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Date: 16 Apr 96
Subject: No Action Alternative for CALFED Bay-Delta Program
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Lester Snow--

This is in response to your April 3, 1996 request for comments on the No Action Alternative for CALFED Bay-Delta Program. In addition, it incorporates some thoughts on the February 5, 1996 discussion paper on the planning benchmark.

Your cover letter and the attached draft writeup provide an excellent starting point for the discussion on this important issue, and I have just a few comments which I hope will be helpful to the process.

General Comment on definition of existing conditions

On page 4 the draft states, "...it is proposed to define existing conditions as those in place as of 1995". The February 5, 1996 draft discussion paper on the planning benchmark suggested that the date should be fixed on December 15, 1994, the date of the accord. Several alternative dates can be reasonably suggested and justified:

April 6, 1992: The Governor's water policy address marked the beginning of the current Bay-Delta solution finding process. The Governor called for establishment of the Bay-Delta Oversight Council and the Water Policy Council, established the principles of equity, and described the key solution components which have provided the framework for subsequent efforts.

December 9, 1992: The Governor issued his Executive Order establishing BDOC.

June 1994: The Framework Agreement for State and Federal cooperation in the Bay-Delta solution finding process was signed. This laid the foundation for the current CALFED Bay-Delta Program.

December 15, 1994: Signing of the Accord, which establishes the intent of the agencies to abide by the principles and particulars of the negotiated framework for the Bay-Delta standards setting, operations, and long-term solution process.

May 1995: SWRCB releases its Interim Delta Standards, which makes the accord binding for a three year period under State water rights law.

March 1996: Publication of the Notice of Preparation and

Notice of Intent to prepare an EIR/EIS.

If one holds to the position that the benchmark should be set prior to December 15, 1996, then the interim standards, which resulted in a major reduction in water supply available to the SWP and CVP, would be viewed as incremental environmental enhancement, which should be credited towards future mitigation and enhancement requirements. CALFED's proposed benchline date would roll these concessions into the baseline, and therefore no future credit could be granted. The market value of the water supply concessions is very large and its economic implications alone should justify a careful consideration of this issue.

In addition, there are interesting implications for the future of the solution-finding process, which may go through several additional institutional changes before it is completed. If we reset the benchmark with each significant change in the solution finding process, what guarantees can be offered the participants that their early concessions, contributions, and initiatives will not simply be taken for granted at the next step in the process?

There are a couple of technical issues associated with establishment of the benchmark which could also be mentioned at this point. Some environmental features change fairly slowly from year to year, or are stable between changes, and thus can be adequately described at one point in time for comparison with future conditions. Riparian vegetation, laws, regulations, and facilities fall in this category. Other features fluctuate wildly from year to year and thus a specific point in time may have little meaning as a basis for comparison. Splittail and delta smelt populations are good examples of this category. It may be necessary to pick a multi-year average to adequately describe such features.

Also, once a particular point in time is picked for the baseline, it will be necessary to adequately document its environmental features. Presumably, one of the major advantages of the programmatic approach is that the baseline environmental features are established and agreed upon at the beginning of the process, which would provide the basis for evaluating project specific impacts and mitigation requirements much later in the process. This suggests that the level of detail for the baseline data compilation would need to be commensurate with the level of detail ultimately required for project specific EIR/EIS's later in the process rather than the less detailed requirements of the programmatic EIR/EIS itself. How else can detailed project specific impacts be evaluated against the baseline? If the initial baseline data compilation proves to lack adequate detail, we will be forced to do a more detailed analysis for each project specific EIR/EIS, thus losing one of the key advantages of doing the programmatic EIR/EIS in the first place.

It should also be noted that the EIR/EIS is just the first of several analyses that need to be completed, at a level of detail required to meet permit agency approvals. For example, the Department of the Army Permit (usually called the 404 permit) process demands that the applicant provide highly detailed, rigorous environmental and economic data and analyses, documented in a separate report.

Specific Comments

Page 3, Criterion 3: The comparable final milestone for the State EIR process includes several components, including certification of the final EIR, adoption of findings if necessary, preparation of an approved mitigation monitoring program, and if necessary, a statement of overriding consideration. After final approval of a project for which an EIR has been prepared, a Notice of Determination must be filed with OPR.

Page 5, second paragraph, next to last line: Change "affect" to "effect".

Page A-3, State of California, 5th bullet: "South Delta Program should be "Interim South Delta Program, and probably fits more logically on Page A-4, under "PHYSICAL ACTIONS, State of California".