

The Bay Institute of San Francisco  
California Sportfishing Protection Alliance  
Environmental Defense  
Golden Gate Fishermen's Association  
League of Women Voters of California  
Mono Lake Committee  
Natural Resources Defense Council  
Pacific Coast Federation of Fishermen's Association  
Save San Francisco Bay Association

March 31, 2000

Mike Madigan, Chair  
Sunne McPeak, Co-Chair  
Bay-Delta Advisory Council  
CALFED Bay-Delta Program  
1416 Ninth Street, Suite 1155  
Sacramento, California 95814

Dear Mike and Sunne:

In accordance with BDAC Coordinator Eugenia Laychak's March 3, 2000, call for comments by BDAC members on the proposed motion summarized and described in Mike's February 23, 2000, memorandum to the CALFED Policy Group, here are our comments. First we address the process question of the appropriateness of having any BDAC motion on the best solution alternative for the environmental documentation process, and then we address the substantive issues we wish to emphasize regarding the CALFED Preferred Program Alternative (PPA). This letter does not include a comprehensive summary of our recommendations and comments on the vast CALFED program. Many of our organizations will submit additional comments as appropriate.

**Process** BDAC was established by Secretary of the Interior Bruce Babbitt on January 31, 1995, in accordance with Section 9(a)(2) of the Federal Advisory Committee Act (FACA). The establishment of BDAC was approved by the Director of the Office of Management and Budget on March 21, 1995, and the charter for BDAC was filed on May 12, 1995. The stated purpose of BDAC is to "provide recommendations to the Secretary of the Interior and Governor of California in developing long-term solutions to address the underlying causes of problems affecting the San Francisco Bay, Sacramento-San Joaquin Delta Estuary and its watershed (Bay-Delta Estuary) public values." The charter sets forth four specific responsibilities for BDAC, namely to do as follows:

1. "Recommend objectives to be met, including both the problems to be addressed and a specific set of objectives."

2. "Recommend neutral evaluation criteria to measure the effectiveness of alternative solutions consistent with statutory and regulatory authorities."
3. "Recommend specific solution alternatives to be evaluated in a formal National Environmental Policy Act (NEPA)/California Environmental Quality Act (CEQA) Process carried out by one or more agencies."
4. "As part of the NEPA/CEQA environmental documentation process, recommend the best solution alternative for implementation by the appropriate agencies."

In addressing its responsibilities, BDAC from the beginning proceeded by means of discussion and a consensus approach. After some consideration of our process at an October 25, 1996, meeting of BDAC, Lester Snow as the executive director of the CALFED Bay-Delta Program was asked to present some guidance for structuring BDAC deliberations. He did so in a memorandum dated November 8, 1996, entitled "Suggested Guidelines for BDAC Deliberations." Eight guidelines were suggested. One stated the following: "As the goal is to build agreement on appropriate approach, motions are not encouraged, as they can be divisive and force BDAC members into inappropriate choices. Rather than conducting business by making motions, the Chair and Co-Chair, along with the Executive Director, will sum up discussion as detailed below." The next guideline, entitled "A Working Definition of Consensus," stated that the manner in which BDAC operates "is to move toward a sense of broad agreement on the elements of the CALFED Bay-Delta solution. BDAC members commit to working toward consensus in their deliberations....For the purpose of this effort, consensus refers to the highest level of agreement that can be reached without dividing the parties into factions....As part of this goal of building consensus, BDAC members are asked to clearly identify areas of agreement, and to work hard to narrow areas of disagreement."

BDAC accepted Lester Snow's suggested guidelines for its deliberations and dealt with its first three specific responsibilities - recommending objectives, recommending evaluation criteria and recommending specific solution alternatives - in a consensus manner as provided in the guidelines. At this critical juncture, when we now must complete our work by recommending the best solution alternative for implementation by the appropriate agencies, it is entirely inappropriate to ignore the agreed-upon guidelines from 1996 and to proceed by motion. We strongly object to this precipitous and unwarranted change in BDAC's process, which threatens to derail the good work that has been going forward since 1995.

**Substance** The PPA currently includes eight programs, with the topics of finance and governance relegated to a separate Implementation Plan. We believe, however, that finance and governance are integral to the success of the Bay-Delta Program, and we consequently urge that the material covered in the Implementation Plan be included in the PPA itself. We appreciate that Mike's February 23, 2000, memorandum to the CALFED Policy Group recommends aggressive progress on identifying guaranteed funding for ecosystem restoration - this is crucial for the long-term success of the Bay-Delta Program, as is the creation of an effective commission to guide implementation of the

PPA and a strong conservancy to manage the Ecosystem Restoration Program (ERP). With regard to finance, we also support aggressive progress on implementation of user-derived financing of new storage and conveyance projects as well as user responsibility for financing mitigation of the environmental impacts caused by such new projects. The balance of our comments deal with the eight programs identified in the current version of the PPA.

### **1. Levee System Integrity Program**

Although the section of the PPA on the ERP identifies reconnection of Bay-Delta tributaries with their floodplains through the construction of setback levees as a representative ERP action and setback levees are mentioned under Conveyance, we believe the topic of setback levees should also be addressed in the Levee System Integrity Program. We suggest a new bullet as follows: "Levee Setback Plan - Where appropriate and feasible, set back levees to provide the multiple benefits of levee integrity, ecosystem restoration, subsidence control, flood management, conveyance and storage."

Currently the Delta Levee Subsidence Control Plan language refers only to correcting subsidence "adjacent to levees" and to coordinating research "to quantify the effects and extent of inner-island subsidence." We believe that in addition to efforts to quantify subsidence effects extent, there should be aggressive research on means of inner-island subsidence reversal. Some have suggested a goal of rebuilding key islands in the western Delta to sea level, for example by using clean dredged material from San Francisco Bay. We believe that goal should be seriously investigated.

