

April 12, 2000

Mike Madigan, Chair
Sunne Wright McPeak, Vice-Chair
Bay-Delta Advisory Council
CALFED Bay-Delta Program
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Dear Mike and Sunne:

Thank you for the opportunity to comment on CALFED's Preferred Alternative. We are submitting this letter on behalf of a coalition of over 30 environmental justice and community-based groups. These comments may go beyond the scope of your original request, but we felt it was important to comment broadly about environmental justice issues and its relationship with the CALFED program, as it seems that it has yet to be adequately discussed or addressed.

The preferred alternative has been described as a framework for decision making, and it is well recognized that although numerous action steps are proposed, there still remains substantial analysis that must accompany any phased decisionmaking in order to ensure that CALFED objectives are met; this becomes particularly important when objectives may be in conflict and/or actions have not been adequately studied to determine potential impacts that must be addressed. Moreover, CALFED's principles include commitments to actions that reduce conflicts, are equitable, and result in no significant redirected impacts. We believe that adherence to such principles must also include a commitment to environmental justice.

The preferred alternative and the CALFED program must make a stronger commitment to developing a framework to conduct, identify, address, and mitigate existing and potential environmental justice problems and impacts. By truly embracing its own principles, CALFED's preferred alternative and program will affirmatively address existing and potential environmental justice problems in the Bay-Delta, not simply engage itself in an extensive and reactionary mitigation program as it moves forward. In doing so, CALFED must:

- Develop and adopt environmental justice goals and objectives that will inform the decisionmaking, evaluation, and implementation of CALFED program areas. This includes building a stronger model to conduct environmental justice analysis that will guide implementation of the preferred alternative and future environmental review of specific actions taken by CALFED;
- Expand its scope of problem definition to include the identification and amelioration of social, economic, and human health problems related to the Bay-Delta, as well as the impacts of CALFED actions;
- Commit its programs to developing strategies that empower and engage community-based organizations, rural and urban watershed groups, and affected local residents to address program objectives, including those related to environmental justice;
- Provide for representation of environmental justice, rural, and urban constituencies in its governance and decisionmaking structures, including those developed within program areas; and,
- Commit sufficient and equitable staffing and funding to support the recommendations and actions suggested above.

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Environmental Justice

Environmental justice is the fair treatment of people of all races, cultures, and incomes with respect to the development, adoption, implementation, and enforcement of environmental laws, regulations, and policies. According to the EPA's Office of Environmental Justice, "fair treatment" means that no group of people, including racial, ethnic, or socioeconomic group, should bear a disproportionate share of the negative environmental consequences resulting from the execution of federal, state, local, and tribal program and policies.

The obligation to address environmental justice issues is not new. Title VI of the Civil Rights Act of 1964 forbids discrimination by programs receiving federal financial assistance, and thus includes any state or local agency receiving federal funds. Under Title VI, federal agencies and departments may not provide funding to programs that discriminate on the basis of race, including programs that have the *effect* of subjecting individuals to discrimination (i.e., disparate impact).

In the 1994, the President issued Executive Order 12898 on Environmental Justice ("Executive Order"). It 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.

While CEQA does not yet 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. Public agencies have additional obligations to present and future generations of California citizens when resources held in trust for the public are managed. Moreover, the state of California has several bills pending that assert environmental justice obligations of state agencies. SB 115 (chaptered) requires that the California Environmental Protection Agency develop a model environmental justice mission statement for boards, departments, and offices, and that it conduct its program, policies, and activities to ensure environmental justice. SB 1113 (enrolled) requires that the Office of Planning and Research recommend changes in, and the Secretary of the Resources Agency shall certify and adopt revisions to, guidelines to provide for the identification and mitigation by public agencies of disproportionately high and adverse environmental effects of projects on minority populations and low-income populations. AB 2237 (enrolled) is intended to ensure that communities that experience disproportionately high and adverse human health or environmental effects receive access to environmental funding that is commensurate with those effects.

Given the above obligations by the federal and state agencies that comprise CALFED, and CALFED's own principles, we believe that CALFED must adopt and act on principles to ensure environmental justice goals are achieved related to CALFED program actions.

Adopt an Environmental Justice Principle and program goal and objectives to address environmental justice issues

To date, CALFED has inadequately identified and analyzed existing environmental justice problems in the Bay-Delta and potential impacts of its program elements (please see comments submitted during the EIS/EIR public comment period from Torri Estrada, et. al, dated September 22, 1999). The Environmental Justice analysis contained in the June 1999 draft EIR/EIS correctly identifies two population groups that

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may be adversely impacted by CALFED actions: farm workers and agribusiness workers. We agree that attention must be paid to addressing potential impacts to these communities. In moving forward with specific projects, CALFED must recognize the need to conduct further and more detailed analysis of adverse impacts across all potentially impacted communities, including those of color in urban and rural areas.

CALFED must commit to developing and carrying out appropriate environmental justice analysis as a matter of procedure to determine whether or not CALFED's program actions could introduce a disproportionate impact or worsen an existing disproportionate impact. It must also respond to such analysis by developing program goals and objectives for each program element to address and mitigate such impacts without harming institutional safeguards that are already in place. In essence, CALFED needs to adopt environmental justice as an operating principle (as it is required to do so by Title VI, the Executive Order, and the pending state legislation).

Drawing from the President's Executive Order, we can suggest the following principles for inclusion in the CALFED program:

The CALFED program and its participating agencies are committed to seeking fair treatment of people of all races, cultures, and incomes, such that no segment of the population bears a disproportionately high or adverse health or environmental impact resulting from CALFED's programs, policies, or actions.

