

24 October 1997

Mr. Roger Patterson
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2800 Cottage Way
Sacramento, CA 95825

Mr. Michael Spear
Director, Region 1
U.S. Fish and Wildlife Service
911 N.E. 11th Avenue
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Re: CVPIA 1998 Workplans

Dear Roger and Mike:

We appreciate your continued efforts to disclose the activities of your agencies "before the fact". However, given the narrow distribution and short time for review of the draft CVPIA 1998 Workplans, please do not assume that less than vigorous public comment on these drafts indicates agreement as a whole or in part.

The following brief comments are preliminary and do not represent the scope and depth of our concerns with the draft CVPIA 1998 Workplans. We will provide additional comments as soon as we are able to gain a better understanding of your specific intentions for 1998.

Section 3406 (b)(1) - Anadromous Fish Restoration Program: \$11.8 Million

In general, I must ask, as I always do, what is the "plan" behind these proposed expenditures? I know you feel that our requests for a "good science foundation" coupled with admonition to "get some work done on the ground" are at odds. However, when it really comes down to it, we are merely asking that funds be allocated and programs/activities be chosen smartly, and that if there is a plan/strategy/logic behind these decisions, that you share it with us (all stakeholders not just the regulated community).

I assume you will point to the "final Draft AFRP" as the basis for your actions. However, as we have commented repeatedly, the Draft AFRP is no more than a draft menu; a long, long list of possible actions. It makes little, if any, attempt to fully define potential projects and illuminate the associated scientific, legal, economic or engineering questions that must be answered with each specific project idea/proposal. Instead the AFRP merely passes these questions, along with questions of reasonableness, to yet-to-be-developed (or even drafted as far as we are aware) implementation plans. That is where the specific plans for action would be put out for review and our questions answered; or so we have been told repeatedly. There is in this case, "no there, there". Please provide us with a schedule for the development of the implementation plans.

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For the most part, the proposed CVPIA 1998 Workplans appear to be derived from an opportunistic/shotgun approach to decisionmaking, rather than an educated and targeted approach.

For example, what was the decisionmaking process that led to spending \$1.03 million to address gravel mining impacts on 0.4 miles of the Stanislaus River? Particularly how does this action "measure up" ecologically against needs of species or processes in the Delta, or on other tributaries to the mainstem Sacramento River? What ecological arguments in terms of species or habitat needs, or potential benefits, weigh in favor of undertaking that specific action as opposed to any other?

Likewise, why is \$1.3 million allocated for similar work on the Tuolumne River, which is not a CVP controlled stream? Again, while each of these activities and expenditures may have their individual merit, what consideration was given to how they "rank" when compared to other projects and programs that are not funded in 1998? How will the projects and activities proposed for funding in 1998 work together, as a whole, for the benefit of targeted and non-targeted species and ecological processes? Also, given that the CVPIA was specifically enacted to address ecological issues associated with the CVP, it seems you be prioritizing all CVPIA monies to first address CVP issues, then deal with fishery and habitat problems elsewhere. Why is this not a reasonable expectation?

If these projects were "stand alone" proposals by a private or local government entity, and not covered under a large umbrella program such as the CVPIA, would they not be subject to a fairly stringent NEPA/CEQA-ESA evaluation requiring detailed analysis of ecological cost and benefit? Isn't this analysis and knowledge critical?

As we continue to ask for underlying science and logic, programmatic basis and accountability, it comes to mind to ask if there has been an assessment of actions taken under these programs in previous years? What ecological benefits have been accrued? Which actions met their intended purposes, which did not? What was learned about the species or processes targeted? What was learned about the relationship between the action taken and the ecological response? What was learned about contracting policies and expenditure mechanisms with regard to "getting the work done"? In this light, we ask where is the budget and programmatic emphasis on monitoring and assessment of the actions proposed for 1998?

I am enclosing our recent comments on the CalFed Ecosystem Restoration Program Plan (ERPP), as these are quite relevant here.

With regard to the "larger picture" of environmental work contemplated for 1998 in the context of CVPIA, the CalFed-Bay/Delta effort, and other state and federal programs, I am sure you are aware of the potential for both overlapping or redundant efforts, as well as critical "gaps" in taking action to address identified needs. Your efforts to develop and coordinate an implementation budget for CVPIA activities themselves and as part of the larger Bay/Delta program are critical to appropriate and efficient allocation of resources.

