



CALIFORNIA FARM BUREAU FEDERATION

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COMMENTS ON CAL-FED PROGRAMMATIC ENVIRONMENTAL IMPACT STATEMENT/ENVIRONMENTAL IMPACT REPORT

July 1, 1998

Farmers and ranchers throughout California depend upon the waters of the Sacramento and San Joaquin Delta/San Francisco Bay (Bay/Delta) to maintain their livelihood and to provide the food, fiber, nursery products, open space, wildlife habitat and tax base we all depend upon. The California Farm Bureau Federation ("Farm Bureau") appreciates the opportunity to provide comments to Cal-Fed on behalf of its more than 75,000-member families throughout the state. Farm Bureau is the largest agricultural organization in California, representing more than 42,000 farm and ranch families--more than 80% of the state's commercial agricultural producers. These farm and ranch families that we represent throughout the state farm, live and own land within both the problem and solution areas as defined by Cal-Fed, and they use water from nearly all the watercourses in the Sacramento and San Joaquin Valleys, including small and large private diversions and the state and federal projects. Additionally, Farm Bureau represents farmers and nurserymen in Southern California and the high desert who depend upon water from the Metropolitan Water District and the California Aqueduct.

Farm Bureau also represents more than 30,000 people who, although not directly involved in commercial agriculture, live and work in rural communities and are therefore very concerned about the continuing economic health of the agricultural industry as the backbone of their communities and way of life.

For several years, Farm Bureau has been expressing our members' concerns with the Cal-Fed program and its proclivity to redirect agricultural resources (including both land and water) to solve the problems in the Bay/Delta.¹ We will continue to demand that farmers and ranchers in all parts of the state benefit from the Cal-Fed process and that agriculture moves forward into

¹Readers should particularly note Farm Bureau's comments to Cal-Fed on July 1, 1997, which are markedly similar to these comments one year later. Farm Bureau has also participated in the "Agricultural Water Caucus" and the preparation of its Cal-Fed white paper, which we encourage Cal-Fed to seriously consider. Our previous comments and the white paper are hereby incorporated by reference.

the next century at the same pace as others with a significant stake in the Bay/Delta. For this to happen, Cal-Fed, at a minimum, must fully honor and implement its solution principles, including the tenet that there be "no significant redirected impacts." As we have stated for many years, this means that Cal-Fed must change its present course to avoid any significant redirection of agricultural resources.

These comments will focus upon Cal-Fed's redirection of agricultural resources, including both land and water, within the context of the Programmatic Environmental Impact Statement/Environmental Impact Report (hereafter "PEIS"). As the numerous components of the program are further developed, we will provide further and more detailed comments.

I. AGRICULTURE IS AN IMPORTANT PART OF THE EXISTING ENVIRONMENT

Farms and ranches throughout California are an important part of the environment that is expressly recognized in both the National Environmental Policy Act (NEPA) and the California Environmental Quality Act (CEQA). There is no question that California agriculture has its roots well-entrenched in the physical environment. Agriculture as defined in federal law "includes farming and all its branches and among other things includes the cultivation and tillage of the soil, dairying, the production, cultivation, growing and harvesting of any agricultural or horticultural commodity . . ." (29 U.S.C. §3203(f); *also see* Labor Code §140.4(a) and Civil Code §3482.05(e).) The agricultural resource base is the environment for purposes of NEPA. (42 U.S.C. 4332(2)(A); 40 C.F.R. 1508.8; *Nat'l Assoc. of Government Employees v. Rumsfeld* (E.D. Penn. 1976) 418 F.Supp. 1302,1306.) CEQA specifically provides that a project will have a significant effect on the environment if it will convert prime agricultural lands to non-agricultural use or impair the agricultural productivity of prime agricultural land. (Pub. Res. Code §§21060.1, 21060.5, 21095; 14 C.C.R. 15000, *et seq.*, Appendix G(y) to State CEQA Guidelines.) Any adverse effects on agricultural water resources are also significant. (Pub.Res.Code §21159.2; State CEQA Guidelines, Appendix G(f)(g)(h) and (i).

Additionally, the State CEQA Guidelines require that "knowledge of the regional setting is critical to the assessment of the environmental impact. Special emphasis should be placed on environmental resources that are rare or unique to that region and would be affected by the project." (State CEQA Guidelines §15125(a); *also see Metropolitan Edison Co. v. People Against Nuclear Energy* (1983) 460 U.S. 766; *Sabine River Authority v. Dept. of Interior* (5th Cir. 1992) 951 F.2d 669.) Central Valley agricultural lands and the attendant water supplies are a resource of global significance that is unmatched anywhere in the world. This means that special emphasis must be given to agriculture and the attendant environment in the Central Valley. Put simply, the environmental review will be inadequate if it fails to identify and

analyze a water project's impact on agriculture in the Central Valley and throughout California. (See *Galante Vineyard v. Monterey Peninsula Water Management Dist.* (1997) 60 Cal.App.4th 1109-1122.)

