State of California

Memorandum

To : Mr. Lester Snow
Executive Director
CALFED Bay-Delta Program
1416 Ninth Street, Suite 1155
Sacramento, CA 95814

Date: APRIL 16 1996

ORIGINAL SIGNED BY:

Jerry Johns
Assistant Division Chief
Division of Water Rights

From : **STATE WATER RESOURCES CONTROL BOARD**
901 P Street Sacramento, CA 95814
Mail Code G-8

Subject: NO ACTION ALTERNATIVE DISCUSSION PAPER

Thank you for letting us review your discussion paper regarding developments of the No Action Alternative for the CALFED Bay-Delta Program. We have only a few comments detailed below.

1. Page 1 last line, and top of page 2. While this discussion is technically correct, it may lead to a misunderstanding of the term baseline from which to assess environmental impacts of water and projects. Under CEQA, the No Action Alternative is not always the same as the baseline. For water projects, it usually is not the baseline. The baseline is the existing conditions, or environmental setting, described in the CEQA guidelines at Title 14, California Code of Regulations, section 15125. The purpose of having a baseline is to determine the impacts of the proposed project. This requires a comparison with existing conditions. (See Title 14, California Code of Regulations, section 15126(a).) Case law regarding CEQA precludes using a No Action Alternative to determine the impacts of a proposed project where the No Action Alternative allows for continued development that would have more impacts on the environment than the proposed project. (See E.P.I.C. v, County of El Dorado (1982) Cal. Reptr. 317.))

   CEQA requires that an EIR include a No Action Alternative and that it be compared to the existing conditions. This shows how the environment would change if the agency took no action on the proposed project. (Title 14, California Code of Regulations, Section 15126(d)(4).) Other alternatives may, in addition to being compared to existing conditions, be compared to the No Action Alternative for informational purposes. However, for CEQA, the No Action Alternative should not be treated as the baseline for purposes to determining the environmental effects of the proposed project or for establishing mitigation measures.

This may be the proper baseline for NEPA, but it is not for CEQA.

The idea of comparing the action alternative to both the No Action Alternative and existing conditions as set forth on the top of page 2 is a good one and helps bridge one of the gaps between NEPA and CEQA.

2. Page 2, first full paragraph, line 2 - Change to: ..."reasonable" basis of comparison for assessing the impacts of the action alternatives.

3. Page 5, under the section on possible Phasing of Analysis - As you state in this section, the phrasing of the No Action Alternative would be complex and a rather novel approach. This moving target for your NEPA analysis may lead to more confusion than clarity. I agree that it should be evaluated cautiously and may not be worthwhile.

4. Page A-1, under "Actions" - The fourth line of this paragraph mentions actions to be included in a No Action Alternative. However, the title of the section states that this is a No Action Alternative and cumulative action list. I'm confused. Some of these actions, particularly the physical and environmental actions (e.g., Shasta Lake enlargement, Los Banos Grandes, Delta Wetlands, etc.) seem to fall better under the category of cumulative impacts rather than No Action. A No Action Alternative represents the build-out that would occur under the current regulatory requirements. It does not include changes in the current regulatory requirements. Therefore, new or revised policies, institutional actions, yet-to-be authorized physical or environmental actions, and future economic actions would not be part of the No Action Alternative, since each of them involves an action. A list of activities that separates No Action from cumulative impacts would be helpful.

I hope these comments are helpful. If you have any questions, please give me a call at (916) 657-1981.

cc: Steve Yaeger, CALFED
Rick Breitenbach, CALFED