We understand you will be developing a specific "execution budget" once you have coordinated with the CalFed Category III decisions. We were recently told that this document will be produced in early to mid-November. Please provide us with a copy of this document as soon as it is available. For your information, enclosed is our preliminary effort to extract 1998 budget figures from your draft Workplans.

Section 3406(b)(2) -- 800,000 Acre Foot Yield Dedication

Leaving the contentious issues of legal interpretation and execution of this CVPIA provision aside for now, I will focus the draft 1998 Workplan's proposed "specific actions and implementation costs". You have proposed to spend \$250,000 this year to "develop a water management plan" including a "number of operational prescriptions to benefit fish and wildlife". Yet, as noted above, there is not assessment of, or supporting data for, such prescriptions. Is it not more appropriate to first establish what water resources may be needed and why, rather than spending time and money now to develop a plan for dedicating such resources to undefined and unsubstantiated needs?

Notably, this \$250,000 is in addition to the \$500,000 for model evaluation; \$150,000 for "rule curve development"; \$150,000 to update the OCAP; \$550,000 for identification of "acquired water needs"; \$100,000 to "develop" a COA; \$100,000 to develop rules and regulations. All tolled, the proposed 1998 workplan budgets \$2,050,000 in advance of establishing the fundamental elements of the legal basis by which the 3406(b)(2) water is dedicated and accounted. We find it curious that the development of Rules and Regulations necessary for the implementation of this provision; and the identification, evaluation and disclosure of the purpose and magnitude of proposed uses of this water and actual implementation will occur in the same year -- apparently simultaneously. We cannot understand how the 1998 Workplan builds on the previous \$3.7 million spent to implement this section of the law.

Finally: 1) what is the scope of work associated with the \$100,000 budgeted for developing a "Coordinated Operation Agreement"?; and, 2) since neither the AFRP or ERPP appear to provide an emphasis on actions for the benefit of endangered species, what is the scope of work associated with the \$150,000 budgeted for compliance of section 3406(b)(2) with the Endangered Species Act?

Other Issues/Questions

1. Section 3406(b)(1)("other"): We have yet to receive a response to our letters and comments on your plans and justification for action on this section. Until there is a clear and understandable explanation of the relationship between the CVP and the "needs" of the Bakersfield Cactus, Oil Nestrav, Re-legged Frog, Bush rabbits, woodrats, etc., we cannot support these expenditures or this program.

2. Section 3406(b)(3): Do you have plans to develop a long-term water acquisition program this year? If so, this should be explicitly stated and the plan of work should be displayed.

3. Section 3406(b)(4): We assume this Workplan has been developed by the San Luis and Delta Mendota Water Authority, or at the least in close coordination with them.
4. Section 3406(b)(5): Same comment as #3 above; except, with regard to the Contra Costa Water District.
5. Section 3406(b)(6): The specific deliverables with this \$8.8 million should be displayed. There is no reference to the "leakage" problem. Will the TCD be repaired in 1998?
6. Section 3406(b)(10); "Fish Passage": What is the relationship between the work proposed for 1998 and work done in prior years? The plan appears to say \$390,000 will be spent in 1998 and as a result, all planning and NEPA work will be done and a preferred alternative selected to solve the fish passage issues at RBDD. Should we expect that all of this will actually happen?
7. Section 3406(b)(10): We have significant questions on many of the specific expenditures/decisions made related to the \$22 million spent on this project to date. Please provide the planning documents or plan of study that is guiding this program so that we can better understand your decisions here. For example, we would like to know how \$140,000 to examine the behavior of squawfish is justified. What information is expected to be collected and how is it intended to be used? When will this overall program be complete?
8. Section 3406(b)(11): We assume the fisheries work at Keswick is almost complete. Is this correct?
9. Section 3406(b)(11); Coleman NFH: We continue to try to understand your overall program for Coleman NFH and its rationale. This will be an area of significant investigation on our part this year. (Thanks for your ongoing assistance.) However, we are very disappointed that you have not programmed money for the development of a restoration plan for Battle Creek. We believe a large scale Battle Creek restoration effort should begin immediately and would request that you so prioritize this program.
10. Section 3406(b)(12): We understand this and other programs may be altered because of Category III decisions. Please provide re-formulated Workplans if changes are made. We have previously raised the question of monitoring for results of specific actions. Clear Creek restoration makes a great case: what have we learned from past actions and where is the monitoring element of the \$1.5 million investment scheduled for this year?
11. Section 3406(b)(16): We question the justification of \$500,000 for angler surveys. We note that this \$2.4 million comprehensive monitoring program has little money for data collection. We continue to be concerned that this program which will essentially collect field data from other field data collection programs, will be of little value unless fully coordinated and made a part of the CalFed and related programs. Further, we believe that the program needs to incorporate a

research component to encourage development of appropriate and necessary and innovate gear and methods for sampling and monitoring.

