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M. Scoonover



CALIFORNIA FARM BUREAU FEDERATION

EXECUTIVE OFFICES

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November 16, 1999

Steve Ritchie, Acting Executive Director
CALFED Bay/Delta Program
1416 Ninth Street, Suite 1155
Sacramento, CA 95814

The Honorable Mary Nichols
Secretary
The Resources Agency
1416 Ninth Street, Suite 1311
Sacramento, CA 95814

**Re: Control Number 2000-014
Freedom of Information Act APPEAL:
Request for Background Data on CALFED
Land Acquisitions from 1994 to Date**

Dear Secretary Nichols and Acting Director Ritchie:

After several informal communications with CALFED officials, both oral and written, addressing CALFED funded agricultural land conversion projects, we received a letter from Ms. Olene Chard on October 6, 1999, which treated our earlier correspondence as a formal request for information (see copy attached) and offered access to CALFED program files.

Later, although access to project files had already been offered to us by CALFED in response to our earlier communications, on October 12, 1999 we were asked by Ms. Olene Chard to put our request for project information in writing, again.

As requested, as our initial FOIA request, on October 15, 1999, we sent a letter with detailed questions regarding background information about certain specifically identified projects, and information about any CALFED project that involved a land acquisition, either in-fee or an easement (copy of letter attached).

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In response to our letter, on October 18, 19, and 21, 1999, CALFED permitted access to some of the program files previously itemized in our request, and provided copies of documents when specifically requested.

On October 25, 1999, we attended a meeting requested by Mr. Patrick Wright. At this meeting, we were informed by Ms. Wendy Halverson Martin that CALFED had supplied all documents in their possession. Thus, no other information would be forthcoming. We are treating that meeting as the *final response* to our initial FOIA request of October 15th.

We have reviewed the information provided by CALFED, and we object to the organization's inadequate response. CALFED failed to respond to questions in paragraphs A, B, C, D, E and F of our letter, herein specifically incorporated by reference, and based on the following comments, we hereby appeal CALFED's final response to our FOIA request.

Ms. Halverson Martin, and other CALFED staff members, have indicated that the organization has produced all relevant information within their immediate possession. However, that does not satisfy CALFED's FOIA obligations. As CALFED's staff has reminded us many times, CALFED is an "umbrella" entity made up of various state and federal agencies whose purpose is to coordinate efforts in the Bay-Delta region. We were told at their October 25, 1999 meeting that the answers to our remaining questions are probably located at the Department of Fish and Game, the United States Bureau of Reclamation, the United States Fish and Wildlife Service, or at offices of other CALFED participating agencies. As the coordinating entity for all projects in which we have expressed an interest, it is reasonable to expect CALFED to produce relevant information from all its member resources. Further, because we understand that CALFED has no authority independent of its member agencies, we specifically included the Department of the Interior and the office of the Resources Secretary in our initial FOIA request. All of the member agencies mentioned above were thus included in our initial FOIA request.

We hope that we will not be misunderstood, as we sincerely appreciate CALFED's attempt to satisfy our request. If the CALFED program's potential impacts did not jeopardize the future of farm families so significantly we might be in the position to compromise and accept an inadequate response. However, the issues raised in our inquiries are too critical to our more than 85,000 members to leave important questions unanswered.

Our fundamental concern is CALFED's failure to produce a record of CEQA/NEPA compliance for land acquisitions it has funded, as requested in paragraph F. We have yet to receive information regarding how each project applicant satisfied their environmental obligations, since this information is not included in any of the project files that we were permitted to review. CALFED should provide us with copies of those compliance documents.

In some cases, according to the terms of their respective contracts, it appears project applicants were responsible for CEQA/NEPA compliance. Even in these situations, however, CALFED should be monitoring and recording those compliance activities. CALFED has ultimate responsibility under both state and federal law for environmental compliance because funding a project, either in whole or in part, invokes both environmental statutes. (Cal. Pub. Res. Code §21065(b), 40 CFR §1508.18(a).)

A related concern is CALFED's failure to supply a complete accounting of agricultural parcels that were subsequently converted to non-agricultural uses. The program files produced by CALFED fail to sufficiently state the nature or status, at the time of acquisition, of the parcels funded through CALFED. While the prior land use is sometimes indicated, the zoning designation, the specific location of the property, the property's agricultural preserve status, and the CALFED Ecosystem Restoration Program Plan region designation is NOT indicated in any of the documents provided by CALFED.

Similarly, our appeal is justified because none of our questions in paragraphs D and E regarding the ultimate management of agricultural lands have been addressed by CALFED. (Please refer to attached 10/15/99 FOIA request for our specific questions.) We have obtained the "Tracking Table for Ecosystem Restoration Project" spreadsheet, which indicates certain acquisitions are in "existing agricultural use." However, we have obtained conflicting information from CALFED files that suggests even though a parcel is identified as being in an "existing agricultural use," that indication cannot be equated with a commitment to on-going agricultural production.

Finally, the issue of water rights raised in paragraph C of our October 15th letter was ignored completely by CALFED in its FOIA response. Therefore, we still do not know whether any CALFED project has caused a change in water rights, where and by whom the associated water right is being utilized, the location of the points of diversion, whether groundwater is a part of the associated water right and, if so, what is the associated basin and hydrologic region.

The future of California's farmers and ranchers, its farm workers, and its rural communities are completely dependent on the sufficiency of the available land and water resources. As such, the answers to the questions posed in our October 15th letter are a vital public concern. CALFED's June 1999 Draft Programmatic EIS/EIR contemplates removing significant land and water resources from available supplies. Therefore, it is in the public interest that CALFED and its participating agencies provide an adequate accounting of prior and on-going CALFED funded land and water rights acquisitions.

Since farmers and ranchers are expected to play a pivotal role in the CALFED process, it is understandable that our members have many reservations and concerns when fundamental questions go unanswered by CALFED. We are merely trying to get answers to our most important questions.

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As always, we are available to both CALFED and its participating state and federal agencies to assist in developing appropriate disclosure of this important information. In our continuing efforts to resolve this matter informally, we had a meeting with Wendy Halverson Martin on Tuesday, November 16, 1999. While we are pleased with the results of that conversation, much of our request remain unsatisfied. Secretary Nichols needs to direct other Resources Agency entities and contractors, including the Department of Fish and Game and the National Fish and Wildlife Foundation, as well as the appropriate contract administrators to provide responsive files and/or access to records so that we may get answers to the questions set forth in the October 15, 1999 letter and this appeal.

We look forward to your cooperation and eagerly anticipate your complete and responsive reply within 20 working days.

Sincerely,



Bill Pauli

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Enclosures

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