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From: Cynthia L. Koehler
Subject: CALFED
Date: Dec. 14, 1998
No. of pages (inc. cover sheet): 14
Comments: Thanks for the call today. I am refaxing Save The Bay's proposed revision to the "water operations" section to make sure that you all have it. As discussed, we agree that a water account could be useful, but the draft (12/15 10:20 am) -- even more than prior drafts -- is too flawed to be edited and should be rewritten because:

1. It prematurely commits to establishing a particular type of Account, misstates the level and areas of agreement and appears to tie assurances of environmental water to increases in new supplies for water users -- a concept that does not have broad support.

2. The draft is inconsistent in style and level of detail with the rest of the Phase II report -- it is a piece of advocacy and gives a highly skewed version of "benefits" and "risks."

3. It contains pages of inappropriate -- and incorrect -- attacks on the efficacy of regulations and refers to environmental standards disparagingly.

4. It implies that physical storage is inherent in an account. This is incorrect.

5. It ignores the issues raised in our letter to Secretary Babbitt. Resolution of such issues is key to whether and how such an account should be established in the first place.

We emphasize, again, that we support the notion of assuring environmental water and believe that an account is a useful tool to continue to investigate. We intend to be as actively engaged as we are permitted to be as these discussions proceed. But we are not now convinced the particular proposal under consideration is the panacea portrayed in the draft. I hope that the attached language is useful. I have attached my markup of the current language as well (I hope it is somewhat legible).

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SAVE SAN FRANCISCO BAY ASSOCIATION'S PROPOSED TEXT CHANGES FOR THE REVISED PHASE II DOCUMENT

I Water Operations/Environmental Water Account (pp 1-7)

This section is dropped into the Implementation Plan portion of the document and its purpose is not clear. Note that no other aspect of CALFED (ecosystem, water quality) is specially culled out in the Implementation Plan (distinct from other stage 1 actions). Moreover, as drafted, the section entitled "operational scenario for stage 1" is in part an implicit attack on the scientific foundation of the existing ESA and water quality standards -- this is highly inappropriate.

As indicated in our December 9, 1998 letter to Secretary Babbitt, while the environmental water account proposal under development has merit, significant institutional, operational and policy considerations have not been addressed much less resolved. **We recommend that all of section 5.32 be moved into the "Stage 1 Actions" and be rewritten as follows:**

Water Project Operations

A major Stage 1 issue is how to operate the state and federal water projects to provide greater benefits to fish and wildlife while also improving water supply reliability. There is a spectrum of views as to whether and how this could be accomplished. For the last month, a group of stakeholders and agency staff have been meeting to explore the idea of combining more environmentally protective standards in the Delta with greater operational flexibility through the mechanism of an "Environmental Water Account" (Account).

The notion behind an Account is that the projects would receive greater flexibility than is currently available under water quality standards and ESA requirements in exchange for greater environmental protections overall. The theory is that the environment could call for restrictions on export pumping when the standards may not otherwise allow for this action as needed to protect aquatic resources on a real-time basis. Similarly, the projects would be able to pump water when otherwise prevented by the standards if it was determined that such action would not be environmentally harmful. These actions would be tracked as "withdrawals" and "deposits" in the Environmental Water Account.

In theory, this greater flexibility would allow managers to respond to immediate needs that could go unmet in a strict regulatory scheme while at the same time improving water supply reliability and water quality. Some believe that an Account of this kind could be employed to increase biological protections without imposing additional water costs on Delta exporters.

One way to construct such an Account would be to provide it with both water and

financial assets that would allow whatever entity is charged with responsibility for the ecosystem restoration program ("the ecosystem manager") to reduce direct and indirect mortality and enhance the ecosystem. Thus, for example, the Account could be used to reduce exports at critical times that are not well defined in advance by drawing on groundwater storage south of the Delta to make the exporters whole or by using financial assets to purchase replacement water.

A large number of questions and issues remain to be resolved prior to a decision to establish such an Account in the phase before the ROD is issued as well as in Stage 1. The following actions will be required.

1. A full set of operational analyses are required to determine how workable the Account proposal may be in practice.

2. The amount of water necessary for the Account to function properly must be determined.

3. Because the current water quality and other environmental protections now in place were developed with the best protection of the species in mind, there are questions as to how much actual room for operational flexibility there may be that would not result in adverse biological impacts. These must be fully examined and addressed.

4. The question of whether additional physical storage (groundwater or surface water) necessary for the Account to work or would a system of credits serve effectively must be resolved.

5. If a rigorous analysis reveals that additional storage would be beneficial for purposes of an Environmental Water Account, how much and what type of storage is appropriate? CALFED must also ascertain whether the potential adverse impacts of developing more storage -- and depleting more water from the natural system -- could undermine the potential benefits of increased system flexibility.

6. If physical storage is determined to be an essential element of an Environmental Water Account, the question of whether and how the environment would share in the use of existing and new facilities -- for both storage and conveyance -- would need to be addressed.

7. The issue of carryover of ecosystem credits from year to year requires resolution. CALFED must also examine other potential uses of ecosystem water (and financial) credits.

8. Trading regulatory certainty for increased operational flexibility shifts the

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assurance of environmental protection from the standards to the ecosystem manager. An institutional structure and controls must be developed to ensure that the ecosystem manager is capable of providing an equivalent level of environmental assurance.

9. An Account assumes a clear and agreed upon starting point in terms of the water available to the environment. This "baseline" question is contested among the parties to CALFED and is event he subject of federal court litigation. A process for resolving this question and bringing clarity and certainty to it is required.

10. Assuming the baseline issue is resolved, should the environment receive an initial "endowment" of water over and above that which it is entitled to based on current statutory and regulatory standards alone? If so, what should this endowment consist of and where should it come from?

11. CALFED will address how much should the environment's initial financial endowment be and who should pay for it.

12. A plan addressing the issue of secured debt and delayed payback of Account water should be developed.

13. An Account also assumes that it will be possible to track environmental water that is used by, or owed to, the environment with certainty. Such an accounting system must be developed.

14. Similarly, the specific operating rules and clear decision making authorities must be developed.

15. How will, and should, the Account's "assets" grow over time?

16. What should be the appropriate assumptions about the extent to which water user assets grow in relation to those of an Environmental Water Account? What accommodation should be made for the imbalance in the water and financial "assets" available to the environment as compared with those of the state and federal water projects at the outset?

17. How can environmental protection ensured when protective requirements exceed the water available to the ecosystem manager?

18. What would be the relationship of an Environmental Water Account to the broader issue of ensuring the availability of water to the environment as necessary to fully implement the ERP? The relationship of the Account to upstream water

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issues must be examined and resolved.

19. What would be the relationship between the Account and attainment of the performance standards embodied in the ERP and the Strategic Plan for the Ecosystem Restoration Program?

No decision regarding the establishment of an Environmental Water Account will be made until each of these issues, and possibly others, have been addressed.

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