# U.S. House of Representatives
# Subcommittee on Water and Power

## Chairman Ken Calvert

## Oversight Hearing
## Regarding

# Operations of the Water Delivery System:
# The CALFED Record of Decision and Anticipated Deliveries for 2002

## Testimony of

**Timothy H. Quinn**
**Vice President, State Water Project Resources**
**Metropolitan Water District of Southern California**

## February 14, 2002

**U.S. House of Representatives**
**Subcommittee on Water and Power**

**Chairman Ken Calvert**

**Oversight Hearing**
**Regarding**

**Operations of the Water Delivery System:**
**The CALFED Record of Decision and Anticipated Deliveries for 2002**

**Testimony of**

**Timothy H. Quinn**
**Vice President, State Water Project Resources**
**Metropolitan Water District of Southern California**

**February 14, 2002**

Mr. Chairman and Members of the Subcommittee, thank you for this opportunity to appear before you on matters of considerable importance to California. My name is Timothy Quinn. I serve as Vice President of State Water Project Resources at the Metropolitan Water District of Southern California.

Today, you have asked witnesses to address two questions:

> Given that present and future demands of urban, agricultural, and environmental needs exceed the capacity of the project, where do we find solutions to reliably meet these needs in the 21st century?
>
> In your opinion, what administrative or operational changes can be made to meet the goals of water supply and reliability set forth in the CALFED Record of Decision?

Mr. Chairman, I will address these questions in order.

## Meeting Water Needs in the 21st Century: The Diversification Strategy

Metropolitan believes the answer to the first question is, in a word, diversification. While California's water managers once believed our water supply security rested solely in the completion of large water projects, primarily the State Water Project (SWP), we have come to recognize we must invest heavily in local resources as well as assure the security of the statewide water supply system.

Nowhere has this diversification strategy been more vigorously implemented than in Southern California. Twenty years ago, Southern California water planners embraced a long-term vision that was one-dimensional: We wanted the state to honor its contract with us for 2.0115 million acre-feet (MAF) of SWP entitlements, even during the driest of years. That vision, for better or worse, was not realized, largely as the result of legitimate environmental concerns.

Today, through Metropolitan's Integrated Resources Plan, we have moved substantially toward restoring the

reliability of the region's water supplies by investing heavily in local resources, including:

- Vast reclamation plants to reuse imported water supplies;
- Conservation programs that save more than 700,000 AF annually, equal to the combined water demands of the cities of Los Angeles and San Francisco;
- Groundwater storage projects in Southern California and in partnerships in the San Joaquin Valley and along the Colorado River Aqueduct in which we have accumulated 1.5 MAF of stored water;
- Regional surface storage in Diamond Valley Lake, with a storage capacity of 800,000 acre-feet built at a cost of $2 billion; and
- Strategic use of water transfers with Colorado River and Central Valley agricultural partners.

Due to these investments, water use in Southern California today is about the same as it was in 1975, despite an increase in population of 5 million people.

The importance of these regional resource investments is difficult to overstate. Today, water demands in Metropolitan's service area average about 3.8 MAF. By 2020, regional water demands are expected to average about 4.8 MAF. Our supply challenge is to provide that additional 1.0 MAF for the $680 million regional economy and fulfill our unwavering commitment to implement the California Plan to live within the state's allotment of Colorado River water. Fully 85 percent of the water expected to meet these growing demands will come from regional and local investments. These plans for a diversified supply strategy are not merely written on paper. We are implementing them, committing billions of our ratepayers' dollars.

To be successful, the diversification strategy requires that the CALFED Program be successful. From CALFED, we require better water quality in our SWP supplies to protect public health, assure the success of reclamation investments, and maintain a balance of SWP and Colorado River supplies. We require the financial assistance CALFED promises for the massive investments required in local water supply resources and expensive water treatment technologies that must be implemented, if we are to continue using SWP water in our treatment plants and still meet increasingly stringent drinking water standards. And we require reliable SWP supplies, to replenish our south-of-the-Delta storage capacity when it is relatively wet and meet a portion of dry-year demands.

