



# CALIFORNIA FARM BUREAU FEDERATION

## EXECUTIVE OFFICES

2300 RIVER PLAZA DRIVE, SACRAMENTO, CA 95833-3239 • PHONE (916) 561-5520 • FAX (916) 561-5690

August 21, 2000

Steve Ritchie, Acting Executive Director  
CALFED Bay/Delta Program  
1416 Ninth Street, Suite 1155 (HAND DELIVERED)  
Sacramento, CA 95814

David J. Hayes, Deputy Secretary  
U.S. Department of the Interior  
1849 C Street NW  
Washington, DC 20240-9997

Mary Nichols, Secretary for Resources  
The Resources Agency  
1416 Ninth Street, Suite 1311  
Sacramento, CA 95814

Re: **Comments on the Final Programmatic Environmental Impact  
Statement /Environmental Impact Report (Programmatic EIS/EIR) for the  
CALFED Bay-Delta Program**

Dear Mssrs. Ritchie and Hayes and Secretary Nichols:

The California Farm Bureau Federation (Farm Bureau) is a non-governmental, non-profit, voluntary membership California corporation. The Farm Bureau's purpose is to work for the protection of agriculture and the rural environment in the State of California, and to find solutions to the problems of the farm, the farm home and the rural community within the state. Its members consist of 53 county Farm Bureaus and, through them, more than 40,000 farming and ranching families and 45,000 other interested persons located throughout the State of California who support the preservation of viable agriculture and the quality of life in the State of California and its rural communities. We appreciate the opportunity to provide additional comments on this Programmatic EIS/EIR.

In response to the release of the Final Programmatic EIS/EIR, on July 21, 2000, the Farm Bureau offers the following comments and specifically incorporates by reference our previous comments, dated September 23, 1999, July 1, 1998, and July

1, 1997 (copies published in *Calfed Bay-Delta Program Response to Comments, Vol. III: Comment Letters and Testimony, Part 1, Final Programmatic EIS/EIR Technical Appendix, July 2000.*)

## **I. INTRODUCTION**

In its own words, CALFED characterized the Programmatic EIS/EIR process accordingly, "The planning phase of the program is ending and the implementation phase is soon to begin with the signing of the ROD." (Implementation Plan (IP) 7/2000 at 4-12.) Thus, we are at a place where the reviewing public should feel there is a solid plan in place, described in the Preferred Program Alternative selected by CALFED in the Programmatic EIS/EIR, and possessing sufficient details for meaningful public review and comment. Unfortunately, the final document raises more questions than it answers, just like its precursor, and lacks the necessary factual detail for reviewers to read it as an informative document. Moreover, we have searched the entire final document and the responses to comments, and we still have not found the necessary cumulative impacts analysis, an agricultural resources mitigation plan, or an assurances package to address the effects of the Ecosystem Restoration Program Plan and the Multispecies Conservation Strategy on agricultural resources.

The Farm Bureau members have sent over 300 letters to CALFED requesting additional time to review the final document and an opportunity to have CALFED administrators explain the details of the changes made in the document by virtue of the adoption of the June 9, 2000 Framework for Action agreed to by Governor Davis and Interior Secretary Babbitt and incorporated into the Programmatic EIS/EIR as the Preferred Program Alternative (PPA). Consistent with CALFED's pattern of saying the right things but doing the opposite, CALFED notes generously, "In describing a program as large as CALFED, it is easy to lose sight of the human perspective of how the program will affect individuals, their neighbors and the region that they live in." (IP 7/2000 at 1-4.) The letters to CALFED request an additional period of time for comments, hearings and/or workshops to gain an understanding of CALFED's concerns with the "human perspective." Unfortunately, Acting Director Steve Ritchie states in a letter dated August 8, 2000, that this open and public process will not be pursued. (Representative copies of Farm Bureau member letters and Mr. Ritchie's response are attached as Exhibit A and are herein specifically incorporated by reference.)

The Farm Bureau continues to have the concerns raised in its previous letters relaying extensive comments. We also have ongoing concerns with respect to the sufficiency of information provided in the Programmatic EIS/EIR. The document still does not allow for informed decision-making and informed public participation, especially with respect to the new information generated by the selection of the PPA. Further, CALFED's responses to comments in the final document are just as

inadequate and conclusory as the information provided in the Draft Programmatic EIS/EIR. CALFED did not make a good faith effort at full disclosure in this Final Programmatic EIS/EIR.

## II. DISCUSSION

The Farm Bureau repeats its objection to the lack of respect for the public CALFED exhibits by its refusal to extend the extremely curtailed period allowed for review and comment on the extraordinarily lengthy and complex series of documents it has issued as its Final Programmatic EIS/EIR. In all aspects it has been made inexcusably burdensome, but nowhere does it appear more like an effort to defeat further scrutiny than in the water quality section, where its contrived, multivolume cross-referencing treatment of responses to comments enable its authors to run the reviewer through a rat's maze of vague, repetitious irrelevancies before arriving at the inescapable conclusion that CALFED does not intend to provide any substantive response to public concerns. The authors of these volumes appear to have taken as their model the tout in the Marx Brothers' film, "A Day at the Races," who sold a tip that required a form book that required a deciphering key that required . . . and so on until a cart load of documents were purchased, but by then the race was over. Sixty days, for public comments in this case, might not have been enough, but would at least have shown some semblance of good faith to the affected public.

The Farm Bureau hopes this does not presage CALFED's further treatment of the due process rights of this state's citizens to the full and public examination of all hypotheses, assumed facts, models and conclusions offered into state regulatory processes by committees, agents or advisory bodies on behalf of CALFED. Farm Bureau must emphasize that no action may be taken in furtherance of CALFED except in compliance with CEQA and NEPA. Respecting such further actions, no citizen's examination of issues, underlying data or assumptions may lawfully be foreclosed and no objection disallowed because of his/her failure to participate in or object during a preceding CALFED treatment of such issues, data, or assumptions. We will hold CALFED and its participating agencies to CALFED's repeated assurance: "CALFED is not a regulatory agency and does not seek to change state or federal regulatory activity." (WQ 1.4.0-12, and see below, Farm Bureau objection #2). Neither may CALFED feed into regulatory activity any preclusive water quality targets or action preferences that direct regulatory activity and defeat the full participatory rights of the affected public.

### A. Supplemental Comments on CALFED Responses to Farm Bureau Concerns:

The Farm Bureau's review of the CALFED responses to concerns raised by the Farm Bureau on September 23, 1999 regarding the DEIS/EIR uncovered little substantive change or explanation of the points and issues the Farm Bureau found

objectionable. No detailed reexamination of such points and issues will be made here: The Farm Bureau rests on its previous comments.

## **B. Treatment of Water Quality Issues Comments**

Because of the importance of the legal and public policy concerns that CALFED has failed to address, the Farm Bureau offers these supplemental comments addressing CALFED's responses to the Farm Bureau's "Summary of Objections to the WQPP" (Response to Comments Vol. III: Comment Letters and Testimony Part 1, pages 613-614).

1. **The Farm Bureau objection to CALFED's advocacy of specific solutions.** CALFED Response WQ-6.4.1-1: "The WQPP does contain a list of stakeholder-recommended actions . . . . These are not considered exhaustive lists . . . . Other management tools can be incorporated . . . . Workgroups . . . define project priority and appropriateness . . . . To receive funds, each project must first receive approval by stakeholder and agency groups."

### Rejoinder:

This response fails to grasp the nature of the problem. It is that the process by which limited groups of "stakeholders" (many of whom have no financial or personal roots in the areas affected by their recommendations), meeting at a distance from the affected areas, communities and people, developed the list of specific solutions. This process prevented full and fair examination and input by parties who will be charged with carrying out the "solutions" and who will have to live with the consequences (the parties with a real "stake" in the process). Selecting those actions that were listed in the DEIR and expressly rejecting other actions (for example, a drain facility) necessarily constitutes a preclusive preference that will drive future allocation of CALFED resources and prevent the funding of other, more effective, actions that might be selected if there were full public participation.

2. **The Farm Bureau objection to CALFED's superimposing a new tier of extra-legal decision-making through the WQPP that nullifies due process safeguards given to affected interests under the existing statutory and regulatory system for setting and implementing water quality objectives/standards.** CALFED Response WQ-1.3.0-2 and related Responses at WQ-1.4.0-1 through WQ-1.4.0-6: "CALFED does not possess independent, regulatory authority over water quality. However, CALFED does recognize the need for participating agencies to exercise their responsibilities with regard to water quality. CALFED will work with all entities in support of achieving its water

quality goals . . . . CALFED has identified target levels for water quality parameters of concern . . . . these targets are not regulatory.”

