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UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION IX
75 Hawthorne Street
San Francisco, CA 94105

FEB 24 1998

MEMORANDUM FEB 13 1998

SUBJECT: Revisions to Draft Phase II Report
TO: Phase II CALFED Drafting Team
FROM: Tom Hagler

This memorandum is in response to Rick Sohren's Office Memorandum dated this morning transmitting the current version of the internal review draft of the Phase II Report. Given the short turnaround time and the request to submit comments and revisions with draft language, I am providing comments in a memorandum form with relevant revisions included. In addition, I am attaching a mark-up copy of the Phase II Report Draft that include these and other comments. Also, I will send an e-mail version of this memorandum to Loren B. to facilitate changes.

I assume we will discuss these comments as necessary at tomorrow's (Saturday's) morning meeting.

Additional Comments and Caveats: Some of these comments have been provided previously, and have not yet been reflected in the document. In addition, my involvement in the document at this time is probably useful to start identifying agency issues, but it should not be construed as constituting all of EPA's comments. I anticipate substantial additional comment from EPA staff and management when they get a chance to review this document. In fact, given the short time frame for review, my own review has necessarily been limited, and I have not even attempted to perform a significant "editorial" or clarity review. The document could definitely use it. Finally, where applicable, I have noted below where comments have been aired and approved by regional EPA management.

I have attempted to tie my comments to the new pagination of the Friday 13 draft.

COMMENTS

p. iv, Table of Distinguishing Characteristics:

We agreed to move "assurances" to a "critical" list issue. It needs to be moved on this chart.

p. 9, graphic:

Either list all of them by shorthand or delete the single reference to "bromide"

p. 31, climate change, 3d sentence:

I haven't followed this closely, but I doubt that this Administration would support this broad statement. It isn't essential to anything, so I recommend deleting it. Also, the entire discussion seems too long and detailed, given our ultimate conclusions.....

p. 35, 2d full paragraph, on importance of common Program elements:

This is a very broad statement. What is it based on? Do we have any analysis anywhere that shows this? If true, it highlights the need for the EIS/EIR to discuss impacts of common Program elements comprehensively.....

pp. 35-55, Discussion of Program Elements

NOTE: This material was provided late on Thursday, but didn't show up in the Friday draft.

Comment: One of our major concerns has been the lack of focus on the common programs and lack of recognition of continued stakeholder concerns about those common programs. This draft of the document continues to downplay those issues. Here is a suggested structure to a first fix of this issue, and I'm also including some draft language that you can use as a starting place.

Approach: First, in the lengthy description of the common programs found in the Program Alternatives, we add "sidebar" discussions to each program with a quick summary of the stakeholder issues that have been raised as to that program. Second, in the list of critical issues in Chapter 5, we add another critical issue titled (more or less) "Reaching Consensus on the Common Programs". I'm not wedded to this particular approach to the issue, but EPA management at all levels has raised this issue and the need to explicitly recognize up-front and visibly the stakeholder concerns on the common programs. In these draft sidebars, I've tried to maintain a similar level of detail and tone throughout.

SUGGESTED INSERTS

Levees Sidebar (p. 38 insert):

Stakeholder Concerns on Levee Program

Most stakeholder concerns on this common program element center on the critical issues of cost and performance: will the levee system prevent the catastrophic flooding we've seen in recent years, at a cost we can afford? An additional concern has been raised by some stakeholders about the amount of agricultural land that may be taken out of production if the "set-back" levee concept is widely used. Finally, some stakeholders are concerned that a major levee improvement program may require substantial dredging in the Delta and rivers, and that this dredging will adversely affect sensitive fish and wildlife resources.

