

SOUTH DELTA WATER AGENCY

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CALFED Bay-Delta Program

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August 23, 2000

Via Fax (916) 654-9780

Mr. Steve Ritchie
Acting Executive Director
CALFED Bay-Delta Program
1416 Ninth Street, Suite 1155
Sacramento, CA 95814

Re: Final Programmatic EIS/EIR

Dear Mr. Ritchie:

The South Delta Water Agency submits the following comments to the above-referenced document. Mr. Alex Hildebrand of our Agency has previously submitted general comments to this document including an objection to the limited time period available to review the thousands of pages contained therein. We would like to incorporate our previous comments as well as those submitted by the Central Delta Water Agency and the Regional Council of Rural Counties as those comments do not conflict with ours.

Although the document is intended to be programmatic, its lack of specificity on certain projects results in conflicting goals and unaddressed issues. For example, the document at page 2-5 refers to those methods which will be used to address the dissolved oxygen problem but does not mention the overriding and underlying causes which are the Deep Water Ship Channel constructed by the Corps of Engineers and the alteration of Delta flow by the export projects. The document repeatedly references the necessity to decrease constituent loading even though such decreases may be unnecessary if the problems caused by the COE and export projects are mitigated. Absent this, the solution shifts the responsibility of mitigation from the State and Federal Government who caused the problem to dischargers to the river.

On page 2-6, the document reinforces its goal of improving drinking water quality by, among other actions, instituting source controls in the Delta. Such statements avoid the real issue of addressing upstream problems which add constituents of concern such as salt. At this

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time, various CALFED groups are considering how to treat, remove, or otherwise address in-Delta discharges when those discharges are adding no significant load to the river. The problem originates farther upstream, and the document should recognize that solving the problem under California water rights would require limits on those who *add* salt rather than those who simply concentrate it through use.

On page 2-8, it states that the Ecosystem Restoration Program seeks to restore 50 miles of slough habitat and 25 miles of riparian habitat without even mentioning how such actions may conflict with the levee portion of the program. The document also recognizes the purchase of tens of thousands of acres for habitat but gives little consideration to the tremendous effects resulting therefrom. The irony of this seems to escape the CALFED planners. The export projects damaged the environment and wildlife as well as beneficial users in the Delta in order to provide a water supply to other regions. CALFED's solution to this problem is to take land away from in-Delta uses in order to maintain the programs which originally and continually cause the problems.

Page 2-8 also refers to CALFED's goal of purchasing 100,000 acre-feet of water for fish and wildlife. Unless any such purchases assume that the sale water will be the result of a decrease in consumptive use or of water previously irretrievably lost, such sales merely transfer impacts to those parties who relied upon the existing hydrodynamics.

Page 2-8 also references CALFED's goal of screening in-Delta diversions in order to protect fish. However, since the fishery agencies have no evidence of the effects those diversions have on fisheries, this goal is contrary to the CALFED principle of using the "best science available" in making its decisions.

CALFED also seeks to encourage and expedite transfers of water but only gives lip service to the avoidance of third-party impacts. If harm to third parties is only defined in terms of "legal users," and legal users is limited to only those who have a specific right to the water, then there are no third parties who may be injured by such transfers.

Page 2-8 also refers to additional storage. CALFED continues to intentionally confuse the difference between new storage and new net supply or yield. Additional storage may help any particular user by allowing it to accumulate a larger supply. However, unless that new storage is the result of new yield, that user's additional supply results from a decrease in someone else's supply. Without addressing this issue, the EIS/EIR is inadequate.

Page 2-8 also mentions potential benefits resulting from the reoperation of power facilities. This proposal necessitates a detailed investigation of water right priorities and downstream reliance. Current power facility operations result in downstream flows during the

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peak agricultural diversion times. Reoperation of those dams will decrease downstream supplies and adversely affect such diverters as well as fish and wildlife needs, other public trust needs, and the ability of the projects to meet water quality standards.

