

BUTTE BASIN WATER USERS ASSOCIATION

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CALFED Bay-Delta Program
1416 Ninth Street, Suite 1155
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Re: Comments of the Butte Basin Water Users Association on 1998 CalFed Bay-Delta Draft Programmatic EIS/EIR

Ladies and Gentlemen:

Butte Basin Water Users Association (Butte Basin) submits its comments on the foregoing described document.

IDENTITY OF BUTTE BASIN

Butte Basin is a cooperative voluntary organization of individuals, corporations, public and private agencies, including the County of Butte, and several municipalities within the county, who have formed together in order to cooperatively, and comprehensively, manage and protect the groundwater resources of the Butte Basin area. Among other things, Butte Basin has already completed, at a cost of \$350,000+, a groundwater model used for evaluation of the Basin's groundwater supply, its characteristics, and its behavior under different water supply and water pumping scenarios. Only recently completed, the model is still undergoing review and substantial local monies are required to maintain the model's quality and current data.

Commencing with the five-year drought from 1987-1992, there has been active and ongoing public involvement in the maintenance and monitoring of the quantity and quality of the Butte Basin Groundwater aquifer. While many of the water purveying entities within the county (most of which are members of Butte Basin), have developed their own plans for the management and cooperative use of their surface and groundwater supplies under AB 3030, Butte County voters, in 1996, also passed Measure "G" (Butte County), a groundwater management ordinance which seeks to regulate groundwater transfer and groundwater pumping when substituted for surface water transfers outside the county. Among other things, this ordinance establishes a nine

(9) member Butte County Water Commission whose task is long-range planning and implementation of the regulatory requirements of Measure G. Measure G also establishes extensive environmental and technological review programs governing the transfer of groundwater or for the transfer of surface water which will be made up, in whole or in part, by pumping of groundwater.

Butte County water users have a variety of sources of water supply but some generalities can be made. The greatest portion of the area of the Basin, generally south of Durham and west of Highway 99 is characterized by significant surface water development implemented by the formation of water districts in the early 1900s to create ways of distributing surface water for agriculture. These districts possess senior water rights on the Feather River and Butte Creek but those rights are quantified for delivery purposes in outstanding agreements between the Districts and the California Department of Water Resources which were developed in order to facilitate the development of the State Water Project including the building of Oroville Dam and Reservoir. The area of the Basin from Durham north primarily characterized by extensive development of groundwater resources via the use of deep wells for both agricultural as well as urban water requirements.

Overall, the Butte Basin area is bounded generally on the east by the Feather River and on the west by the Sacramento River. It is transected by Butte Creek as well as other permanent and intermittent streams.

The CalFed Program element focuses much of the ERP on this region as a source of new water supply and as a focus for environmental restoration. The Butte Basin area is, therefore, an area which is uniquely interested in the CalFed program and many of the programs, evaluations and considerations set forth in the Draft EIR/EIS.

GENERAL COMMENTS

By its very nature, the Programmatic EIR/EIS is "general" in scope. As noted in the document, the CalFed environmental analysis at this point must occur at a "program" level rather than at a level which is site specific. Indeed, even upon selection of a preferred alternative, later in this process, that preferred alternative will not, as the document notes, enact any changes in law or policy (see page 1-10). However, it will be used as a guideline document to develop a set of actions which should be taken by numerous organizations to establish a comprehensive approach to managing the Bay-Delta resources.

Thus, the comments of the Association are not directed towards any specific plan, but rather as a general comment, directed primarily to the areas of interest or concern to the Association. As CalFed unfolds, the Association will comment further throughout the course of the environmental review process and program development. To the extent that the CalFed process develops into specific plans of action and/or programs, the site specific impacts of those individual programs will be addressed by the Association.

The Association believes that the goal of the Programmatic EIR/EIS at this point seems directed to establish a set of criteria and programs which are defined just well enough to suggest that they can be of assistance in meeting the overall program goals, but are not defined so specifically as to illuminate any downside of those programs. Thus, the adverse impacts of any programs, which tend to be site specific, are not heavily addressed nor, perhaps, could they be at this point. Nevertheless, it would appear that, even from the general nature of the comments, that such impacts can occur and they should at least be generally set forth.

