



**CALFED
BAY-DELTA
PROGRAM**

1416 Ninth Street, Suite 1155
Sacramento, California 95814

(916) 657-2666
FAX (916) 654-9780

DATE: March 30, 2000
FROM: Rick Breitenbach – Assistant Director
TO: Management Group
SUBJECT: Tiering Guidelines

Attached to this memo is a copy of Tiering Guidelines which we will be transmitting to appropriate staff in each of the CALFED agencies. The guidelines are designed to aid agency staff in preparation of second-tier environmental documents for CALFED projects. The purposes of the guidelines are to ensure that the benefits of the CALFED tiering approach are realized by lead agencies, and to ensure that there will be a solid tie between the Programmatic EIS/EIR and second-tier environmental documents. It is anticipated that the guidelines will be reissued as policy when a permanent CALFED governance arrangement is adopted.

If you have any questions on the guidelines, please contact me at (916) 657-2666.

CALFED Agencies

California

The Resources Agency
Department of Fish and Game
Department of Water Resources
California Environmental Protection Agency
State Water Resources Control Board
Department of Food and Agriculture

Federal

Environmental Protection Agency
Department of the Interior
Fish and Wildlife Service
Bureau of Reclamation
U.S. Geological Survey
Bureau of Land Management
U.S. Army Corps of Engineers

Department of Agriculture
Natural Resources Conservation Service
U.S. Forest Service
Department of Commerce
National Marine Fisheries Service
Western Area Power Administration



CALFED Second-Tier or Subsequent Environmental Document Guidelines

I. Need for Guidelines

The CALFED Bay-Delta Program is a consortium of state and federal agencies working toward a set of common goals in developing and implementing a long-term plan to restore ecological health and improve water management in the Bay-Delta system. These goals are to be reached through the implementation of dozens of projects of many different types, occurring throughout the solution area. Yet, the theme and goals of all these projects are closely interrelated.

CALFED prepared a Programmatic Environmental Impact Statement/Environmental Impact Report to address the larger overall environmental issues associated with a program of this magnitude. It set a planning framework and background for future CALFED projects. For CALFED to be perceived as a cohesive program, to take advantage of the benefits of the tiering concept, and to meet the legal requirements of tiered documents, guidelines for second-tier environmental documents are needed. These guidelines will affect all projects which are carried out or funded through the CALFED process.

In order to qualify for funding which is part of the CALFED Bay-Delta Program, any agency or private party should use these guidelines. For purposes of these guidelines, any requirement that federal- or state-funded actions be consistent with, or in accord with, the CALFED Bay-Delta Program means it is part of the Program.

II. Legal and Regulatory Background

Programmatic Environmental Documents

Federal agencies operating under the National Environmental Policy Act (NEPA) originated the concept of a Programmatic document. For large federal projects involving multiple smaller projects over large geographic areas, the concept of a document addressing a program as a whole, rather than a number of documents on component pieces, made sense in increasing understandability. Looking at the big picture and assessing larger-scale impacts that might not be visible at the project-document scale were central benefits of this approach. When individual project documents were undertaken, these second-tier projects could use analyses already completed to address many of the large-scale, non-site specific issues.

The use of the Programmatic EIR, paralleling the NEPA Program EIS, was recommended for the California Environmental Quality Act (CEQA) process in a court case, and was subsequently adopted into California's CEQA Guidelines.

Tiering

1. NEPA- Council on Environmental Quality (CEQ) Regulations Section 1502.20 addresses federal tiering requirements. That section encourages tiering environmental documents to avoid repetition of issues that have already been evaluated. Subsequent, or second-tier, documents can summarize issues discussed in the broader statement, and may incorporate discussions from the higher-level document by reference. The CEQ has emphasized that second-tier NEPA reviews

must still be carried out, but that tiering can avoid unnecessary duplication.

2. CEQA- CEQA Guidelines Section 15168 (c) and (d) include guidelines for determining what level of second-tier environmental review is necessary, and what parts of a Program EIR can be used in later environmental documents. Of particular importance to CALFED second-tier documents is Section 15168 (c) (3), which states that agencies shall incorporate feasible mitigation measures from the Program EIR into subsequent actions in the program. Also important to second-tier documents is Section 15168 (d) (2), which allows the Program EIR to be incorporated by reference to deal with regional influences, secondary effects, cumulative impacts, broad alternatives and other factors applying to the Program as a whole.

III. CALFED Commitments

EIS/EIR Commitments

Throughout the process of preparing the Programmatic EIS/EIR, holding public hearings and responding to comments, CALFED has represented to all levels of government and to all stakeholders that site-specific projects will be reviewed for CEQA and NEPA compliance, including preparation of second-tier environmental documents when appropriate. These environmental documents will conform to the Programmatic document, and use it to provide the basis for evaluating impacts and developing mitigation measures.

