

September 22, 1999

CALFED Bay-Delta Program
Attention: Rick Breitenbach
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Subject: Environmental Justice Comments on Draft Programmatic EIS/EIR, June 1999

This letter is submitted by the undersigned to provide comments on CALFED's Draft Programmatic EIS/EIR with respect to compliance with its mandate to conduct analysis of potential environmental justice impacts, including program activities that will address such impacts. Some of us are actively working with communities to remedy environmental injustices. All of us share a concern that natural resource and environmental policies too often ignore environmental justice issues, and agencies are ill-equipped to develop appropriate programs to address these issues. Based on its Draft EIS/EIR, CALFED, with its far-reaching impacts (in time and programmatic and geographic scope), has largely ignored and/or inadequately addressed environmental justice issues.

Environmental Justice Requirements

Executive Order 12898 on Environmental Justice ("Executive Order") requires that federal agencies make the achievement of environmental justice part of their mission by "identifying and addressing as appropriate, disproportionately high and adverse human health or environmental effects of their programs, policies, and activities on minority populations and low-income populations." This applies to an agency's daily activities as well as obligations under NEPA. With respect to the NEPA process, the Executive Order emphasizes the importance of research, data collection, and analysis of exposure to environmental hazards for low-income populations, minority populations, and Indian tribes and incorporation of such data into NEPA analyses. It makes specific mention of the need to assess potentially disproportionate adverse human health or environmental effects on low-income populations, minority populations, and Indian tribes with respect to subsistence patterns of consumption of fish, vegetation, or wildlife. It further requires that federal agencies work to ensure effective public participation and access to information.

The president's memorandum accompanying the Executive Order specifically recognizes the importance of procedures under NEPA for identifying and addressing environmental justice concerns. The memorandum identified the following actions as important ways for federal agencies to consider environmental justice under NEPA (as cited in the Council on Environmental Quality's "Environmental Justice, Guidance Under the National Environmental Policy Act"):

- Appropriately analyze environmental effects on minority populations, low-income populations, or Indian tribes, including human health, social, and economic effects;
- Ensure that mitigation measures in an environmental impact statement or a record of decision address significant and adverse environmental effects of proposed federal actions on minority populations, low-income populations, and Indian tribes;
- Provide opportunities for effective community participation in the NEPA process, including identifying potential effects and mitigation measures in consultation with affected communities and improving the accessibility of public meetings, crucial documents, and notices.

While CEQA does not require environmental justice analysis, per se, it recognizes that social and economic impacts of a project are relevant to determine whether a physical change is significant. Such analysis is very relevant to identifying potential impacts on low-income people and communities of color.

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CEQA states: "Where a physical change is caused by economic or social effects of a project, the physical change may be regarded as a significant effect in the same manner as any other physical change resulting from the project. Alternatively, economic and social effects of a physical change may be used to determine that the physical change is a significant effect on the environment. If the physical change causes adverse economic or social effects on people, those adverse effects may be used as a factor in determining whether the physical change is significant." (Title 14, Division 6, Chapter 3, Article 5, 15064)

We are dismayed that the Draft EIS/EIR repeatedly qualifies its limited analysis on social, economic, and environmental justice impacts with language that dismisses or reduces their significance. The document repeatedly states "...this Programmatic document fully discusses social and economic issues, as required by NEPA, but consistent with state and federal law, does not treat adverse social and economic effects as significant environmental impact." The implication that environmental justice, social, and economic impacts do not have equal standing as an adverse significant impact is incorrect and troubling. The Executive Order clearly requires that NEPA include environmental justice analysis and that mitigation measures address potentially adverse and significant disproportionate impacts that may be discovered. CEQA similarly recognizes the use or consideration of adverse social and economic impacts in determining significant impacts of proposed actions.

