

Agenda Item: 4
Meeting Date: February 11, 2004

DIRECTOR'S REPORT

Budget

The Bay-Delta Authority's proposed budget includes an \$8.5 million general fund appropriation, representing a \$2.4 million general fund reduction for CALFED Program oversight and coordination activities.

As for Propositions 13 and 50, the Administration is currently evaluating various alternatives to reorganize and streamline existing resource conservation efforts and will defer the appropriation of bond program funds until the spring. Bond appropriations for existing staff are, however, currently included in the Governor's proposal.

Although bond funding is not currently proposed, the Governor's budget summary highlights the administration's commitment to CALFED, along with the Lake Tahoe Environmental Improvement Program, and improvements to State Parks facilities as programs that will depend on bond funding for the 2004-05 fiscal year.

Legislation

The Legislature reconvened the second year of the two-year session and began introducing new bills on January 5, 2004. The deadline for bill introduction is February 20, 2004.

Senator Mike Machado introduced SB 1155 on January 28, 2004. This bill is identical to preprint SB 2 (Machado) except SB 1155 does not contain an urgency clause. The introduction of the preprint was designed to serve as a vehicle for discussion during the legislative recess.

As introduced, SB 1155 would prohibit additional water pumping from the Sacramento-San Joaquin Delta beyond currently authorized levels until the Bay Delta Authority, in collaboration with the implementing agencies, prepares and implements all water quality standards and objectives that were in effect on July 1, 2003. Prior to increased pumping, this bill would also require the completion

of specified additional elements called for in the CALFED Programmatic Record of Decision. All elements would be required to conform to the CALFED solution principles and be developed through an open Bay Delta process.

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Senator Machado has scheduled an informational hearing of the Senate Agriculture and Water Resources Committee on February 17, 2004 at 9:30 a.m. in Room 112 of the State Capitol. The subject of the hearing is "Restoring the Sacramento/San Joaquin Delta: Where Do We Go From Here?" It is likely that the provisions of SB 1155 will also be discussed.

As previously noted, the Governor's budget proposes to defer the appropriation of bond funds, including Proposition 50, until the spring. To date, one bill has been introduced that would appropriate bond funds. Senate Bill 1132 (Brulte), introduced on January 15, 2004, would appropriate \$50 million from Chapter 8, the Integrated Regional Water Management program, to the Department of Water Resources for competitive grants among five southern California counties declared disaster areas following the 2003 wildfires. The funds would be available for flood control programs and other water management projects to prevent or reduce the likelihood of flooding and degradation of water quality. This bill was referred to the Senate Agriculture and Water Resources Committee but may not be acted upon until February 15, 2004.

California Bay-Delta Program EIS/EIR Litigation Update January 2004

A. Federal Case

Laub v. Babbitt, et al., U.S. District Court, Fresno

Plaintiffs: The California Farm Bureau Federation and several individual farmers

Defendants: All Federal and State agencies participating in the program. The State agencies recently named in the Farm Bureau's latest complaint are sued via their executive officers: Governor Schwarzenegger, Michael Chrisman (Resources), Terry Tamminen (CalEPA), Celeste Cantu (SWRCB), Linda Adams (DWR), Sonke Mastrup (DFG (Acting)), Peter Rabbon (Reclamation), Margit Aramburu (Delta Protection Comm.), Darryl Young (Conservation), Will Travis (BCDC), Diana Bonta (DHS), and A.G. Kawamura (Food and Agriculture)

Summary of Case: The Farm Bureau filed this case in September 2000. It alleges that the CALFED Programmatic EIS/EIR ("PEIS/EIR") violates NEPA and the Administrative Procedures Act. They seek an injunction against all State and Federal actions to implement the Record of Decision until an adequate PEIS/EIR is prepared. The State defendants are apparently being sued under the theory that the Program is a joint, Federal-State partnership that requires NEPA compliance under Federal law, and therefore the Federal government must comply with NEPA for all State projects, as well as Federal projects. The Farm Bureau alleged that the PEIS/EIR violated NEPA by improperly analyzing impacts to agricultural land and water and failed to contain an adequate alternatives analysis or mitigation measures to reduce impacts on agricultural land and water. The Farm Bureau also alleged other violations of NEPA, such as the claim that the June 9, 2000, policy document called the Framework for Action contained "significant new information" regarding the integrated storage investigation and the EWA that required defendants to recirculate the PEIS/EIR.

Current Status: The case is pending in the Federal district court. The district court dismissed an earlier version of the complaint as premature in August 2001. The Court of Appeals reversed that decision in September 2003. The Farm Bureau recently amended its complaint and an answer from all State defendants is due on February 2, 2004. At a status conference held on January 20, 2004, a deadline of August 27, 2004, was set for the Federal defendants to file the administrative record. Discovery will be suspended until the record is filed. A subsequent status

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conference is scheduled for November 1, 2004, to determine how the case will proceed.

