

Mr. Lester A. Snow, Executive Director
CALFED Bay-Delta Program
1416 Ninth Street, Suite 1155
Sacramento, California 95814

I am writing concerning the relationship between the CALFED Bay-Delta Program (CALFED) and the U.S. Army Corps of Engineers (USACE) Regulatory program in South Pacific Division. The nature of this relationship was expressly stated in the letter sent by our Sacramento District in response to your request that USACE be a cooperating agency under NEPA for the preparation of the Programmatic Environmental Impact Statement (PEIS), and was subsequently restated in the language that we have provided for the draft revised MOU on participation by USACE in the Federal Ecosystem Directorate (ClubFED). Essentially, USACE must retain independent authority to review and evaluate applications for those program features which may eventually require Department of the Army permits prior to construction.

For the vast majority of regulatory actions, we have sufficient organizational capacity to review applicant supplied data and to generate independent NEPA and 404(b)(1) documentation. However, for those projects whose potential impacts are significant enough to warrant the preparation of an EIS, we lack sufficient interdisciplinary staff and funding to perform these functions. Consistent with our NEPA implementing regulations, we shift the work associated with the independent review, and in some instances the generation of information on environmental impacts, to an independent third party contractor.

The mechanism that we use in transferring the work load while ensuring independent review of applicant supplied data, is referred to as a "third party agreement". Simply described, the permit applicant contracts and pays for environmental review services with a qualified consulting firm. The terms of the contract specifies that the contractor takes their direction only from the USACE regulators, and not from the permit applicant. The third party environmental contractor then assists the regulators in their interdisciplinary review of the environmental documentation. This ensures that our independent review of the materials is substantively and procedurally adequate, while expediting the permitting process.

I have been informed by my regulatory staff that the CALFED Bay-Delta Program hopes to receive documentation at the end of Phase II that the information contained in the Draft PEIS is sufficient to satisfy our documentation requirements for NEPA and 404(b)(1). They have also indicated that a substantial number of

Enclosure 2

stakeholders are concerned over assurances that permits will be issued in a timely fashion for the storage and conveyance elements of the Program. At the same time, there are always constituencies who are scrutinizing our actions in making permit decisions, to ensure that we are meeting our responsibilities under the Clean Water Act and the National Environmental Policy Act.

While even with a third party contract we cannot assume that permits will be issued, with such an agreement we can assure that permit decisions will be made in a timely manner. Absent such a third party agreement, we would be unable to provide such assurances on the timeline that the CALFED program has established for Phase II.

In summary, CALFED will need to fund and obtain the services of a qualified environmental consulting firm to provide adequate interdisciplinary support or it is unlikely that we will be able to perform the necessary review of your environmental documentation within your current timeframe. My Sacramento District Regulatory staff are prepared to assist you with the establishment of the necessary documentation to ensure timely review of your documentation within the framework of a third party agreement. The point of contact for the action in Sacramento District is Jim Monroe, at (916) 557-5266. Should you have additional questions, please contact Wade Eakle of my staff at (415) 977-8030

Sincerely,

J. Richard Capka
Brigadier General, U.S. Army
Division Engineer