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TO: Hap Dunning, Chairman,
CALFED Governance Work Group

FROM: Stuart T. Pyle

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SUBJECT : Comments on CALFED Governance Proposals

Recent meetings of the Governance Work Group, BDAC and the Policy Group focused on the draft of CALFED Governance Principles and away from the actual "Straw" proposal for a Bay-Delta Commission considered earlier. A revised set of Principles were adopted by the Policy Group in December. These are some comments on the Principles and on the proposed commission structure.

I believe that Principle 1 should be extended to be a partnership of Federal/State/and Stakeholder interests. This should recognize the need for these three levels to function together to carry out the Bay-Delta Programs. All three have some degree of interest and control over the development, guardianship of the resources, and utilization of the benefits of the water resources of this state.

The Framework Agreement in 1994 was a major step forward in setting up a partnership to bring together the State and the federal government agencies for water resources management. The next logical step would be integrating the major groups of stakeholders into the partnership framework of the future CALFED governance structure. Bringing BDAC members into the Policy Group discussions is evidence of the need for this. The trend is in this direction. Precedence for partnership between a federal agency and local entities can be found in the U.S. Army Corps of Engineers partnership agreements on local flood control projects. This leads to sharing all levels of decision making and responsibility for implementation.

Other than the above comment on partnership, the Principles provide a generally adequate outline of items to guide formation of a CALFED /Bay-Delta commission. The real test comes in how these are put into practice in the legislative and administrative provisions for the entities that form the commission. The Principles referred to above were represented in the December meetings to be independent of the "Straw" proposal. However, the December 10 paper on governance uses the Straw proposal to illustrate how a commission would be structured and how it would operate. I would like to register a major objection to the 19 member commission format used in the straw proposal.

Such a commission would give legislative authority to the status quo and would empower the state and federal employees with major powers to carry out the CALFED program. This is not workable because the major orientation and allegiance of those employees could, in some cases, be to carry out the mandates of their employers and not necessarily to

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the overall and general welfare of the State of California, its population and its resources. Further, there would be chain-of-command conflicts as well as disparity in rank among the various agency heads named which would impair their ability to debate and take positions as equals. The commission members should be answerable to the Governor and possibly the Legislature without dual responsibility to a bureaucratic structure.

I believe the commission should have fewer members, say, 7 to 9, and that they should be recommended by the concerned agencies and public interest groups and should be appointed by the Governor with the concurrence of the Secretary of the Interior. A limited number of the commission seats should be assigned to State or federal agency heads, say, 4 out of 7 or 9, because of their importance in resources management, such as California Resources Agency Secretary and the Regional Director of the Department of the Interior.

In making this comment, I do not downplay the importance of the body now known as the Policy Group, that is, the heads of the State and federal agencies operating in the water resources field in California. This group has a vital role to play within the Bay-Delta commission to coordinate the proposed actions of the commission with those of the involved agencies and to implement the programs adopted by the commission. Much of the program budgeting and funding would take place within the existing agencies and all of this would need to be developed and carried out along with commission programs.

There will probably be proposals submitted to the State Legislature on possible commission structures. There is a draft of a trial proposal, prepared by Dennis O'Connor of the Legislative Research Bureau, that sets out the legislative intent, the structure with nine appointed members, and general operating provisions. This is much closer to the type of structure that I believe should be adopted rather than the "straw" proposal.

The Research Bureau draft proposes a legislatively established environmental restoration authority and outlines some operating provisions. This is something that should be worked out with the environmental stakeholders. Environmentalists in the Governance Work Group want an independent body in which they have a major interest and control. They could set up a corporate entity that could contract with a Bay-Delta commission or other agencies to implement some of the ERP measures. The Research Bureau draft includes the science control within the ERP authority. If an Independent ERP body under the control of some environmental groups was set up for implementation, there would still be a need for policy coordination, budgeting, and science control from the Bay-Delta commission. Either of these proposals would work if the parties were willing to overcome institutional difficulties to achieve the environmental restoration.

The 35 page draft of the CALFED Governance proposal dated December 10, 1999, describes how implementation of the CALFED Program would function within the entity. There is also a need for a document similar to the Legislative Research Bureau draft which includes the legislative authorities and provisions under which it would function.