

**CALFED
BAY-DELTA
PROGRAM**

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February 23, 1998

The Honorable Debra Bowen, Chair
Assembly Committee on Natural Resources
State Capitol, Room 4112
Sacramento, CA 95814

Dear Assemblywoman Bowen:

This is in response to your letter of November 13, 1997, requesting clarification of the effect of a habitat conservation plan on environmental review of water transfers under the CALFED Bay-Delta Program. You have expressed concern that the combination of a simplified CALFED water transfer process and a program-wide habitat conservation plan could lead to significant impacts on wildlife that would be exempt from review under the Endangered Species Act.

I apologize for the delay in responding. Your questions and concerns, as well as those raised by others, have caused us to evaluate issues related to development of a CALFED habitat conservation plan.

At the outset, let me assure you that the CALFED Program is not suggesting any combination of policies or programs that would result in significant impacts on wildlife being exempt from review under either the state or federal Endangered Species Act.

Before discussing our point of view on species and habitat conservation, perhaps I should review our point of view regarding water transfers. Water transfers are authorized and governed by State law. As you have noted, water transfers are complex activities. Many different types of water transfers exist, and each type presents its own set of issues. For example, a transfer of water from the Sacramento Valley to the San Joaquin Valley or to urban Southern California involves issues of conveyance and storage capacity in the State Water Project's California Aqueduct or the Central Valley Project's Delta-Mendota Canal. Some transfers occur entirely within the service area of a water supplier, while others occur between agencies and require approval of the State Water Resources Control Board. Additionally, the CVPIA authorized transfers from a Central Valley Project water user to an outside water agency.

CALFED Agencies

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

Federal
Environmental Protection Agency
Department of the Interior
Fish and Wildlife Service
Bureau of Reclamation
U.S. Army Corps of Engineers

Department of Agriculture
Natural Resources Conservation Service
Department of Commerce
National Marine Fisheries Service

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The CALFED Bay-Delta Program will soon release a draft programmatic environmental impact statement/environmental impact report that will discuss several alternative sets of program actions to address the multiple ecosystem and water management issues present in the Bay and Delta area. Those environmental impact documents will discuss water transfer policy. When finalized, those documents may recommend changes in law, regulation, or water supply contracts to implement those policy recommendations. The CALFED Bay-Delta Program will not change the law or regulations or contracts governing transfers of water or water rights. Those changes are within the control of the State Legislature, the State Water Resources Control Board exercising its regulatory authority over water rights, or water agencies through their contractual agreements.

Our current point of view is that a higher level of water transfers would help address part of the water reliability issue by allowing the voluntary compensated shift of water during critical periods. We also believe this higher level of transfers might occur if smaller agencies were able to participate in transfers. Currently, water transfers are sufficiently complicated that smaller agencies and individuals cannot participate because the costs of completing required economic and environmental analyses are prohibitively high. But we agree that water transfer policy is only one part of an integrated approach to water management. Additionally, we are keenly aware of the potential for multiple and cumulative impacts of water transfers. We are working with interested parties to fashion approaches to addressing these impacts. A consensus seems to be emerging that a water transfer information bank or "clearinghouse," that is, a central repository of information on all proposed and completed transfers, would benefit all parties in understanding the number, size, and impacts of water transfers. Nonetheless, I do not anticipate the creation of a water transfer process specifically and uniquely designed for the CALFED Program.

Water supply reliability is only one of the resource questions that the CALFED Program is addressing. The CALFED Bay-Delta Program is being designed, in part, to provide protection and restoration for endangered species, as well as for other species that inhabit the Bay-Delta ecosystem. Although our goal is to protect and restore the Bay-Delta ecosystem, we are aware that some specific Program actions may have adverse impacts on endangered species. To maximize the beneficial impacts of the Program on the ecosystem and to ensure that the CALFED Program complies with federal and California Endangered Species Acts, CALFED agencies are developing a comprehensive Conservation Strategy. This Strategy will integrate CALFED Program species enhancement and mitigation actions. We believe integration of these actions will improve species and habitat protection. As a secondary benefit, we believe this

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integrated Conservation Strategy will increase the assurances of overall Program implementation.

The Conservation Strategy will address all federally and state listed, proposed, and candidate species that may be affected by the CALFED Program. The Strategy will also address other species that CALFED has identified as potentially affected by the Program, when adequate information is available. In the Conservation Strategy, we are using the term "covered species" to refer to all of the species that will be addressed in the Strategy. The Strategy will address all the effects (beneficial, neutral, and adverse) of CALFED Program actions on covered species. The Strategy will also address the minimization and mitigation measures needed both to offset anticipated adverse impacts and to allow for species recovery. In addition to addressing impacts on species, the Conservation Strategy will address the conservation and protection of habitats affected by the CALFED Program.

We are designing the Conservation Strategy to include a monitoring and reporting component, as well as a process for adaptive management. The Strategy will also address funding for implementation of the Strategy and will identify a process to address unforeseen circumstances. Unforeseen circumstances are those changes in the circumstances surrounding the Conservation Strategy that could not be anticipated by CALFED and that result in a substantial and adverse change in the status of a covered species. Availability of funding, as well as other measures, may provide a buffer for events that could not reasonably have been anticipated.

We believe the Conservation Strategy will assist in compliance with federal and State endangered species acts. Some specific Program actions may result in adverse impacts to endangered species. For example, reconstruction of Delta levees to create habitat and to provide additional safety for Delta islands may have temporary impacts on some endangered species. Before proceeding with these actions, CALFED agencies will determine which regulatory mechanism is appropriate to ensure compliance with the federal and State endangered species acts. In some cases, that mechanism will be an incidental take permit with a habitat conservation plan under Section 10 (a) of the Federal Endangered Species Act. We anticipate that the Conservation Strategy will provide the general framework for most of the required components of a habitat conservation plan. For some actions, the Conservation Strategy may completely fulfill certain Section 10 requirements; for other actions, the Conservation Strategy will need to be refined and updated to fulfill Section 10 requirements.

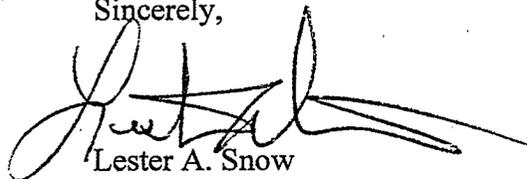
I would like to close by concurring with your observation that water transfers are a complex subject with implications reaching beyond the willing buyer and willing seller. We are

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aware of the complexity, and with the help of interested parties we are working toward an approach that balances the potential water supply benefits and the potential impacts to affected environments and communities.

I hope this information is helpful.

Sincerely,

A handwritten signature in black ink, appearing to read "Lester A. Snow", with a long horizontal flourish extending to the right.

Lester A. Snow
Executive Director