

DeltaKeeper

A PROJECT OF SAN FRANCISCO BAYKEEPER

30 June 1998

Mr. Rick Breitenbach
CALFED Bay-Delta Program
1416 Ninth Street, Suite 1155
Sacramento, CA 95814

Via Fax: Hardcopy to Follow

Re: CalFed Bay-Delta Draft Programmatic Environmental Impact Statement/Environmental Impact Report

Dear Mr. Breitenbach:

This letter represents the supplemental comments of San Francisco BayKeeper and DeltaKeeper (DeltaKeeper) on the CalFed Bay-Delta Draft Programmatic Environmental Impact Statement/Environmental Impact Report (DEIS/R). DeltaKeeper has previously commented on the DEIS/R at public hearings held in Oakland, Walnut Grove and Stockton. Additionally, DeltaKeeper is a party to comments by the Environmental Water Caucus.

As we have previously testified, we believe the DEIS/R is seriously flawed in failing to:

1. provide a demand-side environmental alternative that analyzes the environmental and economic benefits derived from significant water conservation and retirement of marginal farm lands,
2. address the potential consequences on Delta water quality from the proposed alternative approaches for diverting Sacramento River water to Central and Southern California, and
3. consider the benefits of increased streamflow from the upper San Joaquin watershed.

These supplemental comments pertain to our belief that the DEIS/R is deficient in its failure to:

1. adequately identify actual impacts to beneficial uses,
2. establish an extensive research and monitoring program in the Delta and tributaries sufficient to develop a comprehensive understanding of mass loading, spatial distribution, transport, fate and synergistic effects of contaminants in the estuary and their impacts to biological life and human health,
3. analyze the effectiveness of existing regulatory programs and establish a regulatory framework to ensure attainment of water quality standards/goals,
4. establish a water quality technical team of the highest professional caliber free from the influences of bias and special interests,

BayKeeper/DeltaKeeper CalFed DEIS/R Comments, 30 June 1998, Page 1.

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5. evaluate the impacts created by water exporters illegally serving areas outside the places of use permitted by their water rights, and
6. provide numerical standards that will promote recovery of listed species.

CalFed Should Identify Actual Adverse Impacts to Beneficial Uses.

Given the presently poor understanding of water quality issues in the Delta, CalFed should initially fund an effort to define the extent that present water quality conditions are having an adverse impact on the beneficial uses of the Delta and its resources. Such an effort would include extensive toxicity testing on both surrogate and native species including benthic organisms, an assessment of pathogens in Delta waterways and fish bioaccumulation and consumption studies to determine the risks to exposed populations.

Where high levels of toxicity are found, an intensive sampling program should be conducted to determine whether the toxicity is influencing the numbers and types of aquatic organisms. Sampling by the Central Valley Regional Water Quality Control Board, USGS, DeltaKeeper and the Sacramento River Watershed Program have documented frequent toxicity in Delta waterways. Unfortunately, these sporadic studies only provide an indication of the magnitude of the problem.

Adequate concerns regarding human health issues are not evident in EIR/EIS. We believe this to be a serious omission. The State Department of Health recently placed a no fish consumption health advisory on Stockton deep water channel because of PCB/dioxins (ATSDR data). Based on Sac. R. catfish tissue data collected by San Francisco Estuary Institute (SFEI), the Office of Environmental Health Hazard Assessment has indicated that it is prepared to issue an interim advisory on the Sacramento river. The Delta already has a health advisory for striped bass. Yet, CalFed rejected a joint request by the the Regional Board and the SFEI for funds to conduct a fish tissue study in the Delta.

There is a large subsistence fishing community in the Delta, a large black market and substantially higher consumption levels than EPA assumptions. There is virtually no tissue data on fish species commonly consumed (For example, we frequently observe families collecting fresh water clams).

DeltaKeeper patrols are encountering substantial anecdotal evidence of infections/sickness of individuals exposed to Delta waters. We believe a serious study on pathogen levels/effects in the estuary is clearly warranted.

CalFed Needs an Extensive and Independent Research and Monitoring Program in the Delta and Tributaries.

BayKeeper/DeltaKeeper CalFed DEIS/R Comments, 30 June 1998, Page 2.

