

DRAFT

February 9, 1996

Response to Request for Clarification of CEQA Requirements for TROA EIS/EIR Alternatives

At the 2-5-96 TROA EIS/EIR Management Team meeting, Jeff Zippin suggested it may be acceptable to only have two alternatives in the TROA EIS/EIR:

1. the 2052 Future with TROA
2. the 2052 Future without TROA

I assume we'd continue to include a description of the existing environment (the Current Conditions).

As suggested at the meeting, I discussed this with John Kramer, the DWR legal contact for TROA. His comments confirm and add to the tentative information I provided then. I've summarize our position below:

- It's very risky to evaluate only these two alternatives in the Draft EIS/EIR. It leaves us open to challenge under CEQA (and perhaps NEPA) that the document is incomplete. This could make it necessary to add some more alternatives in the Final EIS/EIR, or even worse, force us to redo the Draft EIS/EIR with additional alternatives.
- CEQA requires designation of an environmentally superior alternative. Considering only two alternatives in the EIS/EIR limits the choice of this alternative to the proposed action, TROA. This may conflict with the requirements specified in §15126(d)(3) of the CEQA Guidelines, which states: "the discussion of alternatives shall focus on alternatives capable of eliminating any significant adverse environmental effects or reducing them to a level of insignificance, even if these alternatives would impede to some degree the attainment of the project objectives, or would be more costly."
- Jeff commented that the decision-making authorities will have but two options: 1) to sign TROA, or 2) not to sign TROA; hence, there should be only these two alternatives. While this seems plausible on the surface, there are some good arguments against it. First, all of us are exercising quite a bit of discretion about what is now going into TROA. Second, the decision options could be reframed as: 1) signing TROA or 2) not signing TROA pending its renegotiation to eliminate or reduce any adverse environmental impacts. Such arguments would be difficult to refute.
- Jeff also mentioned that the alternatives considered in the "Report to the Negotiators" were not viable alternatives since the negotiators would never accept them. This may eliminate them from consideration in an EIS under NEPA, but under CEQA, an EIR should consider all reasonable alternatives, and these can go well beyond what's legally permissible. Hence, any of the alternatives we considered in the "Report to the Negotiators", or some combination, could form the basis of additional "reasonable" alternatives in the Draft EIS/EIR.

As suggested at the meeting, I hope Fred Disheroon and Lynn Collins ask John Kramer to be involved in further discussions on this issue so CEQA compliance is addressed. Also, please inform John Kramer or myself before any commitments are made to having only two alternatives in the TROA EIS/EIR.