IV. Tiering from the EIS/EIR

Programmatic Strategy/Advantages of Tiering

CALFED's strategy in preparing a Programmatic EIS/EIR is that major program-level issues will be discussed in the Programmatic document, with significant impacts at the program level identified, and mitigation strategies suggested. As site-specific projects are identified, they will undergo CEQA/NEPA review, using the program document as a guide and template. Significant impacts will already have been identified, and will be examined in the site-specific environmental document for significance at the project location. Lead agencies for second-tier projects will use the mitigation strategies identified in the program document as starting points to determine their applicability to the specific site and to develop mitigation measures. Program-wide issues, including program alternatives, growth-inducement and cumulative impacts, are addressed in the Programmatic document, and can be included by reference in second-tier documents.

Tiering from the Programmatic EIS/EIR means that much of the work that would be required for a stand-alone environmental document has already been prepared, and that many of the difficult larger issues have already been addressed. Duplicative consideration of larger policy issues for the Program can be avoided, saving considerable time and expense.

Consequences of Not Tiering

If environmental documents for CALFED projects with potentially significant environmental impacts are not tiered from the Programmatic EIS/EIR, a number of significant issues could arise. First is a question of whether a project proposed is outside the programmatic scope of the

CALFED Bay-Delta Program, and that a full range of alternatives, cumulative impact analyses, etc., may need to be analyzed. Also, failure to consider significant impacts and mitigation strategies developed in the Programmatic document could lead to concerns that the project lead agency knew of the applicable impacts and mitigation strategies and did not adequately address them. This could lead to document revisions, significant project delay and substantial additional costs.

Level of Analysis

Tiering allows second-tier lead agencies to focus on the site-specific impacts of the project, rather than addressing broader, more general issues. Issues that are ripe for decision at the time of the second-tier document should be the focus; issues that were discussed and settled for the overall program need not be repeated. This level of analysis applies only if the project is consistent with the overall program. For CALFED, this would include any project which was included in the scope of the Program at the time of the ROD/certification, or any supplemental environmental document tiering from the program document. Second-tier documents should focus on impacts to the local area, on site-specific mitigation measures and on project design or alignment alternatives. Second-tier documents should refer to Programmatic EIS/EIR discussions regarding broader Program alternatives. Analyses of cumulative impacts, growth inducement and areawide impacts in the second tier document may reference the Programmatic EIS/EIR as the basis of analysis, but will, in most cases, require more specific information depending on the particular project's potential to cause wide ranging effects.

V. Using the Programmatic EIS/EIR for Tiering

Significant Impacts

The Programmatic EIS/EIR identifies a number of environmental impacts as significant at the programmatic level. These impacts are summarized in Section 3-1 of the Programmatic EIS/EIR, and are also listed in the end of each Resource chapter in the document, as section x.x.12. If a resource listed in the programmatic document as significant is affected by a second-tier project (for instance, air quality effects of levee construction), the second-tier impact should be evaluated. The evaluation in the second-tier document may show that, at that particular site, the impact is not significant. Preparers of second-tier documents should compare their Initial Study or EA checklists against the impacts listed in Section 3-1 of the Programmatic EIS/EIR to determine which resource categories may have been found to be significant, and have mitigation strategies, in the programmatic document. It should also be noted that an impact may be significant at the site-specific level even if not significant programmatically.

Cumulative Impacts

Cumulative impacts of the CALFED Program are evaluated and listed in the Programmatic EIS/EIR. One of the advantages of using the tiering concept is that second-tier documents need not repeat this analysis. For each of the resources affected by the second-tier project, the cumulative impact analysis (included as Section x.x.12) from the Programmatic document should be incorporated by reference, and used as the basis for additional analysis. Additional cumulative impact analysis may be required to more precisely identify the environmental impact contribution of individual projects to the overall cumulative effects of the CALFED Program and

other projects and actions contributing to the cumulative impacts.

Alternatives Analysis

As with Cumulative Impacts, using the tiering concept simplifies the process for second-tier documents. When a Programmatic EIS/EIR is done, program-wide alternatives have already been discussed and evaluated at the Program level. Second-tier projects need only review and evaluate site-specific alternatives, such as design and location, while incorporating by reference the discussion of overall program alternatives from the Programmatic EIS/EIR, and the selection of the Preferred Program Alternative from the ROD/certification.

Growth-inducing Impacts

Growth-inducing impacts of the CALFED Program are evaluated and listed in the Programmatic EIS/EIR. Because of the general nature of the Programmatic EIS/EIR, the analysis in the document assumed that any increase in water supply or water supply reliability resulting from the CALFED Program could cause growth and consequent impacts related to growth. For second-tier documents, additional analysis based on more specific information will be necessary to more precisely identify growth-inducing effects and environmental impacts.

