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CALFED Bay-Delta Program

"Restoring the Bay's ecosystem ... from the Sierra to the sea."

August 14, 2000

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U.S. Department of Interior
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RE: FINAL PROGRAMMATIC EIS/R FOR CALFED BAY-DELTA PROGRAM

EXECUTIVE DIRECTOR

Grant Davis

Dear Deputy Secretary Hayes, Secretary Nichols, and Director Ritchie,

FOUNDER

Bill Davoren

This letter is submitted as the comments of the Bay Institute regarding the July 21, 2000, Final Programmatic Environmental Impact Statement/Environmental Impact Report (FPEIS/R) for the CALFED Bay-Delta Program. Given the short time period for reviewing the documents, these comments do not articulate all of our concerns with and observations on the FPEIS/R. Rather, they are intended to address only the most important outstanding issues, particularly those not fully covered in the 1998 Draft EIS/R, the 1999 Revised Draft EIS/R, and our comments on those documents.

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In summary, we recommend that in the Record of Decision (ROD), CALFED should:

- Commit to establish performance thresholds and indicators for the Ecosystem Restoration Program (ERP).
- Establish a comprehensive ERP environmental water management program, including measures necessary for achieving ERP flow-related objectives and managing export impacts on endangered species.
- Commit to develop measures for restoring the San Joaquin River below Friant Dam, and ensure that Sierra water quality exchanges comply with these measures.
- Test the Environmental Water Account (EWA) as a pilot project before providing Endangered Species Act (ESA) assurances.
- Place more stringent conditions relating to endangered species and habitat impacts on future EWA-related ESA assurances.
- Restrict use of expanded export capacity to EWA operations and require no net reduction in Delta outflow.
- Incorporate the recommendations of the CALFED Agricultural Water Use Efficiency Steering Committee regarding assurances and funding.
- Defer the decision to expand existing reservoirs because project purposes are not adequately defined, evaluations not completed, and alternative approaches not implemented.
- Improve groundwater management by forming basin management councils, increasing the oversight and guidance role of the state, and sponsoring an advisory process to develop groundwater BMPs.
- Defer the decision to construct a screened diversion facility because further evaluations are necessary and the most appropriate water quality objectives are not yet identified.
- Establish an independent entity to manage implementation of the ERP.
- Commit to consider, when making site-specific water supply facility permitting decisions, all new information on the potential for water savings from alternative approaches to surface storage; and the degree to which thresholds for implementing alternative approaches to surface storage have been attained.

- Modify proposed changes in the (b)(2) offset policy.

Ecosystem Restoration Program (ERP)

The FPEIS/R fails to provide assurances that the goals and objectives of the ERP will be achieved, or to identify remedies and consequences for non-attainment of these goals and objectives. In the ROD, CALFED should include the following:

Assurances relating to the CALFED Ecosystem Restoration Program:

The CALFED Ecosystem Restoration Program (ERP) will use thresholds for implementation of Stage 1 actions (level of effort) and attainment of Stage 1 objectives (outcome) as the benchmark of Program success or failure. (The actions and objectives are described in the ERP Strategic Plan and other ERP documents).

Within twelve months of the signing of the Record of Decision (ROD), CALFED will develop and adopt:

- thresholds for success relating to level of effort (e.g., # of Stage 1 actions being implemented per Ecological Zone in years 2, 4, 6, 8 and 10) and outcome (e.g., # of Stage 1 objectives being attained per Ecological Zone in years 5 and 10); and,
- associated remedies and consequences related to non-attainment of thresholds for success. These remedies and consequences should recognize differing causes of non-attainment (e.g., insufficient effort by CALFED; insufficient effort by implementing entities and cooperators; inability of ERP as presently constituted to achieve objectives) and represent appropriate responses (e.g., increase investment; modify investment strategy for allocating ERP funding between management measures; improve ERP guidance, outreach, interagency coordination, and technical assistance to implementing agencies; implement alternative ERP strategies, including both regulatory and non-regulatory approaches).

Following the signing of the ROD, CALFED will form an ERP assurances advisory committee which, in consultation with the ERP Manager and the Science Program, will make recommendations regarding thresholds, remedies and consequences.

In the event that these thresholds are not achieved, the ERP Manager (or executive director of a long-term ERP entity) and the CALFED Science Program will determine the cause(s) for non-attainment and will trigger action by the ERP, the CALFED governance entity and relevant CALFED agencies to implement the appropriate remedies and consequences.

