

This letter is a follow-up to our phone conversation of December 1, 1997. This was a follow-up to the meeting on November 14, 1997 where you assured Undersecretary Yates that CALFED was pursuing alternatives to avoid, reduce, and fully mitigate any CALFED program impacts on agricultural resources, and that the CALFED Programmatic EIR would fully and adequately deal with any adverse impacts on California agriculture and agricultural resources.

In this call we discussed impacts, impact avoidance, impact reduction, and mitigation at the programmatic level and the relationship to site-specific implementation projects. You requested that I provide you with written follow-up regarding several areas previously documented but which you were unaware or unsure of. These included:

1. Thresholds of significance for impacts on agricultural resources at both the programmatic and site-specific levels.
2. Standards for mitigation at the programmatic and site-specific levels.
3. Also, I expressed my concern that the CALFED program in general, and particularly the ecosystem restoration component as defined by the Ecosystem Restoration Program Plan did not adequately consider alternatives and mitigation at the programmatic level. To this you expressed the opinion that the ERPP did not need to examine alternatives, but that in the context of the whole CALFED program, there were alternatives and that the net impact on agriculture would be positive and any adverse impacts on agricultural resources would be dealt with at the site-specific implementation level.

Each of the items above is discussed below.

1. **Thresholds of significance.**

**Programmatic level:** The CALFED program has proposed the conversion of very large areas of agricultural land to other uses. Although we previously identified an existing database to be used to determine the areas involved and the classes of land potentially impacted, there has been no follow-up on this, in fact, the database we identified was not even listed among the sources of information CALFED has identified to be used for impact assessment. In the absence of any follow-up by CALFED, we have reviewed various draft CALFED documents and estimated that CALFED is considering actions which would result in the loss of at least 200,000 acres of predominately prime and unique agricultural land, and associated water resources. In addition to this there are ill-defined but likely to be highly significant impacts related to agricultural practices on land which would not be converted. This is more than three orders of magnitude greater than any reasonable threshold of significance. There is absolutely no question that the CALFED program is proposing actions with significant adverse impacts on agricultural resources.

**Site-specific level:** The CDFA previously identified the Resources Agency, Department of Conservation California Land Evaluation and Site Assessment Model as a method of determining significance. You were unaware of this model. For further information please contact the California Department of Conservation, Office of Land Conservation. However, as summarized below, the obvious massive adverse impact potential of the program as presently conceived influences the analysis needed at the site-specific level.

It is clear that the CALFED program, as now proposed, could result in significant impacts on agricultural resources at the programmatic level, the question of what the thresholds of significance are at the site-specific level is easily answered. Since the program will have significant impacts, then any future project under the programmatic EIR, or pursued by any CALFED member agency, with any impact on agriculture whatsoever must be considered to have a significant impact on the environment. There are a number of reasons for this, but two examples will suffice for now: First, any site-specific project with any impacts on agriculture contributes to the cumulatively significant impacts of the program. Second, under CEQA it is improper to split a program into small parts which by themselves may not have significant impacts and deal with these in isolation.

2. **Standards for mitigation at the programmatic and site-specific levels.**

**Programmatic level mitigation:** The preferred method of dealing with potential impacts is to avoid them through a reasonable range of alternatives. CALFED has chosen not to subject those elements of its program with the greatest potential for impacts on the environment (including agricultural resources and human use of the land for agriculture) to alternative analysis. While you assured me in general terms that the EIR will adequately deal with this, in the absence of any concrete example, or even a general indication of how this will be actually be accomplished, as a CEQA practitioner, I am frankly at a loss to understand how this could possibly conform to the requirements of CEQA. In the absence of a clear response to this often-asked question, we will simply have to wait until the EIR is circulated for review. This leaves us with potential measures to reduce or otherwise mitigate the impacts.

The CDFA previously opened dialog and provided written suggestions of potential measures to reduce unavoidable impacts on agriculture and agricultural resources from the ERPP and other CALFED proposed actions. These have not been reflected in the ERPP or other CALFED planning documents, and you admitted you were unfamiliar with the substance of these communications. This really leaves us with mitigation after the fact as the only option at this time.