Water Quality Program Sidebar (p. 40 insert):

Stakeholder Concerns on Water Quality Program

Stakeholders from all areas are concerned that the

program assure safe drinking water supplies for the millions of Californians dependent on the Delta system for their drinking water needs. Some stakeholder groups have focused on particular stressors on water quality in particular areas. These include the issues of agricultural drainage, upstream mine runoff and toxics in the Bay and Delta. Many agricultural stakeholders have expressed concern that the quality of their water supplies must be protected so that they can continue to grow their crops. Finally, some stakeholders are concerned that the Program has not yet identified and guaranteed a reliable funding source to assure that the intended water quality actions actually occur.

Ecosystem Restoration Program Sidebar (p. 43 insert):

Stakeholder Concerns on the Ecosystem Restoration Program

Many stakeholders have expressed concern about the scientific underpinnings of the Ecosystem Restoration Program. These concerns are from environmental and fisheries interests that want to see the resources restored, and also from the water user community, that understands that successful resource restoration is a major prerequisite to more reliable supplies. In addition, many stakeholders believe that good science will assure that the substantial financial investment in ecosystem restoration is worthwhile. Some stakeholders are concerned that the adaptive management process for the ecosystem restoration program needs to be better defined. Others have asked for a better definition of the funding process for the program. Finally, some stakeholders believe that the conversion of primarily agricultural land to natural habitat unnecessarily burdens the agricultural community.

Water Use Efficiency Sidebar (p. 45 insert):

Stakeholder Concerns on the Water Use Efficiency Program

Stakeholder concerns about water use efficiency reflect the substantial controversy in the State on how best to assure efficient use of the State's water resources. Some stakeholders contend that a more aggressive demand reduction program, including land retirement programs, are necessary, and are the least environmentally and financially costly approach available to water managers. Others believe that substantial conservation efforts have already been put in place or, if anything, already go too far in imposing excessive burdens on particular communities. Some stakeholders want a more regulatory approach; others believe that an efficient water market

is the best mechanism driving conservation improvements.

Water Transfer Framework Policy Sidebar (p. 46 insert):

Stakeholder Concerns on the Water Transfer Policy

Many stakeholders believe that water should be freely transferrable, just as any other good or service. Others are concerned that an unrestricted water transfer market will result in a selective transfer of agricultural water to urban users, with an associated destruction of the agricultural communities. Some water districts are concerned that water transfers out of their districts may impair their ability to maintain their facilities. Some stakeholders are concerned that water transfers will encourage groundwater overdraft problems, or may adversely affect surface water supplies to the detriment of fish and wildlife resources.

Watershed Management Coordination Plan Sidebar (p. 47 insert)

Stakeholder Concerns on the Watershed Management

Many stakeholders believe that the Program overemphasizes the downstream Delta, and ignores the critical role of the upper watershed in many of the Program objectives. Some stakeholders are concerned about how the myriad of watershed programs can be coordinated by the many agencies and groups working on these issues. Some local groups are concerned that decisionmaking needs to include substantial involvement and control by the local watershed interests.

Storage Sidebar (p. 49 insert)

Stakeholder Concerns on Storage

Many stakeholders are concerned that storage projects must be part of the CALFED Program so that their water supplies can be enhanced. Many are concerned about the projected cost of these facilities, and whether they are economically feasible. Some stakeholders raise environmental or operational concerns about particular storage sites. Some stakeholders believe that storage projects should not be pursued until other "soft path" approaches have been fully implemented.

Conveyance Sidebar (p. 53 insert)

Stakeholder Concerns on Conveyance

Although the CALFED Program is substantially different than the "Peripheral Canal" proposed in the early 1980's,

most stakeholders approach the discussion of conveyance facilities through or around the Delta with considerable caution because of the contentious issues raised in that earlier campaign. Addressing stakeholder concerns about the cost, size, function, operation, control, and effects of Delta conveyance are, in large part, the underlying purpose of the CALFED Bay Delta Program.

[ADD ANOTHER BULLET TO THE "CRITICAL ISSUES TO BE ADDRESSED" Section at p. 104]

Developing Consensus on the Common Program Elements

As noted earlier in this Phase II Report, the significant majority of benefits for all purposes generated by the CALFED Bay Delta Program will be derived from the implementation of the "common program elements." These common programs, as presently proposed, are described above and in more detail in the Draft EIS/EIR and accompanying Technical Reports.

