

**MEMO**

**To: Judy Kelly, CALFED**

**From: California Department of Food and Agriculture (CDFA)**

**Subject: Review and comments on the December 24, 1996 "Proposed FY 1998 Program Activities and Cost Estimate"**

**Overall comment:**

It is acknowledged in the introduction that the "CALFED Bay-Delta program is developing a long-term comprehensive plan that will restore ecological health and improve water management for beneficial uses of the Bay-Delta system." One of the most significant beneficial uses of that system is agriculture. This is acknowledged in the introduction with the statement that the Bay-Delta system provides "irrigation water for 200 crops, including 45% of the nation's produce." In addition to supplying irrigation water, most of the Delta itself and much of the riparian land on the major tributaries to the Delta are among the most productive farmlands in the world. These unique environmental resources will be significantly impacted by the program as outlined in the document. This is not consistent with the Governor's solution principals for this program, in that the resource of prime agricultural land and the beneficial use of the Bay-Delta system for agriculture are bearing the brunt of the impacts of the program. There has been no apparent effort to analyze and consider adverse impacts on agriculture, or meet the requirements of the California Environmental Quality Act (CEQA) for:

- A range of reasonable alternatives to avoid significant impacts, and
- Feasible mitigation of unavoidable impacts.

The CDFA hopes to work with CALFED to develop and implement appropriate and feasible avoidance and mitigation measures. The CDFA believes that objective analysis would show that it is feasible to achieve many of the CALFED program goals related to ecosystem restoration, without the significant and unmitigated adverse impacts on prime agricultural land or the beneficial use of the Bay-Delta system for agriculture. Furthermore, the CDFA believes that, to the extent that there would still be unavoidable adverse impacts of the program, these impacts can probably be mitigated. Unfortunately, neither the December 24, 1996 document, nor any other CALFED program documents which CDFA has received, reflect an effort to avoid or mitigate the identified significant impacts of the program.

In addition to the requirements of CEQA, the enabling legislation provides that programs or projects undertaken to offset or avoid adverse environmental conditions related to construction, operation or implementation of ecosystem restoration are fundable from the ecosystem restoration account (California Water Code Section 78684 (d) (3) (c).) There is no indication that there has been any consideration of allocating funds for this purpose. It appears that CALFED is proceeding with a program, developed in its essential features prior to environmental review, in the face of known, significant adverse impacts on the environment, without analysis, or a serious

effort at avoidance or mitigation of those impacts.

**Specific Comments:**

1. Page 2: "...implementation of the preferred alternative may take 20 to 30 years. Given this length of time, it is important to begin implantation as soon as practical. Taking action now lessens the time frame for implementation and early results will build support and commitment for implementing the full alternative."

**Comment:** No funds from the ecosystem restoration account can be spent until the final EIR/EIS is certified. The relationship between this requirement and "action now on ready projects" needs to be explained. Given the complexity of the program and its impacts, a firm foundation of planning, including compliance with CEQA, should be given higher priority than fast action. Also, if the impacts of the program on prime agricultural land and the resources of agriculture are not avoided or substantially mitigated at the level of the programmatic EIR, each site specific implementation project which will impact these resources will require an EIR. This should be reflected in the plans and schedule for future expenditures.

Among the "early results" would be the permanent loss of very large areas of some of the most productive farmland in the world. In addition to the productivity of the soils, much of this land is riparian, and has pre-1914 water rights. Thus taking this land out of agricultural production represents an extremely significant diversion of water away from agricultural use. The program must make a real effort to both explore alternatives and develop feasible mitigation, including the allocation of appropriate resources to offset the lost productivity of this unique element of California's environment.

2. Page 2, "The differences between alternatives lie mainly in the method of transporting water through and around the Delta, and the amount of additional storage which would complete each alternative."

**Comment:** This does not appear to meet the requirements of CEQA for alternatives in an EIR.

**"An EIR must consider a range of reasonable alternatives to the project, or to the location of the project which would feasibly attain *most of* the basic objectives of the project *but would avoid or substantially lessen any of the significant effects of the project*, and evaluate the comparative merits of the alternatives.....*Because an EIR must identify ways to mitigate or avoid the significant effects that a project may have on the environment (Public Resources Code Section 21002.1), the discussion of alternatives shall focus on alternatives to the project or its location which are capable of avoiding or substantially lessening any significant effects of the project, even if these alternatives would impede to some degree the attainment of the project objectives, or would be more costly.*" (CEQA Guidelines Section 15125 (d), emphasis added)**

It is clearly feasible to meet many of the objectives of ecosystem restoration on sites other than prime agricultural land. The EIR needs to include alternatives which avoid impacts.