Another major concern of the Association is that the document, perhaps in an attempt to avoid regional, localized, or other conflicts, has adopted an analysis of the underlying problem with the Bay-Delta which avoids significant discussion of the causative factors for Delta decline. Generally, as noted in Chapter 1 of the EIR/EIS, the document attempts to lump the causative factors into a single pot known as "competing interests" (defined as economic, ecological, urban and agricultural). Such a causation neutral analysis may be useful in order to coalesce a broad universe of potential participants and broad based solutions, but, causative analysis cannot and will not be avoided. As the cost of the projects develop, as the site specific impacts of any program are developed, and as specific attempts are made to evaluate, plan, finance and implement a particular plan, the lack of a causative analysis is bound to produce the very conflicts that the document apparently now seeks to avoid. The Association would suggest that an analysis of causation of the Delta decline (recognizing that it did not occur all at once, nor that the various competing factors appeared on the scene all at once), would be useful so that types of conflict that that analysis may engender can be dealt with early as opposed to later. This is particularly important from the standpoint of those of us in Northern California, such as the Association members, who have been advised and who continue to perceive much of the Bay-Delta decline as being caused by urban growth and intrusion around the Delta, expansion of water transport and delivery projects beyond the storage supply necessary to reliably meet their needs, and logrhythmic growth in exports which are still not, in the view of the Association, responsibly related to the available supplies in storage. While ignoring those particular causative factors, whether they be correctly or incorrectly perceived as causes, may be helpful to avoid initial conflicts, to assume that such conflicts will not arise later in the process is naive. In our opinion, not analyzing them now, getting the facts on the table, and attempting to address them will only provide for an interim peace at the expense of long-term implementation.

The cost of the CalFed Bay-Delta program must be realistically developed and made available to all participants before the program is implemented. There must be something more than the Programmatic EIS/EIR Executive Summary which states at page 5:

"Be affordable: Solutions will be implementable and maintainable within the foreseeable resources of the program and stakeholders."

The Ecosystem Restoration Program Plan, Volume 2, spells out many visions; i.e., visions for the ecological zone, ecological units, ecological processes, habitats, reducing or eliminating stressors, species, etc. But at some point, the CalFed program must develop a realistic set of costs which solve not just a perceived problem and fix an amorphous Bay-Delta ecological zone.

Problems created without defined causes which are claimed to need fixes must have "price tags." Otherwise, the CalFed "stakeholders" and other participants to the process end up "throwing money" at a problem which cannot be solved and is apparently without a cause.

The Association will proceed with specific comments on various elements of the plan of direct concern to the Association and its members.

SUMMARY OF ASSOCIATION COMMENTS

The Association intends to direct its specific comments to the following areas of the documentation:

1. Water transfers/water storage
2. Water rights
3. Establishment of upstream habitat areas and/or meander belts as part of the ERP
4. Water supply reliability
5. Watershed Management Plan

1. WATER TRANSFERS/WATER STORAGE

In connection with its evaluation of supply alternatives, the report places great emphasis on the goal of encouraging and developing water transfers and/or other conjunctive use programs as a water supply reliability factor. Indeed, representatives of the CalFed have held numerous hearings throughout the state in an attempt to achieve some public consensus with respect to this goal. Unfortunately, the efforts of the group to establish solid community and grass roots support for water transfer programs is negated by the continuing effort at the Water Resources Control Board to establish mandatory reductions in water supplies for all instream diverters as a cost of restoring the Delta and as a cost of maintaining current export levels. While CalFed attempts to achieve consensus on this issue, Water Resources Control Board, some of its staff, and some CalFed and water user representatives, persist in arguing that the power exists to forcibly reallocate water from one level of use to another, from one priority of use to another, and from one purpose of use to another under a broad-brush analysis of the public trust.

