

Stockton East Water District
Issues and Interests Concerning the CALFED Bay-Delta Program
(May 27, 1998)

What is CALFED?

The CALFED Bay-Delta Program is a conglomeration of state and federal agencies dealing with water and ecosystem issues in California. CALFED is charged with:

Development of a long-term solution to fish and wildlife,
water supply reliability, flood control and water quality
problems in the Bay-Delta Estuary.

The program is to comprehensively address problems in four resource areas: water supply reliability, water quality, levee system integrity, and ecosystem quality.

The origins of CALFED followed from the Bay-Delta Accord, entered into in December of 1994. Part of the dispute/confusion over CALFED is what it is or should be intended to do. As currently designed, CALFED is designed only to address the problems/solutions for the Bay-Delta system. It is not intended to provide the water supply solutions for the entire state. Consequently, to obtain a place in CALFED, an entity must show that its proposal somehow benefits the Bay-Delta system.

The CALFED program is divided into three phases:

Phase I: Define Problems. Develop Range of Solutions.

Phase II: Programmatic Environmental Evaluation of 12 Alternative Configurations and Selection of Preferred Alternative

Phase III: Implementation of Preferred alternative over 20-30 years. Project Specific Environmental Evaluation.

The estimated costs for a complete CALFED solution range from \$8 to 10 billion.

CALFED Mission Statement

The Mission 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 use of the Bay-Delta.

Primary Objectives of the CALFED Program

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.

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

WATER QUALITY Provide good water quality for all beneficial uses.

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

CALFED Solution Principles

REDUCE CONFLICTS IN THE SYSTEM Solutions will reduce major conflicts among beneficial users of water.

BE EQUITABLE Solutions will focus on solving problems in all problem areas. Improvement for some problems will not be made without corresponding improvements for other problems.

BE AFFORDABLE Solutions will be implementable and maintainable within the foreseeable resources of the Program and stakeholders.

BE DURABLE Solutions will have political and economic staying power and will sustain the resources they were designed to protect and enhance.

BE IMPLEMENTABLE Solutions will have broad public acceptance and legal feasibility, and will be timely and relatively simple to implement compared with other alternatives.

HAVE NO SIGNIFICANT REDIRECTED IMPACTS Solutions will not solve problems in the Bay-Delta system by redirecting significant negative impacts, when viewed in their entirety, within the Bay-Delta or to other regions of California.

CALFED Program Status

The CALFED Bay-Delta Program has recently released a draft Programmatic Environmental Impact Report/Environmental Impact Statement on their proposed program. There are three alternatives for conveyance of water through the Delta. Each has variable water storage programs and a series of common programs to deal with levee protection, water quality, ecosystem restoration, water use efficiency, water transfers, and watershed management. The alternatives fall into three main categories:

- **Alternative 1: existing system conveyance**
- **Alternative 2: modified through Delta conveyance**
- **Alternative 3: dual Delta conveyance**

A matrix is attached which compares the alternatives. Each alternative includes variations on the storage component, from no storage to the full 6 MAF of combined ground and surface storage. The CALFED program hopes to come to a recommended preferred alternative by the end of 1998. Additionally, they are developing an "assurance package" that will specify how the components of the program will be operated and providing an implementation plan for both short-term and long-term projects and programs.

SEWD Issues and Interests

Generally, SEWD has three general concerns with CALFED actions:

- (1) A solution to the Bay-Delta program must be comprehensive if public dollars are going to be utilized. Public money cannot be used to enhance export reliability and quality unless areas and watersheds of origin receive equal enhancement. As a result, any alternative must include surface and ground storage with reasonable financial assistance;
- (2) Area of origin principles must be respected and addressed by CALFED;
- (3) The environmental restoration plan portion of CALFED (ERP) will set precedent for requiring additional and higher flows from the Calaveras and Stanislaus Rivers.

Stockton East Water District Issues and Interests CALFED Bay Delta Program

Comments on Phase II Interim Report

FUNDAMENTAL PROGRAM CONCEPTS

Adaptive Management

SEWD supports the concept of adaptive management. However, the concept has yet to be successfully adapted to in-field applications. Hypothesis are implemented under the guise of adaptive management, and never altered when new information is developed. In addition, funds are often lacking for the monitoring which is essential to true adaptive management. Assurances must be built into the program to insure that adaptive management is not just a catch phrase in the CALFED process, but will be implemented in accordance with its terms.

Conjunctive Management

SEWD is very supportive of the conjunctive management concepts discussed in the Phase II report. The draft principles that have been developed to date, listed on page 37 of the Interim Phase II plan are precisely what is needed to move forward on these important programs.

Area of Origin/Water Rights

It is not enough for the CALFED Program to "support the concept of area of origin." CALFED must acknowledge that area of origin and watershed protection statutes are the law in California, and that any actions proposed by CALFED will comply with those statutory requirements.