B. State Court Cases

Laub v. Schwarzenegger, et al., Court of Appeal, Third Appellate District (Sacramento)

Appellants/Plaintiffs: The California Farm Bureau Federation and several individual farmers

Respondents/Defendants: Governor Schwarzenegger, Resources Agency, Secretary of Resources Chrisman, CalEPA, CalEPA Secretary Tamminen

Summary of Case: The Farm Bureau filed this case in State court after the Federal district court dismissed a CEQA claim that had been part of their original NEPA lawsuit (described above). The Farm Bureau alleged that the PEIS/EIR violated CEQA by improperly analyzing impacts to agricultural land and water and failed to contain an adequate alternatives analysis or mitigation measures to reduce impacts on agricultural land and water. The Farm Bureau also alleged other violations of CEQA, such as the claim that the June 9, 2000, policy document called the Framework for Action contained "significant new information" regarding the integrated storage investigation and the EWA that required defendants to recirculate the PEIS/EIR.

Current Status: Defendants won on all issues in the trial court and the Farm Bureau appealed. That appeal has been consolidated with an appeal of the trial court's CEQA ruling, which was made jointly in *Regional Council of Rural Counties* (described below). On January 13, 2004, the Farm Bureau filed a brief seeking to overturn the Superior Court's ruling. The State's appellate briefs are due in March, 2004.

Regional Council of Rural Counties v. State, et al., Court of Appeal, Third Appellate District (Sacramento)

Appellants/Petitioners: Regional Council of Rural Counties, Central Delta Water Agency, South Delta Water Agency, Zuckerman-Mandeville, Inc., and individual farmers

Respondents/Defendants: State of California, the Resources Agency, Secretary of Resources, CalEPA, CalEPA Secretary (plus real parties in interest Department of Water Resources, DWR Director, Patrick Wright (as Director of the CALFED Bay-Delta Program), DFG, the Director of DFG, and numerous Federal agencies and officers)

Summary of Case: Petitioners jointly filed this suit in Sacramento Superior Court and it was coordinated with *Laub v. Davis* (see above), and the two cases have been consolidated on appeal. Petitioners argue that the PEIS/EIR violated CEQA by, among other things, conducting an inadequate alternatives analysis, etc., relating to water supply and water quality issues in the Delta and watershed areas. Petitioners contend the ROD contained various new changes to water rights and water supply commitments that required recirculation of the PEIS/EIR. Petitioners also brought non-CEQA claims, contending that these provisions (as well as expenditures under the ROD) violated varied provisions of the Water Code.

Current Status: Defendants won on all issues in the trial court and petitioners appealed. On January 15, 2004, petitioners filed two briefs (one by RCRC and one for all other petitioners) seeking to overturn various rulings by the Superior Court. The State's appellate briefs are due in March, 2004.

Municipal Water District of Orange County v. California Resources Agency, et al., (dismissed from Los Angeles Superior Court)

Petitioner: Municipal Water District of Orange County

Defendant: California Resources Agency (plus real parties in interest CalEPA, Department of Fish and Game, Department of Water Resources, State Water Resources Control Board, Department of Food and Agriculture, Delta Protection Commission, and Reclamation Board)

Summary of Case: Petitioner alleged that the CALFED PEIR violates CEQA because it fails to include the June 9, 2000, policy document called the Framework for Action, failed to analyze significant environmental effects of the program, and failed to discuss mitigation measures concerning water supply reliability and water quality for delta exports to Southern California. Petitioners seek a judicial declaration that the Framework for Action is part of the CALFED preferred program alternative.

Status: This action was dismissed in 2001 pursuant to a settlement agreement reciting the contents of the ROD, the actions that defendants had taken and planned to take as of 2001 pursuant to the ROD related to scientific understanding on issues such as the interplay between Delta exports and certain listed fish species, and an agreement to give MWDOC notice of all stakeholder meetings.

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January, 2004

California Bay-Delta Update

News Highlights from the California Bay-Delta Authority

In the News

Governor Wants Strong Partnership with Federal Government on CALFED:

In a letter to President Bush, Governor Schwarzenegger urged the Federal government to develop a strong partnership with the State to implement the CALFED Bay-Delta Program. "I urge you, therefore, to work with me in supporting the efforts of the California Congressional delegation to pass legislation authorizing formal Federal participation in the new Authority and to support increased Federal appropriations ... to maintain a balanced program," the Governor wrote. In his State of the State address, Gov. Schwarzenegger pledged to work with California's congressional delegation to secure Federal funding for water resources efforts such as the Bay-Delta Program. The Governor urged lawmakers to set aside party differences and speak with a united voice in Washington, D.C. More on the address is available at http://www.governor.ca.gov/state/newgov/govsite/gov_homepage.jsp.