Query, if the power routinely exists in the Water Board to make such reallocations, how does CalFed assume that public consensus will voluntarily develop to make the kinds of sacrifices to expend the kinds of funds, and to take the steps that will have to be taken to undertake the CalFed program. If a large base of the commentators on the program, particularly environmental elements, have their assumption enforced so that water can simply be taken as a matter of administrative fiat to meet a broad interpretation of the Public Trust Doctrine, why would any

substantial number of voters, taxpayers, or other elements of society that must support the CalFed program agree that such a program and its cost be undertaken?

Finally, if there will not be a significant effort on the part of CalFed and the Water Board to recognize, to the maximum extent feasible, the property right aspect of water rights, then how can anyone, from a willing seller standpoint, voluntarily engage in a water transfer knowing that such voluntary transfer will be interpreted, at least by the Water Board as the potential recognition that the water is unnecessary and is subject to take under its public trust jurisdiction? Water transfers, on a willing buyer/willing seller basis, is a reasonable use of markets. If one continues to insist that those who would engage in the market have no significant marketable interest (or at least no interest that is not otherwise subject to take as a matter of administrative fiat), how can one truly expect to encourage voluntary transfers and conjunctive use programs to be developed? Indeed, one is now, routinely, hearing this point in the water rights workshop. Thus, the analysis of water transfers should review what impact the Water Board's broad (and we think erroneous) interpretation of its jurisdiction has on the feasibility of a viable water transfer market place.

The Association believes that significant support of the property rights aspects of water rights (obviously subject to reasonable and limited interpretations and restrictions under public trust as well as the inherent restrictions in the Constitution) must be incorporated into the report or else the very types of transactions sought to be developed as part of the program are doomed to failure.

There are three other significant elements of water transfers which receives minimal support in the documents.

First is the need to have significant, local evaluation and local control of groundwater and to subject such transfers to an appropriate analysis, spearheaded at the local level, to evaluate the impacts of the transfers, to mitigate impacts, to protect local aquifers, and to insure that there are no unmitigated impacts and/or neighboring areas which are adversely affected.

Second, at page 23 of Phase 2 entitled "Project Alternatives" – Alternative descriptions of problematic EIS/EIR appendix, it is stated under "Water Transfers" that:

"The program will seek to encourage the development of a uniform set of rules and criteria to be consistently applied to transfers by affected state and federal agencies." See CalFed Bay-Delta Program-Project Alternatives-March 1998 at page 23.

Water Code section 1011 adopted in 1979, specifically provides and encourages the creation and transfer of "conserved water." Indeed, water supply entities that are members of this Association spend countless hours and farmers within these water supply providers spend millions of dollars jointly to efficiently manage and conserve irrigation water supplies. However, with the exception of the 1991/1992 DWR Drought Water Bank purchases, farmers and water supply

providers efforts to transfer conserved water pursuant to Water Code section 1011 have been rejected by the Department of Water Resources Drought Water Bank. The CalFed process must support and encourage the creation, transfer and compensation for the transfer of conserved water. For instance, it is noted in the CalFed "Water Use Efficiency Component" Programmatic EIS/EIR Technical Appendix of March 1998 at pages 4-8 and 4-24 that:

"Typically, losses associated with agricultural water use in this region tend to return to the system of rivers, streams and aquifers. Reuse of these losses is widely practiced. The region does not have significant irrecoverable losses, although water quality degradation does occur. Much of the region's groundwater resources are recharged by annual over-irrigation and deep percolation of applied water. . . ." See page 4-24 of Water Use Efficiency Component Technical Appendix.

Water conservation is recognized, however, at page 4-25 that the potential for water efficient practices and conserving water does exist. Certainly this Association agrees with the thrust of the CalFed statements in the Water Use Efficiency Component Technical Appendix that "conservation is not the solution" in the Sacramento Valley. However, conservation should be a goal and compensation for transfer of conserved water pursuant to Water Code section 1011 should be recognized by CalFed and urged to be complied with by DWR.