Rejoinder:

CALFED's response again fails to grasp the problem. It is that these target-setting deliberations conducted by CALFED's inner circle of agencies and activists that make careers of meetings evade the lawfully-established public processes by which water quality objectives and implementation programs (of which target-setting is necessarily a part) are required to be determined. It is of no consequence that the public advisory committee to CALFED, BDAC, is or may be a "federally chartered citizens' advisory committee" (WQ-1.3.0-1), the extra-legal target-setting function of CALFED forecloses full public examination of and participation in the development of the fundamental factual assumptions that will determine future actions and expenditures. CALFED committees, stakeholder groups, advisors and staff may certainly provide comment in appropriate public agency workshops, meetings and rulemaking proceedings under the existing regulatory system, but these must be given no special weight in such public proceedings. The public must be assured that their full participation and input will not be impaired, as to any issues germane to eventual decisions by appropriate regulatory agencies, by their failure to submit comments or otherwise participate in antecedent CALFED deliberations.

The Farm Bureau must emphasize its particular concern regarding the CALFED statement at Response WQ-1.4.0-1, that, "Elimination or reduction of any industry is proposed as a final source control measure when other measures fail to achieve the goals of the program." Farm Bureau reminds the authors that CALFED has no independent water quality regulatory authority, and that in California, the Porter-Cologne Water Quality Control Act not only is the primary source of all water quality regulatory authority, but the exclusive source of nonpoint source (NPS) regulatory authority. (It is well settled that the Clean Water Act confers no authority for a federal agency to regulate NPS generators). Under Porter-Cologne, no water quality management plan can be adopted without taking economic impacts and attainability into account. Regional boards are required to ensure that any water quality objectives they set are, in fact, reasonable (see Water Code § 13241). This entails, at a minimum, a full examination of the existing, actually available, methods for compliance with the objectives and the costs of such methods. The Clean Water Act adds nothing to CALFED's power or the power of any participating agency in this regard. For NPS management issues in particular, it is expressly provided that sources can only be required to undertake practices that are "feasible" (33 U.S.C. §§ 1288(b)(2)(F), (G), (H) and (I)). NPS generators can only be required to reduce pollution "to the maximum extent practicable" (33 U.S.C. § 1329(a)(1)(C)). These constraints have been imposed by statute on state and federal agencies in recognition of the complexity of variables affecting water quality, and of the

necessarily experimental, or "adaptive," process that must be applied to objectives-attainment in order to ensure that livelihoods, community economics, and other beneficial uses our waters must serve are not capriciously sacrificed by a narrow and ill-conceived enthusiasm to achieve speculative goals at any cost. Again, this CALFED statement illustrates the danger of allowing CALFED to transform itself into an over-arching, extra-legal, process for determining water quality "targets," or for selecting preferred target-attainment "solutions." Economic considerations cannot be fully brought to light without full participation by all potentially impacted parties.

3. **The Farm Bureau objection to the WQPP factual assertions regarding the sources and extent of water quality impairments as lacking citation to evidence in the record.** CALFED Response WQ-1.4.2-3: "The Program used existing information from the CWA Section 303(d) list of impaired water bodies for California to identify the location of beneficial use impairments associated with parameters of concern."

Rejoinder:

The 303(d) list does not cure the evidentiary defect. California's 303(d) list for the most part contains nothing more than generalized descriptions of asserted impairments, using such imprecise terms as "pesticides," "nutrients," "metals," "sediment," or "silt," and attributes these impairments with equal imprecision to broad source categories such as "urban," or "residential," or "agriculture." It provides no scientific data or citation to external data sources that may be obtained from a public record. The state has conceded that the factual underpinnings of its 303(d) lists are thin, at best (generally simply "professional judgment" with little or no instream data collection), and has given emphasis in its TMDL development proceedings to filling in the data gap by establishing appropriate monitoring methodologies and investing in monitoring stations. CALFED must not be allowed to assert recommendations and influence priorities or expenditures affecting state regulatory processes based on a non-existent data base in which the state itself has no confidence. CALFED's proper role must be confined to identifying potential issues and supporting the efforts of the state and affected publics, through state-directed public processes, to obtain actual monitoring data collected pursuant to accepted, reliable, methodologies.

4. **The Farm Bureau objection to the inclusion of water quality impairments in the Upper Fall River, and to the overbroad scope of the CALFED "Solution Area," on the ground that it clearly encompassed impairments, lands and waters that can have no material impact on Bay-Delta water quality, including the entire North Coast, entire Central and South Coasts, and selected Southern California inland watersheds.** CALFED Responses WQ-1.3.0-1 and WQ-10.4.0-1, too lengthy to quote here, again fall far short.

Rejoinder:

These responses fail to recognize that CALFED was not established as a statewide water quality management vehicle, but was expressly confined to the water quality problems within the Bay-Delta. Farm Bureau is pleased to be assured that “. . . the proposal of turbidity reduction activities without a nexus to the Bay-Delta has been removed from the WQPP . . . .” (WQ-10.4.0-1). However, this assurance has no meaning, in view of CALFED’s continuing assertion that it will continue to address “. . . sedimentation in upper watershed areas . . . in overall watershed restoration within CALFED and other efforts” (*ibid*), and that “[t]he scope of the problem and solution area [will continue to] incorporate areas that may contribute to the problem . . . , considering source control.” (WQ-1.3.0-1, emphasis added.) The meaning of this last assertion is unclear, and it is not made clearer by the subsequent reference to including delivery areas in the water quality analysis because of potential “end-of-pipe treatment techniques . . .” (*ibid*). Before it is allowed to expand its problem and solution areas, CALFED must be held accountable to the limited scope of the agreements on which it is founded. It must demonstrate a clear and direct relationship to Bay-Delta water quality.

Moreover, the Farm Bureau cannot accept CALFED’s insistence that it somehow gains authority to broaden its field of view by virtue of the inclusion of “15 state and federal agencies” in its deliberations, or its receptivity to “comment and advice” from BDAC, “a 34-member federally chartered citizen’s advisory committee” (WQ-1.3.0-1). The inclusion of impairments, lands and waters that are not directly responsible for Bay-Delta water quality problems extends the scope of regulatory impacts to areas, communities and people who have little or no understanding of CALFED’s operations (indeed—most people do not know it exists), let alone of the ambitions of CALFED adherents concerning the future of such areas, communities and people. These impacted, out-of-scope, interests cannot possibly be represented and defended in CALFED proceedings. The Farm Bureau is not reassured by CALFED’s hollow insistence that it “. . . is not attempting to change area of origin water rights regulation . . . .” (WQ-1.3.0-2). Of course it is. By including upper watershed areas and no-direct-impact areas CALFED necessarily changes their area of origin water rights by foreclosing options in the future exercise of such rights.

**5. The Farm Bureau objections treated with a common response by CALFED:**

- a) **That it is beyond the scope of the Framework Agreement of CALFED to impose conditions directly, or to demand their imposition by others, in any agreement, program or permitting process to achieve specific solutions to water quality problems within tributary watersheds;**

- b) That the WQPP violates the substantive limits of the Principles of Agreement on Bay/Delta Standards between the State of California and the Federal Government;
- c) That CALFED does not adhere to the limited role given it by the Framework Agreement, which clearly confined it to facilitating coordination and communication among the appropriate jurisdictional agencies, but has instead transformed the intended process for coordination of legal authorities into a process for extra-legal decision making.

CALFED lumps its Responses to all of these objections under WQ-1.3.0-2, discussed by the Farm Bureau above under Rejoinder number 4. CALFED's response is nothing more than a vague and sweeping reference to the participation of 15 state and federal agencies, and to the advising role given to 34 selected representatives of other sectors through BDAC.

Rejoinder:

This is no response at all to the very serious question of whether this EIS/EIR and the WQPP it purports to examine stand upon proper authority. The Farm Bureau must conclude that CALFED's arrogant and dismissive non-response demonstrates beyond doubt its disdain for people's right to participate fully in any governmental action that will affect their futures, the futures of their communities, and the futures of the resources on which their children will depend. **The people have not entrusted their futures or relinquished their rights of direct participation either to the 15 agencies convened under the Framework or to the advisory committee of 34. Neither have they authorized CALFED to exceed the scope of the Framework and Principles of Agreement. CALFED's insistence that 15 agencies and an advisory group of 34 can override the limitations of its founding instruments demonstrates that it has indeed become a shadow government: unelected, uncontrolled by statute, unrestrained by due process, and unaccountable to the public.**

**C. CALFED's Treatment of Watershed Issues Comments**

In reviewing the Programmatic EIS/EIR, it is clear the CALFED primary objectives as described in the Watershed Program Plan are distinctively different from the four CALFED plan goals as reiterated in the June 2000 Framework Agreement. The four goals in the Framework Agreement are, "(1) to restore the ecological health of a fragile and depleted Bay-Delta Estuary; (2) improve the water supply reliability of the state's farms and growing cities that draw water from the Delta and its tributaries, including 7

million acres of the world's most productive farmland; (3) protect the drinking water quality of the 22 million Californians who rely on the Delta for supplies; and (4) protect the Delta levees that ensure its integrity as a conveyance and ecosystem."

