

Draft Purpose and Need Discussion Paper for the CALFED Bay-Delta Program

INTRODUCTION

This draft paper is to initiate discussion regarding the format and substance of the purpose and need statement for the programmatic EIR/EIS on the CALFED Bay-Delta Program. Following this introduction, there are three sections to this paper: first, an explanation regarding NEPA and CEQA requirements for a purpose and need statement and how they are to be used; second, a discussion of programmatic and project-specific purpose and need statements from a variety of sources; and third, the current draft purpose and need statement for the CALFED Bay-Delta Program. Appendix A contains copies of purpose and need statements from three programmatic and two project-specific environmental documents.

The primary issue to be considered is how to prepare a purpose and need statement that will encourage the selection of an appropriate range of alternatives and provide some benchmark as to whether the alternatives are capable of achieving the program objectives.

NEPA AND CEQA REQUIREMENTS

The Council on Environmental Quality (CEQ) NEPA Guidelines state that a NEPA document must "...briefly specify the underlying purpose and need to which the agency is responding in proposing the alternatives including the proposed action." (40 CFR 1502.13.) The goal of this brief statement is to identify what the alternatives will accomplish and why the alternatives are necessary. This brief declaration is a statement of purpose and need. There is no similar requirement to prepare a purpose and need statement pursuant to CEQA, although CEQA guidelines do require an EIR to include a project description, one element of which is a statement of the general objectives sought by the proposed project (State CEQA Guidelines Section 15124).

Several sources were reviewed for guidance in developing a purpose and need statement for an EIS. These sources include the USBR NEPA Handbook, "Mastering NEPA: A Step-by-Step Approach" by Jones & Stokes Associates staff, the "NEPA Deskbook" published by the Environmental Law Institute, and "NEPA Law and Litigation" by Daniel R. Mandelker. None of these sources provide very clear direction as to the intent or suggested contents or format of a purpose and need statement. "Mastering NEPA: A Step-by-Step Approach" indicates that the purpose and need statement is important because it drives the selection of the range of alternatives.

The USBR NEPA Handbook advises that this section of an EIS briefly describe why the action is needed and what the action is designed to accomplish; that the discussion not be tied to any of the alternatives, but rather to a general discussion of the problem that the various alternatives were designed to solve; and that the statement be objective and not a justification of the proposed action.

Perhaps the best guidance is provided in "NEPA Law and Litigation". This reference reviews and summarizes NEPA cases and provides commentary on the decisions. The purpose and need statement has not been directly addressed in any cases, but has been addressed through litigation regarding alternatives needing to be included in an EIS. In most of the relevant cases, a rule has been adopted that limits the alternatives that must be discussed to the "rule of reason" or to the purposes of the project proposed by the federal agency.

These cases point out that careful crafting of the purpose and need statement is necessary to provide a framework for developing alternatives. The purpose and need statement should be written broadly enough to provide room for developing a "reasonable range" of alternatives and avoid litigation regarding inadequate alternatives analysis, but not so broadly that alternatives that clearly do not meet the basic intent of the action can be considered viable, thereby requiring extensive and unwarranted alternatives analysis.

In summary, in drafting a purpose and need statement, typically the "need" briefly describes the problem that the proposed project and alternatives are intended to address, while the "purpose" describes the objectives or standards that the proposed project and alternatives are intended to achieve.

PROGRAMMATIC VERSUS PROJECT-SPECIFIC PURPOSE AND NEED STATEMENTS

This section discusses purpose and need statements that have been obtained from several other projects. Appendix A includes copies of purpose and need statements from these projects. The purpose and need statements were selected from a variety of both broad programmatic EISs and more project-specific water resource EISs.

In reading the various purpose and need statements, differences can be observed between those prepared for programmatic EISs and those prepared for project-specific EISs. Purpose and need statements prepared for programmatic EISs typically contain broader objectives and goals than those prepared for project-specific documents. Summaries of the purpose and need statements included in Appendix A are provided below.

Programmatic EISs

Central Valley Project Improvement Act Program EIS

This EIS is being prepared in response to Public Law 102-575, Title 34, which amends the authorization of the Department of the Interior's Central Valley Project to include fish and wildlife protection, restoration, and mitigation as project purposes having equal priority with irrigation and domestic uses, and fish and wildlife enhancement as a purpose equal to power generation. The act identifies a number of specific measures for meeting these new purposes and sets a broad goal of sustaining natural populations of anadromous fish produced in Central Valley rivers and streams. The purpose and need statement for the Central Valley Improvement Act (CVPIA) Program EIS contains broad purposes such as "protect, restore, and enhance fish, wildlife, and associated habitats in the Central Valley..." and to "improve the operational flexibility of the CVP". The need statement is equally broad: to "improve the existing water management practices of the CVP" because of declines in fish and wildlife habitat and populations.