Substantial work remains to be done on each of these common program elements. In some cases, independent scientific review has been or will be made of the program elements, to assure that the best available scientific and technical information has been incorporated into the proposals. For other programs, serious discussions need to take place between CALFED agencies and stakeholders, so that the programs can be defined and implemented with full cooperation of all parties.

The detailed discussion of each of the common program elements ends with a proposed process for developing any additional technical and scientific information necessary to define the program, and suggests, where appropriate, the process for reaching consensus on that program. [IS THIS TRUE?????????????]

p. 45, Discussion of WUE Common Program, first text paragraph:

Comment: We're hiding the ball here. At our last Policy Meeting, we agreed that we would put on the table a "raised bar" for CALFED benefits. This paragraph hides this raised bar. Given that this is apparently the only place this issue will show up in the public releases (since you're putting the WUE details as an unreleased "technical appendix", you should highlight this proposal to solicit comment.

Suggested rewrite of this paragraph:

The assurance mechanisms are structured to ensure that urban and agricultural water users implement the appropriate efficiency measures. As a prerequisite to obtaining CALFED Program benefits (such as receiving "new" water, participating in a water transfer (as a seller or buyer, or receiving water from the DWR Drought Water Bank), entities will have to show that they are in compliance with the applicable urban or agricultural council agreements. This requirement will result in the serious analysis and implementation of conservation measures provided under those agreements. In addition, CALFED is considering a requirement that recipients of "new" or transferred water meet water measurement and volumetric pricing requirements developed under the Central Valley Project Improvement Act.

p. 68, First Full Paragraph of Text:

In my previous comments, I added the phrase "CALFED also evaluated these alternatives with zero additional storage." This suggestion was not taken. Why? Did we or didn't we runs numbers with zero additional storage?

p. 70, CRITICAL CRITICAL ISSUE: DEALING WITH OPERATING CRITERIA

COMMENT: We have a huge concern with how the X2 v. X3 criteria are portrayed in this document. The Management Team agreed that X3 could be modeled as a "sensitivity" analyses, with X1 and X3 brackets. However, X1 was never done, and this presentation now includes X2 and X3 as coequal alternative "assumptions". That is inconsistent with the direction of the Mgmt team and is unacceptable.

Given the anticipated discussion, I polled senior EPA Mgmt on this issue, and their immediate reaction, without seeing the current draft, was that the sensitivity analyses belonged in the IDT Report or the EIS, but was not acceptable as currently portrayed.

At last Friday's meeting, Lester asked this to be portrayed as an X2 discussion, with an X3 "sidebar". For purposes of the Agency Review Draft, I'm willing to go with that approach, although I'm assuming EPA mgmt may second-guess me later.

I am not providing a rewrite of this section, because it is well beyond my knowledge to separate out those statements based on the X2 runs v. X3 runs.

I am also concerned that the discussions of alternatives in Chapters 4 and 5 are not clear about which "assumption" was used. Do any of the bar charts, etc, in those chapters rely on "X3 assumptions?"

p. 84 - Discussion of "Storage and Release of Water"

Comment: This discussion is inadequate, and unfortunately may reflect a fundamental disagreement about where we "are" on the storage issue. I polled EPA and DOI HQs to see if we had a consensus, and this is where I believe we are: First, the IDT did not conclude that a particular amount of storage should be included in each alternative. They stated a range of -0- to 6MAF for each alternative, and asked Mark to model -0- and 6 MAF as the sideboards. When he did the modeling, he subtracted the ERPP additional flows from the 6 maf and arrived at a modeled sideboard of the 4.75 or 4.95 MAF. However, that is not an optimized storage figure, just a modeling artifact.

