

98-227

PHASING AND CHOOSING THE CALFED PREFERRED ALTERNATIVE**--FOR THE BAY/DELTA--****RECOMMENDATIONS OF THE AG/URBAN GROUP****A. ESSENTIAL PRINCIPLES**

The following general principles are of significant importance to the Ag/Urban group and should be incorporated into future versions of the CALFED document entitled "Developing a Draft Preferred Program Alternative.

1. EXTENSION OF THE ACCORD AND ASSURANCES REGARDING TAKE:

The Accord must be extended before December of 1998 and must remain effective until the Stage 1 implementation agreement described below is in effect.

A Stage 1 implementation agreement must be negotiated and executed prior to the start of Phase 1. Stage 1 assurances contained in the implementation agreement must remain effective during all of Stage 1 and during the interim period after Stage 1 until the long-term facilities are in place. Longer-term assurances will be negotiated during Stage 1 and incorporated into a long-term implementation agreement. There can be no gap in coverage.

Assurances under the state and federal endangered species acts must include the equivalent of "No Surprises" both for identified species and for unanticipated listing of other species. Coverage must include Delta and upstream diverters, and must provide the equivalent of a "Safe Harbor" agreement prior to implementation of ERP measures. Assurances must also include protection from actions under other statutes such as the CVPIA.

2. IMPLEMENTATION AGREEMENT:

The principal must be explicitly established that the process and the rules under which Stage 1 will proceed will be based on a series of binding agreements and not merely decisions made or conditions imposed by the members of CALFED. We expect that an Implementation Agreement will be negotiated parallel with the process of finalizing the programmatic EIS/EIR and will be entered into contemporaneously with adoption of the ROD and NOD through which CALFED approves the overall program. This agreement should set forth those essential terms needed to guide the Stage 1 process. We expect that amendments to the implementation agreement will be entered into contemporaneously with completion of project level supplemental EIS/EIRs and as bundles of Stage 1 projects are approved for implementation.

The terms of the implementation agreement may not be modified without the written consent of all of the parties, and will remain in effect for a time certain or until amended or superseded by another agreement.

3. BALANCED STAGING AND SUBSTAGING

The concept of staging, and in particular Stage 1, is acceptable. However, Stage 1 needs to be broken down into several substages, with each substage being a "bundle" of projects which meet the test of providing balanced improvements in each of the CALFED areas. For each bundle, environmental documentation and analysis, decisions, and permits for all elements of the bundle must move together and no part of a bundle can be implemented until all parts have received necessary approvals.

The program EIS/EIR must clearly set out the process for proceeding with the stages and substages. This process should require that each substage be addressed by a unifying NEPA/CEQA document that discloses the cumulative impacts of the substage as a whole. Additional NEPA/CEQA documents and permits with respect to individual elements or groups of elements of the substage would be required for the projects within the substage. Only after completion of the unifying NEPA/CEQA document would authorization of the substage occur, and implementation would be allowed only if each of the projects within the substage are ready to proceed.

We can not accept a Stage 1 which leaves open the possibility that a significant portion of the ERP will be disclosed, analyzed, and permitted in the first years, while other elements of the CALFED program are put off until the future when separate environmental documentation might or might not occur, and the product of which might be legally challenged. Stage 1 implementation must be balanced at all times and that concept must be reflected in the provisions of the implementation agreement. We believe that Stage 1 should probably consist of 2 to 3 substages.

If the first bundle of Stage 1 projects are to begin immediately or shortly after the ROD and NOD, a parallel process needs to be started immediately to identify the first bundle of projects and to begin project level environmental analysis. This project level EIS/EIR would be approved at the same time or shortly after approval of the programmatic EIS/EIR and would have to be sufficient to allow each of those projects to be approved and permitted by the project sponsor as well as all of the regulatory entities, including but not limited to EPA, USFWS, CDFG and ACOF. Environmental documentation for the first bundle of projects could rely on some existing EISs and EIRs, such as DWR's South Delta Facilities Draft EIR. For a bundle to proceed all financing decisions related to the included projects would have to be complete.