Comments on Public Participation & Access

We conclude that CALFED's Draft EIS/EIR fails to meet the above stated requirements, even in the context of a programmatic review. With respect to the requirement that federal agencies "provide opportunities for community input in the NEPA process," CALFED has yet to provide adequate opportunities for participation by low-income populations and communities of color in its program development and outreach efforts. This is especially relevant in the light of the fact that the CALFED planning period will extend for more than 30 years, and that, in the not too distant future, California will be a multicultural plurality — no single ethnic or racial group will comprise more than 50 percent of the population. By the year 2030, Latinos may be the single largest ethnic group in California. Yet Latinos, as well as all other "minority" populations have been excluded from meaningful participation in CALFED, not just the CALFED Draft EIS/EIR process.

Lack of adequate translation and interpretation services

Beyond translating fact sheets, CALFED has not provided adequate translation and interpretation services at its public hearings, meetings, or workshops. CALFED materials remain largely unknown or inaccessible to the public, especially those with limited English language proficiency. Two examples at public hearings this year illustrate this stark shortcoming.

Although fact sheets were translated into Spanish, at least one public hearing held in a community with a large Spanish speaking minority (San Jose, September 7, 1999), CALFED failed to bring translated fact sheets to the meeting. Spanish language signs noticing the hearing were also not in evidence. Neither were Vietnamese language notices, although fully 10% of the population of San Jose are Vietnamese ethnics. These omissions are inexcusable in a multi-ethnic, multilingual society, as they limit the opportunity for members of the public to participate in the EIR/EIS process.

An incident at the public hearing held in Salinas (August 25, 1999) is another egregious case in point. Not only did CALFED lack interpreters for a monolingual Spanish-speaking farmworker who wanted to comment, but the moderator attempted to prevent the farmworker from reading his statement, suggesting instead that the union representative translate the comments into English and read them into the record. Only after several minutes of discussion with the United Farm Worker representative was he

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allowed to comment in Spanish and have the translation recited as well. Contrary to the Executive Order, CALFED's public outreach efforts discouraged public participation and access to information.

Access to EIR/EIS documents has been difficult

CD-ROM or Internet access is not available for those who do not have adequate hardware and software, which may be particularly true for the poor and people of color. Further, downloading or on-line review of long documents such as the Draft EIS/EIR is neither reasonable nor accessible for most people. People have reported difficulty receiving documents from CALFED, inability to read the CD-ROM, and inability to download web site materials.

Environmental Justice communities have not been consulted in development of CALFED programs nor in preparation of the Draft EIR/EIS document

Environmental justice communities were not invited (and in some cases not permitted) to brief CALFED staff, BDAC members, or policy group members on environmental justice issues. For example, during meetings of the water transfers working group, several organizations recommended that Bill Hoerger, Director of Litigation, Advocacy and Training, at the California Rural Legal Assistance, Inc., brief CALFED staff and BDAC on CRLA's concerns with respect to water transfers. Such offers were dismissed and he was not invited. CALFED's interest in not complicating discussions with non-direct stakeholder issues could not have been made more clear to environmental justice advocates and advocates for poor people

The Executive Order requires that federal agencies identify potential effects and mitigation measures in consultation with affected communities. Nothing in the Draft EIS/EIR suggested that CALFED solicited input and/or sought participation from environmental justice communities and/or advocates as part of its Draft EIS/EIR planning process. CALFED's March 1998 Draft EIS/EIR included the following two commitments: "The views of the affected communities shall be elicited on mitigation measures," and "A community oversight committee shall be established to identify potential minority or low-income population concerns (p. 8.10-6)." The current Draft EIS/EIR contains no such commitments nor does the analysis suggest that any such efforts were made to solicit views on mitigation measures from a broad range of stakeholders, including rural and urban environmental justice interests.