In contrast, the Watershed Program Plan has rewritten the CALFED goals in a manner that may cause decisions by this program to be inconsistent with the goals in the Framework Agreement. The goals in the Watershed Plan that are intended to correspond with the Framework goals are now slanted to provide more protection for the ecosystem and less protection for agriculture. The Watershed Program rewrote the program goals as follows:

- 1) Improve and increase aquatic and terrestrial habitats and improve ecological functions in the Bay-Delta to support sustainable populations of diverse and valuable plant and animal species. **Farm Bureau Comment. The corresponding Framework goal claims to restore ecological health. This goal moves beyond restoration into increasing habitat that may or may not be necessary for the restoration of the ecological health of the Bay Delta. This is clearly an indication that the Watershed Program may fund projects for land acquisition, in addition to the acquisition already intended under the Ecological Restoration Program. In addition, funding programs that plan to support "diverse" plant and animal species may or may not restore the Bay-Delta ecological health. There must be a balance. The rewritten goal by the Watershed Program appears to ignore any balance in exchange for habitat and species.**
- 2) Reduce the mismatch between Bay-Delta water supplies and the current and projected beneficial uses dependent on the Bay-Delta system. **Farm Bureau Comment. Improving water supply reliability as stated in the Framework has little connection to "reducing a mismatch," as is indicated in the Watershed Program statement. The term reducing a mismatch implies a shift in current water uses to other water uses. Farm Bureau is adamantly opposed to shifting agricultural water supplies to urban uses. The purpose of this Framework goal is to ensure that both sectors of California, agriculture and the urban sector, have a reliable supply of water in any given year, without regard to drought or heavy rain. The Watershed Program goal could be interpreted to mean the exact opposite.**
- 3) Provide good water quality for all beneficial uses. **Farm Bureau Comment. The third goal of the Framework is to protect drinking water quality. To shift the emphasis to all beneficial uses greatly expands the goal. There are a number of beneficial uses for almost every body of water in California. If CALFED tries to meet every beneficial use, then it may never accomplish the four intended goals. There are other regulatory processes intended to meet water quality objectives that are outside of the CALFED program.**

- 4) Reduce the risk to land use and associated economic activities, water supply, infrastructure and the ecosystem from catastrophic breaching of Delta levees. **Farm Bureau Comment. The Framework goal is simply to protect the Delta levees. The Watershed Program shifts this from protection of the levees to reducing catastrophic breaching. Based on this shift, the Farm Bureau is concerned that the Watershed Program would not fund projects that protect Delta levees unless applicants can show that there will be a catastrophic breach otherwise. Such a policy could totally eliminate any watershed project being funded that is related to the Delta levee system. Yet, the program would fund the protection of oak trees 200 miles from the Delta (See the Farm Bureau Comment below on response to comment 1.2.1)**

1.4 Geographic Scope – The program plan claims that “any problem associated with the management and control of water, or the beneficial use of water in the Bay-Delta (including both environmental and economic uses) is within the purview of CALFED.” This is clearly a misstatement on the scope of authority granted to the CALFED program. The CALFED program is an interagency cooperative program that contains no regulatory or jurisdictional authority under the law. **Farm Bureau Comment. All regulatory authority on environmental and water quality issues in the Bay-Delta still reside with the appropriate statutory agencies. To state otherwise is incorrect and another example of the Program trying to expand its current nonexistent authority under the law.**

1.5 Watershed Program Goals and Objectives – The stated goals of the Watershed Program are to provide assistance, both financial and technical, and to emphasize the importance of locally based environmental protection and enhancement. **Farm Bureau Comment. Farm Bureau supports these goals and believes them to be the appropriate role of the CALFED Watershed Program. However, of the six objectives identified to reach these goals, none discusses the need to fund on-the-ground projects. Most are related to collaboration, monitoring, education and assessment. The objectives should be amended to reflect the program goals.**

2.1 Introduction – In the Watershed Program elements, the introduction recites the objectives of CALFED. However, as discussed above, the watershed objectives are different from those reiterated in the Framework agreement. **Farm Bureau Comment. (See the Farm Bureau Comments 1 – 4 above.)**

2.1.1 Watershed Stewardship – Activities supported by the Watershed Program must be socially and politically in concert with local needs and desires. **Farm Bureau Comment. The program provides no indication how it will determine if something is socially and politically in concert with local needs and desires. Such a determination is subjective and places CALFED in the position of determining what local politics**

**will prevail. The Farm Bureau is opposed to CALFED deciding if something meets the political needs of a local community.**

**2.1.2 Watershed Restoration Projects – The watershed activities that may be supported for improving water quality appear to be limited to non-point sources of pollution. Farm Bureau Comment. While the Farm Bureau supports assistance for helping to control non-point source pollution, it must be recognized that non-point source pollution is not the only factor causing impairment to Bay-Delta waters. There are numerous point sources of pollution that should be eligible for funding under the Watershed Program.**

**2.2 Element A—Coordination and Assistance – As part of providing coordination and assistance, the Watershed Program intends to identify government agencies and watershed groups that participate in activities consistent with the goals and objectives of CALFED. This component fails to recognize that many individuals everyday are managing properties and conducting activities that help support the objectives of CALFED. Farm Bureau Comment. It is not possible for CALFED to identify all individuals; however, it should not be overlooked that others besides government agencies and watershed groups are doing important work within the watersheds that drain into the Bay-Delta.**

**Element A also intends to support efforts to strengthen watershed management in local general plan revisions. Farm Bureau Comment. CALFED's interference in the local general plan process extends its limited role into local government issues. Even if requested by a segment of the community or a planning department, such interference may not be welcome by the whole community. It also allows CALFED to place a state value judgement into traditionally local issues.**

**Of even greater concern is the continued desire of the Watershed Program to interfere with policy issues related to liability and indemnification for environmental restoration work. The program intends to encourage stakeholders and legislators to establish legal policies to meet this goal. Farm Bureau Comment. On such policy issues, it should be the stakeholders that encourage legislators to resolve legal liability issues. It is not the role of CALFED to prompt others to resolve such issues. As stated in previous comments, here is another example of the Watershed Program trying to increase its authority and influence over environmental issues throughout California.**

**2.3 Element B-Adaptive Management and Monitoring – The Watershed Program intends to develop specific performance measures at a later time. Farm Bureau Comment. One of the main problems with the Watershed Program as currently written is that it defers the development of performance measures and specific criteria into the future. By not including either, it is not possible to perform the necessary analysis as required by the California Environmental Quality Act (CEQA).**

2.4 Element C-Education and Outreach – The Watershed Program plans to fund conservation education programs conducted at the local watershed level and also to fund conservation education curriculum projects. **Farm Bureau Comment. Farm Bureau is not opposed to conservation education that is consistent with the objectives as outlined in the Framework Agreement. However, conservation education that meets only the objectives as written by the Watershed Program will not be balanced and will provide only one skewed perspective. Unless the Watershed Program changes its objectives to be consistent with those stated in the Framework, all of the work done by the program will be one-sided and unbalanced.**

2.6 Element E-Watershed Processes and Relationships – The Watershed Program plans to support research and education regarding watershed process. **Farm Bureau Comment. Farm Bureau supports the use of CALFED watershed funding for research on watershed processes. The research funded by CALFED must be scientifically credible and subject to appropriate quality assurance and quality control parameters. The Watershed Program should clearly clarify that only such credible research will be funded under this program.**

In this element, the Watershed Program discusses the need to establish a set of principles and criteria for funding watershed activities. **Farm Bureau Comment. As mentioned in comment 2.4, the failure to include the criteria within the program plan fails to meet the requirements of CEQA.**

3.2 Watershed Program Principles – The Watershed Program has identified seven principles to guide the funding or support of watershed activities. One of the principles requires the activity to be community based and to have demonstrable community support. **Farm Bureau Comment. It is essential that funded watershed activities are locally led and community based. It is unclear what would constitute demonstrable community support. Would this require support from the local Board of Supervisors? What if the project is being proposed by a significant number of landowners within the watershed in question but is opposed by others within the community? Will this not be considered community supported? Farm Bureau is concerned that by requiring demonstrable community support, some projects will be denied just because a few people within the community object to the project for political reasons.**

3.3.1.1 Collaboration Between Public and Private Parties – The program identifies anticipated decisions in several different categories. One future anticipated decision is criteria describing a watershed group. **Farm Bureau Comment. As mentioned previously, future criteria fails to meet the requirements of CEQA since it is not possible to determine if the criteria may cause a significant environmental effect.**

3.3.3.2 Sustainable Watershed Programs – The program proposes to make decisions regarding the format, content, and locations for work group meetings and other assemblies. **Farm Bureau Comment. The local community members must make decisions about the form, content and location of local watershed meetings. The CALFED program dictating such elements is contrary to the development of locally led Watershed programs.**

3.3.5.1 Improved Watershed Ecosystem Maintenance and Enhancement – The program intends to place an emphasis on developing locally led programs that can be maintained and replicated within the local communities of the Bay-Delta watershed. **Farm Bureau Comment. Farm Bureau is not opposed to the maintenance of locally led programs within Bay-Delta communities. We are opposed to the Watershed Program replicating one program into another Bay-Delta community. Watershed programs are supposed to be locally-led. If CALFED encourages similar programs into other communities, then the Watershed Program is no longer locally-led and is instead state mandated. Locally-led watershed programs must begin at the local level, not through CALFED.**

