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January 30, 1997

Mr. Lester Snow
CALFED
1416 9th Street, #115
Sacramento, CA 95814

California Office
Rockridge Market Hall
5655 College Ave.
Oakland, CA 94618
(510) 658-8008
Fax: 510-658-0630

Dear Mr. Snow:

Following are the Comments of the Environmental Defense Fund (EDF) on the December 18, 1996 update to the CalFed Water Quality Program. We appreciate this opportunity to share our concerns with you and your staff.

General Comments:

The water quality draft illustrates a larger issue that CalFed should address in each of its program elements. In our view, the CalFed program should be built upon the foundation of laws and agreements already in existence. CalFed's "assurance package" will mean little if it is built upon the wreckage of previous good-faith agreements and legal assurances. In the water quality arena, for example, the public spent over \$50 million to devise a technically sound program that garnered the support of all of the major stakeholders. Accordingly, it is appropriate that CalFed aggressively implement the recommendations of the San Joaquin Valley Drainage Program report, especially its most important recommendation -- using source control to reduce the amount of drainage effluent -- rather than become sidetracked into promoting options that maximize disposal (such as above-ground storage of drainage water). In this regard, we applaud CalFed's decision to exclude consideration of the proposed extension of the San Luis Drain to the Delta.

In a state that has endured decades of water wars, it is strongly counter to the public interest -- if not illegal -- to purchase and use water to dilute pollutants. EDF strongly recommends that all of the proposed actions that include purchasing water for the express purpose of diluting pollution discharges be eliminated.

The water quality program also should address the issue of appropriate limits on pollution control subsidies. Although both the federal and state governments have provided subsidies for pollution control to public agencies in the past, the underlying tenet of pollution control law is "polluter pays." Accordingly, we recommend that direct subsidy of pollution control by private businesses (and the quasi-government agencies that serve them) be severely limited in the CalFed program, and preference be given to options that

National Headquarters

257 Park Avenue South
New York, NY 10010
(212) 505-2100

1875 Connecticut Ave., N.W.
Washington, DC 20009
(202) 387-3500

1405 Arapahoe Ave.
Boulder, CO 80302
(303) 440-4901

128 East Hargett St.
Raleigh, NC 27601
(919) 821-7793

44 East Avenue
Austin, TX 78701
(512) 478-5161

Project Office

6 Faneuil Hall Marketplace
Boston, MA 02109
(617) 723-2996

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really require government funding, are truly experimental in nature, or which otherwise promote direct restoration. The latter would include, for example, projects demonstrating new technologies, development of pollution reduction methods, pollution control at inactive and abandoned mine sites, land retirement requiring additional funds for optimal post-retirement management, and land retirement that secures additional water for ecosystem restoration purposes. To the extent that direct pollution control subsidies are provided to private interests, the funds should provide demonstrable pollution reduction (rather than "education," "outreach," or other activities indirectly related to pollution control).

Specific Comments on Potential Projects

1. Surface Drainage Source Control. Item 3.

EDF strongly supports "Safe Harbor" agreements negotiated within the framework of the Endangered Species Act for the purpose of providing incentives to preserve or improve habitat. We recommend that funds provided to the Habitat Enhancement Landowner Program (presumably following the successful negotiation of a formal agreement) be used exclusively to finance verifiable habitat improvements by individual landowners and agencies, rather than providing support for general outreach and education activities.

2. Subsurface Drainage Source Control. Item 5.

Surface storage and timed release of drainage effluent is a method to simply maximize the amount of drainage discharged within the constraints of concentration-based water quality standards. Prior to considering this approach -- and certainly prior to assigning it a high priority, as proposed -- we recommend that its proponents be asked to demonstrate that the holding ponds which they propose to construct will be either "bird-safe or bird-free," as described in the San Joaquin Valley Drainage Program's final report. More generally, appropriate studies should be undertaken to determine whether potential constraints imposed by a mass emissions limit (as defined in the state's Pollutant Policy Document), federal and state antidegradation policies, and/or bioaccumulation concerns might limit the total amount of selenium that could be discharged.

3. Subsurface Drainage Source Control. Item 6.

The proposal to provide incentives to encourage separation of tailwater and tilewater should be designed so that it does not inadvertently penalize landowners and districts who have already invested in such systems without the aid of a government program.

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4. Subsurface Drainage Source Control. New item.

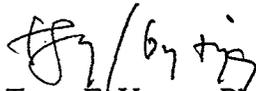
EDF recommends that CalFed explore, in the longer term, methods to encourage the development of commercial uses and markets for drainage salts.

5. CalFed Water Quality Action 25.

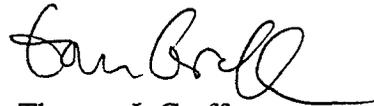
In order to facilitate the development of pollutant credit trading programs, CalFed might consider funding the design and start-up phase of three or four pilot programs representing point/point source trades, point/nonpoint source trades, and nonpoint/nonpoint source trades. It would be useful to include agricultural discharges, rangeland discharges (of sediment, for example), and abandoned and inactive mine discharges in the mix.

If you or your staff have any questions regarding these recommendations, please do not hesitate to contact one of us at (510) 658-8008.

Sincerely,



Terry F. Young, Ph.D.
Senior Consulting Scientist



Thomas J. Graff
Senior Attorney