Comments on the Draft EIS/EIR

The Draft EIS/EIR itself contains many errors and omissions in its project description, goals, comparison of existing conditions and alternatives, analysis of impacts, and analysis of mitigation to avoid and/or mitigate impacts. The Draft EIS/EIR reveals that CALFED has not yet adequately carried out the appropriate analysis of potential environmental justice impacts of its actions, nor has it adequately incorporated existing analysis of potential disproportionate impacts on low-income, minority, and Indian populations. The Draft EIS/EIR's section on Environmental Justice (Section 7.14) clearly falls short of identifying and analyzing potential environmental justice impacts. The comments presented here cannot and do not attempt to provide a comprehensive assessment of all these errors and omissions. Rather, these comments are intended to highlight some of the inadequacies in the Draft EIS/EIR with respect to CALFED's failure to identify potential environmental justice impacts and failure to avoid, mitigate, or address those potential impacts. You should receive additional comments from some of the undersigned organizations under separate cover that provide more detail on specific environmental justice concerns absent in the document. We urge you to refer to those comments as well (see comments submitted under separate cover by: Greg Karras, Communities for a Better Environment; Torri Estrada, Urban Habitat Program; Arlene Wong, Pacific Institute; and Michael Stanley-Jones, Silicon Valley Toxics Coalition).

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Limitations in problem definition and scope

The Draft EIS/EIR fails to adequately depict environmental justice issues in the problem definition and scope of the CALFED Program. This narrows the scope of the problems CALFED has considered and limits its ability to identify and address potential environmental justice impacts of its program alternatives.

For example, the Draft EIS/EIR:

- Arbitrarily excludes the aquatic food chain for all waters connected to the Bay-Delta from the 'problem' area description and fails to describe toxics threats and environmental injustices affecting anglers throughout the program areas, including the impacts of increased pollution and decreased bay water circulation.
- Fails to describe the social, economic, and human health impacts on communities from urban industrial land use or agricultural pesticide practices.
- Inadequately describes impacts on low-income communities and communities of color caused by drinking water quality degradation, particularly with respect to the relationship between treatment and deterioration of distribution and delivery infrastructure.
- Fails to discuss the connection between the Bay-Delta water system and land use patterns, particularly the impacts of water management policies considered under CALFED on the conversion of agricultural land, the dynamics of suburban sprawl and urban disinvestment, and the decline of the ecological, socioeconomic, and physical well-being of low-income communities of color across urban and rural landscapes.

Lack of analysis of impacts on human populations

The Draft EIS/EIR fails to identify and analyze potential social, economic, and health effects of its actions on human populations. It consistently limits its analysis to impacts on environmental resources.

For example:

- The water quality analysis fails to describe and assess impacts of pollutants in terms of human health, whether through bioaccumulation in fish and other aquatic food resources, or through other exposure pathways related to uses throughout the Bay-Delta system.
- The urban water supply analysis is limited to economic impacts on water providers and not water consumers.
- The groundwater analysis depicts physical changes in the resource but not the social, economic, and health impacts related to degradation of that resource.
- The urban land use analysis fails to identify the "cause-effect" linkages between the loss of agricultural land, residential and commercial/retail development of rural counties, and increased water supply for growing suburban users, including its indirect impact on the continuing disinvestment and deterioration of the urban core and inner-ring suburbs of metropolitan areas such as Sacramento, San Francisco, San Diego, and Los Angeles.
- The analysis of regional economics fails to depict the economic linkages between regional economies such as the agricultural economy of the Central Valley and service economies of major metropolitan areas, including the impact of agricultural job loss on employment and social services in rural communities and urban centers.

Failure to identify potentially impacted populations and conduct analysis to determine if impacts are disproportionate

With the exception of agricultural workers and seasonal workers, the Draft EIS/EIR fails to identify other potential populations impacted by its actions and whether such impacts may be disproportionate. It further fails to include existing research and information on potential environmental justice impacts that communities in the program area currently face. The Draft EIS/EIR consistently refers to the limitations of a programmatic document in identifying specific impacts of individual projects

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and therefore its inability to perform analysis until such projects are proposed and impacts can be identified and assessed. However, this should not relieve CALFED of its responsibility to begin broader analyses even at this programmatic stage. Further, the Draft EIS/EIR should set forth the process and method to assess such impacts at the individual project level.