San Joaquin County is within the "watershed of origin" of the Stanislaus River under State law and has the right to have its water needs met prior to the needs of exporters or Bay-Delta mitigation for adverse impacts caused by exporters. SEWD has filed for priority water rights under the "watershed of origin" laws from the Stanislaus River. In implementing the CALFED program, the priority rights of those in the area of origin should be considered and the CALFED program should not diminish the water rights of those in the area of origin.

San Joaquin Drainage

While "complete resolution of the San Joaquin Drainage problems" may be beyond the scope of the CALFED program, CALFED appears to go too far in the other direction in an attempt to avoid this complicated problem. Water Quality and Ecosystem Restoration goals in the Bay-Delta system cannot be met unless serious improvements are made to the salinity problem in the San Joaquin River. CALFED can play a very important role in that resolution, and must do so.

None of the three CALFED alternatives reduce the amount of water released from New Melones Reservoir for water quality purposes in the San Joaquin River. One of the specific goals of the CALFED program is to improve water quality, particularly for urban water users receiving water exported from the Delta. The CALFED program needs to also improve the water quality in the San Joaquin River for the benefit of agricultural users in the South Delta and for urban and agricultural water users receiving supplies from New Melones Reservoir.

COMMON PROGRAM ELEMENTS

Ecosystem Restoration Program

One of the stated goals of the ERPP is "restoring instream flows through increased storage or voluntary purchases." While this is a laudable goal, CALFED has not taken the most responsible position in pursuing this goal.

The instream flow goals established in the ERPP have been taken largely from the Anadromous Fish Restoration Plan Draft Working Paper developed by the United States Fish and Wildlife Service. These flows were not developed through scientific review, and, as acknowledged by the Service, these flows have not been determined to be "reasonable." As such, they have no place in the ERPP.

CALFED has responded to our expressed concerns by stating that the flow goals in the ERPP will only be implemented through increased yield or voluntary purchases. CALFED staff misses the point. Once flow targets have been "adopted" by an agency or published in a document, they somehow become official goals. They are then cited by environmental groups and others who desire to increase flows in Central Valley streams. Because the ERPP will carry the weight of the CALFED program, it will be incumbent upon water users to then develop science to counter the published flow goals, when the burden to develop science should be on the drafters of the ERPP.

Calaveras River. The Calaveras River is included in the CALFED Ecosystem Restoration Program Plan. That document addresses instream flow needs of the Calaveras River, and establishes flow levels that are disputed by San Joaquin County interests. In addition, the State Water Resources Control Board is holding hearings on the obligation of parties to meet flow requirements for their Bay-Delta Water Quality Control Plan. Although these hearings are separate for the CALFED process, many of the parties are the same and there is overlap of some issues. Releases from the New Hogan Project to help meet Bay-Delta water quality standards should not be required since the Calaveras River does not have hydraulic continuity with the Delta during relevant time periods.

Agricultural Land Conversion

The CALFED program anticipates creation of large number of ecosystem restoration projects. San Joaquin County is a prime location for ecosystem restoration projects because our land is on the fringe of the Delta where land can easily be restored to tidal action. Land in the central Delta is harder to restore because much of that land has subsided over time and is well below sea level. Land suitable for ecosystem restoration may be currently farmed. Conversion of large amounts of active Delta agricultural land to ecosystem restoration or other CALFED purposes has economic and social impacts that must be mitigated. Taking agricultural land out of production impacts local government tax and assessment revenue and impacts local businesses and workers. Impacts can be reduced by first using government owned lands and lands that are not in agricultural production for ecosystem projects.

Water Use Efficiency

Any standards for Agricultural Use Efficiency must take into consideration unique aspects of certain areas of California. In areas with overdrafted groundwater basins, the agricultural application of surface water is part of a recharge program for the groundwater basin. This is true in SEWD where the agricultural use of surface water is encouraged in order to recharge the critically overdrafted groundwater basin. Under these circumstances, the full application of agricultural efficiency measures may actually be counter productive, and these unique circumstances should be considered.

Storage

Storage Component

Probably the most fundamental area of concern with the CALFED Program is the storage component. As stated, the mission of the CALFED 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. Equitably and legally, water supply reliability cannot be improved for some Bay-Delta water users unless there are substantial improvements for all; this is particularly true if public funds are used in the process. This concept is contained in the Solution Principles adopted by CALFED. Yet, some of the alternatives being proposed by CALFED do not include storage components. The result of an alternative which does not include surface and/or groundwater storage is to improve water supply reliability for exporters and in-delta water users, without improving the water supply reliability of upstream users. Such an alternative is not equitable, acceptable, or legal.

Financing Issues

No where is this problem illustrated more clearly than under the financing component of the Phase II Interim Plan. The CALFED concept at this time for financing program components seems to be that the Common elements will largely be funded with public dollars. Storage components, however, will largely be funded on the principal of "user pays" or "benefits based" approach. While such an approach appears on its face to be reasonable, closer analysis reveals that strict application of such an approach violates the area of origin/watershed protection concept of California law.