Third, dealing in increased population projected to reach California exceeding 40 million people by the year 2010, it is absolutely critical that project storage facilities are not just studied and determined to be feasible, but actually constructed and operable. In this connection, pages 5-8 and 5-9 of the Programmatic EIS/EIR Draft of March 1998 describes five or six water storage projects, both north and south of the Delta, as subjects for further study. Water storage is a must. CalFed must support selected sites whether onstream or offstream and construction of new storage facilities must commence immediately. For instance, the 29,600 acre Sites/Colusa project having a storage capacity estimated at 3,000,000 acre-feet was chosen a number of years ago. Water storage facilities will eliminate the need to use the band-aid "water transfer" method of possibly drying up one area of ground in this state to move water to another area. CalFed also might consider serving/storing water in winter months to meet increasing population demands. This Association insists that CalFed provide a time line for the building of either offstream or onstream storage facilities which time line will appear in the next Draft EIR/EIS. Additionally, this Association cannot support a Bay-Delta solution without provision for storage both north and south of the Delta.

2. WATER RIGHTS

With respect to water rights (and this element is also important in evaluating the potential jurisdiction that may be effective in connection with water transfers), there does appear to be some bias in the documentation. For example, in Volume I, page 21, it is noted that restoring stream flows must address the constraints, which it defines as including "previous water supply allocations" (i.e., water rights and contracts). Perhaps it is a subtle distinction, but we believe it is

significant, that those particular previous water supply allocations are more than "contracts." They reflect ongoing, significant, long-established and clearly authorized beneficial uses of water. We submit that this particular analysis, as stated, ignores the "people" aspect of these particular allocations in water uses and relegates them to a form of a legal documentation which the CalFed authority apparently assume can be readily modified. It is noteworthy that one "constraint" that was not mentioned is the fact that there are people and economies which are dependent upon existing flow patterns and diversions, many of which predate the 20th Century.

Likewise, we note that the report defines "Delta outflow" as total stream flow from tributaries minus reservoir storage and water diversions. Once again, this seems to assume that reservoir storage was not in fact a function of Delta outflow when, in fact, as it was with the development of the state and federal water projects, and the reservoir storage developed by them, that was intended to be a contributor to Delta outflow as necessary to preserve Delta water quality. (See SWRCB Decisions 990 and 1275.)

Another error which occurs in this portion of the report (page 23) is the statement that streams such as Butte Creek, which is in the Association's area of influence, is "formally managed" by the State Watermaster. In fact, Butte Creek is, in total, not managed by the State Watermaster. The adjudications of Butte Creek only extended as far as Western Canal's dam (now a siphon) and a significant portion of Butte Creek, including that which traverses an area of major environmental significance, the Butte Sink, is unregulated and unadjudicated. It should also be noted that Butte Creek, through much of its area, is heavily dependent on return flows from agriculture, in large part, the flow in Butte Creek is itself imported water arising from PG&E's diversions from the West Branch of the North Fork of the Feather River and agricultural return flows from water imported from the Feather River.

It is unclear why, in the definition of "Delta outflow" see page 2, Volume I, reservoir storage is eliminated from the calculation. It's unclear whether what is referred to are releases from storage or water which is being diverted into storage. Certainly, many of the projects do make releases from storage for river flow enhancement, Delta water quality or other downstream purposes. Thus, if the definition of Delta outflow excludes releases of storage for downstream purpose, it's unclear why that has been done. The Association's position is that the CVP and SWP are required to make releases for purposes of Delta outflow.

The report, once again, tends to characterize foundational water rights issues, including contracts and FERC jurisdiction as "complications" to a reallocation of supplies. "Reallocation" should not be a goal of CalFed, it is to be avoided. Once again, it should also be recognized that many of the water rights, contracts, and the projects approved and operated under FERC jurisdiction, also provide, up to this point, much of the storage and river flows which have to date maintained the existing streams. This type of language also tends to characterize some of the most foundational elements of our existing water supply system as "complications," once again casting them in a negative light. The question remains whether or not from this standpoint the document is a political statement or a objective evaluation.