3. Page 3 "The attached cost matrix includes potential funding levels and potential funding agencies which are based solely on CALFED staff's judgment. The cost matrix is followed by more detailed text descriptions of the proposed activities."

Comment: The cost of mitigation for the adverse impacts of the program on prime agricultural land and agricultural productivity as a beneficial use of the Bay-Deltas system need to be developed and included in program costs. The judgement of staff needs to be balanced with objective analysis, which must consider other opinions, including those expressed in the CALFED process to date.

4. Page 3, "...many of the activities will produce multiple benefits across these four areas."

Comment: While it is obviously important to consider the benefits of the actions, it is at least equally important to evaluate the impacts of the actions. All actions proposed should be consistent with the beneficial uses of the Bay-Delta system, and be carefully planned to avoid and mitigate adverse impacts of the program.

5. Page 3, "Because these actions are included in all three Program alternatives, they can be implemented prior to completion of the programmatic environmental documentation and would not impact the selection of a final preferred alternative."

Comment: On the face of it, this statement is in conflict with both the requirements of CEQA (Two, of a number of possible examples: 1. Project approval by a Lead Agency must be based on a certified Environmental Document. 2. The prohibition on fragmentation of a project so that the EIR does not consider the whole of the action.) and the requirements of the California Water Code, tying expenditure of funds to certification of the Final EIR. The approach of fragmenting and piecemeal approval of a program based on the anticipated outcome of an environmental review which has not yet seriously begun, is unique. The CDFA suggests that the Lead Agency either explain a legal basis for this approach, or change it.

6. Page 3, "*Process for Approving Early Implementation Projects*"

Comment: This needs to be reformulated based on comment 5, above. In addition, the mitigation for impacts of "early implementation projects" need to be developed and implemented along with the projects themselves. There should be an explanation of the relationship between the process described and the requirement of Proposition 204 that the program be carried out by the Secretary of the Resources Agency until the Legislature designates another entity.

7. Pages 9-end

Comment: The program actions described in the balance of this document would have very serious impacts on prime agricultural land and the beneficial use of the Bay-Delta system for agriculture. These impacts are clear even without the analysis CEQA requires. The CDFA expects to work with CALFED, during the preparation of the EIR, to avoid these impacts where feasible. Where impacts are shown to be unavoidable or infeasible, the CDFA will help CALFED

to identify, implement, and monitor feasible mitigation measures to offset the lost resources and beneficial uses.

8. Supplemental information document entitled "Fiscal Year 1998 Activities."

**Comment:** At several places in the document there are references to acquisition of land from willing sellers. The CDFA supports this as the preferred method for CALFED to acquire land to site CALFED program development works. However, site acquisition should proceed only after certification of the Final EIR. Site selection is crucial to the CEQA process and fundamental to the avoidance and mitigation of adverse impacts on the existing environment. It is important to add that the ownership of environmental resources does not obviate the need to avoid and mitigate impacts on those resources.

The sites are not identified in sufficient detail to allow specific review. However, it appears that the majority of this is prime agricultural land. Taking prime land out of production or restricting its future use for agriculture would be significant impacts on the environment. As such, under CEQA there needs to be an effort to avoid these impacts, and develop feasible mitigation measures for the unavoidable adverse impacts.

Under CEQA, there is an emphasis on site selection as a preferred method of avoiding impacts. Prime farmland is a very rare and valuable environmental resource. Many ecosystem restoration goals could be met using land that is not prime farmland. For example, selecting agricultural land with drainage limitations would be an excellent way to avoid impacts. There are large areas within the area under study by CALFED where there are drainage and other environmental or physical constraints on its use for agriculture. Exploring alternative sites and mitigating unavoidable impacts are essential if CALFED hopes to achieve its goals, follow the guidance of the Governor's solution principals, and comply with CEQA.