Refuges 2003 Program EIS

This EIS was prepared by the U.S. Fish and Wildlife Service to address the environmental impacts of its proposed 10-year management plan for wildlife refuges nationwide. The purpose of the project was defined as development of a management plan for the National Wildlife Refuge System to ensure that it meets the challenges to protect fish and wildlife resources and the public's use and enjoyment of those resources into the 21st century. The need for the project was based on the addition of substantial acreage to the system, the addition of responsibilities for management, the increased scope of programs to protect and recover threatened and endangered species, changing public values, continued population growth and associated use, and increased public pressure to use refuges for a variety of activities.

Tahoe National Forest Plan EIS

This EIS was prepared by the U.S. Forest Service on its proposed plan for managing the Tahoe National Forest. The purpose of and need for the project depend heavily on legislation passed by Congress and does not focus on a specific purpose and need. Specifically, the purpose and need are defined as the passage by Congress of two pieces of legislation: the Forest and Rangeland Renewable Resources Planning Act of 1974 (RPA) and the National Forest Management Act of 1976, amending the RPA. These acts require that comprehensive, long-range forest plans replace separate and often uncoordinated resource management plans.

Project-Specific EISs

Los Vaqueros Reservoir Project

This joint EIR/EIS was prepared by the Contra Costa Water District (District) and U.S. Bureau of Reclamation on the District's locally funded reservoir project. The purpose and need statement for the Los Vaqueros Reservoir Project is very detailed. The need for the project is clearly defined as a water quality problem at a specific site in the Delta (Rock Slough), and as a reliability problem relating to the project sponsor's lack of emergency storage. In addition, the purpose statement includes very specific objectives that alternatives are intended to achieve. These objectives include a minimum water quality goal at the consumer's tap (65 milligrams/liter [mg/l] chlorides and 50 mg/l sodium), minimum emergency storage goals (75% of the maximum 3-month demand in 2025), and cost (\$350 million in 1988 dollars). Secondary objectives (purposes) were also identified.

Delta Wetlands Project

This joint EIR/EIS was prepared by the U.S. Army Corps of Engineers and the State Water Resources Control Board for the project applicant's proposal to flood certain Delta islands to provide water storage and wildlife habitat. The purpose of the project is defined as the ability to divert surplus Delta inflows, transferred water, or banked water for later sale and/or release for Delta export or to meet water quality or flow requirements for the Bay-Delta estuary. Additionally, the project is intended to provide managed wetlands and wildlife habitat areas and recreational uses.

The need for the project is based on projected periodic shortages in California's water supplies and on the need for additional water supplies to meet environmental and outflow needs within the Delta.

Discussion

The differences in the level of detail of the purpose and need statements between programmatic and project-specific environmental documents has a direct effect on the range of alternatives that are appropriate to consider and the level of detail of both the alternatives and the analysis. As demonstrated above, the purpose and need statements for the programmatic EISs tend to be much broader and less specific. For example, the purpose and need statement for the CVPIA Program EIS would naturally lead to the development of broad, policy-oriented alternatives that could potentially improve habitat conditions and operational flexibility throughout the Central Valley, while the purpose and need statement for the Los Vaqueros Reservoir Project would lead to the development of alternatives that have some probability of achieving the specific project objectives set forth.

It is important to note that all of the alternatives need not fully achieve all of the objectives in order to be included in an EIS. NEPA and CEQA specifically require the examination of alternatives that reduce impacts on the environment even if they do not *completely* fulfill the project objectives.

DRAFT CALFED BAY-DELTA PROGRAM PURPOSE AND NEED

Background

Efforts to bring about solutions to the problems facing the Bay-Delta have been continuing for many years. Various responsible state and federal agencies and interest groups have taken direct action or have proposed actions to solve aspects of the problems facing the Bay-Delta system. Various interested parties have put forward potential solutions to the biological declines in the Bay-Delta, championed strategies to solve various water supply issues, or sought to establish regulations addressing these issues. More integrated planning has occurred through efforts such as the San Francisco Estuary Project and the Governor's Bay Delta Oversight Council.

The CALFED Bay-Delta Program is an extension of the recent increase in coordination and cooperation that has characterized the actions of the many interest groups and agencies concerned with the Bay-Delta. Interest groups and agencies that historically have been at odds are working together to foster cooperation and to find and implement mutually acceptable solutions. This willingness by all parties to seek agreement on long-standing issues presents a major opportunity for government, key interest groups, and the public to develop a lasting set of solutions for the problems facing the Bay-Delta system. The CALFED Bay-Delta Program is charged with finding solutions to the most pressing problems now facing the estuary.

Below is an initial draft of a purpose and need statement for the CALFED Bay-Delta Program. This draft is intended for discussion and is based on various materials prepared by CALFED over the last several months. Because of the importance of the geographic scope of the CALFED Bay-Delta Program, a discussion of geographic scope has been incorporated into the purpose and need statement.

Purpose

The purpose of the CALFED Bay-Delta Program is to develop a long-term comprehensive plan that will restore ecological health and improve water management for beneficial uses of the Bay-Delta system. The Bay-Delta Program is intended to achieve objectives in each of four areas: ecosystem quality, water supply reliability, water quality, and vulnerability of Bay-Delta system's functions. The objectives for each of these areas are summarized below.

