

96-284

Memorandum

To : Mr. Lester Snow
Executive Director
CALFED Bay-Delta

Date : October 15, 1996

From : Department of Fish and Game

Subject : Environmental Compliance Handbook Review

The Department of Fish and Game (Department) has reviewed CALFED's Environmental Compliance Handbook. Three sections, the Introduction, Chapter Two, and Chapter Three, were reviewed. Our response is in the form of general comments and specific comments. Grammatical corrections were not addressed.

GENERAL COMMENTS

The Environmental Compliance and Permitting Handbook's purpose is to describe and clarify State and Federal regulatory requirements for individual CALFED projects. Identification of these requirements should accelerate the environmental documentation and permitting process. The introduction should narrow its focus to descriptions of regulatory processes and requirements.

The Program Action Categories listed identify not only categories of actions but also include specific activities. For this handbook's program-level purpose it would be better to provide program action categories and not specific actions. Specific habitat restoration actions to restore the Bay-Delta ecosystem have not yet been determined. These actions should be determined during Phase II. Although we recommend that these actions be removed from this document, review comments on these actions have been included.

SPECIFIC COMMENTS

INTRODUCTION

Page 1-3 *Phase II Compliance Requirements*

Information found in this matrix should be consistent from one Act to the other. For example, the Endangered Species Act states that a Section 7 consultation is required and who to talk to. The Executive Order 11988 Floodplain Management does not state requirements, contacts, or even what it is for.

Programmatic mitigation is mentioned in every Act except for Section 404. The statement, "...should include development of programmatic mitigation to include in project descriptions of individual components of the preferred alternative." should be clarified, condensed and perhaps stated at the top of the matrix instead of repeated for every Act. An alternative may be "CALFED's programmatic mitigation should be included in each project description."

Page 1-4 *Property Purchase and Site Design* Paragraph 1, Sentence 2

"Environmental conditions...may greatly increase the cost of development because of the regulatory permits that would be required." Permits are not costly, however, there may be costs associated with remedial measures and mitigation. Perhaps this sentence could be ended with "...may increase development costs due to remedial measures and mitigation."

Page 1-5 *RESTORE BAY-DELTA SYSTEM HABITATS: Restoration of Bay-Delta System Shallow Water Habitat*

The second bullet should be changed to "Conserve existing shallow-water habitat." The existing statement, "Protect shallow-water habitat from erosion" may limit shallow-water habitat protection to erosion control. There may be viable cost-effective options other than erosion control.

Page 1-7 *REDUCE EFFECTS OF DIVERSIONS: Improvement of Bay-Delta System Fish Migration*

Four out of six actions require barriers to improve fish migration by diverting them from the south and central Delta. Studies using barriers to route migratory fish around the central and south Delta, remain inconclusive. Barriers alter Delta flow patterns with unknown consequences. Altered flow patterns may increase the diversion's effects on other Delta species. Hydraulic simulations performed for the Interim South Delta Project's draft EIR/EIS indicate that reverse flows are much greater with the Head of Old River Barrier (Fish barrier) installed. These reverse flows inadvertently draw many fish species into the central and south Delta towards the pumps. Actions taken to reduce diversion effects should produce a net benefit to Delta species.

PROGRAM-LEVEL REGULATORY COMPLIANCE

Page 2-9 *CESA* Paragraph 1

The completed document should be reviewed for consistency. Biological Opinion and Management Authorization are capitalized in Chapter two and not in Chapter three. Both should be capitalized throughout the document.

Page 2-9 CESA Paragraph 1, Sentence 3

This sentence is confusing; it has two thoughts that should be in separate sentences.

Page 2-9 CESA Paragraph 1, last line

Mus: should be changed to should.

Page 2-9 CESA Paragraph 1, Sentence 1

Through CESA, DFG must ensure that the action does not jeopardize the continued existence of a listed species. This includes actions that result in the destruction or adverse modification of habitat essential to listed species. This sentence should be rewritten to reflect adverse modification of habitat.

Page 2-10

All the page numbers should be on the same side of the page. The document should be checked for consistency.

Page 2-10 CESA Paragraph 1

This paragraph is confusing and should be clarified.

Page 2-10 CESA Paragraph 3, last sentence

Change "...expected to..." to "...and may...."

Page 1-12 Regulatory Matrix

Restoration Bay-Delta Habitats: Terrestrial Habitat and Control Introduced Species may require a Streambed Alteration Agreement. These two categories should include a half circle in the Department's Streambed Alteration Agreement matrix box.

Reduce Effects of Diversions: Install and Improve Fish Screens; Improve Bay-Delta Fish Migration; and Fish Hatchery will most likely require a Streambed Alteration Agreement. These actions should have a full circle in their matrix boxes.