There are also a host of Constitutional and legislative provisions that expressly recognize the importance of farms and ranches to the existing environment:

- As part of CEQA, the California Legislature has stated that:

“(a) Agriculture is the state’s leading industry and it is important to the state’s economy;
(b) The continued productive of agricultural lands in California is important in maintaining a healthy agricultural economy;
(c) The conversion of agricultural lands to non-agricultural uses threatens the long-term health of the state’s agricultural industry;
(d) The California Environmental Quality Act plays an important role in the preservation of agricultural lands.” (Stats. 1993, ch.812, §1.)

- California Constitution, Article XIII, §8 heralds the importance of land used for the “production of food or fibre” along with attendant open space values which significantly contribute to the environment.

- In the California Land Conservation Act of 1965, the Legislature declares:

(a) That the preservation of a maximum amount of the limited supply of agricultural land is necessary to the conservation of the state’s economic resources, and is necessary not only to the agricultural economy of the state, but also for the assurance of adequate, healthful, and nutritious food for future residents of the state and nation....

(d) That in a rapidly urbanizing society, agricultural lands have a definite public value as open space, and the preservation in agricultural production of such lands, the use of which may be limited, constitutes an important physical, social, aesthetic, and economic asset to existing or pending urban or metropolitan development. (Cal. Gov. Code §51220, *et seq.*)

- In the Delta Protection Act of 1992, the Legislature found that:

(a) The [San Joaquin-Sacramento] Delta is an agricultural region of great value to

the state and nation and the retention and continued cultivation and production of fertile peat lands and prime soils are of significant value.

(b) The agricultural land of the Delta, while adding greatly to the economy of the state, also provides a significant value as open space and habitat for waterfowl using the Pacific Flyway, as well as other wildlife, and the continued dedication or attention to that delta land in agricultural production contributes to the preservation and enhancement of open space and habitat values. (Pub. Res. Code §29703.)

- The Agricultural Land Stewardship Program Act of 1995 provides that “the long-term conservation of agricultural land is necessary to safeguard an adequate supply of agricultural land and to balance the increasing development pressures around urban areas.” (Pub. Res. Code §1010201(d).)

- The Thurman Agricultural Policy Act provides that:

A profitable and healthy farming industry must be sustained by a sound natural resource basis of soils, water, and air which is developed, conserved, and maintained to ensure sufficient quantities and highest optimum quality possible. (Food & Ag. Code §802(g).)

One of the major principles of the state’s agricultural policy shall be “to sustain the long-term productivity of the state’s farms by conserving and protecting the soil, water and the air which are agriculture’s basis resources.” (Food and Ag. Code §821(c).)

- The federal Agricultural Improvement and Reform Act of 1996 provides that:

The nation’s farmland is a unique natural resource, and each year a large amount of the nation’s farmland was being irrevocably converted from actual or potential agricultural use to nonagricultural use in many cases as the result of action taken or assisted by the federal government. The Federal Farmland Protection Program directs federal agencies to identify and take into account the adverse effects of federal programs on the preservation of farmland; consider alternative actions, as appropriate, that could lessen such adverse effects; and assure that such federal programs, to the extent practicable, are compatible with state government, local government and private programs and policies to protect farmland. (Fed. Reg. June 17th, 1994, page 31110.)

These detailed assertions by the People of California, their Congress and the Legislature speak for themselves about the public interest in California agriculture and its importance to the existing environment.

II. THE REDIRECTION OF AGRICULTURAL RESOURCES IS A SIGNIFICANT IMPACT [EFFECT] ON THE ENVIRONMENT

Redirecting agricultural resources to other uses in the Cal-Fed process is not only contrary to the Cal-Fed solution principles, it also constitutes a significant impact on the environment. This discussion will first look at the redirection of agricultural land followed by the redirection of agricultural water under the current Cal-Fed proposal.

A. Agricultural Land

The PEIS, in section 5.2, discusses the land use changes that will likely occur in the Cal-Fed program. The PEIS provides that **“is likely that the majority of lands that would be affected by the Cal-Fed program are currently being used for agricultural purposes.”** (PEIS 5-5, emphasis added.) The PEIS estimates that the ecosystem program will directly fallow 127,000 to 152,000 acres statewide, the levee program 34,000 to 35,000 acres and the water quality program 35,000 to 45,000 acres. Storage and conveyance could also fallow from 0 to 82,100 acres. This equals 196,300 to 314,100 acres of agricultural land that will be taken out of production in the Cal-Fed process alone.