Under conveyance (page 2-17), the document lists the various proposed South Delta improvements. Our Agency has taken the lead in trying to get the export projects to mitigate their adverse effects on the South Delta. Those efforts resulted in the plan to install three tidal barriers. CALFED's other goals appear to frustrate the efforts at mitigating the project's effects. CALFED seeks to have joint point of diversion, increase net exports, and reoperate Clifton Court Forebay. Each of these exacerbates existing problems yet does not require that the tidal barriers be fully functional before such activities are accomplished. In addition, CALFED has not addressed the problems experienced by diverters who are downstream of the tidal barriers. Any export activities must be conditioned upon the ability to mitigate those activities. For CALFED to have chosen methods of increasing exports before it has resolved the problem that the exports visit upon the South Delta is truly incredible.

The conveyance section also refers to the possibility of developing an isolated conveyance if the through-Delta alternative is not successful. Will CALFED staff be involved in the studies and development of an isolated facility prior to any efforts to optimize the through-Delta?

Section 4.3.1 lists estimated land use changes. Does the acreage proposed to be converted to habitat in the Delta include the acreage affected by the Delta Wetlands Project?

Under Chapter 5 Physical Environment, Section 5.1 discusses water supply and management. However, there is no mention of providing an adequate supply of water for in-Delta uses as required by the Delta Protection Act. The Tidal Barrier Program as envisioned by CALFED does not provide for the protection of water quality and quantity at all times when needed. Thus, CALFED's actual goal of protecting exports becomes apparent. Benefits to non-export users are merely incidental.

Various Figures in Chapter 5 examine the effects on flows resulting from the alternatives. However, many of these figures (e.g., Figure 5.2-55) indicate that the net flow at Vernalis will increase under various alternatives without additional upstream storage. This is of course wrong unless one assumes decreased consumption, or the depletion of ground water. There is no "extra water upstream" and so CALFED's proposals for transfers and reoperation cannot result in more water coming down the river.

Section 5.3 describes water quality issues. This Section makes no mention of in-Delta water quality needs for agricultural users. It makes no mention of the requirements of the Delta

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Protection Act and the concept of the "common pool" which protect those needs. It makes no mention of the interior South Delta water quality objectives which are obligations of the State and Federal Export Project permits, or the fact that the CVP and SWP modeling indicates that they are unable to meet all of these objectives and have no plan of how they might meet those objectives. If CALFED's goal is to "save the Delta," why would it not first address the issue of meeting existing water quality standards?

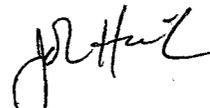
Page 5.3-7 incorrectly states that Delta salinity is now lower due to the operation of upstream dams. This may be true for portions of the Delta but not true for the South Delta. Now that the CVP and SWP operate their project, South Delta water quality regularly exceeds the objectives. Prior to those projects, South Delta water was always of excellent quality (except for one short period of time). Historic salinities almost never approached current levels.

Similarly, under Section 8.2.5, the EIS/EIR states that the 1995 Water Quality Control Plan objectives are expected to be fully implemented. This statement misleads the public into believing that water quality is being addressed. In reality, as stated above, although the projects now have permit conditions requiring them to meet certain objectives, their own modeling indicates they will not be able to do it.

It is clear that the EIS/EIR is focused on taking those actions which will improve the water quality and reliability of exports from the Delta, even though exports are the major cause of harm to the Delta. If the CALFED program sought to cure Delta problems and follow the existing water right priorities in California, it would first attempt to mitigate the adverse effects of the projects such that third parties including fish and wildlife, the environment, and agricultural diverters are fully protected. By adopting the principle of everyone getting better together, CALFED reverses water right priority law and institutionalizes ongoing harm. The best example of this is CALFED's refusal to allow the operation of the tidal barriers as needed without requiring decreases in exports during those times barriers cannot be operated.

Please call me if you have any questions or comments.

Very truly yours,



JOHN HERRICK

JH/dd

cc: Mr. Alf Brandt