The FPEIS/R fails to articulate a comprehensive set of indicators of "ecological health" that would allow for the evaluation of progress toward achieving ERP objectives and outcome-based thresholds for success. The Bay Institute has prepared a draft set of indicators for the ERP, enclosed with this comment letter as Attachment A. In the ROD, CALFED should commit to select and adopt, within twelve months of the signing of the ROD, a core set of key indicators for the ERP and other CALFED program areas.

The FPEIS/R includes the ERP's objectives and targets for Delta outflow but fails to identify any Stage 1 actions for achieving these objectives and targets. In the ROD, CALFED should specify the environmental water management measures it will implement to achieve these objectives and targets.

The FPEIS/R fails to include a comprehensive environmental water management program to address the ERP's goals and objectives for instream tributary flow and Delta outflow, in conjunction with the Stage 1 Water Management Strategy's export management tools (Environmental Water Account, or EWA). In the ROD, CALFED should commit to the establishment of one comprehensive environmental water management program to address instream flow, Delta outflow, and export management needs, under the control of the ERP Manager or long-term ERP entity. The environmental water controlled by the ERP Manager is supplemental to existing blocs of environmental water.

The FPEIS/R also fails to include two critical environmental water management measures necessary to achieve the ERP's flow related goals and objectives. In the ROD, CALFED should commit to:

- establish an instream flow registry to account for all environmental water, including regulatory requirements and supplemental acquisitions.
- establish an instream water right and other mechanisms to protect environmental water that is supplemental to regulatory requirements.

The FPEIS/R fails to include specific objectives for restoring endangered fisheries and hydrological conditions to the San Joaquin River below Friant Dam. The responsibility under state and federal law of CALFED agencies to maintain the San Joaquin fisheries has been affirmed repeatedly in federal court. In the ROD, CALFED should commit to evaluate and implement measures to restore endangered species and hydrological conditions on the lower San Joaquin River.

Environmental Water Account (EWA)

The FPEIS/R relies on the proposed EWA as a primary tool to promote the protection and recovery of endangered fish species at risk from Delta export operations. The Bay Institute was an early proponent of the EWA concept and continues to believe that an EWA, in conjunction with implementing other flow- and nonflow-related measures of the ERP, could significantly contribute to endangered fishery protection. The approach to an EWA contained in the FPEIS/R, however, is inadequate for a number of reasons:

- Under the Stage 1 Water Management Strategy (WMS), the proposed EWA will be operated in conjunction with use of additional export capacity (joint point of diversion and currently unused State Water Project pumps). Together, this operational regime is likely, according to CALFED's own modeling, to result in levels of take (fish salvage) of endangered species in excess of both historical levels and take limits in many years. (Dry year benefits to endangered species in these modeling exercises were largely attributable to existing regulatory requirements, while wet year benefits mostly mitigated for new impacts of the potential WMS regime).
- Implementing the modeled WMS operational regime, even as modified by EWA operations, does not support attainment of ERP objectives and targets for Delta outflow and instream flow, and in most years could create significant unforeseen impacts from large-scale reductions in Delta outflow.
- Tier 3 may need to be invoked as often as once in every four years, yet no Tier 3 assets are identified in the FPEIS/R.
- CALFED's finding that the EWA will promote endangered fishery protection and recovery, even when combined with increased export pumping under the WMS, is based on modeling exercises and has not been tested in the real world.

See Attachment B for a detailed analysis of the EWA, use of increased export capacity under the WMS, and potential fishery and habitat impacts.

In the ROD, CALFED should:

- Establish a pilot EWA with sufficient assets to modify export operations in the short term in order to provide immediate relief to endangered fisheries, while longer-term changes in export operations are developed by the resource agencies and project operators. Test the efficacy of the EWA in protection and recovery before providing any EWA-related Endangered Species Act (ESA) assurances.

- Commit to providing ESA assurances if and when appropriate only if the WMS does not result in increased levels of diversion and export for consumptive purposes, or in reductions in Delta outflow.
- Commit to link any ESA assurances to providing full funding for and implementation of the ERP, whose many flow- and non-flow measures mitigate in part for historical impacts of operating the Delta export facilities. See Attachment C for further discussion of this point.
- Commit to operating the EWA fully in conjunction with ERP environmental water management efforts, under the direction of the ERP Manager, in order to meet ERP objectives for instream flow and Delta outflow as well as the export management purposes of the WMS.
- Specify what assets (e.g., water or funding sources) will be available in the event that Tier 3 is invoked.

