

**COMMENTS ON CALFED
DRAFT PROGRAMMATIC EIS/EIR**

Yuba County Water Agency ("Agency") submits the following comments on the Draft CALFED Programmatic EIS/EIR:

Introduction.

The Agency delivers agricultural water supplies in Yuba County from the Yuba River Development Project on the North Yuba River. The agricultural economy of Yuba County and the rest of the Sacramento Valley is dependant on the protection and preservation of local water supplies for present and future uses. Adherence to the area of origin and water protection laws is crucial to protection of the water rights and entitlements relied on by Sacramento Valley agriculture.

The Agency supports the goals of the CALFED program to improve ecosystem quality, water supply reliability and water quality. It is essential that CALFED strictly comply with its solution principles as it implements the goals of the Bay-Delta program. One solution principle states that a CALFED Bay-Delta solution will not cause significant redirected adverse impacts in other regions of California. Inclusion of that solution principle gave encouragement to the Agency that the CALFED program would not result in harm to the areas of origin.

The Agency has reviewed the CALFED Bay-Delta Draft programmatic environmental impact statement/environmental impact report. We find that the Draft EIS/EIR describes a program that (1) would result in significant, pervasive adverse economic impacts to agriculture economies in Northern California, (2) would violate in virtually every component the solution principle that there would be no redirected adverse impacts, and (3) would be vigorously opposed by the Agency and the rest of Northern California.

No Redirected Impacts.

The Agency supports in concept the objectives of the CALFED program, namely

improvements to ecosystem quality, water supply, water quality and Delta facilities, and supports the principles stated to achieve those objectives. Adherence to the program's solution principles will be crucial to its success. One of the most important principles is that the program's solutions will not cause impacts to be redirected to other areas of California. Every objective of the program must stand a test of rigorous adherence to that principle. The principle, if it is to mean anything, cannot be qualified or diluted in any respect. CALFED should make it clear that the phrase, "when viewed in their entirety", does not mean that a program "solution" that causes a negative impact elsewhere (such as in Yuba County) is acceptable, and consistent with CALFED principles. The Agency will assume for purposes of these comments that the no redirected impact principle means what it says.

Programmatic EIS/EIR Not a Substitute For Real EIS/EIR With Impact Analysis and Mitigation.

The Draft EIS/EIR provides no specific information on the details of the CALFED program, the impacts of the program in particular areas of measures to mitigate adverse impacts. As such, it has very little use as an environmental review document, and cannot substitute for full environmental review of the program's preferred alternative. When components of the CALFED program are implemented, there will need to be subsequent EIS/EIRs to analyze and mitigate the future sites and project-specific impacts. (CEQA Guidelines Section 15168(c); *Rio Vista Farm Bureau Center v. County of Solano* (1982) 5 Cal.App.4th 351, 372.) The CALFED EIS/EIR should expressly commit to the preparation of such future EIS/EIRs or EIRs.

Need For CALFED Program.

The discussion of the need for the program lists several actions that have impacted the Bay-Delta ecosystem. It includes upstream water development and use, and export of water from the Delta. If upstream diversions have caused any adverse impact to the Delta environmental resources (which we doubt), they have been insignificant compared to impacts caused by export projects. The Agency asserts that the primary cause of the diminishment of the Bay-Delta ecosystem, and hence the need for the CALFED program, is the export of water from the Delta. The EIS/EIR should be expanded to explain the relative causation, and the

primary cause(s) of Bay-Delta impacts. The CALFED program approach seems to be to assign responsibility to mitigate for Delta conditions to areas that have not contributed to those conditions, which would violate the CALFED solution principles.

Water Supply Alternatives Analysis.

The Census Bureau predicts that nearly 18 million more people will become Californians by the year 2025. That is comparable to the population of the State of New York moving to California. The CALFED program identifies the need for millions of acre feet of water to meet the program's goals. Yet, the program's analysis of water supply alternatives is very limited and unlikely to produce adequate supplies to meet California's future needs. The discussion of new water storage in the Draft EIS/EIR does not include new onstream storage facilities. The Agency is concerned that the program includes undue and unrealistic reliance on water transfers and reduced agricultural water use in the Sacramento Valley (through conservation and conversion of fertile agricultural land to habitat) as new sources of water. That approach would result in an unacceptable negative impact in the Sacramento Valley. The program should consider a full range of alternatives, including development of new onstream storage facilities in order to comply with CEQA.