12. Section 3406(b)(17): Same comment as #3 above; except with regard to Anderson Cottonwood ID.

13. Section 3406(b)(19): When will this work, and the work in Section 3406(b)(9) be completed?

14. Section 3406(b)(20): Same comment as #3 above; except with regard to Glenn Colusa ID.

15. Section 3406(b)(21): Please provide further information which shows integration with CalFed Category III expenditures and federal funding for CalFed. Will there be any effort to consolidate (not just coordinate) the CVPIA and CalFed screening program this year?

16. Section 3406(b)(22): We question the justification for \$7,000 to announce the program and \$874,000 to review proposals for waterfowl habitat.

17. Section 3406(d)(1)-(5): This area will be the subject of extensive examination by CVPWA. We remain concerned with earlier indications that \$100 million may be needed for the conveyance of refuge supplies.

18. Section 3406(g): When will these ecological and water system models be complete? It looks like you have already spent \$3 million on this item.

19. Section 3408(h): Where is the land retirement plan? Is it in final form? If so, please provide it.

20. State Cost Share: This a major area of potential funding: \$64,000,000 in 1998 that is not mentioned at all in these plans. Where will this money be spent? What opportunity will we have to comment? How will the money be managed?

21. We see no reference to the establishment of a dry-year water acquisition reserve. Do you have any intention in this regard?

22. We would like to see specific figures of FTE's supported by each CVPIA related program.

23. We would like to see a detailed explanation/breakout of all overhead costs. We have previously been assured this is a "low overhead" program. However we have little comfort with that assurance lacking a specific dollar and percentage breakout of agency and contractor overhead.

24. We noted only one area with dollars set aside for the development of rules and regulations. Overall, how much money do you plan to spend on this effort in 1998?

25. We don't understand why you have never shown PEIS costs in CVPIA expenditure reporting. We would like to know how much has been spent to date and how much you plan to spend in 1998 on the PEIS.

26. Our analysis of the CVPIA Workplans shows anticipated expenditures of up to \$80 million in 1998. Yet, we have also heard that you will have \$67 million to spend. Please confirm the amount of money you anticipate having to spend this year.

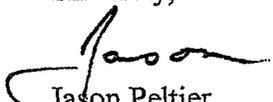
Conclusion

It cannot be said that the "CVPIA water" and financial resources are not being, or have not been, dedicated to the environment since passage of the Act. As you are well aware, the CVP has been vastly "re-operated" to meet "environmental purposes" (despite the "co-equal" statutory language of the CVPIA). Further, modeling studies have concluded that since enactment of the Bay/Delta Accord, the impact on CVP yield of meeting the Bay/Delta Accord water quality obligations (themselves covering ESA requirements) has been somewhere between 750,000 and 850,000 acre feet.

As you may be aware, the design of the CVPIA provided for "up front" water and "up front" environmental improvement actions to be undertaken "upon enactment" to bridge the gap between enactment of the CVPIA and implementation of the long-term AFRP. What was to be done for Central Valley fish and wildlife allegedly impacted by the CVP was laid out in section 3406. The enumerated CVPIA activities were meant as ecological "jump starts" (previously analyzed and documented by CA DFG and others) and intended to be an integral part of the AFRP.

What has not been done is an inventory of needs and available resources and a smart allocation of resources to needs. There has been little or no evaluation of what the benefits and ecological responses to the past years' actions have been (under both the CVPIA and the Bay/Delta Accord). Likewise, there has been little or no evaluation or demonstration of actual ecological "need" for which "emergency" or unstudied responses are required beyond what is already being accomplished under the CVPIA and Accord and prior to studied implementation of the AFRP and ERPP. The proposed CVPIA 1998 Workplans appear to follow this same well-worn path of "putting the cart before the horse". With the absolutely incredible amount of resources that can be brought to bear in 1998 for the benefit of the environment (\$280,000,000+), it would seem prudent to first establish and substantiate the "plan" by which these resources are to be dedicated, before setting out to spend it.

Sincerely,


Jason Peltier
Manager