As we have consistently stated from the outset of this program, Cal-Fed should have a no-net loss policy for agricultural lands, recognizing that there will be certain limited circumstances when conversion is necessary. Unfortunately, these figures for land fallowing reveal a much different Cal-Fed policy which favors certain components of the environment over that part of the environment that includes productive agriculture. We continue to deplore this pre-determined sentiment against agriculture and urge Cal-Fed to adopt a no-net loss policy for agricultural lands and thus expressly acknowledge that fallowing agricultural lands as part of the Cal-Fed process will have a significant impact on rural areas and the environment.

The PEIS also indicates that “water use efficiency measures are not expected to directly impact current land uses therefore, no estimates of land changes relative to this program are presented.” (PEIS 5-5.) This of course was our understanding as we moved from Phase I of Cal-Fed to Phase II, but despite assurances, land retirement on the west side of the San Joaquin Valley (400,000 to 600,000 acres) still seems to haunt the Cal-Fed program. Any further comments would only serve to dignify these water demand reduction goals, thus we simply

request that Cal-Fed reiterate in plain terms that land retirement and fallowing are not a water efficiency tool.

B. Agricultural Water

Cal-Fed has proposed several options that can redirect agricultural water to other uses and therefore result in a significant effect on the environment. Most notably, it appears that the ecosystem and water quality programs will require significant amounts of agricultural water to meet their goals and visions. Additionally, it appears that Cal-Fed will rely extensively on the transfer of agricultural water to urban uses. In all cases, the redirection of agricultural water to other uses is a significant effect on the environment and must be fully analyzed in the PEIS.

The water transfer common program is the most visible effort to redirect agricultural water to other uses. At this time the program is conceptual in nature and therefore difficult to specify the amount and type of water that will be transferred. Nonetheless, the PEIS must make an effort to look at transfers under the program and analyze the potential effects in detail. The transfer of water will have a significant effect on the environment and the rural areas from which water is transferred, varying with the type of transfer. There are three basic types of transfers that must be analyzed for each region, including: (1) the fallowing of agricultural land, as previously discussed, (2) increased water efficiency or water conservation and its effects on downstream water users and related agriculture, and (3) the substitution of groundwater to replace transferred surface water and its effects on the groundwater resources and the attendant agricultural resources. Cal-Fed must make a choice on this issue. If water transfers are going to be a common program, then Cal-Fed must fully (not selectively) analyze the potential impacts. Otherwise, water transfers should be left out of the Cal-Fed process completely.

As part of this discussion, Cal-Fed must analyze the more subtle water transfers that will occur as a result of the proposed land conversion in the Cal-Fed process. In almost all cases, water rights are either part and parcel with the land or are appurtenant to the land. The land and water must therefore be analyzed as a package that constitutes the agricultural resources. Moreover, any increase in water use that results from fallowing the land, i.e., the creation of wetlands or other habitat, must also be analyzed in the PEIS.

Finally, the Cal-Fed conjunctive use (groundwater storage) program has not been adequately analyzed in the PEIS, despite the significant effects that this program may have on groundwater rights, which are part and parcel with agricultural land. We have previously provided detailed comments on the conjunctive use program and how it can adversely affect water rights held by farmers and ranchers. The bottom line is that groundwater storage may have significant effects on agricultural resources that must be analyzed in the PEIS. (*See Kings County*

Farm Bureau v. City of Hanford (1990) 221 Cal. App.3d 692, 728.)

C. Agricultural Land and Water

In addition to the direct threats to agricultural land and water, there are more subtle processes which may also redirect both agricultural land and water and are therefore significant effects on the environment.

1. HCP . The Cal-Fed conservation strategy is very nebulous and does not accurately reflect what will happen on the ground. Past HCP's throughout the state have shown that agricultural land has always been targeted for mitigation as part of an HCP. Since Cal-Fed will also undertake an aquatic HCP, it follows that agricultural water will also be targeted as mitigation water. This mitigation will be in addition to the land and water already redirected under the Cal-Fed program. These additional impacts to agricultural resources must be adequately analyzed in the PEIS.

2. Adaptive Management. As a central tenet of Cal-Fed, adaptive management suggests that there may be additional agricultural land and water targeted for ecosystem improvements or other similar uses. Like the HCP, the PEIS does not adequately analyze the potential effects on agricultural land and water that may arise from adaptive management.