Finally, the CalFed process must expand its description of the types of "water rights" existent in California. Pages 11-12 and 11-13 explain "water rights" in paragraph 11.3.9 as either riparian or appropriative for surface waters. However, this Programmatic EIS/EIR fails to describe a third very important and developed groundwater right in California; i.e., the California correlative rights rule which entitles each overlying landowner to a "fair and just portion" of a common pool. The CalFed document must explain that there is a difference between out of basin and in-basin groundwater pumpers in California such that all in-basin pumpers are subject to the correlative rights rule but out of basin pumpers are subject to the appropriative rights rule requiring that two conditions be met: 1) there must be surplus water which is defined as water in excess of the safe annual yield as described in the City of Los Angeles v. City of San Fernando case (1975) 14 Cal.3d 199 and 2) the surplus water must not be needed by overlying owners.

3. MEANDER BELTS

The Association has great concern with respect to the proposal, which is given heavy emphasis in the document, for the reestablishment of larger river meander belts and widening of level and/or flood plain areas. The assumption seems to be that this can be looked at as an isolated circumstance, where an individual landowner agrees to certain actions on his property and, for that, is compensated. Nevertheless, we question the wisdom of such a proposal because, as can be seen in the most recent years, it can have serious adverse consequences to neighboring lands. Moving the flooded areas of the river (or the overflow areas) east or west, does not necessarily insure that they are confined within the new boundaries, it simply moves the flood zones closer to other landowners who heretofore have been less affected. In the area of the Sacramento River close to Ord Ferry Road, there is an overflow zone on the Sacramento River which, in the last two years, has caused significant damage to Association members as well as individual landowners within Butte Basin. Indeed, but for the fact that perhaps extraordinary water years have brought it about, one could easily see that the Sacramento River is, by virtue of the expanded flood zone area and the "meander belt," moving its way inexorably eastward until it joins with Butte Creek approximately ten (10) miles north and east of its current confluence. The result has been excessive water into areas where it has not previously occurred, damaged facilities including levees, canals and channels, and significant adverse consequences to landowners.

Additionally, the "river meander" favored in the report would take roughly 20,000 acres of prime orchard land out of production from the Chico Landing to Red Bluff. This same "meander zone" impacts another estimated 75,000 acres from Chico Landing south to Butte City. Not only will this "meander zone" destroy prime agricultural land, it will also harm the local economy by reducing the Butte County tax base. This "meandering zone" or "return to nature" concept is unacceptable in our agricultural basin.

The report does not propose to assess these impacts. The report cannot assure that by modifying a river channel and/or expanding a meander belt, those who now border the expanded meander belt will not be affected. There has been no evaluation to determine whether or not the expanded meander belts will have disastrous consequences for existing infrastructure such as levees, bridges, culverts, distribution channels, canals, etc. Much of the existing infrastructure

including water supply facilities, lift stations, and diversion structures have been located, constructed, operated and planned assuming existing channelization. Creation of a meander belt does not develop "new water" for California's existing water supply system. Page 239 of the CalFed Ecosystem Restoration Program Plan at Volume 2 identifies "stream meander" at target 1 to read as follows:

"Preserve or restore the 50- to 100-year flood plains along the lower reaches of streams in the Butte Basin ecological zone, and construct setback levees to reactivate channel meander in areas presently confined by levees."

First, there must be a defined non-modifiable area constituting the 50- and 100-year flood plains which CalFed will produce in the forthcoming EIR/EIS which we understand is due in December. The CalFed "stream meander" concept imposes damage, threatens infrastructure and creates this "back to nature" approach at tremendous cost to existing landowners. If CalFed continues to support this "stream meander" concept, we demand that the public disclosure process be adopted requiring 1) a public notice of all land acquisition related to proposed stream meander projects and 2) public disclosure of stream meander proposals and plans, explanation of anticipated impact and mitigation strategies. The process should be funded by proponents of this "stream meander" process.

All of the landowners communities' and residents' compensation that is proposed to be provided goes only to the immediate landowner, community or resident upon whom the meander belt is located. It fails to evaluate impacts on other landowners, communities or residents within the ultimate path of the water. In this regard, it is suggested that the preparers of the report evaluate the Sacramento River not just to determine the impacts of the degraded levees and/or proposed meander belts, but to also look at the impacts this particular effort has had on neighboring landowners, communities and residents often miles away from a particular point of immediate impact. The Association will be happy to assist the preparers of this analysis.