The Mgmt and Policy Teams agreed that the analysis suggests that water supply benefits are directly linked to the amount of storage, and that this direct relationship continues up through the entire range (that is, the more storage, the more water supply benefits). However, the Mgmt and Policy Teams also did not endorse a particular size of storage for any of the alternatives, again relying on a range. We also agreed that because of the supply/storage relationship, real decisions about the amount of storage would have to be based on location and who pays how much, rather than on which Alternative we use.

Based on this, the Phase II Report has to clearly articulate the general findings we've made about storage. Neither of the two earlier discussions in the document about storage address this issue (at p. 13 and p. 48). Given that Chapter 4 is the actual evaluation, it makes sense to do that discussion here.

Suggested Addition to present language on p. 84:

CALFED's technical analyses suggest that the amount of additional water supply generated by any alternative (for either environmental or consumptive use) is strongly related to the amount of additional storage. Further, the technical analyses indicate that this relationship of storage and water supply benefits is true regardless of which of the three alternatives is chosen. Finally, the analyses suggest that the relationship is essential proportional; that is, the more storage you add, the more additional water supply you generate. These findings have two very important ramifications:

- First, although important for water supply benefits from the program, storage is not a major distinguishing factor between the three alternatives. *uncertainty*
- Second, the decision about the "proper" amount of storage will be determined by issues such as cost and site-specific

concerns, rather than by an "optimization" process. In other words, technical analyses alone don't answer the question of the proper amount of storage.

In order to evaluate the three alternatives, CALFED has included a range of additional storage in each of the alternatives, from zero to 6 MAF and additional storage. In the modeling results provided in this Phase II Report and in the Draft EIS/EIR, two different modeling efforts were made for each of the three alternatives - one with zero storage and one with 6 MAF. Again, these numbers were chosen for evaluation purposes only, and do not constitute a CALFED conclusion that any one particular amount of additional storage is required in the CALFED alternatives.

p. 85, 2d sentence at top on barriers

There is disagreement with the phrase "alternatives 2 and 3 would reduce or eliminate the need for barriers". Alternative 3 may in fact require barriers to protect the south Delta. Given that you don't need this to make your point, drop the phrase.

p. 85, "Assurances":

We agreed last Friday that Assurances, which was not considered by the IDT, would be taken out of the "lesser" characteristics and moved to the "critical" characteristics next to the "solution principles" discussion. That needs to be changed here.

pp. 97-100: Discussion of Water Supply Opportunities

This entire section raises the same serious issue of the presentation of X2 v. X3 operating criteria that is discussed in the context of page 70, above. The current approach is unacceptable. Again, this is the kind of discussion that I thought we'd be seeing as an X3 sidebar, and I'm not sure my mgmt will even buy that approach.

p. 101: Need to move the "Assurances" discussion to here as a critical characteristic and treat it the same way as the solution principles characteristic.

That's what we decided last Friday.

p. 102: Table on Characteristics

Given that we are identifying both "assurances" and "solution principles" as critical distinguishing characteristics, but are explicitly not ranking them, this table should be labeled as "TECHNICAL" Characteristics.

p. 102: Discussion of the Table of Characteristics

Add the following text before last sentence of first paragraph of text, and be consistent in paragraph by referring to "characteristics" rather than "factors":

In addition, the table above does not attempt to "standardize" the scales for each characteristic. That is, the relative difference between an "L" and an "M" on one characteristic may be totally different than the difference between an "L" and an "M" on another characteristic.

p. 103: Generally

This whole discussion on page 103 makes a number of important points that are critical to understanding why we, in essence, are ignoring a number of the important distinguishing factors. This discussion needs to be highlighted somehow, because it is the introduction, conceptually, to the next chapter. This could wait until the Agency review draft.

p. 104 to p. 113: New Sections on Drinking Water and Fish Entrainment

I have some minor editorial and substantive edits provided by EPA staff and mgmt on these rewrites. If Saturday's schedule allows, I'll get them to you then.

p. 125: Major Corrections to 404 Discussion!!!!!!