It will be essential that the program determine whether the development of new water supplies for Bay-Delta purposes will adversely affect the ability of the areas of origin to develop water supplies to meet their ultimate water needs. A number of Sacramento Valley water districts need to develop additional supplies to meet their future water needs. The watershed protection laws are supposed to provide the assurance that water supplies will be available when they are needed in the areas of origin. It will be more difficult for the Sacramento Valley to acquire additional water supplies if they must compete with a massive CALFED water acquisition program.

The EIS/EIR should examine if and how the CALFED program would adversely impact the ability to acquire water supplies for the needs of the areas of origin.

Water Use "Efficiency" Program.

The proposed water use efficiency program has the potential to cause significant adverse impacts within the Sacramento Valley that would violate the CALFED principle that "solutions" will not result in redirected impacts. The Draft EIS/EIR recognizes that conversion of agricultural water use in the Sacramento Valley does not result in new water supplies because water not consumed by crops remains in the water system for multiple uses. Inexplicably, the program nevertheless proposes (1) reduction of agricultural water use by hundred of thousands of acre feet, and (2) substantial redirected impacts in the Sacramento Valley, such as decreased production of agricultural land and land fallowing, increased groundwater pumping, and related socio-economic impacts.

Water conservation should be implemented if it increases the available water supply, and if it is economically and environmentally feasible. In the Sacramento Valley, application of agricultural water recharges groundwater aquifers. Reduction in application of water in the name of "conservation" could reduce the groundwater supply and interfere with ongoing conjunctive use programs that are vital to local water supplies, particularly during drought periods. Reduction in agricultural water application could adversely impact agricultural production if, as a result, salts are not leached from the soil's root zone or through use of lesser-quality recirculated water.

The proposal to increase the cost of agricultural water in the Sacramento Valley by \$45 to \$72 per acre foot per year to implement "conservation" measures would substantially impact agricultural production (page 8.1-37), without any real water savings. Does the CALFED program intend to produce new water supplies by causing land in the Sacramento Valley to go out of production because the cost of water would be prohibitive OR to force over-reliance of agriculture on use of groundwater creating significant groundwater over draft and associated problems? CALFED should clarify whether these will be impacts from the program. If so, the program should be revised to avoid those impacts.

Water Transfers.

Another potentially disturbing aspect of the program is the proposed definition of "water use efficiency." The Draft EIS/EIR states (Water use Efficiency Component Technical Appendix at page 2-1): "Efficiency can also be defined in economic terms: deriving the greatest economic output from a given input such as a unit of water... Program actions that facilitate as water transfer market will likely result in improved economic efficiency." The Sacramento Valley will support voluntary and locally-controlled water transfers if they play a limited role in meeting California's water needs. Water agencies within the Sacramento Valley, including the Agency, have played an important role in providing transfer water on a temporary basis to help meet California's water supply needs during drought conditions. The areas of origin will oppose the concept that "efficiency" dictates the transfer of water from beneficial uses in the area of origin to uses in export areas with water uses that are perceived to have higher values. Once that concept of efficiency is accepted, there is concern that water transfers from areas of origin will be required rather than permissive.

The Draft EIS/EIR states that the program's water transfer policy "must also provide a means of ensuring that water transfers do not merely improve short-term water supply reliability at the expense of local communities or groundwater resources" (page 2-15). Yet, there is nothing in the proposed transfer policy that provide that assurance.

The Draft EIS/EIR acknowledges that the water transfer program could have significant adverse impacts in the Sacramento River region, including an increase in groundwater pumping, increased pumping costs, exacerbation of groundwater overdraft, reduction of groundwater recharge, reduction in crop yields due to poorer water quality, reduced farm output, land subsidence (referred to as "lower ground elevations") making affected areas more susceptible to flooding, infrastructure damage and reduce wildlife habitat. (See, e.g., page 3.1-37). The Draft EIS/EIR states: "Pumping and subsidence occurring near levees or other flood control facilities could cause settlement of the underlying substrate, resulting in levee slumping, cracking, or more significant damage" (Page 8.4-23). These would all be significant redirected adverse impacts in the Sacramento Valley from implementing the CALFED program. The

CALFED program should be revised to avoid those redirected impacts and be consistent with the CALFED principles.

The CALFED program should incorporate these principles as part of the assurance that transfers will not cause adverse local economic impacts:

1. Transfers should be voluntary, and the essence of a voluntary transfer is that the consent of the water right holder is needed. The policy should not pressure water right holders to consent to user-initiated transfers.