3.6.1 Stage 1 Actions – Item 9 of the Watershed Program's stage 1 actions plans to develop a state-wide umbrella watershed management act. **Farm Bureau Comment. Farm Bureau is extremely concerned with the development of a statewide watershed management act. Watershed management is about local control. The development of a statewide program will circumvent local programs and place statewide values on local processes. CALFED should not be putting forward legislation with regards to a statewide watershed management act.**

### CALFED's Responses to Comments

Response to comment 1.2.1 Primary Objective - This response suggests that funded watershed activities may include the protection of oak woodlands. The comment then references the "Desired Outcomes" section of the watershed plan. However, the "Desired Outcomes" section does not reference the protection of oak woodlands as a potentially funded activity. **Farm Bureau Comment. Farm Bureau is greatly concerned that the Watershed Program will fund upstream programs and activities that have little nexus or applicability to the CALFED objectives. The protection of oak woodlands is an example of one activity that may have little relevance to CALFED water quality objectives and more relevance to local land use decisions. There are other programs outside of CALFED that are appropriate for protecting oak woodlands. The Watershed Program should not fund extraneous projects that have little relevance to CALFED objectives.**

Response to comment 1.4 Geographic Scope - The program plan intends to allow any project that supports the CALFED objectives to be eligible for support from the Watershed Program without regard to geographic boundaries. **Farm Bureau**

**Comment.** By having such a broad scope, both geographically and substantively, the Watershed Program may end up funding projects that have little direct correlation to the 4 distinct CALFED goals. Farm Bureau is concerned that the CALFED Watershed Program is trying to be a statewide, comprehensive watershed program. The concept of a statewide watershed program runs completely contrary to the universal understanding that watershed programs are supposed to be locally-led and developed by local communities.

Farm Bureau supports the statement that, "[t]he Watershed Program is not a regulatory or mandatory program and will not require anyone to develop a plan that benefits the estuary." However, we remain concerned with the broad geographic scope and disregard to physical location contained within the Watershed Program.

Response to Comment 1.5 Watershed Program Goals and Objectives - The response alludes to other CALFED programs and discusses what the Watershed Program intends to fund. However, neither the response to comment or the Watershed Program Plan adequately distinguishes between the role of the Watershed Program and the other CALFED programs. **Farm Bureau Comment.** Since a considerable amount of taxpayer money is being expended, the CALFED program must take special care to not duplicate efforts and inefficiently spend taxpayer dollars. Farm Bureau is concerned that without clearer lines of demarcation between the Watershed Program responsibilities and the other programs, projects will be duplicated and not carefully coordinated.

Response to Comment 1.5.1 Primary Objectives - The Watershed Program responds that the implementation plan for the Watershed Program is still being refined and is incomplete at this time. **Farm Bureau Comment.** It is impossible to comment on an incomplete implementation plan. In addition, the appropriate environmental analysis is unable to be conducted on an incomplete element. Consequently, the mandates of CEQA have been violated.

Response to Comment 2.1.2 Watershed Stewardship – The Watershed Program will only provide technical or financial assistance if a local program is willing to adopt the Watershed Program's principles. **Farm Bureau Comment.** A local program is supposed to develop principles for the local community, not for the CALFED Watershed Program. By requiring local programs to adopt standard statewide principles, the program is forcing local communities into a statewide watershed program instead of a locally led community program.

In addition, the response document reiterates the unwillingness of the CALFED program to determine specific selection criteria for projects until the Watershed Program is funded. **Farm Bureau Comment.** This belief is backwards. The selection criteria should be established so it can be determined if the watershed program merits funding. Otherwise, we are funding an unknown program.

Response to Comment 2.2 Element A-Coordination and Assistance – Page seven of the response document clearly raises the program's intent to create a new regional government bureaucracy. The response states that the program intends to take the objectives to regional community organizations for the development of regional implementation plans. **Farm Bureau Comment. Farm Bureau is opposed to the CALFED Watershed Program creating a regional government bureaucracy under the auspices of watersheds.**

Response to Comment 3.6 State 1 Actions – Again, the program refers to the development priorities when funds are available. **Farm Bureau Comment. To properly consider if the program is worth funding, the priorities should be established first.**

#### **D. CALFED's Treatment of the Multispecies Conservation Strategy Comments**

The Multi-Species Conservation Strategy (Strategy) extends well beyond the goals of the CALFED process. This over-reaching Strategy greatly exceeds what is necessary to protect listed species. In the process, agriculture is sacrificed. The Strategy's over-zealous approach results in four fatal flaws.

1. The Strategy circumvents the Endangered Species Act and unlawfully assumes the authority of the implementing agencies.
2. The Strategy fails to streamline the current regulatory processes or achieve any degree of regulatory certainty.
3. The Strategy fails to balance environmental needs with those of the agricultural industry and urban and suburban water users.
4. The Strategy fails to discuss, or even consider, its impacts on agriculture.

**The Strategy circumvents the Endangered Species Act and unlawfully assumes the authority of the implementing agencies.**

Through the Strategy, CALFED intends to "contribute to the long-term survival leading to the delisting" or "contribute to recovery" of more than 40 different species, 16 of which are not even listed under the federal or state Endangered Species Acts. This greatly exceeds the necessary protection measures that should be taken as well as the legally required level of protection. The vast majority of the conservation measures necessary to achieve CALFED's lofty goals will occur on private lands at the expense of private landowners. The only legal obligation required of private landowners is that their activities not contribute to the decline of listed species. As CALFED is not a federal or state agency, its only obligation is to not contribute to the decline of listed species as well. Furthermore, if CALFED actually achieves its fundamental goals of solving problems regarding ecosystem quality, water quality, water supply reliability and levee

system integrity, immeasurable environmental benefits will occur. Thus there is no legal authority and no need for CALFED to embark upon the "recovery" of both listed and unlisted species. While this is certainly a worthwhile endeavor, time and resources should be utilized more efficiently.

The existence of CALFED is predicated upon the Management Agency Agreement. This agreement does not bestow any regulatory authority on CALFED. Despite this, CALFED has taken it upon itself to create recovery plans for federal and state listed species. Many of the recovery goals found in Table 3-1 (p. 3-5 through 3-10) are goals that CALFED decided were necessary to achieve "recovery". However, recovery plans can only be drafted and adopted by the U.S. Fish and Wildlife Service or the National Marine Fisheries Service. CALFED's lofty "recovery" goals have no weight with regard to the Federal Endangered Species Act or the California Endangered Species Act. Obtaining these goals will, however, have significant impacts on private landowners.

**CALFED attempts to justify its actions by describing the MSCS as a "biological assessment for the federal ESA and a programmatic plan under the NCCPA."<sup>1</sup> However, this description is not accurate. First of all, a biological assessment is not needed for species which have not been listed.<sup>2</sup> More importantly, the MSCS does not meet the legal requirements as set forth in 50 C.F.R. §402.12 et al. While the contents of a biological assessment are at the discretion of the Federal agency, the regulations suggest that a biological assessment contain the results of an on-site inspection, an analysis of the effects of the action on the species and habitat, including consideration of cumulative effects and an analysis of alternate actions considered.<sup>3</sup> The MSCS is completely void of any site-specific information. CALFED explains that this level of specificity will be brought forth in the action-specific information plans (ASIP). The MSCS does not analyze the effects on the species and habitat or alternative actions. Once again, CALFED attempts to defer this crucial information until an ASIP is produced during the implementation phase of CALFED. Without site-specific information, it is virtually impossible to undertake an adequate analysis of impacts on species or their habitat as well as alternative actions. Without this information and analysis, the MSCS can not legally serve as a biological assessment for the federal ESA, and CALFED has no independent authority to issue its own "recovery" plans.**

It is fool-hardy to pursue "recovery" goals which have no legal weight and may or may not result in the delisting of a species. CALFED's job is not to implement the Endangered Species Act. CALFED is to solve California's water problems in an

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<sup>1</sup> CALFED Bay-Delta Program July 2000 Programmatic EIS/EIR Response to Comments Document. MS-3 (July, 2000).

<sup>2</sup> 50 C.F.R. § 402.12(d)(1), 1997.

<sup>3</sup> 50 C.F.R. § 402.12(f) et seq., 1997.

equitable manner. If CALFED were to achieve this goal, it would, by default, result in immeasurable improvements for the environment. Thus, a more appropriate use of scarce resources would be to achieve certainty in an equitable manner for all of California's water users rather than creating, with no authority, recovery plans for listed species.

We are very confused that CALFED proposes to achieve its very ambitious goals utilizing, primarily, the Section 7 Consultation process to comply with the Federal Endangered Species Act. To begin with, CALFED has no jurisdiction or authority to initiate or participate in Section 7 Consultations. Because all of CALFED's projects are federally funded, Section 7 Consultation will probably be triggered. However, CALFED has absolutely no role in the consultation. By statute, Section 7 consultation occurs between either the U.S. Fish and Wildlife Service or the National Marine Fisheries Service and the Federal agency which is authorizing, permitting or funding the activity. However, CALFED is not an agency. Thus, it has no authority to require consultation or participate in consultation.