Ecosystem Quality

Improve and increase aquatic and terrestrial habitats and improve ecological functions in the Bay-Delta to support sustainable populations of diverse and valuable plant and animal species.

- Improve and increase aquatic habitats so that they can support the sustainable production and survival of native and other desirable estuarine and anadromous fish in the estuary.
- Improve and increase important wetland habitats so that they can support the sustainable production and survival of wildlife species.
- Increase population health and population size of Delta species to levels that assure sustained survival.

Water Supply Reliability

Reduce the mismatch between Bay-Delta water supplies and current and projected beneficial uses dependent on the Bay-Delta system.

- Reduce the conflict between beneficial water users and improve the ability to transport water through the Bay-Delta system.
- Reduce the uncertainty of Bay-Delta system water supplies to help meet short- and long-term needs.

Water Quality

Provide good water quality for all beneficial uses.

- Provide good water quality in Delta water exported for drinking water needs.
- Provide good Delta water quality for agricultural use.
- Provide good Delta water quality for industrial use.
- Provide good Delta water quality for recreational use within the Delta.
- Provide improved water in Delta water for environmental needs (see Ecosystem Quality).

Vulnerability of Bay-Delta System Functions

Reduce the risk to land use and associated economic activities, water supply, infrastructure, and the ecosystem from catastrophic breaching of Delta levees.

- Manage the risk to existing land use and associated economic activities and infrastructure from gradual deterioration of Delta conveyance and flood control facilities and catastrophic inundation of Delta islands.

- Manage the risk to water supply facilities and operations in the Delta from catastrophic inundation of Delta islands.
- Manage the risk to water quality in the Delta from catastrophic inundation of Delta islands.
- Manage the risk to the existing Delta ecosystem from gradual deterioration of Delta conveyance and flood control facilities and catastrophic inundation of Delta islands.

Geographic Scope of the CALFED Bay-Delta Program

The geographic scope of the CALFED Bay-Delta Program will consist of the legally defined Delta, Suisun Bay (extending to the Carquinez Strait), and Suisun Marsh. The program proposes to address problems that are manifested in or closely linked to the Suisun Bay/Suisun Marsh and Delta areas. However, the scope of possible solutions to these problems may encompass any action that can be implemented by the CALFED agencies or can be influenced by them to address the identified problems, regardless of whether its implementation takes place within the Suisun Bay/Suisun Marsh and Delta areas.

Any problem currently associated with the management and control of water or the beneficial use (including both environmental and economic) of water within the Bay-Delta is within the purview of the CALFED Bay-Delta Program *provided* that at least part of the problem is manifested within the Bay-Delta or is directly associated with conditions within the Bay-Delta.

Need

The San Francisco Bay/Sacramento-San Joaquin Delta Estuary (Bay-Delta) is a critically important part of California's natural environment and economy. The Bay-Delta is the largest estuary on the west coast of both North and South America. Because of its size and complexity, the system supports a wide variety of fish, wildlife, and plant life. It also supports important economic activities including commercial and sport fishing, shipping, industry, agriculture, recreation, and tourism. As with any diverse ecosystem, problems exist for many of these uses and users of the Bay-Delta system.

In recognition of the serious problems facing the region and the complex resource management decisions that must be made, the State of California and the federal government are working together to stabilize, restore, and enhance the Bay-Delta Estuary. State-federal cooperation was formalized in June 1994 with the signing of a Framework Agreement by the involved state and federal agencies. These agencies, with management and regulatory responsibility in the Bay-Delta Estuary, are working together as CALFED and will provide policy direction and oversight for the process. CALFED has identified four basic areas that need to be addressed to develop a coordinated solution to managing the Bay-Delta system.

Water Quality

The quality of Delta water is not adequate to fully meet the needs of all beneficial uses. The concentrations of many pollutants are elevated in the estuary's water, sediment, and living resources. The presence of both organic carbon and salts in the estuary is also of concern. The Delta is a source of drinking water for millions of Californians. Its water quality is critical not only for this use, but also for the state's agricultural and business sectors.

Ecosystem Quality

The ecosystem in the Delta does not provide sufficient quality habitats and valued species. Substantial environmental changes have occurred since the Gold Rush. These changes include habitat degradation and loss, population declines and the loss of many native species, and the introduction of hundreds of new plant and animal species. Wetlands and the animals dependent on them have been particularly affected. Populations of many fish species have declined to their lowest levels, and the number of fish and wildlife species needing special protection is increasing.

Water Supply

The water supply from the Delta does not adequately meet the needs of various users. Of particular concern, the reliability of water supplies available for municipal, industrial, and agricultural use, is increasingly uncertain as a result of both increasing human needs and recent requirements placed on the operation of water supply facilities to protect fish and wildlife.

Vulnerability of Delta Functions

The functions of the Delta are vulnerable to upset or disaster. Levee failure would result in flooding of productive Delta farmlands, loss of habitat for nonmigrating waterfowl species, and loss of wintering grounds for migrating species. Levee failure on certain islands would significantly impact water supply distribution functions.