2. CALFED should declare that fallowing agricultural land in the Sacramento Valley will not be pursued as a source of water under the CALFED program.

3. Any conjunctive use transfer program must (a) be controlled by local public agencies in the area from which the water is to be transferred, (b) include a program of data collection to establish the safe yield of the affected aquifer, (c) carefully monitor the program to avoid impacts, and (d) include local benefits from the program.

4. CALFED should not pursue already developed water supplies from areas whose long-term water supplies will not meet long-term needs. CALFED should pursue water supplies only from areas that have identified a long-term surplus.

5. CALFED should pursue water supplies through development of both onstream and offstream storage facilities, instead of relying on water transfers and reduction in the application of agricultural water in the Sacramento Valley.

Ecosystem Restoration Program.

Water purchases to implement the ecosystem restoration program must not cause redirected impacts in the Sacramento Valley. Even if the program proposes purchases from willing sellers, competition of CALFED for water supplies with water-deficient areas in the

areas of origin could cause a redirected adverse impact. The program's proposal for conversion of 34,000 acres of agricultural land in the Sacramento Valley to implement the ecosystem restoration program could result in redirected adverse economic impacts, which would violate CALFED principles. Indeed, the Draft EIS/EIR's impact analysis (Table 3-1) shows extensive potential negative impacts to agricultural economies from implementing the program, which would violate the CALFED solution principles.

For example, the Draft EIS/EIR estimates that the CALFED ecosystem restoration program will result in loss in crop revenue of between \$13 million and 34 million per year in the Sacramento River region alone, and acknowledges that there would be substantial adverse economic impacts on farm revenues, income generation, employment levels and even the financial viability of water districts. (See, e.g., page 8.1-36.) Between 650 and 3,000 jobs might be lost (page 8.6-13). These impacts are identified in the Draft EIS/EIR as "potentially significant unavoidable impacts". (See, e.g., page 8.1-31.) The program should be revised in order to avoid these redirected impacts and remain consistent with the CALFED principles.

The Agency has these specific comments on the ecosystem restoration plan (technical appendix Volume 2) for the Yuba River:

1. The plan relies on flow recommendations from a 1993 Department of Fish and Game management plan. The DFG plan contained numerous errors and flawed analysis. Beak prepared a study entitled "Anadromous Fish Enhancement Actions Recommended For the Lower Yuba River" (July 1996). The Agency refers CALFED to the Beak study for accurate information concerning the lower Yuba River fishery. The CALFED Draft EIS/EIR implies that the lower Yuba River anadromous fisheries need to be restored. In fact, average post-project chinook salmon and steelhead populations exceed pre-Yuba River Development Project populations.

2. On pages 249-250: The stressors described at the conclusion of the introduction should include high flushing, scouring flows and levee breaks.

3. On pages 250-251: The Feather River Ecological Unit narrative on page 250 states that the Thermolito Reservoir is on the mainstem below the forks. Page 251 states that Oroville Reservoir is the lowermost reservoir on the Feather River. Thermolito is downstream of Oroville.

4. On pages 252-255: The second paragraph, first line, says three dams on the river have altered river flows and fish passage. There are eight major dams on the Yuba. The second paragraph, line 6 states: "Englebright reservoir ... and cool, bottom released water to the lower Yuba River." Englebright has no low level outlet. Because of this, the Agency is investigating use of a temperature control device to allow release of cool bottom water. Line 13 says that the 0.2 miles of river between the dam and the two powerhouses has no flowing water unless the reservoir is spilling. More precisely, the Yuba County Water Agency Narrows 2 power house is 360 feet (0.068 miles) downstream of the dam and the PG&E Narrows 1 powerhouse is approximately 1200 feet (0.23 miles) downstream of the dam.

5. On page 253: Paragraph 3 describes the lower 3.5 miles of the Yuba as being bordered by levees. The levees are set back levees that are a considerable distance from the river. The same applies to the previously described 7.8 miles below Daguerre Point Dam and does not mention that it also has levees (setback levees). Paragraph 4 describes some of the out-of-basin diversions from the Yuba River. It would be more accurate if the diversions described included percentage of depletion of the total Yuba flow, particularly seasonal impact. It would also be beneficial to describe the percentages of Yuba River water that is diverted out of basin, diverted to consumptive use above and below Englebright Dam and the percent dedicated to instream flows and unregulated water flows from the river.

