

March 28, 2000

Honorable K. Maurice Johannessen  
Chair, Senate Select Committee on CALFED Water Program  
State Capitol, Room 5061  
Sacramento, CA 95814

Dear Senator Johannessen:

Several comments and observations made during the March 15, 2000, meeting of the Select Committee deserve a formal response to clarify the record on these topics.

It was suggested that the current audit by the Bureau of State Audits of land acquisition activities conducted by the CALFED Bay-Delta Program and associated state and federal agencies was prompted by unresponsiveness by CALFED staff. We see no information before the committee to support that suggestion. Assemblyman Dickerson's letter of January 4, 2000, to Assemblyman Wildman, chair of the Joint Legislative Audit Committee, requesting authorization for this audit indicates that "...(m)any citizens are concerned that an excessive amount of land in California is being acquired for the purposes of habitat restoration and wetland/ecosystem restoration without any seeming centralization or organized method or goal by the separate state agencies that are a part of the CALFED process." This request made no mention of unresponsiveness by CALFED staff to requests for information.

It was also suggested that some stakeholders submitted requests for information under the federal Freedom of Information Act (FOIA) because CALFED staff have been unresponsive to requests for program records. We have reviewed correspondence addressed to the CALFED Bay-Delta Program regarding requests. For information generally, and those specifically under the federal FOIA and California Public Records Act (CPRA). Our review reveals that the CALFED Bay-Delta Program has been forthcoming in providing members of the public with copies of identifiable program records. The vast majority of these information requests have been processed quickly and the identifiable records provided to individuals, agencies, the press, and other organizations.

Several information requests from the California Farm Bureau Federation (CFBF) allege that CALFED has not been responsive to requests for "information" under the FOIA. For clarification, the FOIA requires the federal agencies to release existing identifiable records held by the federal agencies. The CPRA contains similar requirements that apply to state agencies. Neither law requires public agencies to create records in response to information requests or to conduct research and draft answers to questions posed under a FOIA or CPRA request. The following information summarizes our communications with the CFBF on this matter:

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**CALFED Agencies**

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<p><b>California</b></p> <ul style="list-style-type: none"> <li>The Resources Agency</li> <li>Department of Fish and Game</li> <li>Department of Water Resources</li> <li>California Environmental Protection Agency</li> <li>State Water Resources Control Board</li> <li>Department of Food and Agriculture</li> </ul>	<p><b>Federal</b></p> <ul style="list-style-type: none"> <li>Environmental Protection Agency</li> <li>Department of the Interior</li> <li>Fish and Wildlife Service</li> <li>Bureau of Reclamation</li> <li>U.S. Geological Survey</li> <li>Bureau of Land Management</li> <li>U.S. Army Corps of Engineers</li> </ul>	<ul style="list-style-type: none"> <li>Department of Agriculture</li> <li>Natural Resources Conservation Service</li> <li>U.S. Forest Service</li> <li>Department of Commerce</li> <li>National Marine Fisheries Service</li> <li>Western Area Power Administration</li> </ul>
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- On August 6, 1999, the CFBF sent a letter to the CALFED Bay-Delta Program, the U.S. Department of the Interior, and the California Resources Agency. The letter requested detailed answers to five questions because "...California business and labor interests have been involved in ongoing efforts via a coalition to secure federal and state funding for CALFED programs...[but] it is problematic to keep pushing for additional appropriations when we [CFBF] cannot account adequately for use of the money to date." This initial letter from the CFBF, which recited the FOIA, did not suggest any unresponsiveness on the part of the CALFED staff.
- By letter of September 7, 1999, the CALFED Bay-Delta Program responded by providing copies of identifiable records held at the Program office that pertained to the questions posed in the CFBF August 6, 1999, letter. The U.S. Department of the Interior and the California Resources Agency offered separate responses.
- On October 5, 1999, the CFBF wrote another letter to the CALFED Bay-Delta Program and the California Resources Agency suggesting that the Program's response of September 7, 1999 was evasive and incomplete. The CFBF specifically requested additional answers to the questions posed in the prior letter and again cited the FOIA.
- On October 15, 1999, the CFBF sent another letter to the CALFED Bay-Delta Program, the U.S. Department of the Interior, and the California Resources Agency asking for a detailed response to a series of questions about 41 land acquisition projects funded by CALFED. This letter again cited the FOIA.
- In response to the CFBF's October 5, 1999, and October 15, 1999, letters, CALFED staff arranged for CFBF staff to inspect and copy CALFED records pertaining to funded projects involving land acquisition on October 18, 19, and 21; met with CFBF officials on October 25; and provided a written response on November 3, 1999. The CALFED Program's November 3, 1999, letter included additional information related to the Department of Water Resources internal audit of CALFED's Category III process. Further, the letter explained that the CALFED Program had provided copies of all existing records responsive to the questions posed in the CFBF's letters. Separate responses were provided by the U.S. Department of the Interior and the California Resources Agency.
- On November 16, 1999, the CFBF sent another letter to the CALFED Bay-Delta Program and the California Resources Agency indicating its belief that "...it is reasonable to expect CALFED to produce relevant information from all its member resources."
- On December 10, 1999, the CALFED Bay-Delta Program responded in writing, explaining that at least some of the information the CFBF was seeking about land acquisition projects is not contained in the Program files because the Program to date had not requested such information from grant applicants. The letter notes that CALFED staff were working with CFBF staff on how to obtain and track information the CFBF was interested in. Indeed,

many of the CFBF suggestions about information tracking for the CALFED Program have been incorporated into the Program's process for selecting ecosystem restoration projects.