The standards for mitigation under CEQA are proportionality and nexus: That is, the mitigation must be in proportion to the impacts and the mitigation must be linked to the project. The CDFA is charged under law to protect and enhance California agriculture. Looking at California agriculture as a statewide environmental resource, adverse impacts in one site or region can be mitigated by replacing the lost productivity of the resource

with increased productivity in another site or region. Two alternatives for mitigation which could easily be incorporated into the EIR are:

1. For each acre of farmland with a secure irrigation water supply converted to other uses, provide six acre feet of water to other land for agricultural use.

**Discussion:** Since water supply is a limiting factor in agricultural resource productivity in many areas of the State, and CALFED's fundamental mission relating to a reliable and adequate water supply, it logically follows that providing an adequate and high quality water supply to other sites or regions is a reasonable approach to mitigation. This is not a new concept. Off-site mitigation for impacts on environmental resources is standard practice in CEQA. For example the Department of Fish and Game has standards for creation, maintenance, and protection of wetlands to offset unavoidable impacts on existing wetlands. I suggest this is a reasonable model to follow. I believe that their current standard is replacement on a three to one basis.

2. For each acre of farmland converted to other uses, provide permanent protection to two acres of analogous farmland.

**Discussion:** This mitigation alternative does not avoid or reduce the impact or offset or replace the lost productivity. Nevertheless, preservation of appropriate portions of the resource base could be an acceptable mitigation. This could be accomplished via easements.

**3. The concept of programmatic level alternatives capable of avoiding, reducing, and mitigating impacts.**

**General discussion:** the language of Proposition 204 shows that the authors anticipated adverse impacts from the Ecosystem Restoration elements of CALFED, a need for mitigation, and provided for inclusion of mitigation for adverse impacts of the ecosystem restoration program in the Programmatic EIR. This makes your statement that all analysis of mitigation for ecosystem restoration will be deferred until site-specific environmental documents are prepared rather troubling. It is essential that the Programmatic EIR include adequate mitigation, at the programmatic level. As I discussed in our conversation, it is also essential that the public and the decision makers be full informed of the whole of the project, including the costs of mitigation for the impacts which CALFED has chosen not to attempt to avoid through alternative analysis, or other means at the programmatic level.

**Closing discussion of the draft CALFED approach to achieving ecosystem goals:**

CEQA requires Lead Agencies to consider a range of alternatives capable of avoiding or reducing adverse impacts on the existing environment, even though these may impair

achieving the goals of the program. CALFED has not done this for impacts on the agricultural resources and uses of the existing environment. There most certainly are alternatives capable of reducing or avoiding these impacts. These include, among other choices, improving the management of existing habitat, and fundamental changes in the management of both exotic species, and indigenous species in the system.

On the basis of staff opinion, CALFED has chosen an approach of land use conversion and redirection of water use for habitat construction and maintenance in order to address the degradation to the Bay-Delta and tributary systems. One problem with the approach of taking agricultural land out of production and using these sites to create and maintain habitat is that the degradation is largely unconnected to the existing human use of the existing environment for agriculture. This is patently obvious since the human use of the environment for agriculture has not significantly changed in the areas targeted by CALFED since well before the Bay-Delta system began to decline. There is a significant body of expert opinion which holds that the declines of certain populations is due not to loss of habitat to agriculture, or water diversions from the system, but rather from the massive ecological changes due to introduced species which, in about the last 25 years, have fundamentally altered the ecology of the system. While I am certain that the EIR will discuss and describe this disagreement as required, it is unfortunate that no alternatives have been developed.

It is possible, and I believe highly probable that the habitat creation and maintenance policy CALFED is pursuing, if implemented, will simply enlarge the habitat for the invasive exotic species which now dominate the system. In this context, the failure to explore alternatives which avoid or reduce the adverse impacts on the existing environment is particularly vexing.