**The Strategy fails to streamline the current regulatory processes or achieve any degree of regulatory certainty.**

Although CALFED claims to utilize a streamlined process, this simply does not occur. CALFED proposes to create ASIPs in order to evaluate and/or improve 243 species and 18 different habitat types. These ASIPs do not currently exist, and it is presently impossible to gather the biological information necessary to satisfy Section 7 consultation requirements. **"Formal consultation shall not be initiated by the Federal agency until any required biological assessment has been completed and submitted to the Director in accordance with § 402.12."<sup>4</sup> As discussed above, the MSCS clearly lacks the specific information statutorily required to satisfy the federal ESA requirements. Without such information, section 7 consultation can not result in the issuance of any final decision. We are presently embarked upon a process that has resulted in a colossal waste of time and resources but has not streamlined anything.**

CALFED considers this streamlining because, in theory, a group of similar projects will be lumped together and go through a single Section 7 consultation process. Given the scope of the Strategy, there may be thousands of "projects" which are to be carried out. Lumping a few together will not increase efficiency. Furthermore, CALFED gives absolutely no indication about the specifics of the "programmatic" Section 7 consultation. We are not even sure if such a scheme would be recognized under the Endangered Species Act. **We were unable to find any regulations regarding a "programmatic section 7 consultation" in either the Code of Federal Regulations or the federal Endangered Species Act.**

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<sup>4</sup> 50 C.F.R. § 402.14(c) (6), 1997.

Assuming a programmatic consultation process is possible, Section 7 consultation is still incredibly tedious and time consuming. Furthermore, as enumerated above, CALFED will have no formal, recognized role in any consultation because it does not have the authority. Literally years can pass before the National Marine Fisheries Service or the U.S. Fish and Wildlife Service ever decide to initiate "formal" Section 7 consultation. In the interim, projects can not proceed. During this "informal" consultation process, demands are often made for additional data, new, different or increased mitigation and fundamental changes in the project itself. There are no deadlines which have to be met. There are no records of decisions being made. There is no opportunity for public. There is no opportunity for the individuals who are proposing the project or who will be impacted by the project to provide input. Informal consultation is merely the U.S. Fish and Wildlife Service (or National Marine Fisheries Service) and the authorized agency negotiating terms upon which the project can proceed. Admittedly, if this informal process is ever finished, formal consultation is a much more open process with statutory deadlines. However, there is nothing CALFED nor the affected public can do to implore the agencies to end the "informal" consultation and begin the "formal" consultation.

The difficulties of "informal" consultation must not be overlooked for another reason. There is legal authority in existence which holds that once consultation begins all activities that may adversely impact the project area must cease until consultation is concluded. Given the size of the project area proposed in the Strategy, it will be impossible to comply with this mandate. The recent "drought" experienced as a result of our inability to turn on the pumps at Tracy due to the delta smelt emphasize the critical need to be able to react very quickly. We can not simply wait patiently while consultation occurs.

Once a final decision regarding consultation is made, there is still no guarantee the project will be allowed to proceed. Any third party who believes that the mitigation is inadequate or that a crucial piece of scientific information was not utilized can file suit. The filing of third-party lawsuits is very common and has, in some instances, bogged the process down so much that consultations are never finalized and projects are never implemented. The future of California lies in the balance. We can not risk our future on a never-ending bureaucratic process that never achieves results.

Lastly, relying primarily on the consultation process to achieve compliance with the Endangered Species Act hinders CALFED's ability to utilize an adaptive management strategy. We applaud CALFED's desire to monitor the conditions and alter management strategies as we learn more about these dynamic ecosystems. However, consultation does not lend itself to such an approach. Any time a substantive management change is necessary and desired, a new consultation process must be initiated.<sup>5</sup> **Reinitiation of formal consultation is required any time new information reveals effects the action may have on listed species or critical habitat that was**

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<sup>5</sup> 50 C.F.R. § 402.16, *et al.*, 1997.

**not previously considered.**<sup>6</sup> Failing to initiate a new consultation process and receive new approval leaves CALFED extremely vulnerable to a legal challenge by any disgruntled party. Embarking upon a new consultation process means adaptive management must wait for extremely long periods of time. Given that CALFED estimates it will take 30 years to implement all of the programs it presently desires, we may never actually implement the Strategy. We will never have the ability to utilize the information gleaned from the monitoring and implement a credible adaptive management style if we are forced to rely, primarily, upon consultation.

**The Strategy fails to balance the needs of aquatic and terrestrial species with those of the agricultural industry and urban and suburban water users.**

CALFED's mantra has been "a solution to problems in one resource category cannot be pursued without addressing problems in the other resource categories." Unfortunately, this crucial premise is sorely lacking in the Strategy. The Strategy emphasizes "the use of natural processes to reestablish a sustainable environment for plants, fish and wildlife. This approach minimizes human intervention for habitat maintenance." CALFED Multi-Species Conservation Strategy, 1-3.

The complete lack of balance in this document is best exemplified by Chapter 3, Species and Habitat Goals. This chapter proposes to create and/or restore eighteen habitat types to recover or contribute to the recovery of listed species. This desire will affect more than 1.2 to 1.3 million acres and 770 to 1,900 miles of waterbodies.<sup>7</sup> However, there is not a single reference with regard to where this land will come from or what activities are presently occurring over this area. There is no mention, whatsoever, of the amount of land that is going to have to be taken out of production, or sacrificed as rivers are allowed to meander freely and eighteen different classifications of habitat types are created, restored or improved. **There is no analysis regarding the tremendous changes in environmental conditions and habitats destroyed or converted to habitat CALFED deems more appropriate.** In part, these references are not made because CALFED doesn't even know how it is going to achieve its goals, or if the goals are even necessary.

While the strategy lists over 240 species that need protection, there is no mention of the need to plan for California's ever expanding population. Agriculture's role in providing open space, habitat, and feeding the world is never mentioned. While the Strategy discuss flows necessary to "adequately protect" anadromous salmonid populations, a similar discussion regarding the flows necessary to keep the agricultural industry viable or to supply adequate, safe, reliable water for urban and suburban users never takes place.

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<sup>6</sup> 50 C.F.R. §402.16 (b), 1997.

<sup>7</sup> CALFED Multi-Species Conservation Strategy, Table 3-2, July 2000.

While a discussion regarding the impacts the Strategy will have on other water users is nonexistent, there is ample discussion regarding how greater sacrifices need to be made by agriculture and other sectors. The goal of the Strategy is to manage more than 388,000 acres of agricultural upland cropland and seasonally flooded land "for improved wildlife habitat values."<sup>8</sup> The Strategy goes on to state that

"[c]onservation measures for upland cropland and seasonally flooded agricultural habitats are **not** intended to **conserve agricultural land uses**, but are directed at avoiding impacts on agricultural lands that provide high wildlife habitat values or replacing the wildlife habitat values provided by agricultural lands..."<sup>9</sup>(emphasis added).

Farmers and ranchers' commitment to conservation is well documented. For over 100 years, agriculturists have nurtured and cared for the environment as a part of their daily operations. The Strategy's proclamation that agriculture's goal must shift from producing food and fiber for our growing population to producing habitat for wildlife is absurd. Drastically changing the management goals and techniques on this property will have a significant negative impact on both the agricultural community and the environment. This is contrary to CALFED's fundamental goal, which is to find equitable solutions for ALL user-groups. Furthermore, the environmental impacts created by such a fundamental shift must be addressed in the EIS/EIR.

**The Strategy fails to discuss, or even consider, its impacts on agriculture.**

**The most glaring omission in this Strategy is its complete failure to mitigate the conversion of private agricultural lands. Agriculture plays many vital roles in this state. Agriculture provides precious open space and creates habitat in which thousands of species thrive. Agriculture is a multi-billion dollar industry which creates significant employment opportunities. Agriculture leads the nation in the production of food and fiber, providing Californians and the world with the safest, most economical supply of food available. The massive conversion of agricultural lands, called for in this Strategy, represents a significant environmental impact that must be fully analyzed and mitigated. CALFED must consider other options which will have a smaller amount of impact on the environment and pursue those options whenever possible. This document contains no such analysis. There is not a single sentence in the entire MSCS that even acknowledges that the conversion of agricultural lands might have an impact. This omission is unlawful under CEQA. This omission is contrary to the Management Agency Agreement and the founding principals of CALFED. This omission must be rectified immediately.**

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<sup>8</sup> CALFED Multi-species Conservation Strategy, Table 3-2, July 2000.

<sup>9</sup> CALFED Multi-species Conservation Strategy, p. 5-28, June 1999.

The Strategy clearly intends to utilize private property to obtain its far-reaching goals. However, there is not even minimal discussion about the effects the Strategy's recovery proposals will have on agriculture, or any other sector. **There is absolutely no recognition of the environmental benefits derived from keeping agricultural land in production and maintaining agriculture as a viable industry. At a minimum, any plan that contemplates the removal of agricultural land must discuss the negative impacts that would occur to the species which presently reside, in concert with the farm and ranching activities, on that property. Additionally,** recognition must be given to the tremendous socioeconomic benefits agriculture provides to California. There must be a recognition that this property is currently owned by private citizens who have a legal right to produce food and fiber and any actions which will diminish the value of the private property or hinder citizens' abilities to continue their production of food and fiber must be adequately compensated. Lastly, CALFED must come to grips with the reality that they have no legal authority to take agricultural land out of production and turn farms and ranches into wildlife refuges.