6. On page 254: The right column, paragraph 1 notes that approximately 60% of the salmon are spawned between Daguerre Point Dam and the Highway 20 bridge, with the remaining fish spawned above Highway 20, or below the dam. On behalf of the Agency, Jones & Stokes has conducted salmon spawning surveys on the Yuba River since 1991. The distribution of spawning identified in the Jones & Stokes studies is considerably different from the distribution reported in the CALFED EIR/EIS. Although, the ratios vary slightly from year-

to-year, the 1994-97 average spawning distribution is 30% above Highway 20, 43% from Highway 20 to Daguerra Point and 27% below Daguerra Point. The present fall run chinook salmon run averages 14,174, rather than 13,005 as shown. The 28,000 fish anticipated in the Department of Fish and Game's early 1960 study has subsequently been determined to be in error. The study anticipated that all available spawning habitat would be fully utilized. Jones & Stokes has indicated that prediction to be unrealistic.

Paragraph 2 states that the run (spring run chinook) had almost disappeared by 1959, presumably because of diversions and hydraulic development projects. However, the native sprung run most likely ceased to exist in the Yuba River after the early 1900's due to lack of cold water summer habitat. In 1904-05, the California Debris Commission constructed Barrier No. 1 approximately 4.5 miles upstream of Daguerra Point Dam. The barrier, which completely blocked upstream migration, was in place until it washed out in 1907. Daguerra Point Dam was completed in 1906. Although it had two fish ladders, the ladders were not fully effective. In 1927-28, the fish ladders were destroyed by flood waters. The ladders were not replaced until 1938. This period without effective fish ladders most likely eliminated any native spring run chinook salmon from the Yuba River. The replacement ladder was marginally effective. A functional ladder was not installed until 1950.

The Yuba River Fall-Run Chinook Salmon Estimates bar graph does not show figures for 1996 and 1997, which were significant years. There were 27,520 and 25,778 fish, respectively.

7. On page 255: Paragraph 1, last sentence: Reduced flows below Daguerra Point Dam, particularly in the spring and early summer, is the primary factor in the decline of the American Shad run. We understand that the number of American Shad entering the Yuba is more influenced by the ratio of the Yuba River flow to the Feather River flow and temperature, rather than any specific flow. Shad often wait to enter the Yuba River until the water temperature has increased.

The table of water diversions is incorrect for Ramirez Water District. The heading should be P, rather than WR.

8. On pages 258 to 260: The last paragraph, first sentence states: "At present sufficient stored water remains in the Yuba River system (in New Bullards Bar Reservoir) to help restore the river's anadromous fish runs." The Yuba River anadromous fish runs are generally healthy and do not require restoration. Although under a proper management plan, the sufficient stored water statement could be correct, the Department of Fish and Game or U.S. Fish and Wildlife Service plans are not correct.

Page 259, second sentence: "An early spring flow event in the lower river during dry and normal water years will improve spawning condition for spring run chinook salmon." Spring run chinook salmon spawn during the September period. Increased spring flows would not address fall spawning conditions.

First paragraph, last sentence: "Restoring or maintaining riparian habitat ..." This is very difficult to do on the Yuba River because of frequent high scouring flows from uncontrolled stems of the Yuba.

Last paragraph, second sentence: "The current practice of stocking spring run and fall run chinook salmon and steelhead using fish reared in the Feather River Hatchery should be reconsidered." This practice was discontinued many years ago.

Last sentence on page 259: Statements regarding evaluation of genetic integrity in the Feather River should not be included under the Yuba River Ecology Unit.

First sentence on page 260: Urban development and its drainage should be added to the list of land use changes in the zone.

9. Page 263 - Striped Bass and American Shad: Unless some species of striped bass are listed as threatened or endangered, the Agency disagrees that higher flows should be

proposed for striped bass, which is an exotic species that preys on native species. Also, statements regarding American Shad do not apply overall to the Yuba River.

10. Page 266, Target 3 and Programmatic Action 3A: "Both the target and the action advocate the flows recommended by Department of Fish and Game (1993)." The flows recommended by the Department of Fish and Game are in many instances not supported by scientific data. Hydrologic analysis was not done to determine the long-term effect of the recommended flows. Department of Fish and Game recommendations have not been subject to peer review.

11. Page 269, Programmatic Action 1F: Agency records show that a mean daily temperature of below 65 degrees for at least one month from April to June 30 is currently being met. Information from Jones & Stokes shows that American Shad at times hold off entering the Yuba River because the temperatures are too low.