CalFed should not proceed on project elements proposed in the DEIS/R without developing an understanding of the understanding of mass loading, spatial distribution, transport, fate and synergistic effects impacts of contaminants in the Delta. For example:

1. The USGS National Water Quality Assessment (NWQA) for the San Joaquin River found 49 different pesticides in the river. Between 7 and 22 pesticides were found simultaneously at each monitoring site. Research at the University of California Davis has established that chlorpyrifos and diazinon are additive. Research to increase our understanding of the synergistic effects of pesticides (especially in the presence of other contaminants) is needed.
2. Placing barriers in Old River may increase the bioavailability of selenium in the Central Delta. Presently, much of the selenium carried down the San Joaquin is drawn through Old River and exported south. With barriers in place, selenium loads will likely be carried into the eutrophic waters of the Central Delta where they may be transformed by algae into a more biologically damaging form (as at Kesterson). Also, at least one field study provides evidence of lowered toxicity thresholds for selenium-induced reproductive impairment in the presence of mercury contamination (Henny and Herron 1989). Given the levels of mercury in the Delta, this matter needs to be investigated. Additionally, studies need to be conducted to determine the extent that dairy waste discharges are a significant source of selenium loading to the estuary.
3. Widening and dredging of Delta channels threatens to increase the bioavailability of mercury. USGS investigation found that deep sediments in San Pablo Bay contained 3 to 5 times the levels of mercury than top sediments. There is reason to believe that this same situation exists in Delta channels. We have serious reservations concerning large scale dredging projects in the Delta especially if those spoils are destined to be deposited on levees. Efforts need to be launched to provide information necessary to define what forms of mercury are responsible for the excessive mercury bioaccumulation problems in the Delta.
4. Nutrient loading and effects have not been adequately addressed in the EIS/R. Excessive fertilization of waterbodies by nitrogen and phosphorus compounds can lead to severe water quality impairment. However, our understanding of the sources of nitrogen and phosphorus compounds and the relationship between current nutrient loads and water quality problems in the Delta (and tributaries) is limited. We do know that excessive growth of algae and floating water weeds in the Delta interferes with recreation use (a protected use) and is a concern to utilities who have reservoirs which store Delta water. A "Peripheral Canal" could significantly change nutrient (and other pollutant) loads to various parts of the Delta.
5. The Delta and tributary waterways are listed on the 303(d) list as impaired because of "unknown toxicity." Virtually every urban waterway in Stockton and Sacramento becomes toxic to aquatic life following storms (not simply first flush - toxicity extends

well into the rainy season). A significant percentage of the cause of this toxicity is "unknown." The sources of this toxicity must be identified before effective programs to improve water quality can be developed.

CalFed Must Include Regulatory Enforcement and Programs in its Efforts to Achieve Water Quality Objectives.

Since many CalFed agencies have direct responsibility for implementing existing water quality statutes and programs, CalFed's water quality component cannot exist in a vacuum outside the existing regulatory framework. CalFed should identify relevant legislative and administrative authorities and establish a framework to ensure adequate progress in attaining compliance. Where voluntary programs are established or envisioned, specific timelines/procedures should be put in place for moving to regulatory enforcement should voluntary efforts fail.

Water quality programs such as the federal Clean Water Act's Nonpoint Source Management or TMDL programs or California's Bay Protection and Toxic Cleanup Program should be included as part of the overall strategy for improving water quality. CalFed should take the lead on insuring that funding is available for TMDL's (Section 303 [d]) and the cleanup of toxic hot spots (Bay Protection & Clean Up Program). It should insist that NPDES permits be adjusted to bring waterbodies into compliance with standards. Considering the magnitude of non-point source pollution and the failures of existing regulatory efforts, CalFed should be directly involved in developing and implementing effective non-point pollution programs.

The California Department of Pesticide Regulation's voluntary dormant spray program in the San Joaquin Basin has clearly failed to accomplish its intent of reducing the toxicity resulting from the loading of organophosphate (OP) pesticides to the estuary. CalFed should begin development of an effective mandatory OP pesticide program modeled after the successful rice herbicide program on the Sacramento river. Further, CalFed must insure that sufficient funding/programs exist to provide reliable, current estimates of the amount of public application of pesticides in urban areas (by types of users) and the necessary fate, transport and toxicity evaluations necessary to quantify the impacts of urban pesticide application.

DeltaKeeper believes that California's Porter Cologne Water Quality Control Act provides the state with sufficient authority to effectively regulate illegal ballast water discharges which are the source of significant numbers of introduced species. We have petitioned both the Central Valley and San Francisco regional water quality boards to require mid-ocean ballast water transfers and believe that CalFed should take a similar position. The USGS NWQA study found that native species were significantly more successful in resisting invasions by exotic species in non-degraded habitat than degraded areas. CalFed should pursue further studies that will likely strengthen the case for restoration of water quality/habitat.

