

CITY AND COUNTY OF SAN FRANCISCO

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August 21, 2000

VIA FACSIMILE (916-654-9780) AND ORIGINAL VIA U.S. MAIL

Mr. Steve Ritchie
Executive Director
CALFED Bay-Delta Program
1416 9th Street, Ste 1155
Sacramento, CA 95814

Re: Comments on certain Elements of the CALFED Final Programmatic EIS/EIR

Steve
Dear ~~Mr. Ritchie~~:

You have requested that comments on the above-referenced document be filed by today. Our comments focus on a narrow but very important aspect of the document, the discussion of water transfers and, in particular, the discussion of "reservoir refill criteria" contained in Appendix C and related text, particularly Section 3.4 of the Water Transfer Program Plan (Technical Appendix of the Final Programmatic EIS/EIR).

Whatever the genesis of these portions of the document, they are unquestionably biased in favor of the positions long espoused by the state and federal projects and their contractors. Many entities have consistently articulated very different views.

The discussions of "reservoir refill criteria," the "no injury" rule, what constitutes transferable water, and related issues rely on an imaginative amalgamation of (1) legally incorrect interpretation and unsupportable application of Watershed Protection Act and "area of origin" concepts; (2) a greatly expanded role for "Term 91" in a context it was never intended to address; and (3) an utter and complete failure to recognize the water rights implications of the stated conclusions.

The discussion's one unifying theme is that the transfer of water by anyone other than the state or federal projects and their contractors will be burdened with "refill" restrictions. The suggested restrictions would effectively abrogate the seniority of a transferor's rights to divert to (or recover) storage following a transfer, notwithstanding the fact that no one would try to impose the suggested restrictions if the transferor had used the same water from its storage for its own purposes.

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This is not an academic issue; it is complicated and difficult, but the ultimate resolution must not be handed over to the state and federal projects to resolve. The "potential solution options" set out at pages 3-10 and 3-12 call for development of a "standardized set of policies, guidelines, or formal rules" on "quantification of transferred water" and "transferability of saved or conserved water" that the state and federal projects, the State Water Resources Control Board ("SWRCB"), and "other interested parties" agree to. We urge that these should be rules promulgated by the SWRCB, and it must be considered that those rules may very well not be agreed to by the projects.

The "potential solution options" at page 3-13 and 3-14 are even more worrisome. "Carriage water criteria" are to be developed in some "Agency/Stakeholder process" and the extremely divisive "refill" issues may be dealt with by "negotiated agreement." This is unacceptable. The Record of Decision should not incorporate any of these "potential solution options" set forth at pages 3-10, 3-12, 3-13, and 3-14 in a context that the state and federal projects were to be allowed to dictate the rules and policies on the key transfer issues in California. These issues certainly must be examined, but the Legislature has charged the SWRCB with these tasks. In fact, the SWRCB has a process underway to delve into all transfer issues. We urge that the Record of Decision confirm that these questions are open questions, and are most appropriately addressed by the State Water Resources Control Board.

Thank you for the opportunity to provide these comments.

Very truly yours,

LOUISE H. RENNE
City Attorney



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cc: Michael Carlin