The FPEIS/R incorrectly identifies a strong need for additional storage to make an EWA work. In fact, CALFED's own modeling exercises do not support this conclusion. The FPEIS/R itself is correct when it later implies that the primary beneficiary of additional storage is not the EWA but its competitors, e.g., those interests seeking water from the same sources. Aggressively implementing alternative approaches to surface storage, including conjunctive use and water use efficiency, however, may adequately meet the legitimate needs of these non-EWA users without additional storage..

Water Use Efficiency

The FPEIS/R fails to fully incorporate the recommendations of the CALFED Agricultural Water Use Efficiency Steering Committee regarding assurances and funding. In the ROD, CALFED should commit to:

- within twelve months of the signing of the ROD, develop and adopt thresholds for performance and associated remedies and consequences, as described in the August 3, 2000, memorandum from the Steering Committee to the CALFED Policy Group.
- allocate funding provided for water use efficiency purposes as appropriate between the urban, agricultural and recycling programs, but bar reallocation of these funds to non-water use efficiency purposes.

Water Quality

The FPEIS/R commits to facilitate water quality exchanges and similar programs to make high quality Sierra water in the eastern San Joaquin Valley available to urban Southern California interests. These exchanges and programs may not be consistent with measures to restore endangered fisheries and hydrological conditions on the San Joaquin River below Friant Dam, as required under federal and state law. In the ROD, CALFED should commit to ensure any water quality exchanges and programs must comply with the requirements of the San Joaquin fishery and hydrological restoration effort.

Surface Storage

The FPEIS/R identifies four projects to be evaluated and constructed by CALFED: expansion of Los Vaqueros and Shasta Reservoirs, and construction of in-Delta storage and a San Luis Bypass facility. As we have stated in our previous individual and joint comments on earlier versions of the EIS/R, the Bay Institute believes that several of these projects are not environmentally or economically justifiable. For instance, expansion of Shasta Dam may have serious adverse impacts on the ecological and recreational values of upstream tributary habitat. Furthermore, CALFED has yet to set measurable objectives for the proposed environmental, operational flexibility and water quality improvement purposes of these new facilities, or otherwise adequately defined project purposes. In the ROD, CALFED should defer making a decision to expand existing reservoirs because the project purpose is not adequately defined, operational constraints are not identified, and the performance of alternative approaches to surface storage has not yet been evaluated.

For further discussion, see Attachment E.

Groundwater Management

The FPEIS/R proposes that groundwater should be managed at the basin level, but fails to provide adequate oversight, guidance or structure for regional, basinwide management. In the ROD, CALFED should commit to implement or seek authorization for the following:

- the formation of regional groundwater management councils which include representatives from water districts, local government, regulatory agencies, and other interests, and that would oversee the development and implementation of basin plans.

- increasing the role of the state in oversight (e.g., certification of basin plans) of and guidance (e.g., technical assistance in data analysis and basin plan preparation) for basin plans.
- CALFED sponsorship of a facilitated process for developing groundwater best management practices and other guidance for preparing basin plans, using both an agency-stakeholder advisory committee and an independent technical review panel.

Conveyance

The FPEIS/R contemplates a Stage 1 WMS in which use of joint point of diversion and full SWP pumping capacity, and other expansions in Delta export capacity, contribute to significant increases in diversions and exports for consumptive uses and significant reductions in Delta outflow. As discussed above (see EWA), such an operational regime will likely result in elevated levels of endangered species take, as well as other adverse impacts to listed, covered and nonlisted species, and to habitat conditions in the estuary. In the ROD, CALFED should limit use of additional export capacity to operations of an EWA, and condition use of additional export capacity on the occurrence of no significant increases in consumptive use or reductions in Delta outflow.

The FPEIS/R proposes to construct a screened diversion facility on the Sacramento River with a diversion capacity of up to 4,000 cfs if necessary to address drinking water quality concerns and if construction does not adversely affect fish populations. This decision is not justifiable for either water quality or environmental purposes. The FPEIS/R assumes drinking water quality needs which may not be appropriate. As the U.S. Environmental Protection Agency has explicitly stated, future drinking water quality objectives for suppliers dependent on Delta export have yet to be determined. Furthermore, CALFED's own initial analyses of a screened diversion underscore the potential for significant adverse fishery impacts, extremely high costs and immense technical feasibility issues. In addition, the relationship between operations of a new screened diversion facility and the existing Delta Cross Channel gates is extremely unclear, and could result in even more adverse cumulative impacts to Sacramento River fisheries from a diversion rate of up to 8,000 cfs.