The Association does note, with favor, the proposed elements of the report which stress that many of the crops grown in the area of the Association provide excellent opportunities for enhancement, including rice, seasonal wetlands, alfalfa, corn, grain and certain row crops. Indeed, it is the operations of the existing water systems and the existing farming pattern of those particular crops which have also significantly enhanced adjoining areas, such as the Butte Sink and other areas of significant environmental interests including Llano Seco Rancho, Gray Lodge Wildlife Area, and other state, federal and privately-owned areas. However, it must also be clearly pointed out in the report that these areas benefit from the long development of established water supply projects including delivery canals, diversion structures and the application of water to adjoining agricultural crops, with beneficial use of drain water and operational spills that the CalFed report finds to be evidence of wasteful use.

4. WATER SUPPLY RELIABILITY: THE PREFERRED THROUGH-DELTA ALTERNATIVE

The Association is not in the position to advance significant technical or other arguments in connection with the through-Delta facility. However, it appears to be apparent to all that the existing system is grossly inefficient and not even operating as it was intended. The Association would support the most efficient mechanism for delivering quantities of water both to the Delta and to the pumping plant that can be developed with the least injury to upstream diverters. Once again, the report, perhaps in an effort not to "offend" anyone, tends to stray from the concept of the most efficient water delivery system in favor of a smorgasbord of proposals in order to offer something to everyone. However, we believe, particularly when it is now apparent, that Delta concerns have such enormous consequences upstream in areas not even directly connected with the Delta, that the biggest issue is the efficiency of operation in water delivery.

Regardless of any determination by CalFed that a through Delta facility/isolated Delta facility must/should be constructed and/or installed; the Association believes that a prerequisite of any through Delta facility would be the construction and installation off-stream storage reservoirs, both north and south, of the Delta. Therefore, assuming the foregoing construction is completed, the Association would support a Bay-Delta solution which provides the most efficient mechanism for meeting the delivery obligations for all users of water emanating from Northern California.

5. WATERSHED MANAGEMENT PLANS

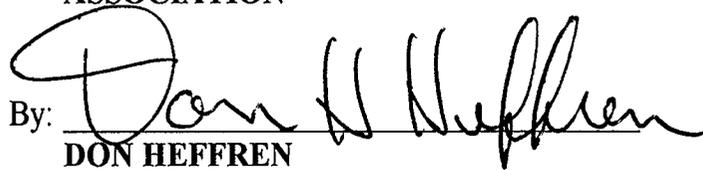
Once again, perhaps in an effort to offer something to everyone, the report seems to support watershed management plans which would expand the likelihood of woody debris within streams and rivers. It also judges bridge abutments and other structures necessary to our agricultural basin infrastructure as stressors. In the flooding which occurred in Butte County in '97 and '98, woody debris destroyed and disabled numerous bridges when they were dislodged by flood waters. Poor levee maintenance, not their location, flooded homes and farms. There must be a point where the authors have to recognize that certain aspects of civilization, certainly infrastructure needed for roads and irrigation systems, will need to be protected if not demanded by the police power of a County Board of Supervisors. To some extent, to attempt to recreate a pre-populated nature state, will be impossible. This is not to say that our Association does not support the existence of creeks, rivers and streams in their natural state where increased population has not maximized development. Our Association supports environmental enhancement and upper watershed management in areas where existing infrastructure would not be damaged.

Among other things, we believe that there is an insufficient analysis of the impacts on existing infrastructure such as diversion structures, lift stations, canal inlets, bridges, roads, levee roads and canal berms, and other necessary infrastructure which is currently in place. The report, in treating such issues as "stressors," does little to seriously evaluate the impact of the proposals on these stressors which are key infrastructure to supporting existing economies and communities

within rural areas. The report must acknowledge and credit local water purveyors and users for their efforts in reducing and in many cases eliminating these "stressors."

Very truly yours,

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