12. Page 271, Programmatic Action 1A and 1B: Due to periodic high scouring flows from uncontrolled stems of the Yuba River, efforts to maintain both riparian habitat and side channel habitat improvements have been short lived.

13. Page 273, Programmatic Action 1C, study removal of Englebright Dam: Preliminary rough estimates of the mitigated cost to breach Englebright Dam is a capitalized cost in excess of \$378 million, or an annual cost of \$25.2 million. If the action doubled the current average salmon spawning run, the annual cost per fish would be \$1680.

14. Page 278, Striped Bass: Increasing striped bass potentially creates more predation to native threatened or endangered species. This is symptomatic of many of the resource management activities, which are a series of independent action without overall management strategy.

Mitigation Measures Are Vague and Inadequate.

Notwithstanding the extensive list of significant impacts from the CALFED program that would occur in the Sacramento Valley, the Draft EIS/EIR does not identify adequate mitigation measures. Nor does CALFED assume the responsibility to mitigate significant negative impacts caused by its program. For example, the Draft EIS/EIR states: "As discussed in the introduction to this summary, mitigations are proposed as strategies in this programmatic document and are conceptual in nature. Final mitigation would need to be approved by responsible agencies as specific projects are approved by subsequent environmental review" (emphasis added; page 8.1-38). Below that comment, the Draft EIS/EIR sets forth numerous, vague strategies (e.g., "provide advice on how to stretch existing water supplies in cost-effective ways to keep water acquisition costs down"; and provide advice on ways to increase the production yielded from a unit of water... which will tend to keep production up even as acreage goes down") that are supposed to mitigate for the significant economic and other impacts that would result in the Sacramento Valley from implementation of the CALFED program.

The so-called mitigation strategies are too vague to provide meaningful insight as to how the impacts of the CALFED program could be mitigated. An offer to "provide advice" is not mitigation. Indeed, it appears that the CALFED program cannot abide by the solution principle that redirected impacts will not result from implementing the program. The Draft EIS/EIR appears to acknowledge that the program would result in significant adverse impacts in the Sacramento Valley that could not be mitigated. In order to comply with CEQA, the mitigation measures must be expanded and strengthened.

Although for a program EIR, mitigation measures may be general, the EIR nevertheless must describe measures that could minimize the significant adverse impacts of the CALFED program. The mitigation measures may not be deferred until a future study or project. (*Rio Vista Farm Bureau Center v. County of Solano* 1992) 5 Cal.App.4th 351, 376.)

New Taxes and Fees.

As noted above, the water use efficiency component of the CALFED program would result in substantially-higher water charges for agricultural users in the Sacramento Valley. These additional costs could make agricultural production uneconomic in the Sacramento Valley. The EIS/EIR socio-economic analysis should be expanded to address the impacts of the proposed tax.

In addition, CALFED proposes to impose a tax on all water diversions within the Bay-Delta watershed to pay for ecosystem restoration. (See page 26 of the Implementation Strategy Technical Appendix.) The overwhelming evidence is that the export of water from the Delta has been the primary cause of degradation of environmental resources in the Bay-Delta watershed. The Agency would strongly oppose the imposition of any such tax or fee on water uses within the areas of origin.

Conclusion.

In conclusion, the preview of the proposed CALFED program set forth in the draft EIS/EIR discloses a plan that will result in significant adverse impacts to agriculture the area of origin communities that depend on an agricultural economy. The proposed CALFED plan calls for a massive transfer of water (through ecosystem restoration, water use "efficiency", land fallowing and conjunctive use water transfers) from Northern California agricultural use to CALFED purposes.

The CALFED program needs to be extensively revised if there remains any expectation that it could be supported by Northern California.

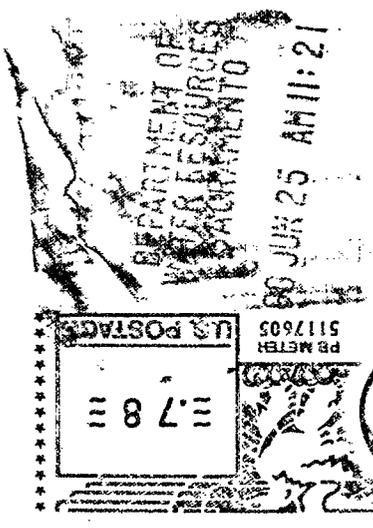
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