4. LINKAGE AND SECTION 404

CALFED is proposing "linkages" for some projects. However, all of the projects for which linkages are proposed are those which Ag/Urban believes are necessary for water supply and water

quality improvement. While they are called linkages, they really amount to preconditions which must be met prior to considering projects such as surface storage. AgUrban believes that progress on all elements of the CALFED solution must be linked to one another. Thus, no element of a Stage 1 bundle of projects can be allowed to move forward until all projects within the bundle are ready to be implemented. This concept of linkage should be more clearly set forth in the phasing documents. In many respects, if the implementation agreement, getting better together, substaging and bundling concepts are each accepted and implemented, the linkage issue may become moot, because environmental and water user projects and proposals will proceed forward together in a balanced and agreed upon fashion.

AgUrban recognizes that some preconditions to construction of water supply facilities may be needed in the context of section 404 of the Clean Water Act. That section requires that a project such as surface storage be evaluated based on whether it is the least damaging practicable alternative. For the CALFED program, this section 404 finding for surface storage must be made at the programmatic stage and must be based on the levels of implementation called for in the CALFED programmatic EIS/EIR for the water conservation, waste water reclamation, water transfer, and groundwater conjunctive use programs. The programmatic EIS/EIR must spell out in detail the expected levels of implementation for these programs and the Corps of Engineers and EPA must accept these levels for section 404 needs and alternatives analyses.

Once this is done, progress to a defined level on these other program elements may properly be expected before surface storage projects are implemented. If the defined level of progress occurs, later Stage 1-permitting issues related to surface storage would be limited to site specific issues.

5. IMPROVED WATER QUALITY:

Any CALFED program which does not provide long-term improved water quality, particularly for drinking water, will not be supported by Ag/Urban, and may cause members of the Ag/Urban Group to actively oppose the CALFED process.

6. WATER SUPPLY:

Any CALFED program which is likely to reduce the amount of water currently available to water users during Stage 1 or on a long term basis will not be supported by Ag/Urban, and would probably cause many, if not all, members of the Ag/Urban Group to actively oppose the CALFED process. Water supply needed to meet current agricultural and urban demands has been lost in recent years to meet increasing environmental requirements. Ag/Urban expects Stage 1 to restore at least a part of that water supply.

7. DECISIONS ON ISOLATED CONVEYANCE:

CALFED must establish a specific process and timetable to determine if the contingent strategy of dual Delta conveyance is warranted. The timetable can not be extended beyond the end of Stage 1. In addition, prior to the 1999 ROD, CALFED must establish the water quality and

fishery conditions that would trigger implementation of the contingent strategy. During Stage I, all necessary planning, environmental documentation, and permit acquisition for dual conveyance must be completed so that there is no delay in implementation if dual conveyance is determined to be necessary. All assurances related to construction of dual conveyance (as listed in CALFED's August 5, 1998, Draft "Developing a Draft Program Alternative") should be in place at the time the ROD is issued in late 1999 so that the only contingencies to implementing dual conveyance are water quality and/or fishery determinations.

8. ADDITIONAL ITEMS WHICH ARE EXTREMELY IMPORTANT TO CONTINUED AG/URBAN SUPPORT FOR THE CALFED PROGRAM:

For Ag/Urban members to support the CALFED program, and therefore the commencement of Stage I, there must be a clear understanding and agreement regarding the following matters:

- a. How much water will be available for diversion during Stage I without fear of future imposition of additional ESA, CWA, CVPIA or other legal constraints?
- b. How the plan will improve water quality sufficient to meet or assist urban users of Delta waters in meeting future EPA drinking water requirements.
- c. How the plan assures that there will be a balanced, adaptively managed, ecosystem restoration program managed by an independent and responsible ecosystem entity which will be accountable and responsible for its actions and the recovery of the ecosystem and all listed species.
- d. An ascertainable limit on, description of, and agreement regarding how much the plan will cost water users.

OMITS (#9)

*What must be done before December 31
Ag Urban Strategy*