D. Cumulative Impacts

The purpose of both NEPA and CEQA would clearly be frustrated if Cal-Fed's actions were considered in isolation rather than by looking to the cumulative impacts. Cumulative impacts are defined in federal law to mean:

The impact on the environment which results from the incremental impact of the action when added to other past, present, and reasonably foreseeable future actions regardless of what agency (federal or non-federal) or person undertakes such other actions. Cumulative impacts can result from individually minor but collectively significant actions taking place over a period of time. (40 C.F.R. §1508.7; See State CEQA Guidelines §§15355.)

The redirection of agricultural land and water to other uses has and will likely continue to take place in California. Yet, despite the cumulative impacts on agricultural resources, the PEIS in Chapter 9 focuses very narrowly on a limited number of water projects rather than on agricultural resources. The conversion and fallowing of agricultural land must be considered in

the context of both urbanization and environmental restrictions that are being imposed on agricultural lands throughout the state. The numerous proposals to reallocate agricultural water for both urban and environmental purposes must also be analyzed in the cumulative impacts analysis. If Cal-Fed takes this obligation seriously, when considered cumulatively, the redirection of agricultural land and water is particularly significant and it shows the short-sighted policy of Cal-Fed and other agencies to continue redirecting agricultural resources.

III. REDIRECTING AGRICULTURAL LAND AND WATER IS NOT AN UNAVOIDABLE IMPACT IN THE CAL-FED PROCESS

The consideration of agricultural resources as an important part of the environment is not an academic exercise. A complete and adequate analysis is important for several reasons. First and most important, both NEPA and CEQA require Cal-Fed to consider alternatives that will have less impact on the environment, including agricultural resources. (Pub. Res. Code §21081.) This applies to both the common programs and the variable components. It has generally been recognized that the alternatives analysis is the "heart" of the environmental review process and is therefore the key to meaningful environmental review. With respect to land, Cal-Fed must pursue options that do not adversely affect agricultural land. As an example, there are non-agricultural lands that can be used for many of the Cal-Fed programs. With respect to water, there are other components in the Cal-Fed process that, if implemented properly, will reduce the demand on agricultural water resources. Most notably, environmentally sensitive surface storage is an option that must be pursued to avoid impacts on agricultural resources. Alternatives to reduce the impacts on agricultural resources, particularly within the common programs, must be seriously pursued by Cal-Fed in both the program and site-specific environmental review.

Second, if no feasible alternatives are available to protect agricultural resources, then appropriate mitigation measures must be adopted with respect to both agricultural land and water. (40 C.F.R. 1505.3, 1508.20; Pub. Res. Code §21081; 21081.1.) Although the mitigation measures in chapter 8 of the PEIS are a good start for agricultural resources, the mitigation needs to be taken more seriously and there needs to be an expectation that any impacts on agricultural resources can be fully mitigated to maintain viable agriculture throughout California.

Finally, the analysis of impacts upon agricultural resources has important implications beyond the environmental review process. This analysis will serve as a litmus test for determining whether Cal-Fed has satisfied its solution principles. For example, if Cal-Fed pursues alternatives within its program that do not affect agricultural resources, the solution principles for redirected impacts will clearly be satisfied in this regard. On the other hand, if Cal-Fed continues down the current path and redirects agricultural resources, as revealed in the PEIS, the solution principles are clearly not satisfied. Put differently, if Cal-Fed in its PEIS

indicates that there are potentially significant unavoidable impacts on agricultural resources, the solution principle for no significant redirected impacts by definition cannot be satisfied. (See PEIS 8.1-31.) We therefore submit that Cal-Fed must use its PEIS as the litmus test for determining whether there are significant redirected impacts, as discussed in these comments..

IV. STORAGE MUST BE A COMMON PROGRAM IN THE CAL-FED PROGRAM

As previously discussed, the only way to avoid reallocating agricultural water resources is to conserve water during peak flows. The Department of Water Resources in its most recent draft California Water Plan has estimated that in 1995, 46% of total water use was dedicated to the environment, 42% for agriculture, and 11% for urban use. Additionally, millions of acre-feet of water flow to the ocean above and beyond this water dedicated to the environment, farms and cities. Rather than redirect water from productive urban and agricultural uses, Cal-Fed must fully utilize and conserve the water that flows through streams to the ocean. By focusing on conserving outflow, California can minimize the risk of flooding and conserve this water for other times, particularly during dry years when cities, farms and fish need the water. The most effective way to conserve outflow is to increase surface water storage in an environmentally sensitive manner. Increasing the capacity of existing reservoirs, such as Lake Shasta and Millerton Lake, are good examples of such programs.

Like all of the other so-called common programs, storage and conserving outflow are critical components for water management in California and must be part of any solution. For these reasons, storage must be a common program in Cal-Fed.

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