### **2. Water Quality Program**

We believe the following should be added to the opening paragraph on continuous improvement in water quality: "An adaptive management approach to water quality improvement based on the most current information will be utilized to fully protect public health while minimizing costs and maximizing environmental benefits. The Drinking Water Quality Council or its successor will be charged with consulting fully with the ERP and the Watershed Program."

We strongly object to the reference in the bullet on drinking water parameters to a screened diversion structure near Hood. See our comments on the Conveyance Program.

While the listed actions on the specific problems in the last nine bullets are appropriate, we note that these are representative only and that a more definitive, prioritized set of recommended actions should be forthcoming from the Drinking Water Quality Council. In addition, language needs to be added recognizing that work will be done on water quality issues affecting the health of the ecosystem independently of drinking water, e.g. water quality problems leading to the consumption of contaminated fish. This is an important environmental justice concern not adequately treated in the PPA.

### **3. Ecosystem Restoration Program**

We suggest that the six goals of the Strategic Plan for Ecosystem Restoration be stated in the PPA. These are as follows:

1. Achieve recovery of at-risk native species dependent on the Delta and Suisun Bay as the first step toward establishing large, self-sustaining populations of these species; support similar recovery of at-risk native species in San Francisco Bay and the watershed above the estuary; and minimize the need for future endangered species listings by reversing downward population trends of native species that are not listed.
2. Rehabilitate natural processes in the Bay-Delta system to support, with minimal ongoing human intervention, natural aquatic and associated terrestrial biotic communities, in ways that favor native members of those communities.
3. Maintain and enhance populations of selected species for sustainable commercial and recreational harvest, consistent with goals 1 and 2.
4. Protect or restore functional habitat types throughout the watershed for public values such as recreation, scientific research and aesthetics.
5. Prevent establishment of additional non-native species and reduce the negative biological and economic impacts of established non-native species.
6. Improve and maintain water and sediment quality to eliminate, to the extent possible, toxic impacts on organisms in the system, including humans.

### **4. Water Use Efficiency Program**

While we support the general direction of this program, the water use efficiency effort has not yet produced final recommendations that can be evaluated for adequacy. In addition, the linkage between implementation of the various anticipated water conservation-related actions and other programs such as Storage and Conveyance is unacceptably vague. See our comments below regarding Storage.

### **5. Water Transfer Program**

Same comment on linkage as in #4 above (Water Use Efficiency Program).

### **6. Watershed Program**

We support the Watershed Program and, in particular, the work of the workgroup associated with the Watershed Program.

## **7. Storage**

As presently written, this program is appropriately explicit that without compliance with "all" program linkages, including the four set out in bullets, there will be no decision to construct groundwater and/or surface water storage. We are concerned, however, that in the second bullet the phrase "[d]emonstrated progress" could be subject to many different interpretations. We suggest the following instead: "Demonstrated substantial progress in meeting the Program's water use efficiency, water reclamation, and water transfer program targets under the Water Management Strategy, with an explicit method provided by which to determine what amount of progress is 'substantial' and whether substantial progress has been demonstrated." To allow progress on this program to be properly evaluated, the program must include specific measurable objectives.

Storage projects in the PPA are presented as a means of addressing all four Bay-Delta Program areas of concern, i.e. ecological health, water supply reliability, water quality and the levee system. It is unstated, however, how the benefits of a given storage project will be allocated among the potential beneficiaries. We believe some attention at the programmatic level should be devoted to this problem. For example, is it anticipated that successful water conservation would give the conserver some sort of "entitlement" to water from a future storage project?

Before any particular storage project can be considered appropriate for authorization, further scientific and operations studies will be needed. Since all storage projects are likely to have impacts on the sources from which they intend to divert their water supply, these impacts must be carefully identified, since the necessary mitigation for those impacts may well make particular storage projects infeasible and/or uneconomic. Further, the program should be strengthened by providing for a more rigorous economic evaluation regarding new projects. The results of CALFED's Economic Evaluation of Water Management Alternatives suggest that, using conservative estimates of yield, there are no new surface storage projects under consideration by CALFED that are economically justifiable as water supply facilities. The program should reject water supply uses for which there is no economic justification.

Before final storage decisions are made, we believe there must be a re-forecasting of future water demands, perhaps through Bulletin 160-03, one that accurately describes the relationships between supply, demand and price and the wide array of ways available to meet demand. In the PPA, this would be most appropriately presented as a fifth program linkage bullet. Furthermore, final decisions regarding new surface storage should not be made until the end of Stage 1, after all the other program elements had had a chance to work.

## **8. Conveyance**

Among the proposed through-Delta conveyance facility actions at the seventh bullet is study and evaluation of a screened diversion structure on the Sacramento River at Hood with a range of diversion capacities up to 4,000 cfs "as a measure to improve drinking

water quality in the event that the Water Quality Program measures do not result in continuous improvements toward CALFED drinking water goals." This was proposed as a way to meet numerical source water quality targets for bromide and total organic carbon (TOC). But since that proposal was made, new information has altered key assumptions underlying the concerns about bromide and TOC, and it has been recognized that any attempt by CALFED to predict future drinking water standards for bromide and TOC is premature and inappropriate. Therefore, we strongly object to any attempt at this time to justify a Hood diversion facility on the basis of water quality concerns.

We look forward to discussing these issues with you and other BDAC members at our meeting on April 13, 2000. Thank you for your consideration of our views.

Sincerely,

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