In seeking to address and achieve environmental justice (as defined above), CALFED will develop programs, policies and actions to:

- identify and evaluate the environmental, health, social, and economic effects of CALFED activities;
- propose and commit to measures to avoid or mitigate disproportionate effects;
- seek participation from potentially impacted communities in finding alternatives or solutions to mitigate impacts;
- improve research and data collection related to the health and environment of minority and low-income populations impacted by CALFED programs;
- support outreach and education activities to improve the public's ability to participate in CALFED decisionmaking and program implementation, including transparent and facile public access to data taken from all programs.

Broaden the program scope to include environmental justice issues facing Bay-Delta (and CALFED) impacted communities

CALFED's current impact analysis represented in the EIR/EIS continues to frame the issues and potential significant environmental impacts too narrowly; CALFED's analysis does not adequately consider many communities of color impacted, and impacted by, the Bay-Delta system. Clear ecological and social linkages are overlooked in the analysis because arbitrary boundaries are created within assumptions of the CALFED analytical framework and choices of measurement criteria.

For example,

- CALFED frames the water quality issues in terms of drinking water and environmental water quality concerns, and ignores the substantial problem of water quality impacts on those communities that rely on the Bay-Delta system for subsistence. Access to fisheries is a constitutional issue in California and contamination of aquatic species is of critical importance for numerous communities throughout the Delta, Bay, and Central Valley watersheds. Exclusion of the aquatic food chain as part of the problem scope is a major omission and ignores the environmental justice issues affecting communities throughout the Bay-Delta and Central Valley watershed.

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- CALFED's program has the potential to exacerbate groundwater problems in terms of overdraft and water quality. Its program should, therefore, more adequately address the need to improve groundwater management. CALFED's analysis of groundwater impacts does not adequately reflect the social, economic, and health problems and impacts in communities that could be adversely impacted by CALFED actions related to groundwater storage or water transfers.
- CALFED actions in the Delta could change water circulation patterns, adversely impacting the water quality in certain segments of the Bay-Delta system. Changes in peak flows from the Delta or other circulation patterns could impact pollution patterns, bioaccumulation, and exposure to toxic pollutants in the Bay. What analysis has CALFED done to identify the communities impacted by such changes in water quality? It has been stated before, and by others, that improved water quality for one set of users should not result in less adequate water quality for another purpose or another set of users. Nor should actions taken in one program area foreclose on options to remedy environmental justice problems being addressed in other program areas.

This broader framing of the problem may seem to expand CALFED's scope, but it also expands the actions that can contribute to a solution.

Support and implement actions that will address environmental justice issues by engaging community actors

In the examples above, and in the numerous examples we provide in our specific comments on program elements, CALFED misses an opportunity to define program actions that work with communities to address environmental justice issues that they face — actions that would contribute to a CALFED solution. Communities in urban areas are actively working on pollution prevention, watershed restoration, and education and outreach strategies that can contribute to CALFED objectives related to water quality, watershed management, ecosystem restoration, and water conservation.

CALFED should demonstrate in its programs a commitment to local and community implementation. Stage 1 actions continue to weigh heavily on studies, structural/engineering changes, and government actions, with incentives primarily offered to water agencies. CALFED support and incentives should be offered to community-based organizations who are effectively addressing water-related issues in the Bay-Delta system. In addition, CALFED should support and create incentives for water agencies to build partnerships at the local and regional level with farm workers, community-based organizations, and local residents. Community-based organizations, including urban watershed groups, are currently addressing water quality, ecological and habitat restoration for endangered species (endangered fish such as chinook salmon and steelhead use habitat and the aquatic ecosystems in urban areas), and water use efficiency issues of the Bay-Delta and should be included as a partner in solving problems in the Bay-Delta.

Ensure environmental justice representation in CALFED governance and decisionmaking structures of its programs

CALFED governance must be transparent and include equitable representation of environmental justice perspectives from both urban and rural communities. In addition, decisionmaking and oversight structures must also be balanced in their representation of stakeholders and affected communities, particularly those from the environmental justice community. Transparency of CALFED governance and oversight structures will ensure that CALFED actions are designed, implemented, and evaluated as to ensure that they truly serve the interests on environmental justice and communities of color at large. One such commitment must be to assure broad public and stakeholder involvement in the planning and implementation of projects.

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Commit sufficient and equitable staffing and funding to support the achievement of environmental justice goals and objectives established by CALFED

Currently, federal and state agencies do not have the infrastructure and capacity to adequately address environmental justice problems and impacts anticipated in CALFED's preferred alternative. In moving forward with its preferred alternative, CALFED must provide for staffing levels within key agencies and program areas to address environmental justice. For example, environmental justice research and data collection should be integrated into CALFED's Comprehensive, Monitoring, Assessment, and Research Plan (CMARP). Each CALFED program should have dedicated and trained staff to assist the program in carrying out environmental justice principles. Moreover, the dedication of adequate and equitable funding throughout CALFED program areas is necessary for CALFED to achieve its environmental justice goals and objectives.

Attached, we provide additional comments on how CALFED programs can begin to address the issues that we have raised more broadly above. We understand that such comments likely go beyond the scope of commenting on a programmatic document, but we feel this will help better illustrate the extent to which we feel the programs must go to better address the environmental justice implications of the CALFED program. Thus, we leave our comments on program elements attached.

Thank you for this opportunity to comment. Addressing environmental justice issues and including communities in implementing solutions is essential to finding a long-term solution for the Bay-Delta that will meet CALFED's stated principles. We hope that these concerns can be addressed in the Record of Decision and in CALFED's program implementation as it moves forward.

Sincerely,

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