

**CALFED Bay-Delta Program**

**KEY AGENCY CONTACT MEETING SUMMARY**

**DATE:** March 27, 1996

**AGENCY:** U.S. Army Corps of Engineers

**ATTENDEES:**

Jim Monroe	U.S. Army Corps of Engineers	916/557-5266
Rick Breitenbach	CALFED	916/657-2666
Kristina Bergquist	Jones & Stokes Associates	916/737-3000
Carolyn Yale	U.S. Environmental Protection Agency	415/744-1580
Tom Yokum	U.S. Environmental Protection Agency	415/744-1975
Jim Martin	Department of Water Resources/CALFED	916/653-9715
Karen Shaffer	U.S. Army Corps of Engineers	916/557-5269
John Sibilsky	U.S. Army Corps of Engineers	916/557-6722
Ken Bogdan	Jones & Stokes Associates	916/737-3000
Ray McDowell	Department of Water Resources/CALFED	916/653-9499
Tom Coe	U.S. Army Corps of Engineers	916/557-5255

Opening remarks by Rick Breitenbach, CALFED, included introductions, purpose of meeting, and background of the CALFED Bay-Delta Program. This was followed by a discussion of the following subjects:

Agency's Requirements and Approach to Public Involvement:

In response to the Corps' concern for more opportunities for public involvement in the north State, CALFED will investigate the possibility of conducting another scoping meeting for the north coastal communities.

Agency's Regulatory and Permitting Requirements for Program-Level Activities:

The Corps does not expect to have permitting authority under Section 404 of the Clean Water Act (CWA) for CALFED's program phase of developing the long-term solutions for the Bay-Delta. Under Section 404 of CWA, the Corps regulates the discharge of dredge or fill material into waters

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of the United States. The development of the CALFED Bay-Delta Program may select an alternative that involves the discharge of dredge or fill material into waters of the United States; however, the decision to select a particular alternative would not involve any ground-disturbing activities and, therefore, would not require a permit from the Corps.

The Corps identified a scenario for the program EIS/EIR alternatives selection process that potentially could conflict with EPA Guidelines. One of the solution principles defined to guide the efforts of the CALFED team in the alternatives selection process requires that an alternative "must pose no significant redirected impacts". The Corps interpreted that this could mean that CALFED agencies would not consider alternatives that would require the use of eminent domain proceedings to acquire properties. Although this screening criterion may be appropriate for the selection of alternatives in the CEQA/NEPA process, according to the Corps, this screening approach may unduly limit the analysis of potential practicable alternatives for purposes of meeting the requirements of EPA Guidelines. Therefore, if CALFED wishes to achieve both the objectives of CEQA/NEPA and EPA Guidelines, it should not use this particular principle to screen out otherwise practicable alternatives.

CALFED emphasized the need for the Corps to be very involved in the scoping process during the next 4 months to ensure that Section 404(b)(1) guidelines requirements are met. CALFED requested that the Corps and EPA closely examine the Bay-Delta Program purpose and need statement in light of the current discussion.

Agency's Regulatory and Permitting Requirements for Project-Level Activities:

The implementation phase of actions within the selected CALFED program alternative would probably require a permit from the Corps. Section 404(b) of CWA directs that Corps permits issued under Section 404 comply with EPA Section 404(b)(1) Guidelines. These Guidelines require that the Corps issue a permit only in the absence of practicable alternatives to the proposed discharge that would have a less adverse impact on the aquatic ecosystem. This requirement warrants an alternatives analysis for projects to discern the least environmentally damaging practicable alternatives.

The program EIS/EIR may be used in documenting compliance with EPA Section 404(b)(1) Guidelines alternative analysis requirement for "offsite" alternatives. That is, at the project activity implementation level, the Corps would not revisit the issue of developing alternatives to meet the overall program-level activity objective and would focus only on the onsite alternatives to permit the least environmentally damaging practicable alternative. Therefore, although no Corps permit action would be required at the CALFED program-development level, the alternative analysis for the program EIS/EIR also should meet the requirements of EPA Section 404(b)(1) Guidelines.

Nonconformance with EPA Section 404(b)(1) Guidelines is grounds for permit denial.

Additional Meetings:

None required.