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December 8, 1995

VIA FACSIMILE & FIRST-CLASS MAIL

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

Re: Comments on CALFED Workshop of December 4, 1995

Dear Mr. Snow:

Our firm represents a number of public agencies, mutual water companies, and farming companies that hold riparian and/or senior appropriative rights to divert water in the Sacramento Valley, the Delta, and the San Joaquin Valley. A list of our clients is attached hereto.

We attended CALFED's workshop on December 4, 1995 and have the following comments about the process that CALFED is using in order to develop a long-term solution to the problems facing the Bay-Delta Estuary.

1. *Potential Actions Are Not Well-Defined.*

The purpose of the December 4, 1995 workshop was to allow participants to discuss a large number of actions that might help resolve the problems facing the Bay-Delta Estuary. There was strong consensus in the break-out session that I attended (which included representatives from a variety of interests, including exporters, upstream diverters, urban, agricultural, and fisheries interests) that the generality of the actions proposed for consideration by CALFED made it virtually impossible for participants to determine whether an action would help resolve current problems facing the Bay-Delta Estuary or would create new problems.

At the conclusion of the December 4, 1995 workshop, there was general consensus among the workshop participants in favor of developing a set of

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"core" actions that would be included in all alternatives. The theory behind adopting these core actions is that, if there is general consensus on some actions that must be taken to improve the Bay-Delta Estuary, CALFED should include those actions in each and every alternative. In light of the general nature of the actions proposed, however, CALFED should be careful to avoid considering actions discussed during the workshop as anything more than a general agenda of the types of actions that could be a part of a solution to the problems facing the Bay-Delta Estuary. In particular, CALFED should not conclude that the workshop participants agreed to include any specific action in the set of core actions.

2. *CALFED Should Screen All Actions Included in Alternatives Against Its Solution Principles*

At the present time, CALFED is attempting to address the entire range of potential actions that should be considered in the alternative development process. It is critical, however, that each of the actions be screened against CALFED's Solution Principles before being accepted as a portion of a potential alternative.

CALFED has stated that alternatives must have "legal feasibility." Presumably, CALFED means by this principle that each of the alternatives must comply with applicable state and federal laws. Our clients agree with this principle; all alternatives proposed by CALFED must, therefore, be consistent with the seniority of our clients' water rights vis-a-vis the state and federal projects. Further, this principle requires that any alternative proposed must respect the senior rights of areas of origin (including the need for water to accommodate future growth) vis-a-vis the needs of water exporters.

CALFED has also stated that alternatives must be affordable for stakeholders. In light of the priority system and the protection for areas of origin, our clients believe that the legal obligation to undertake activities to restore the Bay-Delta Estuary rests with those who export water. In-basin users have little or no responsibility to contribute to such efforts. Consequently, CALFED should focus its attention on whether potential alternatives can be afforded by export interests, as they bear the responsibility to pay for restoration of the Bay-Delta Estuary.

3. *CALFED Should Strengthen the Solution Principle Prohibiting Redirected Impacts.*

The final Solution Principle states that alternatives should not "solve problems in the Bay-Delta system by redirecting significant negative impacts, when viewed in its entirety, in the Bay-Delta or other regions of California." This principle purports to prohibit CALFED from adopting as a solution an alternative that merely redirects the problems facing the Bay-Delta Estuary to some other area of California. However, the use of the word "significant" and the use of the phrase "when viewed in its entirety" have the potential to undermine this principle. If CALFED truly wishes to resolve the problems facing the Bay-Delta Estuary without simply moving those problems to other parts of the state, CALFED should add language to this principle stating that the word "significant" has the same meaning as under the California Environmental Quality Act and should delete the phrase "when viewed in its entirety."

4. *CALFED Should Recognize Ecosystem Benefits Outside the Bay-Delta Estuary.*

The actions proposed for consideration by participants at the December 4, 1995 workshop rightly focused on ameliorating conditions in the Delta. A number of these actions, however, would be located in upstream areas well away from the Delta. CALFED must be careful, therefore, to consider the impacts of such actions on upstream ecosystems before including such actions in alternatives. For instance, one action proposes modifying upstream consumptive uses of water. Forced reductions in upstream consumptive uses will have the impact of severely impacting local ecosystems dependent on these consumptive uses. CALFED should not ignore these impacts in considering actions to be included in its alternatives.

5. *Demand Management is Not a Panacea.*

Much discussion at the December 4, 1995 workshop focused on efforts to reduce water use, under the headings of improved demand management or water conservation. Although these efforts make sense in some contexts, they may not make sense throughout the state. For instance, a major problem for lowland areas in the Delta is not reducing water use but rather keeping subsurface flows out of the root zone. Water use in these areas is extremely efficient and often approximates the evapotranspiration requirements of crops

being grown. Similarly, water use in the Sacramento Valley is highly efficient, with most water either being needed for evapotranspiration, percolating to usable groundwater aquifers, or returning to the Sacramento River and, ultimately, to the Delta. Reducing use in these areas is not likely to generate much (if any) new water for the system.

6. *CALFED Should Use Water Right Decision 1485 as the Baseline for its Environmental Analysis.*

At the conclusion of the December 14, 1995 workshop, one participant asked Rick Breitenbach to describe the baseline that CALFED would use for its programmatic environmental impact statement/environmental impact report. Mr. Breitenbach replied that a decision on the baseline had not yet been made.

The appropriate baseline for CALFED's environmental analysis is the set of conditions established by the State Water Resources Control Board's Water Right Decision 1485, as supplemented by the contracts between the Department of Water Resources and the North Delta Water Agency and East Contra Costa Irrigation District. Other regulatory initiatives, such as the recently adopted Water Quality Control Plan and the Central Valley Project Improvement Act, should be analyzed as part of the cumulative impacts analysis rather than being included in the baseline condition. This approach to environmental analysis will clearly reveal the impacts of any solution proposed by CALFED as well as the impacts of other regulatory actions and will, therefore, meet CALFED's obligations under the National Environmental Policy Act and the California Environmental Quality Act.

Please feel free to call if you have any questions concerning these comments.

Very truly yours,



David R.E. Aladjem

cc: Attached Distribution List

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BAY-DELTA CLIENT LIST

East Contra Costa Irrigation District

Maxwell Irrigation District

Merced Irrigation District

Meridian Farms Water Company

Natomas Central Mutual Water Company

North Delta Water Agency

Parrott Investment Company

Reclamation District No. 108

Reclamation District No. 1004

Reclamation District No. 2068

South Sutter Water District

Sutter Mutual Water Company

Zumwalt Mutual Water Company

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