Comment: Last week I provided a markup of this 404 section. The markup has been run by both COE and EPA 404, and must be included in both the EIS and this document (same language). I am informed that the EIS made the changes, but they are not included in this draft. This is not negotiable. Make the following changes, beginning with the second paragraph under this section.

New Language:

EPA's Guidelines (40 CFR 230 et seq.), the Corps' regulatory guidelines (33 CFR 320 et seq.), and the National Environmental Policy Act (NEPA) and NEPA Guidelines (40 FR 1500 et seq) provide part of the substantive environmental criteria and procedural framework used to evaluate applications for Corps permits for the discharge of dredged or fill material into waters of the United States, including wetlands and other designated special aquatic sites. Under the Corps evaluation, an analysis of practicable alternatives is a screening mechanism used to determine the appropriateness of permitting a discharge. The Corps evaluation also includes analysis of compliance with other requirements of the 404(b)(1) Guidelines, a public interest review and evaluation of potential impacts on the environment in compliance with NEPA.

According to EPA Guidelines, an alternative is considered practicable if it is available and can be implemented given considerations of cost, existing technology, and logistics in light of overall project purposes. Practicable alternatives may include siting a project in areas not owned by an applicant, but that could be reasonably obtained by the project applicant, to achieve the basic project purpose (40 CFR 230.10[a][2]).

Many features of CALFED have the potential to require the discharge of dredged or fill material into waters of the United States, including designated special aquatic sites. The ERP contains many such actions, including the restoration of wetlands, restoration of channel islands, construction of fish barriers, construction of fish screens, and restoration of riparian habitat. The Levee System Integrity Program contains actions, such as the creation of setback levees, improvements to levee maintenance, and the flooding of islands, that could require a Corps permit. The water supply reliability components contain actions, such as the creation of additional water storage capacity and the construction of conveyance facilities in the Delta, and the Water Quality Program contains actions, such as the construction of water quality barriers, that would require a Corps permit. Section 404 Permits will be required during Phase III.

A 404 Permit is not required for Phase II of the CALFED process because selection of the Preferred Alternative will not authorize implementation of the projects composing the Preferred Alternative and therefore will not involve the discharge of materials into the waters of the United States. Nevertheless, the alternatives under consideration in the CALFED process are being analyzed in the light of the requirements of the 404(b)(1) Guidelines so that when the Corps is required to determine whether particular Phase III projects comply with the 404(b)(1) Guidelines, it will have the benefit of an analysis as to the consistency of the CALFED Preferred Alternative with the 404(b)(1) Guidelines at a programmatic level.

During Phase I of this process, the problems of the Bay-Delta were identified, objectives defined, a comprehensive list of actions for achieving the objectives were compiled, and preliminary alternatives assembled. The remainder of Phase I consisted of an iterative process of analyzing and screening alternatives, leading to the selection of a Preferred Alternative. The initial screening of alternatives, beginning with 100 and selecting 10, was principally an effort to combine alternatives so that each, in keeping with the CALFED solution principles, provided balanced benefits to each to the problem areas. In screening from 10 to three alternatives, some were removed from further consideration; others were not eliminated, but became variations of the three main conveyance concepts: existing system conveyance, modified through-Delta conveyance, and dual-Delta conveyance (a combination of through-Delta and isolated conveyance). These three alternatives, and 12 variations associated with them, were carried forward for further refinement in Phase II. In Phase II, the three alternatives are being subjected to further analysis, resulting in further refinements, and will result in the eventual selection of the Preferred Alternative.

This process is consistent with the Section 404(b)(1) Guidelines in that the screening of alternatives is intended to lead to the selection of the least environmentally damaging practicable alternative. Implementation of Phase III actions involving the discharge of dredged or fill material into waters of the United States may require site-specific documentation that specific proposals comply with EPA's Section 404(b)(1) Guidelines.