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CALFED Bay-Delta Program

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16 August 2000

David J. Hayes, Deputy Secretary
U.S. Department of Interior
1849 C Street, N.W.
Washington, DC 20242

Mary D. Nichols, Secretary
California Resources Agency
1416 Ninth Street
Sacramento, CA 95814

Steven R. Ritchie, Acting Director
CALFED Bay-Delta Program
1416 Ninth Street
Sacramento, CA 95814

Re: CALFED Final Programmatic EIS/EIR and ROD

Dear Colleagues:

This letter is written in behalf of the California Planning and Conservation League to recommend that the record of decision in the CALFED program remove reference to the Monterey Amendments to California State Water Contracts as part of the no-action alternative or pre-project condition of implementing the CALFED program; and that any program changes necessary to reflect this circumstance be made in the record of decision.

This recommendation is based upon the Planning and Conservation League's pending challenge to the legality of the Monterey Amendments and their accompanying environmental assessment under the California Environmental Quality Act. In our comment letter 1465 on your draft programmatic EIS/EIR (Final EIS/EIR Response to

Comments, vol. III, part 1, p. 766), we advised your offices of this pending challenge, and questioned the inclusion of the Monterey Amendments as part of the no-project alternative. The response to comment IA-2.2-5 (*Ibid.*, Response to Comments, vol. 1, p. IA-2-24), states, "The decision to include the [Monterey] Agreement in the No Action Alternative appears to be justified given that the Agreement is in place and is part of the SWP operating requirements."

Although the California Court of Appeal has not resolved the Planning and Conservation League challenge to the Monterey Amendments, it did hold oral argument on that challenge on 17 July 2000, and submitted the matter for decision. A summary of that argument is attached, which provides strong inference that the Monterey Amendments may be set aside by the Court.

To ensure that the CALFED program is not adversely affected by whatever action the Court of Appeal may imminently take, the Planning and Conservation League submits the present recommendation. We ask not only that the above quoted statement in the final EIS/EIR be amended, but also that the record of decision address the further comment that we made on the draft EIS/EIR, namely that the presence of the Monterey Agreements forecloses credit to the Delta for water conservation in Southern California. Response 1A-5.1-108 (vol.1, p. IA-5.1-17), referenced in the final EIS' annotation of our comment letter 1465 (vol. III, part 1, at p. 766), does not address the comment and appears to be an erroneous citation.

Finally, the Planning and Conservation League recommends that a draft record of decision be circulated prior to its execution, to give interested parties an opportunity to make suggestions for possible correction or improvement. In far more conventional contexts, proposed findings and decision are available to members of the public prior to action by decision-makers; and given the complexity of CALFED it would seem that your offices would benefit greatly by this last opportunity to ensure an exemplary record of decision.

Respectfully submitted,



cc: Felicia Marcus, Region IX Administrator, EPA
Gerald Meral, Ph.D, Executive Director, PCL