It is important to emphasize that the federal Freedom of Information Act and the California Public Records Act do not require public agencies to conduct research or create records in response to requests for information. The CALFED Bay-Delta Program has incorporated the information needs of the CFBF, and other interested stakeholders, into its ecosystem restoration grant process to ensure that in the future, the types of information that the CFBF seeks will be readily available and accessible to members of the public.

Additionally, it is important to note that CALFED does not direct or control the actions of its member agencies. CALFED is a group of state and federal agencies, established by agreement in June 1994 and operating under a 1995 contract. CALFED has three functions – first, serving as a focal point for coordinating operations of the federal and state water projects with environmental regulatory requirements; second, developing a long-term water and resources management plan for the Bay-Delta Estuary; and third, managing Bay-Delta ecosystem restoration funds that have been appropriated to the Resources Agency or the Department of Interior. The CALFED staff, including the Executive Director, reports to the CALFED agencies. CALFED agencies do not report to, or take direction or instruction from, the CALFED executive director or staff. Additionally, CALFED agencies have explicitly recognized that their participation in CALFED does not constrain or limit the agencies in carrying out their statutory responsibilities. In short, no agency has transferred any of its statutory authority to CALFED – whether defined as the agency group as a whole or as the CALFED staff.

It was suggested that information from the CALFED Program has not been provided to the Legislature's staff. We see no information to support this suggestion. We have reviewed our correspondence and meeting notes. With the exception of some current responses now in preparation, we can find no instance in which CALFED staff have not responded to requests for information from the Legislature.

It was suggested that an internal audit of CALFED accounting procedures has revealed serious problems, with the implication that these problems have not been addressed. This suggestion is an exaggeration of the audit's findings, and the implication is incorrect. Department of Water Resources' Internal Audit Office reviewed CALFED accounting activities for the ecosystem restoration funds that became available through passage of Proposition 204 (1996) and issued a report in December 1999. For the Select Committee's fuller understanding of this issue, I offer the audit's "Conclusion":

"In reviewing the overall financial and accounting system of the CALFED 'Category III' Program, in general, we found the accounting system to be reliable. We found all transactions through April 30, 1999 to be properly authorized and recorded in the accounting records. However, in our opinion there are weaknesses in internal controls that need to be corrected. Most of these control weaknesses stem from a cumbersome accounting system that flows through 5 separate organizational entities coupled with the lack of properly approved

reconciliation procedures. Additionally, communication between all organizations involved is hindered due to personnel changes. Finally, an overall program of fiscal monitoring of projects, which includes site inspections, needs to be established.”

In short, CALFED accounting is reliable and accurate, but should be improved. And it has been improved. Specifically, the CALFED staff response to DWR’s audit (included with DWR’s audit report) indicates that CALFED has taken action on nine specific points. DWR’s assessment of that response (also included with the audit report) is that the CALFED actions adequately demonstrate CALFED’s cooperation in complying with State and Department of Water Resources policy.

It was suggested that Senate Budget Subcommittee No. 2 on Resources, Environmental Protection, Judiciary, and Transportation deferred action on the CALFED Bay-Delta Program budget because the proposed budget lacked detail. This is inaccurate. On March 8, 2000, the budget subcommittee approved several parts of the CALFED budget, specifically:

- the proposed budget for CALFED staff support.
- the proposed CALFED expenditure authority for federal ecosystem restoration funds.
- the proposed budget for CALFED agricultural water use activities.
- the proposed budget for CALFED studies on the San Joaquin River.

The subcommittee denied approval of the proposed budget for CALFED integrated storage investigations. Senator Sher, chair of the subcommittee, indicated that this denial was without prejudice and was in accordance with the wishes of the Senate leadership for further discussions with the Administration on this subject. The subcommittee withheld action on the proposed budget for CALFED water acquisitions pending further information from the Department of Water Resources.

Thank you for the opportunity to clarify the Select Committee’s records on these matters. I agree that it is important for the Legislature to have accurate information for decision-making.

Please call me at (916) 657-2666, or Daniel McCarroll, CALFED Legislative Coordinator at (916) 653-5704, if you have questions on these matters.

Sincerely,



Steven R. Ritchie  
Acting Executive Director

cc: Members of Senate Select Committee on CALFED Water Program