The CALFED Program has embraced the diversification strategy. At its core, the CALFED Record of Decision (ROD) is an aggressive, balanced plan of action, with deadlines and budget commitments to provide accountability. The CALFED Program strongly emphasizes a commitment to habitat restoration -- an unprecedented program now well underway -- and to investments in local water supply resources throughout California. It contemplates up to 4.5 MAF of new storage capacity and necessary improvements to through-Delta water conveyance. Equally important, CALFED has successfully implemented an Environmental Water Account, to provide flows for the restoration of fisheries and essential regulatory assurances for water supplies against further takings under the Endangered Species Act.

In Southern California, the diversification strategy is working. A little more than a decade ago, at the end of the 1987-1992 drought with a SWP supply of only 30 percent, mandatory rationing was widespread in Southern California, as it was elsewhere in the state. Economic damages were substantial. Reports were widespread of companies hesitant to expand plants or locate new ones in California due to unreliable water supplies. California water in the early and mid-1990s looked a lot like energy markets at the beginning of the 21st century. Simply stated, chaos reigned.

In sharp contrast, last year with SWP deliveries similarly limited, there was no panic. Instead, water demands had been lowered through aggressive demand management strategies; Metropolitan withdrew water from its groundwater storage accounts and from Diamond Valley Lake; and we purchased a modest amount of water from the business-like dry-year transfer program administered by the California Department of Water Resources. There was no rationing. Reliability of supplies was maintained. At the same time, in part due to the historic efforts to improve habitat and restore beleaguered fisheries, most fishery species of concern appear to be on a recovery trend.

To keep California on this successful track, it is imperative that we fulfill the vision of CALFED. It is for this reason that we so strongly support the efforts to authorize the CALFED Program in H.R. 3208[1], introduced by Chairman Calvert, as well as the efforts of Senators Feinstein and Boxer to pass authorization legislation for the CALFED Program in the Senate.

**Administrative and Operational Changes**

While overall the CALFED Program provides a sound plan for a secure water future for California, success has not been universal. One of the most notable exceptions is the operation of the Central Valley Project (CVP) both prior to and after the adoption of the CALFED ROD in August 2000.

Recognizing the serious water supply shortfalls experienced by CVP agricultural service contractors in the west San Joaquin Valley, the ROD includes a commitment to increase supplies for this region to 65 to 70 percent of their contract amounts under "normal" hydrologic conditions. Yet, in a January 25, 2002 statement, the U.S. Bureau of Reclamation (Bureau) announced water supply projections that clearly fall far short of this commitment. Based on the current operating guidelines for the CVP, under dry conditions, CVP Westside contractors can expect deliveries of 45 percent, comparable to the current allocation to SWP contractors. But while SWP contractors can expect increased deliveries under more favorable hydrologic conditions, CVP deliveries will be no more than 45 percent even under above-normal hydrologic conditions. Ironically, if the year turns out wet, CVP deliveries will be reduced to 35 percent due to the Department of Interior's (Interior) current plans to implement the Central Valley Project Improvement Act (CVPIA). The current operational guidelines of the CVP are not consistent with the clear commitment in the CALFED ROD to balance water supply and environmental benefits.

Wherein lies the remedy? In a December 11, 2001 letter to Chairman Calvert (Attachment A), Metropolitan's Chief Executive Officer Ronald Gastelum expressed our opposition to statutory remedies for this problem. Like many other water districts throughout California, we believe that statutory protections to guarantee the water supplies of one select group of water users, no matter how carefully worded, inherently pose the risk of putting others at a disadvantage. Such statutory solutions threaten to replace one form of imbalance with another. For this reason, we continue to oppose the so-called "assurance" language in any CALFED reauthorization bill.

