does not contain enough water to meet fishery needs.
2. The EWA is sized correctly but funding or some other constraint does not allow EWA to obtain required assets.
3. The baseline level of protection (WQCP standards and (b)(2) water) is eroded leaving an adequately sized and funded EWA unable to meet objectives.

When enviros raise this question it must be recognized that situation 2 and 3 have existed over some or all of the last 3 years of the first four year EWA.

Q2 The ESA is very expensive, haven't we learned enough to cut the annual of EWA assets size for the long term and still meet recovery objective?

A2 Counteracting the factors which call into question the efficacy of an EWA in Q&A1 above, there are at least three factors which possibly lead to a reduction in the annual water needs.

1. Annual science reviews demonstrate certain fishery actions are not as necessary as once thought.

2. Improved operational experience has demonstrated ways to provide functionally equivalent fish protection with less EWA water. There is no doubt the teamwork and esprit de corps developed between fish and water agency personnel during the hour-to-hour real-time management of flows at key times for fish has paid off handsomely to the benefit of fish and water users.

3. Increased trust between parties has led to increased use of interyear hedging of risk. While this was contemplated in principle during original EWA it will likely be given much more prominence as a tool in long term EWA.

Q3. Who is the judge whether EWA should be bigger or smaller to achieve fisheries recovery?

A3. Ultimately, the fishery agencies. They have the State and Federal regulatory authority. CALFED established checks and balances, however. The ROD specifically directed the CALFED Science Board to establish a standing EWA Science Panel and directed them to "provide recommendations to maximize fishery benefits while minimizing impacts to water supply."

Q4. Will all EWA water continue to be purchased?

A4. The ROD states, "As CALFED develops new water, the EWA will obtain an appropriate share in order to minimize the need for annual acquisitions and to maximize operational flexibility."

Q5. Will water users pay the full cost of the long term EWA?

A5. If your view is EWA is only covering mitigation and not recovery, there is a justification for full cost recovery from water users.

Since the EWA is, in fact, designed for recovery an argument can be made for some public funding. The split between public and water user funding is a policy matter, a political choice.