When the state and federal water projects were approved, the area of origin/watershed protection laws were put into place. The concept was that the state of California, later the Federal Government, would subsidize the world's largest water supply project for the benefit of water users. At its initiation, those water users were, and still are for the large part, exporters. The concept, upon which the project financing was approved, however, was that if and when the water developed by the projects was needed by areas of origin, they would be entitled to that water. Consequently, the subsidy enjoyed by the exporters would theoretically be enjoyed by areas and watersheds of origin at that point in the future when they needed the water.

Conversely, however, the CALFED financing approach abandons the "benefits based" approach when it comes to the common programs, or fixing the Bay-Delta. At that point it is determined that it would be too difficult to make determinations of injuries, even though CALFED's own documents evidence the serious adverse impact the project diversions have had on the fishery.

Many upstream areas now have a need for additional water supplies, and are demanding the water promised to them decades ago. However, at this point areas and watersheds of origin are being told that the appropriate way to finance new water supplies is the "user pays" or "benefits based" approach. It is no longer acceptable to subsidize water supplies, so the promises made fifty years ago cannot be kept. The result is that exporters receive the benefit of the original water subsidies used to construct the project, and are now receiving the benefit of additional subsidies because the public will finance remediation of the Bay-Delta needed because of the adverse impacts of those exports. Such an approach adds insult to injury.

Upstream users are largely agreeable to paying on a benefits based approach to the extent of their ability. However, as acknowledged in the Phase II Interim Plan, costs of development of storage is more expensive today because of heightened environmental concerns and because the lower cost surface storage reservoir sights have already been developed. Consequently, upstream water users will need assistance in developing the storage that the entire state needs so that exporters can continue to divert the supplies they have come to rely upon. Without the development of additional ground or surface water storage, areas and watersheds of origin will exercise their rights under the law, and will be entitled to recall the water that is currently exported. Therefore, development of upstream storage components benefits the entire state.

Some of the issues of concern set for on Page 64 of the Interim plan are relevant. There are concerns that (1) storage must be financed strictly on a "benefits based" approach because subsidizing the cost of water from storage would undermine a transfer market and limit implementation of water use efficiency measures, and (2) storage should only be considered as part of a staged alternative or in the context of linked implementation so that storage components could be delayed until certain water transfer and water use efficiency milestones are achieved. While such an approach may be applicable to storage components developed for export, they are not appropriate for storage developed for upstream water users.

Most, if not all, upstream water users are not in a position to utilize water transfers. Similarly, as mentioned above, application of water use efficiency principles to their fullest extent is not appropriate in all areas. Users in this position would be punished unfairly by application of the above principles.

Boiled down to its essence, CALFED must be careful that it does not adopt alternative or principles that benefit exporters without affording areas and watersheds of origin the same protections.

DISTINGUISHING CHARACTERISTICS

This section sets forth the 18 identified distinguishing characteristics that are determined to be important when assessing the performance, impacts and overall merits of each alternative. One of these 18 identified distinguishing characteristics is "consistency with solution principles." The solution principles should not be used as one of 18 criteria; rather, they should be applied as a screening criteria. Any alternative that does not meet the solutions principles should not be further evaluated.

ALTERNATIVES EVALUATION

At page 123, the statement is made that new storage will first be used to meet the ERPP flows. As noted above, the ERPP flows are not based upon science, further refinement in these flows must be made before the first yield from increased storage is dedicated to them.

ASSURANCES

It is noted on page 150 that one of the three characteristics CALFED has identified for a successful staging strategy includes the concept that "each stage should be completed before the next one can begin." This concept should not be applied rigidly. There should be circumstances under which another phase can proceed without completion of a first phase, provided certain other actions are undertaken. Changed circumstances and development of additional information may determine that a particular action cannot proceed. Requiring completion of that stage before the next one can begin would have an unintended domino affect on the entire CALFED solution principle. Therefore, subsequent stages should be allowed to proceed if alternative protections are put into place which provide the same or equivalent goals.

Finally, area of origin and watershed protection must be included in the summary of assurance issues described in the draft implementation strategy document.

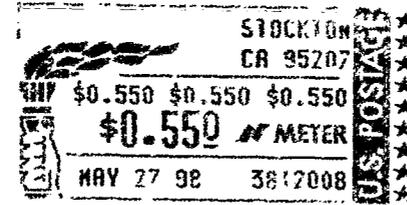
HERUM, CRABTREE, DYER, ZOLEZZI & TERPSTRA, LLP

2291 West March Lane
Suite B100
Stockton, California 95207

STOCKTON
CALIFORNIA
MAY 27 1998

98 MAY 28 AM 11:12

Rick Breitenbach
CALFED Bay-Delta Program
1416 Ninth Street, Suite 1155
Sacramento, California 95814



C-010789

C-010789