Spending Plan for Bond Funds Deferred: The Governor's Budget appropriation of Resources bond funding in 2004-05 is deferred until the spring. In the meantime, the Administration will evaluate various alternatives to reorganize and streamline existing resource conservation efforts. In keeping with reductions made to other State agencies, the 2004-05 budget also includes a 22 percent reduction (\$2.4 million) in State general funds for the California Bay-Delta Authority. The Administration is committed to Lake Tahoe, CALFED, and improvements to parks, which depend on bond funding for the fiscal year 2004-05. Specific information about the proposed budget can be found at: <http://www.osp.dgs.ca.gov/On-Line+Publications/Governors+Budget+2004-2005.htm>.

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Peltier Appointed Deputy Assistant Secretary for Water and Science: Interior Secretary Gale Norton has appointed Jason Peltier, of California, as Deputy Assistant Secretary for Water and Science. He will assist Assistant Secretary Bennett Raley and Principal Deputy Assistant Tom Weimer in management oversight and policy direction for the Bureau of Reclamation and the U.S. Geological Survey. Further details can be found at: <http://www.doi.gov/news/peltier.htm>.

Grant \$\$

Water Use Efficiency Package Released: The Department of Water Resources has released a draft proposal solicitation package for \$30 million in grants for local agricultural and urban water use efficiency projects. The grants, to be funded through Proposition 50 of 2002, will be judged on a competitive basis and awarded in August. Workshops are scheduled in January to discuss the package and solicit comments. Details and the draft application package can be accessed at <http://www.owue.water.ca.gov/finance/index.cfm>.

New Federal Grants Announced: Interior Secretary Gale Norton has announced a \$4 million Challenge Grant Program to help fund conservation and water efficiency projects in Western states. As part of the program, the Bureau of Reclamation will be accepting proposals for matching grants from irrigation and water districts for programs that meet goals identified in the Water 2025 initiative launched by Norton in June 2003. Notice of the criteria, processes, and deadlines for applications will be published in mid to late February at www.grants.gov. More information on Water 2025 can be found at www.doi.gov/water2025.

Grants Database Available: A listing of grants awarded by Bay-Delta agencies over the past several years is now available on the California Bay-Delta Authority web site. The information is organized by program area as well as region. Details can be found at <http://www.calwater.ca.gov/GrantOpportunities/GrantInformation.shtml>.

Operations Update

SWP Forecast: The Department of Water Resources has announced an increase in its initial forecast for water deliveries in 2004. In a January 16 notice to State Water project customers, the department said it now expects to deliver 2.06 million acre-feet of water, or about 50% of the supplies requested by contractors. The new allocation is based on updated snow surveys and reservoir storage. DWR's initial announcement in December called for a 35% supply. Further information on SWP deliveries is available at <http://www.swpao.water.ca.gov>.

Bay-Delta Program Happenings

Upper San Joaquin to Begin Environmental Review Process: A Notice of Intent/Notice of Preparation of an Environmental Impact Report is expected to be published this month for the Upper San Joaquin River Basin Storage Investigation. The notice marks the beginning of the environmental review process for the program, which is considering options for expanding surface storage in the Upper San Joaquin River basin. Public scoping sessions will be scheduled following publication of the notice. Further details on the program can be found at <http://www.usbr.gov/mp/sccao/storage/index.html>.

BDPAC Subcommittees: Several subcommittees of the Bay-Delta Public Advisory Committee are slated to meet in January. Upcoming meetings include the Drinking Water Subcommittee on January 23. Meeting notices are posted on the Program calendar at <http://www.calwater.ca.gov/calendar/calendar.shtml>.

Independent Science Board to Meet: The California Bay-Delta Authority's Independent Science Board will meet in Sacramento January 29 to discuss ongoing activities and critical science issues. The board, which includes 15 scientists from across the United States, was established last year to advise the Authority on science issues relevant to the overall Bay-Delta Program and individual program elements. Meeting details are available at <http://www.calwater.ca.gov/calendar/calendar.shtml>.

Contaminants Workshop Scheduled: Contaminants in the Bay-Delta watershed are the focus of a two-day workshop to be sponsored February 4 and 5 by the California Bay-Delta Authority's Science Program. A panel of expert science advisors will help workshop participants evaluate the state of knowledge regarding chemical contaminants in the Bay-Delta and develop a science agenda to address the issue. Workshop details are available at <http://www.calwater.ca.gov/calendar/calendar.shtml>.

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