**CALFED attempts to defer all of these discussion until ASIPs are developed. However, by failing to include discussions regarding the environmental impacts associated with converting more than 1.2 million acres of land<sup>10</sup> to other uses, CALFED renders this document hopelessly inadequate. Both NEPA and CEQA require a thorough review of the environmental impacts associated with a project. CALFED has refused to have this discussion by pushing it off until implementation has begun. However, the point of these laws was to force consideration of environmental effects before implementation so that the impacts are avoided or mitigated. CALFED appears to be under the false belief that it only has to considered the 244 species it deemed important and their associated habitats. However, simply because CALFED does not deem a particular land use worthy of inspection does not mean that the more than 1.2 million acres considered in the MSCS is not protected by NEPA and CEQA.**

**At a minimum, CALFED must review the impacts associated with converting the more than 668,000 to 778,000 acres of agricultural land that will be utilized for the restoration or enhancement of various habitat values.<sup>11</sup> The list of impacts to agriculture include:**

- 1. Introduction of tidal exchange to existing agricultural and other nontidal habitats. (Restoration of 1,195-1,284 acres of riparian habitat along up to 35 miles of channels, and restoration of 200-300 acres of riparian habitat along up to 75 miles of channels.)<sup>12</sup>**

<sup>10</sup> CALFED Multi-Species Conservation Strategy Table 3-2, July, 2000

<sup>11</sup> CALFED Multi-Species Conservation Strategy Table 3-2 and Table 4-1, July, 2000

<sup>12</sup> CALFED Multi-Species Conservation Strategy Table 4-1 and 4-2, July 2000.

- 2. Conversion of agricultural and natural habitats to emergent nontidal wetlands. (Restoration of up to 19,600 acres.)<sup>13</sup>**
- 3. Conversion of agricultural and natural habitats to lacustrine habitats. (Restoration of up to 1,600 acres.)**
- 4. Conversion of agricultural and natural habitats to seasonal wetlands. (Enhancement of up to 4,000 acres and Restoration and enhancement of up to 28,000 acres. Restoration of up to 1,00-1,500 acres and enhancement and management of up to 58,000 acres. Enhancement and management of up to 73,325 acres. Protection and enhancement of up to 172,800 acres.)<sup>14</sup>**
- 5. Change in land use practices. (Enhancement of up to 4,000 acres and restoration and enhancement of up to 28,000 acres. Restoration of up to 1,00-1,500 acres and enhancement and management of up to 58,000 acres. Enhancement and management of up to 73,325 acres. Protection and enhancement of up to 172,800 acres.)<sup>15</sup>**
- 6. Conversion of agricultural and natural habitats to riparian habitat. (Restoration of 1,195-1,284 acres of riparian habitat along up to 35 miles of channels, and restoration of 200-300 acres of riparian habitat along up to 75 miles of channels. Protection and enhancement of 17,000 to 25,000 acres. Protection, enhancement and restoration of up to 3,635 acres. Restoration of up to 5,932 acres and protection and enhancement of up to 1,000 acres. Protection, enhancement and restoration of riparian habitat up to 75 miles of channel.)<sup>16</sup>**
- 7. Change in land use practices. (Restoration of 1,195-1,284 acres of riparian habitat along up to 35 miles of channels, and restoration of 200-300 acres of riparian habitat along up to 75 miles of channels. Protection and enhancement of 17,000 to 25,000 acres. Protection, enhancement and restoration of up to 3,635 acres. Restoration of up to 5,932 acres and protection and enhancement of up to 1,000 acres. Protection, enhancement and restoration of riparian habitat up to 75 miles of channel.)<sup>17</sup>**
- 8. Change in land use practices. (Protection and enhancement of 50-100 acres.)<sup>18</sup>**
- 9. Change in agricultural cropping patterns and practices. ("Cooperative" management of 40,000 to 75,000 acres of agricultural land to enhance habitat**

<sup>13</sup> CALFED Multi-Species Conservation Strategy Table 4-2, July 2000.

<sup>14</sup> CALFED Multi-Species Conservation Strategy Table 4-1 and Table 4-2, July 2000.

<sup>15</sup> *Ibid.*

<sup>16</sup> *Id.*

<sup>17</sup> *Id.*

<sup>18</sup> *Id.*

values for waterfowl and associated species in the Delta Region.

"Cooperative" management of 298,643 acres of agricultural land to enhance habitat values for waterfowl and associated species in the Sacramento River Region. "Cooperative" management of 15,290 acres of agricultural land to enhance habitat values for waterfowl and associated species in the San Joaquin River Region.)<sup>19</sup>

10. Construction and other activities necessary to improve agricultural infrastructure. ("Cooperative" management of 40,000 to 75,000 acres of agricultural land to enhance habitat values for waterfowl and associated species in the Delta Region. "Cooperative" management of 298,643 acres of agricultural land to enhance habitat values for waterfowl and associated species in the Sacramento River Region. "Cooperative" management of 15,290 acres of agricultural land to enhance habitat values for waterfowl and associated species in the San Joaquin River Region.)<sup>20</sup>

11. Change in agricultural land use practices associated with reductions in use of pesticides. (Reduction by 25 to 50 percent.)<sup>21</sup>

12. Conversion of agricultural and natural habitat to riparian habitat at and near Caswell State Park on the Stanislaus River.<sup>22</sup>

13. Introduction of tidal exchange to existing agricultural and other nontidal habitats in the Bay Region.<sup>23</sup>

14. Change in agricultural land use practices associated with reductions in use of pesticides in the Delta, Bay, Sacramento River and San Joaquin River Regions.<sup>24</sup>

15. Change in land use practices and cropping patterns on agricultural lands in the San Joaquin River Region.<sup>25</sup>

16. Changes in timing, state and velocity of flows in the San Joaquin River Region.<sup>26</sup>

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<sup>19</sup> *Id.*

<sup>20</sup> *Id.*

<sup>21</sup> *Id.*

<sup>22</sup> *Id.*

<sup>23</sup> *Id.*

<sup>24</sup> *Id.*

<sup>25</sup> *Id.*

<sup>26</sup> *Id.*

**17. Changes in patterns of flow in Delta Channels.**<sup>27</sup>

**18. Change in land use practices and cropping patterns on agricultural lands in the San Joaquin River Region.**<sup>28</sup>

**19. Reduction in agricultural irrigation and drainage water to support natural habitat areas in the Delta, Bay, Sacramento River and San Joaquin River Regions.**<sup>29</sup>

**20. Construction or management-related activities that result in removal or alteration of vegetation in the Delta, Bay, Sacramento River and San Joaquin River Regions.**<sup>30</sup>

**21. Conversion of agricultural and native habitats to aquatic habitat in the Delta Region.**<sup>31</sup>

**In accordance with CEQA, the impacts associated with this conversion of agricultural land must be avoided or mitigated.**<sup>32</sup>

Adjacent landowners will suffer significant impacts as a result of CALFED's proposed actions under this Strategy. CALFED fails to consider these impacts as well. A discussion regarding what protections will be provided to landowners adjacent to property suddenly taken out of production and turned into endangered species habitat must be included in this document. A discussion regarding the amount of property that will be lost as a result of erosion due to the meandering of waterbodies needs to occur.<sup>33</sup> In addition, a discussion regarding what CALFED intends to do to compensate innocent landowners when their property falls into the river must take place. CALFED must consider the increased risk to public health and safety that is a result of undertaking levee actions designed to improve habitat quality rather than improving flood protection. CALFED must recognize that the implementation of this Strategy will not occur in isolation; their proposed actions will create hardships. These hardships must be acknowledged and fully evaluated before any project is undertaken. Just as farmers and ranchers are obligated to mitigate any negative impacts on the environment as a result of our activities, CALFED is obligated to mitigate the negative impacts this Strategy will inflict on others.

## **Conclusion**

<sup>27</sup> CALFED Multi-Species Conservation Strategy Table 4-2, July 2000.

<sup>28</sup> CALFED Multi-Species Conservation Strategy Table 4-1 and Table 4-2, July 2000.

<sup>29</sup> *Id.*

<sup>30</sup> *Id.*

<sup>31</sup> *Id.*

<sup>32</sup> 2000 CEQA Guidelines 315021 and Appendix G II.

<sup>33</sup> 2000 CEQA Guidelines, Appendix G VIII.

**The Multi-species Conservation Strategy greatly exceeds what is necessary for the protection of species and ignores everything else.** Due to its over-ambitious goals, millions of dollars and an immeasurable amount of time and other precious resources **have been and will continue to** be wasted without out any significant environmental protection. Any attempt to implement this Strategy, as currently written, will result in nothing more than an exercise of never ending process without anything significant being accomplished on the ground.