Eliminate Streambed Alteration Agreement circles for Fish Harvest, Desalination, Water Conservation, and Water Reclamation.

Enhance Water Supplies: Watershed Management may require a Streambed Alteration Agreement. Add a half closed circle for Watershed Management.

PROJECT-LEVEL REGULATORY COMPLIANCE

Page 3-54 *How To Apply Paragraph 1, last line*

Change the last sentence to read, "Based upon its determination the DFG written finding will be one of the following:

- The project as proposed is "not likely to jeopardize" any listed species;
- The project as proposed is "not likely to jeopardize" any listed species provided the conditions stipulated in the Department's State Biological Opinion are fully implemented and adhered to;
- When new information available to the Department is insufficient to support a finding of "not likely to jeopardize," then the conservative finding that the project as proposed "may jeopardize" is required;
- The project as proposed "is likely to jeopardize" one or more listed species."

Page 3-54 *Section 2081 Management Authorization Paragraph 1, Sentence 3*

Take as defined means to hunt, pursue, catch, capture, or kill an individual of a listed species or to attempt any such act. Take includes any act that is the proximate cause of death of an individual of a listed species, or any act of natural and probable consequence of which is the death of any individual of a listed species.

Page 3-55 *Consultation Process Flowchart*

Add a line which indicates "no effect" out from the first box. This line leads to a new box indicating "A written Finding of "not likely to jeopardize," no further action pursuant to CESA is needed."

Page 3-56 *Section 2081 Management Authorization*

A Management Authorization (MA) and a CESA MOU are combined into one document to form a CESA MOU/MA. MA's often times require mitigation or specific actions; the MOU provides the legal agreement that the mitigation and the actions will be performed. This concept is not clear in the existing MA or MOU sections.

Page 3-56 Section 2081 Management Authorization New Paragraph

Add a new second paragraph which reads, "A 2081 MA is a take authorization for activities not connected to a State agency serving in a CEQA lead capacity (private and local government actions). The 2081 MA is similar to an incidental take authorization."

Page 3-56 Section 2081 Management Authorization Paragraph 2, Sentence 1

The first sentence should be changed to read, "Section 2081 of the California Fish and Game Code authorizes DFG to issue permits or enter into Memoranda of Understanding (MOU) for individuals, public agencies, universities, zoological gardens, and scientific or educational institutions, to import take or possess any threatened or endangered species or candidate species for scientific educational or management purposes."

Page 3-56 Section 2081 Management Authorization Paragraph 5, last sentence

Add this at the end of the paragraph: "If the project will affect a federally listed species the 2081 MA does not authorize take until the project obtains approval from the appropriate federal agency."

Page 3-59 Streambed Alteration Agreements Paragraph 4, Sentence 2 and 3

Sentences two and three should be changed to read, "The initial negotiation, DFG coordination, and review of the draft documents will be conducted at the appropriate DFG regional or division office. The DFG conducts a project site inspection..."

Page 3-59 Streambed Alteration Agreements Paragraph 3

DFG-certified biologist should be changed to DFG biologist.

Page 3-59 Streambed Alteration Agreements Paragraph 4

Wardens are not the only Department staff that write Streambed Alteration Agreements. All references to wardens should be replaced with DFG staff.

Page 3-60 Project-Level Regulatory Compliance; Flowchart

The first box should be changed to read, "Regional DFG office receives a 1600 Agreement Notification from Applicant."

Handbook Comments
Page 6

The second box should be changed to read, "DFG assigns preparation of a 1600 Agreement to appropriate DFG staff."

The third box should be changed to read, "DFG conducts onsite inspection - recommends modifications or measures to protect fish and wildlife and riparian vegetation."

The first three steps are a 30 day process. The Applicant then has 14 days to respond. This time may be extended by mutual agreement.

The left bottom box should be changed to read, "Applicant rejects terms of the Agreement."

If the Applicant rejects the proposal the Department shall meet within seven days to negotiate an acceptable Agreement. If mutual agreement is not reached an arbitration board may be used. The arbitration shall be completed within 14 days once the panel is established, unless the completion date is extended through mutual agreement.

The right bottom box should be changed to read, "Permit issued. DFG assigns regulatory compliance to a local warden."

This concludes our comments. Thank you for the opportunity to review and comment on the CALFED Environmental Compliance Handbook. If you have any additional questions, please call Mr. Frank Wernette, Bay-Delta and Special Water Projects Division, at CALNET 8-423-7800 or Ms. Heather McIntire of his staff at CALNET 8-423-7067.



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DFG/CALFED Bay Delta Program Liaison

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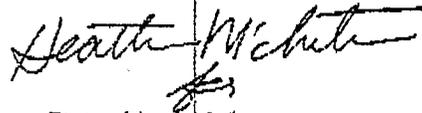
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