Metropolitan believes just as strongly that the remedy lies in appropriate use of administrative discretion, as expressed in a subsequent January 8, 2002 letter to Secretary Norton (Attachment B). We believe that Interior has ample discretion under existing law to achieve the balance promised in the ROD. In recent years, Interior has used its discretion to implement a number of questionable measures in implementing Section 3406(b)(2) of the CVPIA, which dedicates 800,000 AF of CVP yield for specified environmental purposes (b(2) water). Chief among these discretionary acts are three accounting practices for tracking the use of b(2) water that have been labeled "reset", "offset", and "credits". In a decision dated February 5,

2002, the United States District Court, Eastern District of California has now found all three of these practices unlawful. For the reasons set forth below, regardless of the ultimate outcome in the courts, each of these discretionary actions warrants reexamination.

**Reset.** One of the uses of b(2) water is to release water from upstream storage to augment in-stream flows for specific environmental purposes. Under Interior's reset accounting practice, if storage subsequently recovers due to wet conditions before the end of January, the b(2) account is "reset" as though the delivery of water for environmental purposes had never occurred. Using this logic, it could be argued that if Interior releases stored water for delivery to a CVP contractor and storage levels subsequently recover, then its contract obligations should be "reset" and Interior should still be obligated to deliver the contractor's full contract amount as though the initial delivery had never occurred. The soundness of such a policy is subject to question. Certainly, allowing for "reset" after one project use but not another introduces systematic imbalance to CVP operations which has contributed to the water supply shortfalls in the west San Joaquin Valley.[2]

**Offset.** The offset accounting practice affects CVP operations during summer months of peak irrigation demand. During these months with virtually no natural precipitation, water generally must be released from storage to be delivered to CVP export contractors. Accordingly, under some circumstances upstream storage will be higher in the system because export deliveries are cut to protect fish as a b(2) measure. Under the offset accounting practice, such shortages of water during peak irrigation months may not count as a use of b(2) water, because, under certain circumstances, the increase in storage "offsets" the loss of export water supply in Interior's accounting methodology. Thus, despite the fact that an environmental benefit ostensibly occurs by reducing exports and the fact that a clear economic harm occurs for the westside water user, Interior's offset accounting practices may treat such water as never being used for b(2) purposes. Like reset, the federal District Court has found the offset accounting practice arbitrary and capricious and has ruled it unlawful.[3]

**Credits.** The CVPIA expressly states the purposes of b(2) water include water used pursuant to the state's Water Quality Control Plan (WQCP) and to meet ESA objectives. Water used for these purposes should be fully credited against the 800,000 AF of yield dedicated for environmental purposes under the Act. Yet, Interior's accounting practices place an arbitrary cap of 450,000 AF annually on the amount of water credited for these purposes. When actual impacts on the CVP exceed this amount, this accounting practice makes it likely that more than 800,000 AF will be taken from CVP contractors and used for the environmental purposes of the Act. In an October 19, 2001 ruling, the District Court agreed, ordering Interior to fully credit water used for WQCP and ESA purposes.[4]

Whether within Interior's legal discretion or not, Interior's current b(2) accounting practices are inconsistent with the balance objectives defined in the CALFED plan of action. The use of water dedicated for environmental purposes, whether b(2) or otherwise, should reflect the best scientific information available and attempt to achieve environmental restoration objectives with the least economic impact on others. Interior's practices appear to result in the use of more than 800,000 AF annually. Moreover, many of these practices have the effect of concentrating fish protection actions disproportionately on reducing CVP exports where the scientific support for such use tends to be weaker and the economic costs higher. Regardless of the ultimate outcome in the courts, Metropolitan urges Interior to reexamine its use of administrative discretion in implementing CVPIA and make appropriate adjustments consistent with the objectives of the

CALFED ROD to balance water supply and environmental restoration objectives.

## *Environmental Considerations and the Role of Science*

We are aware some interests may be concerned about the implications for environmental restoration of changes in the administration of CVPIA or other environmental laws. Metropolitan strongly agrees that the water supply benefits of the ROD should not be achieved at the expense of environmental restoration. Indeed, the philosophy of the CALFED Program is that we can accomplish both environmental restoration and water supply reliability – and that is the case here.