The Strategy fails miserably at balancing the needs of species with the needs of all of California's resources. The omission of extremely important data, such as the amount of agricultural land that will be taken out of production to achieve the "recovery" goals, makes the Strategy so biased and one-sided its conclusions and objectives are virtually useless. The lack of specificity and balanced discussion must be corrected immediately. The scope of the Strategy must be pared down. The goals laid out in the Strategy must be consistent with both federal and state laws as well as the management agency agreement and the guiding principals of CALFED.

#### **E. CALFED Treatment of Ecosystem Restoration Program Plan Comments**

A number of farmers and others concerned about agricultural resources wrote comments to CALFED regarding the effect CALFED's Ecosystem Restoration Program land acquisitions would have on agricultural resources. CALFED's responses to these numerous comments were inadequate and conclusary to say the very least. CALFED is using a variety of government and private databases that will allow it to pin-point desirable acreages for habitat acquisition and development. For this reason, it defies credibility for CALFED to respond in the Final Programmatic EIS/EIR Responses to Comments that, "It is not possible for us to rely on a willing seller program and be able to detail locations, acreage, and land use in a programmatic document." (ERPP II, at O-1.) The availability of the land for sale should be the least of CALFED's concerns, particularly in light of its stated intent to prioritize public land first, then cooperative programs, easements, and last of all, acquisitions in fee title. CALFED's GIS program could easily provide the analysis needed of properties identified by CALFED as priorities in terms of the solution principles set forth in the Phase II Report, i.e., reduce conflicts, be equitable, be affordable, be durable, be implementable, have no significant re-directed impacts. Once properties are located on a map encompassing the CALFED solution area, CALFED cannot state with any credibility that it has no idea what lands it would consider suitable for habitat restoration and that would also be classifiable by these criteria. Clearly, the response stated above was inadequate.

Further, CALFED is already making excuses for not meeting the priority of restoring habitat on public lands first with its statement that, ". . . but not all public land is suitable. Some site-specific or species-specific habitat will need to be accomplished (sic) and private land acquired from willing sellers."

CALFED makes no attempt in the Final Programmatic EIS/EIR to assess the effects of the ERP on hydrology and water quality as required by NEPA and CEQA. In its response to comments, CALFED begrudgingly acknowledges the following: "We do know that the same habitats and wetlands generally use more water than typical agricultural crops. The use of water in a tidal wetland is very complicated, but it probably does result in more evaporation and transportation than for a typical delta agricultural class." (ERP II, at 0-11.) CALFED states the experts disagree but makes no attempt to provide data or even a passing analysis of the exact nature of these disagreements, the technical support for varying views, and some sense of which experts it is listening to in developing the program and why. None of the responses to comments regarding the need to reduce, avoid or mitigate for any adverse impacts of habitat development on agricultural resources is given more than a token response, deferring all analysis to a site by site basis. Please see our comments dated September 23, 1999 for a detailed account of the reasons this approach renders this Programmatic EIS/EIR legally insufficient to meet the requirements of NEPA and CEQA.

## **F. GENERAL OBSERVATIONS**

### **CALFED'S FAILURE TO RESPOND TO SPECIFIC FARM BUREAU REQUESTS FOR APPROPRIATE ANALYSIS**

Along these same lines, rather than discuss and decide in the Programmatic EIS/EIR whether the PPA measures meet the solution principles, CALFED chooses to defer all of the hard questions either to the legislature or to future, nebulously defined processes. For example, in the Water Transfer Program Plan, CALFED's discussion of controversial issues such as carriage water criteria, wheeling cost criteria for access to conveyance, and the role of fisheries agencies in streamlining improvements in water transfer transactions are all deferred to other processes. We go could on and on about the numerous ways in which CALFED skews the data available to it in assessing the need for various activities, justifying the funding for same, and assigning blame for past failures, but that would be fruitless and we do not have that kind of time. Rather, at this point we want to focus on the most glaring failures of the Final Programmatic EIS/EIR:

- (1) The absence of a cumulative impacts analysis;
- (2) The absence of an agricultural resources mitigation protocol;
- (3) Complete failure to address proposals submitted by the Farm Bureau regarding Partnerships For Restoration in order to facilitate Endangered Species Act compliance and CALFED's oft-stated, but rarely honored policy statement regarding general priorities for ecosystem restoration activities.

The Farm Bureau will not repeat the numerous comments made on the need for cumulative impacts analysis in this CALFED document and the legal and policy support

for CALFED's creation of that analysis. (See September 23, 1999 Farm Bureau comments.) The Farm Bureau has been required to engage in a number of Freedom of Information Act requests of CALFED and participating agencies in order to secure adequate information about ongoing CALFED activities, particularly with respect to disposition of agricultural resources. It has come to our attention that CALFED has been provided with a number of proposals for reducing, avoiding or mitigating for conversion of agricultural resources due to implementation of the Ecosystem Restoration Program Plan in particular, and applicable to other CALFED activities, such as creation of river meanders and construction of larger levees. Attached (as Exhibit B) are copies of representative samples of correspondence and comments provided to CALFED over the course of a number of years, starting in 1996 and continuing to the current environmental documentation process. We hereby incorporate by reference the statements contained in the correspondence from the California Department of Food and Agriculture constructively suggesting ways in which CALFED could meet the agricultural resources mitigation requirements of CEQA and NEPA, meet the cumulative impacts requirements, and provide financing for these activities as appropriate. Nothing in the Programmatic EIS/EIR acknowledges this lengthy dialogue. The document remains unresponsive to the detailed comments provided over the years and recently during an exchange of letters and numerous meetings held in 1999. It is obvious CALFED has no desire to meet the legal requirements of NEPA and CEQA with respect to reducing, avoiding, or mitigating the acknowledged massive impacts to agricultural land and water that will be wrought by implementation of the PPA. This is an unacceptable result.

Apparently, CALFED thinks it is sufficient to pay lip service to a priority system that states restoration activities are to commence, "first on existing public lands as appropriate, second to work with landowners in voluntary efforts to achieve program goals including the acquisition of easements, third, a combination of fee and easement acquisitions and, fourth, acquisition of fee title as necessary to achieve program objectives." (IP 7/2000 at 2-7.) This language remains unchanged from the June 1999 Implementation Plan in the Draft Programmatic EIS/EIR. A year has passed since these general priorities were restated and it has yet to be put into practice. Rather than focusing upon the first priority, restoration of public lands, CALFED continues to acquire new properties whenever and wherever they can get them, particularly if they are available in fee title. Maintenance and improvement of the already existing public lands portfolio is almost completely ignored. We have attached a copy (as Exhibit C) of a report by the California State Auditor regarding the chaos that reigns in the State's acquisition policy, or lack thereof, with respect to habitat. We hereby specifically incorporate by reference in our comments the statements made in that audit report and urge CALFED to heed the message provided in that report. A proper cumulative impacts analysis would certainly go a long way to help cure the deficiencies cited in the State Auditor's report and in CALFED's Final Programmatic EIS/EIR.

To aid CALFED in its supposed effort to work with landowners in voluntary efforts to achieve habitat goals, we hereby submit for the second time , a proposal, entitled

*Partnerships for Restoration: Safe Harbors/Assurances to Implement the CALFED Bay-Delta Program*, which has been discussed broadly in the affected communities, attached as Exhibit D. We hereby specifically incorporate by reference the statements made in that document as suggestions to CALFED on how to meet its stated general priorities for ecosystem restoration and other land and water acquisition activities as they affect agricultural resources. CALFED's continued failure to respond to this constructive suggestion is an unacceptable situation.

**INDIRECT EFFECTS OF CONVERTING AGRICULTURAL RESOURCES  
TO OTHER USES, RESULTING IN MORE URBAN SPRAWL**

In tandem with comments on the need for a cumulative impacts analysis, the Farm Bureau is concerned because agricultural lands are being swallowed by urban sprawl on one side, and various state and federal government land purchase programs on the other. It should be the concern of everyone who enjoys the bountiful and varied food supply California provides the nation and world that California's agricultural Eden is being consumed rapidly and irretrievably. The ability of the nation's top agricultural state to continue its unique and varied agricultural abundance is fast disappearing.

When CALFED completes its habitat acquisitions (or finances such acquisitions by others) and begins to manage for endangered and threatened species as well as other wildlife, the farmers and ranchers who remain will be pushed off the land by government restrictions on their ability to maintain routine and ongoing agricultural management practices, e.g., pest reduction, weed control, levee maintenance and repair, harvesting, to name a few. As more farmers and ranchers are forced to consider other options, the agricultural community shrinks and the necessary infrastructure begins to disappear. When the rural community dissipates, land that can be sold to developers will be converted to additional urban development. Thus, every failed agricultural community fostered by CALFED's takeover of agricultural resources (or funding of same) will breed urban sprawl as the affected communities seek alternative means of survival.