Mitigation Strategies

The Programmatic EIS/EIR provides mitigation strategies for each of the resource areas for which significant impacts were identified. These mitigation strategies are included in each resource chapter as section x.x.11. The Programmatic EIS/EIR also states that second-tier environmental documents will use these strategies as a starting point for site-specific impacts, and will adopt those which are applicable and feasible at the site-specific level. Thus, to be consistent with the Programmatic document, the second-tier documents must evaluate each of the impacts and mitigation strategies from the Programmatic document for impacts to any resource on which the site-specific project may have a significant impact, and adopt those which avoid or lessens the impact and are feasible. For instance, section 6.2.11 of the Programmatic document lists a number of mitigation strategies for vegetation and wildlife impacts. If a second-tier environmental document finds one of the impacts to vegetation or wildlife listed, section 6.2.11 should be reviewed for measures which would be feasible to mitigate those project impacts. Lead agencies should be aware that this list is not all-inclusive; other mitigation measures may be needed at the site specific level which were not foreseen when evaluating the entire Program, or may be found feasible at the time of the second-tier project even though it wasn't anticipated to be feasible at the time of the programmatic decision.

Mitigation Monitoring

Section 9 of the Programmatic EIS/EIR describes a framework for monitoring mitigation strategies. It is likely that CALFED or a successor agency will maintain a master list or database of mitigation strategies which must be considered at the site-specific level. Lead agencies for second-tier documents will be required to report back to CALFED or its successor regarding consideration, selection and implementation of mitigation measures, using a checklist or other mechanism supplied by CALFED. Lead agencies will need to report how each mitigation strategy was considered, describe funding for monitoring, and develop their own mechanism for remedial activities should mitigation measures not perform as anticipated.

Format

Second-tier environmental documents should, as far as possible, use the Programmatic EIS/EIR as a template. This would include discussing affected impacts in the same order as the PEIS/EIR, and using the same categories for impact sections (for instance, use "Air Quality" instead of "Air Quality Impacts", "Air", etc.). Similar use of sidebars, numbering of tables and fonts is encouraged. The purpose is to create a sense of continuity with the programmatic document for reviewers, and to provide an easier format for referencing the programmatic document.

Incorporation by Reference

As stated above, analysis of Program alternatives, analysis of overall Program planning-level effects, and analysis of cumulative impacts can all be incorporated by reference into the second-tier environmental document. As a format, the following can be used:

"Alternatives- Alternatives for the overall CALFED Program were discussed in Section 2 of the CALFED Programmatic EIS/EIR, Record of Decision/certified __/__/00. This Section is incorporated by reference into this document. This document will only discuss alternatives to site-specific location and design."

Integration into the CALFED Program

Second-tier documents should not be done as stand-alone projects, but should demonstrate their integration with the larger CALFED Program. An Introduction should be included in the second-tier document which refers to the project's place in the overall CALFED Program, referring to the specific "common program" goals which the project is helping to fulfill. These goals are contained in the Program Plans which are appendices to the Programmatic EIS/EIR. Any other CALFED projects which are related should also be described. This section should be of sufficient depth that a reader would be able to understand where the project fits in with the larger CALFED plan.

It is also important that the document follow and incorporate programmatic-level solutions developed in Program Plans, the EIS/EIR or the ROD. For example, the Water Transfer Program Plan contains a number of measures to limit third-party impacts. Second-tier documents including water transfers would need to closely review the Program Plan, and should add such measures when applicable and feasible.

Second-tier projects which may affect endangered species should carefully review the Multi-Species Conservation Strategy (MSCS) for applicability, and to determine if any measures are required to maintain consistency with the MSCS. Site-level analysis for incidental take under the MSCS must be done at the second-tier project level.

Also, projects requiring a Section 404 Permit from the Corps of Engineers should review the Memorandum of Understanding (MOU) between CALFED and the Corps on Section 404 to determine what level of analysis will be required in order to obtain a Section 404 Permit. The MOU describes a process by which compliance with Section (404) (b) (1) requirements can be

met, and to clarify and expedite information requirements.

Tiering Requirements

In using the tiering concept for second-tier documents, the second-tier document must state: 1) the title of the previous program document; 2) where a copy of the programmatic document can be reviewed; 3) that the second-tier lead agency is using the tiering concept, and 4) that it is being tiered from the original programmatic document. As a template, the following can be used:

“This document is tiered from the CALFED Programmatic EIS/EIR, certified/Record of Decision issued June __, 2000. The Programmatic EIS/EIR can be reviewed at the CALFED Bay-Delta Program, 1416 Ninth Street, Room 1147, Sacramento, CA (or successor address). The tiering concept being followed is pursuant to NEPA (CEQ) Regulations Section 1502.20 and/or CEQA Guidelines Section 15152.”