For example, it has not:

- Included analysis of subsistence fishers relying on Bay-Delta resources.
- Conducted analysis of communities impacted by poor groundwater quality.
- Conducted analysis of low-income communities impacted by poor surface drinking water quality.
- Conducted analysis of low-income and people of color communities currently underserved by the federal and state water system and how they will be impacted by program alternatives, either positively or negatively.
- Conducted a rate-payer analysis to identify affordability impacts for low-income customers in light of potential rate increases.

Mitigation measures are insufficient

The Draft EIS/EIR's mitigation measures in response to impacts identified, and CALFED's programs broadly, fail to incorporate measures that will ensure that potential environmental justice issues will be addressed. Mitigation measures are often narrowly defined and do not reflect inclusion of all stakeholders impacted in crafting solutions. In doing so, they also miss the opportunity to include and support community activities currently underway that address these environmental justice issues.

For example, the program does not:

- Aggressively commit to and pursue pollution prevention measures that could contribute to water quality and water-efficiency improvements and also reduce toxic burdens on urban and rural communities.
- Address equity issues of program costs in terms of impacts on customers with respect to equitable water rates, low-income, and lifeline rates
- Consider compensation for farmworkers and others whose livelihood depends on agriculture either directly or indirectly. Agricultural mitigation measures in chapters 7.1 and 7.2 focus primarily on compensating landowners/farmers/growers and not farmworkers for crop production losses related to CALFED construction activities. If anything, compensation to growers/farmers should be limited to profits lost. If CALFED pays the fair market value, then some of the revenue should go to workers who will be adversely impacted.
- Clearly extend water transfer protections to non-traditional stakeholders. Third party impacts, though mentioned, are nearly exclusively applied to growers/farmers/landowners/institutional water users, stakeholders already protected by existing law. No where does it reflect the opinions or concerns of farmworkers or other parties reliant on groundwater resources or farming activities that may be adversely impacted.
- Provide any mitigation measures to address the adverse impacts on low-income people and communities of color in the urban core and inner-ring suburbs due to regional growth fueled by anticipated increases in water supplies to urban/suburban areas.

Recommendations

CALFED must address the deficiencies in its environmental justice analysis through improvements in the Draft EIR/EIS and in its program activities broadly.

- The Draft EIS/EIR does not explain key issues adequately or provide adequate discussion and analysis of potential environmental justice impacts to allow the public and decision makers to make informed decisions. A revised draft must address the issues raised in these comments, and we

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additionally, refer you to comments submitted under separate cover by Greg Karras, Communities for a Better Environment; Torri Estrada, Urban Habitat Program; and Arlene Wong, Pacific Institute, and Michael Stanley-Jones, Silicon Valley Toxics Coalition.

- CALFED must improve its public participation and outreach program, particularly with respect to communities of color and low-income communities. Community input should be solicited by CALFED staff and advisory bodies (such as BDAC and program working groups) to discuss and recommend program and mitigation activities for CALFED programs, including, water quality, water-use efficiency, water transfers, and watershed management. CALFED has failed to do so adequately thus far. CALFED should not wait until individual project EIS/EIRs are implemented before engaging with environmental justice interests, but needs to start now, at a programmatic level.
- CALFED must commit to more aggressively pursuing cost-effective pollution prevention and conservation measures that will avoid more costly and more damaging structural solutions, particularly plans for increased water storage and infrastructure.
- CALFED must expand its programs to include more financial support for community-based organizations working on watershed restoration, pollution-prevention, and water conservation issues, many of which also address environmental justice issues.

We believe these measures must be addressed prior to the record of decision and must continue throughout the implementation of the CALFED program. Otherwise, CALFED would fail to comply with its obligations under NEPA, CEQA, Title VI of the Civil Rights Act of 1964, and the Executive Order. We hope that these comments will be considered seriously and look forward to receiving CALFED's response to them. We would be pleased to engage with you to discuss our concerns and recommendations for finding a CALFED solution that will address environmental justice issues and include affected communities in implementing solutions that ensure a better future for all Californians.

Sincerely,

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