The CALFED Programmatic EIS/EIR is replete with internal inconsistencies, particularly between the PPA (the June 9, 2000 Framework Agreement), and the underlying discussion in the environmental report. For example, in the Water Use Efficiency discussion, CALFED continues to show expected water recovery in the range of 4 million acre-feet for water that is not labeled "irrecoverable" due to drainage into salt sinks. The Programmatic EIS/EIR also shows water generated in the range of four and one-half million acre-feet. The Framework, however, describes water savings potential for losses due to excessive evaporation or drainage to an unusable destination in the range of 260,000 to 350,000 acre-feet for agriculture. Another 520,000 to 680,000 acre-feet is expected for urban uses. Water reclamation projects are expected to generate 225,000 to 310,000 acre feet of water. The Framework figures, which are supposed to

now be part of the PPA, added all together do not come close to the four and one-half million acre-feet described in the Programmatic EIS/EIR.

Moreover, CALFED's environmental evaluation fails to discuss the assessment of proposed conservation measures through the lens of the CALFED Solution Principles requiring that such measures (1) reduce conflicts in the system, (2) be equitable, (3) be affordable, (4) be durable, (5) be implementable, and (6) have no significant redirected impacts.

CALFED states, "The Governance Plan is not an action or a project that requires environmental analysis." (IP 7/2000 at 4-1.) This observation is just plain wrong in light of the vast on-the-ground changes that will be wrought by discretionary decisions directly rendered by the governing body created under this plan. Those decisions will be colored by the makeup of this governing body. Thus far, despite the Farm Bureau's numerous public protestations to do otherwise, the governing body will consist of federal and state bureaucrats, with token public representation. Our repeated requests for local participation, consistent with the requirements of CEQA have consistently gone unheeded. For example, the proposed federal/state commission obviously will be in a position to change the way land and water resources are distributed within many local areas. The CEQA Guidelines specifically require environmental analysis of the effects that decisions by this body may have on land use planning by local government. The Programmatic EIS/EIR makes no attempts to provide information on how local interests could be addressed and accommodated in the membership of this decision-making body. Moreover, there is a vague, unsubstantiated reference to "federal constitutional infirmities" inherent in a joint state/federal government approach. CALFED makes no attempt to shed light on this observation in a way that would allow for meaningful public review and comment on the proposal to create such a new governing body.

The CALFED Final Programmatic EIS/EIR fails to be an informative document in its explication of the details of the CALFED Framework for Action as embodied in the PPA. The new information provided in the PPA raises a number of questions, most of which remain unanswered in the Programmatic EIS/EIR. Examples of these questions include, but are not limited to, the following:

#### **CONCERNS WITH FEDERALIZATION**

1. From all indications, the Framework gives federal regulators broad new authority over California's water rights. With so much of the plan driven by federal environmental goals and decisions, what assurances do we have that local and state agencies will retain their control of California's water?
2. It appears the fish continue to get top billing should a drought occur. How will the Governor's Water Bank or the water transfer market envisioned in the

Framework help water users under drought conditions without triggering new ESA requirements?

3. Will federal fisheries and environmental regulators ultimately be the ones controlling the tap for millions of Californians?
4. How will use of federal grants/loans for water conservation, groundwater management and habitat conservation on private lands affect landowners and priority in beneficial uses of water saved, stored, or slated for water marketing by the private right-holder?

#### **CONSERVATION AND RECYCLING CRITERIA**

1. The plan establishes aggressive goals for farm and urban water conservation and recycling as conditions for future storage projects. Who will determine whether those goals make sense and when they have been reached?
2. Will progress on much-needed storage move forward at the same pace as progress on the environment?
3. What are the consequences if CALFED fails to meet prescribed storage development deadlines?
4. CALFED notes storage capacity, but is silent on water supply yield from identified projects. What are the yield figures?
5. What safeguards exist to protect all water interests during drought years?
6. If a landowner saves water through conservation efforts, does he or she retain the right to use or transfer that water or does CALFED or another government agency gain that right?

#### **FUNDING**

1. How much of the CALFED plan's costs will be recovered through fees imposed on water users?
2. Who will be asked to pay those user fees and how steep will they be?
3. How much will farm and urban water users see their water bills rise?
4. Are these one time fees or will they be charged permanently?

5. Will those paying the fees receive defined benefits or will all the money be directed toward ecosystem goals?
6. Will other water users, particularly farmers and ranchers, be given credit for environmental benefits already bestowed in addition to new activities undertaken voluntarily? How will these credits affect user fees?
7. What steps will be taken under the new Framework to ensure adequate reporting and accountability in future CALFED spending?
8. Is the 1996 financing report referred to in the Programmatic EIS/EIR exactly the same thing CALFED is proposing now? Since the cited report is not included in the analysis other than by title, the public has no way of knowing the answer to this question.

#### **ENVIRONMENTAL WATER**

1. As much as 380,000 acre-feet of water—and likely more—will be purchased annually for an “Environmental Water Account.” Where will the water come from?
2. What scientific proof will be developed to support the effectiveness of fishery measures and water use? How will this information be evaluated relative to the need for more or less water in this account and the needs of other water users?

#### **LAND AND WATER ACQUISITIONS**

1. Who will decide on future land purchases and will these purchases be subject to review by Congress or the State of California?
2. Does the Framework lay out how many additional acres of land and related water rights are being considered for habitat acquisition?
3. Are there any safeguards to protect against adverse impacts on local communities?
4. What specifically is CALFED doing to ensure that government lands are targeted first for acquisition?

CALFED has failed to adopt a definition of “agriculture” although the Farm Bureau, among others in the agriculture community, has repeatedly reminded CALFED that it is impossible to track farmland losses without a standard definition. Currently, any

claim by CALFED that their pre-ROD activities have only minimally affected agricultural resources is unsupportable because they are unable to define what constitutes an agricultural resource. There is no excuse for this oversight because California law provides several definitions of "agriculture." For example, see the attached Exhibit E previously presented by the Farm Bureau to aid CALFED in curing this deficiency. We herein specifically incorporate this exhibit as part of our comments herein. The adoption of any of these definitions would be legally defensible. The Farm Bureau has provided these definitions to Secretary Nichols and members of CALFED's ERPP staff on several occasions during this past year. CALFED continues to stubbornly refuse to adopt a definition of agriculture that will allow it to analyze the physical impacts of the CALFED Program on agricultural resources as required by CEQA and NEPA.

It is very important to identify agricultural resources at this time because CALFED has undertaken development of a GIS program. This comprehensive resource mapping effort currently has no clear direction, however. The Programmatic EIS/EIR does not mention the CALFED GIS program anywhere that we could find in the voluminous July 2000 document. Thus the goals and objectives of the program are unknown, but could be very useful in CALFED's environmental analysis.

In early discussions with the agricultural community, CALFED stated the GIS program would play a pivotal role in their efforts to track farmland conversions resulting from CALFED activities. However, at a recent public meeting with CALFED's GIS administrator and consultants it was made very clear CALFED has no plan to use their GIS capabilities to monitor their Program's impact upon agricultural resources. CALFED's explanation was that CALFED's staff members are unsure how to account for farmland losses. There is no excuse for this lack of planning as the Department of Food and Agriculture has repeatedly offered to assist and has provided numerous oral and written suggestions to CALFED in identifying and tracking farmland conversions. (See Exhibit B.) As a result of CALFED's failing to heed all suggestions and comments to date, the Programmatic EIS/EIR is legally insufficient.

### **III. CONCLUSION**

Despite its dogged refusal to change the Programmatic EIS/EIR in a manner truly responsive to the public comments, there have been significant changes in the CALFED document. The adoption of the June 9, 2000 Framework for Action contains significant new information that warrants recirculation of the Programmatic EIS/EIR prior to certification. The adoption of the Environmental Water Account concept as outlined in

the new PPA is an important new development. The Farm Bureau has many questions regarding funding of this account and its interaction with storage proposals, conservation measures and other water management activities briefly outlined in the Framework. The Programmatic EIS/EIR does a poor job of fleshing out these concepts in specific detail to provide an informative document that is not simply conclusory in nature. Critical issues are deferred to other vaguely described processes lacking in factual detail. On this basis and for all the reasons stated above, the Farm Bureau respectfully requests CALFED (1) either grant the original Farm Bureau members' numerous requests for an extension of time to review and comment on the Final Programmatic EIS/EIR or (2) revise the Final Programmatic EIS/EIR to address all information and analytical deficiencies and recirculate the document for public review and comment for a minimum of 60 days. In either event, CALFED should convene public hearings or workshops to address all concerns raised by our members during the next 60 days to educate the public on the Framework as the PPA.

The proposed CALFED Federal Record of Decision/State Certification of the Programmatic Environmental Impact Statement/Environmental Impact Report is not just the selection of a preferred approach to the management of the Delta and its watershed. Rather, it is a crucial planning document that should provide sufficient information and guidance to inform the public and ensure those charged with its implementation have clearly assessed both the objectives and the potential consequences of actions to be implemented by the CALFED Program. While we agree that "uncertainties in science and technology will require flexibility, and substantial commitments should not be based on highly speculative judgments," there are elements missing from the existing document that must be addressed prior to the ROD/Certification.

Sincerely,



BILL PAULI  
President

BP:mo  
Enclosures

cc: The Honorable Gray Davis  
The Honorable John Doolittle  
The Honorable Dianne Feinstein  
The Honorable Gary Condit

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