In the ROD, CALFED should:

- defer a decision to construct a screened diversion facility because further evaluations are necessary, including analysis of alternative approaches and operational constraints, and the most appropriate water quality objectives are yet to be identified.

- engage the Delta Drinking Water Council, the expert panel evaluating fish impacts of Delta conveyance, and the CALFED Science Program in the design and review of the proposed assessments of DCC operation strategies, technical viability of a screened diversion, and resolution of fisheries concerns.

Governance

The FPEIS/R overlooks the consensus efforts of the CALFED Assurances and Governance Workgroups to develop the concept of an independent entity to manage the implementation of the ERP. Because of its ability to insure scientific integrity, promote adaptive management and maximize flexible use of environmental water and land resources, this approach was broadly supported by stakeholder interest groups. In the ROD, CALFED should commit to establish such an entity (e.g., a Bay-Delta Conservancy), with secured funding sources and independent staff, ultimately accountable to the proposed Bay-Delta Commission.

Tier 1

The Bay Institute supports the comments contained in the July 14, 2000 letter of Environmental Defense to Secretary Nichols and Deputy Secretary Hayes and the July 14, 2000 letter from the Natural Resources Defense Council to Secretary Kennedy and Deputy Secretary Hayes regarding the proposed changes to the Central Valley Project Improvement Act Section 3406(b)(2) "offset" policy.

Regulatory Compliance

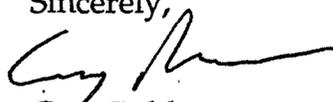
The FPEIS/R states that a Memorandum of Understanding (MOU) will be developed to provide a mechanism for integrating information developed at the programmatic level into the site-specific decisions on Clean Water Act Section 404 permits, and set forth a process for assessing the need for additional surface storage in light of CALFED commitments to alternative approaches, including groundwater storage, water use efficiency, and transfers. CALFED should recognize that there are fundamental disagreements over the potential water savings from these alternatives to surface storage, which has led to an incentive-driven, adaptively managed approach which can only estimate crudely the expected benefits. (The Bay Institute believes that CALFED has consistently underestimated the potential of these alternatives, as discussed in the November 5, 1998 "Blueprint for an Environmentally and Economically Sound CALFED Water Supply Reliability Program," submitted by the Environmental Water Caucus). Furthermore, CALFED has not yet identified thresholds for implementation of

Stage 1 groundwater, water use efficiency, and transfers-related measures and/or attainment of Stage 1 groundwater, water use efficiency, and transfers-related objectives, and associated remedies and consequences for non-attainment. In the ROD, CALFED should:

- commit to consider in the site-specific decisionmaking process all new information, post-ROD, on the potential for water savings from alternative approaches to surface storage.
- commit to develop, within twelve months of the signing of the ROD, thresholds for implementation and attainment of the groundwater management, water use efficiency, and transfers programs and objectives, and associated remedies and consequences for non-implementation/non-attainment, and to consider the degree to which these thresholds have been met when making site-specific permitting decisions.
- include these commitments in the proposed MOU.

Thank you for your consideration of our comments on the FPEIS/R. Please contact me at (415) 721-7680 if you have any questions regarding our views.

Sincerely,



Gary Bobker
Rivers and Delta Program Director

Attachments to this comment letter

A: Draft Program-wide Performance Indicators for the CALFED Ecosystem Restoration Program, prepared by Anitra Pawley, Ph.D., The Bay Institute, July 6, 2000.

B: Memorandum from Christina Swanson, Ph.D., The Bay Institute, to CALFED Policy Group, Re: Key Concerns with Proposed Environmental Water Account, July 7, 2000.

C: Letter from California League of Conservation Voters, California Trout, Pacific Coast Federation of Fishermen's Associations, Save San Francisco Bay Association, Sierra

Club, and The Bay Institute to Secretary Nichols and Deputy Secretary Hayes, Re: ESA Clarifications for the CALFED Framework, July 18, 2000.

D: Letter from Environmental Defense to Secretary Nichols and Deputy Secretary Hayes, July 14, 2000.

E: Letter from the Natural Resources Defense Council to Secretary Kennedy and Deputy Secretary Hayes, July 14, 2000.