RayKeeper/DeltaKeeper CalFed DEIS/R Comments, 30 June 1998, Page 4.

CalFed Needs to Establish a Water Quality Team Comprised of Independent and Qualified Professionals Subject to a Rigorous Peer-Review Process.

Making well-informed decisions regarding the use and protection of natural resources requires CalFed to fully consider and employ the most reliable and accurate scientific information and judgement available. It is crucial for CalFed to include the "best available science" and independent analyses to eliminate any suspicion that industry or water or government agencies are simply promoting their own interests and proceeding without regard to relevant scientific information.

Frankly, CalFed's water quality program has, in significant part, been developed by special interests with a stake in the outcome of decisions or policies. The recent crash program to develop summaries of water quality problems in the Delta is illustrative. The pesticide team is dominated by representatives from chemical companies that manufacture pesticides. Given the political climate, independence is critical and expert peer review essential.

DeltaKeeper believes that fisheries biologists are over-represented on Interagency Ecological Program and CMARP staffs and that experts in water quality and contaminate issues are under-represented. We are also concerned that technical staff members are subject to agency political constraints. Independent and qualified aquatic toxicologists and geochemists with expertise in contaminate fate and transport need to play a pivotal role in the development of CalFed's water quality component.

CalFed should establish and adequately fund an independent entity staffed with qualified scientific professionals to design and implement the research and monitoring program. An independent scientific review panel to oversee and evaluate the activities of the monitoring organization should be created. While stakeholder participation is crucial in policy decisions, such involvement should be limited to an advisory role in monitoring plan design and the collection and analysis of scientific data. Only in this way can the public be assured that the decision or policy-making process is predicated on the best available scientific knowledge, that influences of bias and special interests are minimized, that conclusions are consistent with available scientific information and that risks associated with different interpretations of data are articulated.

CalFed Should Investigate Central Valley Project Water Provided to Areas Outside Permitted Places of Use.

The Central Delta Water Agency's submittals in the state water rights hearing regarding Bay/Delta issues scheduled to begin this Summer document that the Central Valley Project has been illegally serving areas outside the places of use permitted by their water rights. The encroachment acreage

BayKeeper/DeltaKeeper CalFed DEIS/R Comments, 30 June 1998, Page 5.

totals 86,968 acres. Westlands Water District is supplying water to 36,419 acres, Santa Clara Water District some 27,669 acres and San Luis Water District to over 9,609 acres outside their permitted place of use. Other districts include Arvin-Edison, Avenal, Coalinga, Del Pureto and San Benito County. If you assume a reasonable 1.5 to 3 acre feet per acre, this illegal service reflects an impermissible export of 130,452 to 260,904 acre feet of water per year. This illegal use also results in direct or indirect drainage into the San Joaquin River adding additional salts which adversely affects Delta water quality. CalFed should investigate these and other potential violations of water rights and reduce Delta exports by a corresponding amount.

Proposed Numerical Water Quality Standards May Not Be Sufficiently Protective of Listed Species

The USFWS/NMFS Section 7 draft biological/conference opinion on the USEPA's proposed California Toxics Rule (CTR) states that proposed numerical criteria in the CTR are not protective of aquatic life and pose significant threat to the recovery of endangered, threatened and proposed endangered/threatened species (Example - CalFed, 5.0 ug/l Selenium [chronic] - USFWS, 2.0 ug/l). Insofar as CTR criteria are incorporated by CalFed, they will not promote recovery of listed species.

In closing, every major re-plumbing or water delivery project constructed in the Delta over the past five decades has made ecosystem conditions worse despite assurances to the contrary. Yct, the DEIS/R proposes massive projects without undertaking detailed economic analysis or developing the technical/scientific understanding to prioritize projects or permit meaningful evaluation of the consequences of those projects.

Once projects are proposed they assume a life of their own. We are concerned that CalFed has proposed projects without having sufficient information to determine if proposed projects are feasible or advisable from a water qualitative perspective. DeltaKeeper urges CalFed to proceed cautiously on habitat restoration, water quality improvements, improved screening, etc., but delay proposed major re-plumbing of the Delta or increased storage/export projects until such time as we have a more comprehensive understanding of the biological and chemical intricacies of the Bay-Delta estuary. This improved understanding will require a major commitment of resources for baseline monitoring and research to improve our limited understanding of the Estuary.

We look forward to working with you and your staff in developing and implementing measures that will reverse the decline of one of the most marvelous estuaries in North America. Thank you for considering our comments.

Sincerely,

Bill Jennings
Bill Jennings
DeltaKeeper

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