Already, some have suggested that because portions of the CALFED environmental baseline have been declared illegal there should be an immediate acre-foot for acre-foot increase in the Environmental Water Account or that ESA assurances should be withheld this year from the State Water Contractors and others. Such actions are premature. The ROD contains an orderly, public process based on science for dealing with such uncertainties and addressing whether additional EWA assets should be implemented. Metropolitan strongly urges Interior to follow those procedures.

It is important to recognize that California's fisheries are in far better shape today than they were a mere decade ago. That is certainly the case for the three ESA listed species that have been a concern in the operations of the CVP and SWP in recent years: the winter-run chinook salmon, the spring-run chinook salmon, and the delta smelt.

The winter-run chinook salmon has been the subject of intense management activities and, for the first time in decades, the population of this species is on a recovery trend. The winter-run numbered only 191 returning adults in 1991, but last year more than 7,500 adults returned to spawn, the largest number since 1982. If CALFED is able to proceed with plans to restore 42 miles of cold water river habitat for this species on Battle Creek (a Sacramento River tributary near Redding), the winter-run may well be within reach of the population restoration goals of CVPIA and CALFED. Similarly, populations of the spring-run chinook salmon are rebounding on other Sacramento River tributaries. On Butte Creek, a critical spawning area for this species, CALFED restoration efforts with local and statewide cooperation have restored nearly 30 miles of prime habitat. As a result, where once only a few hundred fish returned to spawn, in recent years the returning adults number in the tens of thousands. The Delta smelt population index is also up, having climbed nearly to recovery levels in the past few years.

While these recent trends are encouraging and certainly suggest that we are doing something right through the CALFED Program, the fact is none of these species have yet achieved the sustainable population levels established as goals by both the federal and state governments. For this reason, any changes in the use of discretion to accomplish water supply objectives must be part of the broader CALFED package that also keeps these and other species on a recovery track. To assure that these decisions are based on the best scientific information and do not undermine environmental restoration efforts, Metropolitan urges that Interior follow the procedures outlined in the ROD and consult the CALFED Science Program for guidance. For the same reasons, we recommend that Interior, in cooperation with the CALFED Science Program, convene an independent panel of scientists to offer advice on the best means of refining CVP operations in a manner that is consistent with the environmental restoration goals of the CALFED Program.

Mr. Chairman, once again, thank you for the opportunity to appear before you today. I would be glad to answer any questions the Subcommittee may have.

# # #

---

[1] As discussed below, Metropolitan continues to oppose the so-called "assurances" language in H.R. 3208.

[2] According to the federal District Court decision: "[Interior] is not free to use 'reset' to 'undedicate' and not account for (b) (2) use in a water year, because the current year's overall CVP water delivery capacity has been increased by the windfall of increased precipitation. . . Other than to prefer one competing use for water over another, without legal authority, the reset mechanism is a post hoc rationalization to justify not charging actual (b) (2) use." U.S. District Court, Eastern District of California, Supplemental Memorandum and Order, February 5, 2002, pages 12-13.

[3] The District Court held: "Thus, although CVP yield was actually used for (b) (2) purposes, and not made available for other CVP water users, it was not accounted for under the (b) (2) account. Once water is used for (b) (2) purposes, it must be accounted for. Interior may not use 'offset' to 'undedicate' and not account for as (b) (2) use, water that has already been used for (b) (2) purposes in a water year." *Ibid,* page 15.

[4] Emphasizing the importance of maintaining some certainty for CVP Contractors, the court argued: "[I]f it were left to Interior's 'discretion' whether or not to count CVP yield used for such [WQCP or ESA] (b) (2) purposes, the annual 800 TAF cap would be illusory. The 800,000 TAF [sic] is intended by Congress as an immutable floor and ceiling on annual reallocation of water from CVP yield for (b) (2) purposes. If Interior uses more than 800 TAF for (b) (2) purposes in any year, but does not count all CVP yield used for such purposes, it violates CVPIA Section 3406 (b) (2)." U.S. District Court, Eastern District of California, Memorandum Decision and Order, October 19, 2001, page 35.