

CALIFORNIA BAY-DELTA PUBLIC ADVISORY COMMITTEE

Director's Report

Agenda Item: 2

Meeting Date: March 11, 2004

Budget

The California 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. This reduction, in addition to previous years' cuts in funds and personnel, have generally slowed our ability to keep the public up-to-date on Program activities, increased the time needed to award grants to local and regional agencies and associations, and pushed back the implementation of activities crucial to ensuring the Program goes forward in a balanced manner.

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 the CALFED Program, along with the Lake Tahoe Environmental Improvement Program, and improvements to State Park facilities, as programs that are priorities for bond funding for the 2004-05 fiscal year.

Legislation

Senator Mike Machado introduced SB 1155 which would prohibit additional water pumping from the Sacramento-San Joaquin Delta beyond currently authorized levels until the 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 (ROD). All elements would be required to conform to the CALFED Program solution principles and be developed through an open Bay-Delta process. SB 1155 is scheduled to be heard in the Senate Agriculture and Water Resources Committee on Tuesday, March 16, 2004.

While Authority staff continues working on the proposal for implementing Water Use Measurement, three bills on the subject have been introduced:

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AB 2298 (Plescia) would require, by January 1, 2006, public water systems serving 3,000 or more service connections to require water meters to measure the volume of water delivered to specified new irrigated landscaped areas and rehabilitated irrigated landscaped areas. This bill would also require water meters for irrigated landscaped areas of one acre or more no later than January 1, 2012. Water customers would be charged based on the actual volume of deliveries.

AB 2572 (Kehoe) would require urban water suppliers to install water meters on all service connections constructed before January 1, 1992. This bill would also require customers that have water meters to be charged based on the actual volume of deliveries.

AB 2951 (Canciamilla) would declare that it is the intent of the Legislature to define appropriate measurement for agricultural uses of water in accordance with the ROD and the findings of the independent panel.

The Authority will discuss how to proceed with the staff recommendations on urban and agricultural water use measurement at its April meeting.

California Bay-Delta Program EIS/EIR Litigation Update March 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 CALFED 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 [Interim]), Sonke Mastrup (DFG [Acting]), Peter Rabbon (The Reclamation Board), Margit Aramburu (Delta Protection Commission), Darryl Young (Conservation), Will Travis (San Francisco Bay Conservation and Development Commission), Diana Bontá (Health Services), 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 Environmental Water Account (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 was filed 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 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 on the previous page). 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; 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]; Department of Fish and Game, 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 previous page), 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 (MWDOC).

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 The 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 CALFED 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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February 2004

CALFED Bay-Delta Program Update

News Highlights from the California Bay-Delta Authority

[In the News](#)

President Bush Proposes Additional \$15 Million for Bay-Delta Program: President Bush has proposed spending \$15 million for several key elements of the California Bay-Delta Program in fiscal year 2005. This is in addition to appropriations in Federal agency budgets, including the Central Valley Project Restoration Fund to support CALFED activities. Included in the President’s proposal is \$2 million for water storage feasibility studies, \$8 million for the Environmental Water Account (EWA), \$1.5 million for planning and management activities; and another \$3.5 million for conveyance, water use efficiency and ecosystem restoration activities previously funded in other areas of the Federal budget. The proposed budget can be accessed at <http://www.whitehouse.gov/infocus/budget/index.html>.

\$21 Million Proposed for Western Water Initiative: President Bush’s fiscal 2005 budget calls for \$21 million in funding to help Western communities develop water use efficiency and water marketing projects as part of the Water 2025 initiative. Funding will be directed at on-the-ground projects selected through a 50-50 cost-shared Challenge Grant Program. More details are posted at <http://www.doi.gov/news/040127b>.

Final Environmental Documents Issued for EWA: State and Federal agencies have issued a final environmental report on operation of the California Bay-Delta Program’s Environmental Water Account. The final Environmental Impact Statement/Environmental Impact Report (EIS/EIR) analyzes three alternatives for operating the EWA through 2007. The EWA is a cooperative program to address fish protection and recovery in the Bay-Delta while improving water supply reliability for cities, farms, and businesses. The draft EIS/EIR was made available for public review and comment in July 2003. Public hearings were held in August 2003. The final EIS/EIR includes comments received on the draft document, as well as responses to those comments. Further details and the final document can be accessed at <http://www.usbr.gov/mp/EWA/FinalEIS/index.html>.

Final Mercury Strategy Released: The California Bay-Delta Authority's Science Program has issued a final report laying out a strategy for investigating and addressing mercury contamination in the Bay-Delta watershed. Developed by a team of independent scientists with input from two public workshops, the strategy is aimed at providing a unifying framework for the research needed to better address mercury in ecosystem restoration, environmental planning, and other areas. A copy of the final report is available at www.science.calwater.ca.gov.

Grant \$\$

Groundwater Applications Received: The Department of Water Resources received 71 applications requesting \$16.7 million in grant funding as part of the fiscal year 2003-04 Local Groundwater Assistance Grant Fund Program. A total of \$5 million in funding is available for the program this year, and individual applicants are eligible to receive up to \$250,000 each. The program provides grants to local agencies to conduct groundwater studies or to carry out groundwater monitoring and management activities. Priority for grants is given to agencies that have adopted groundwater management plans and demonstrate collaboration with other local agencies to manage the groundwater basin. Final selection of grant recipients is expected in June. Further details are available at <http://www.dpla2.water.ca.gov/grants-loans/ab303/>.

Operations Update

CVP Initial Outlook: The U.S. Bureau of Reclamation has issued an initial water supply outlook for 2004 Central Valley Project (CVP) deliveries. The January 23 forecast calls for a 60% supply for agricultural contractors south of the Delta and an 85% supply for urban customers south of the Delta. The outlook is based on runoff information from January. Official allocations will be announced February 16. DWR announced last month that it would meet 50% of contractor requests and the next update is scheduled to come in two weeks. More on CVP deliveries is available at www.usbr.gov/mp. SWP delivery information is available at: <http://www.swpao.water.ca.gov/deliveries/>.

Bay-Delta Program Happenings

In-Delta Storage Studies Available: The California Department of Water Resources and the Bay-Delta Authority, with technical assistance from the Bureau of Reclamation, have completed the In-Delta Storage Program State Feasibility Study that addresses the technical feasibility of the proposed In-Delta Storage Project. All State feasibility study reports were released on February 4, 2004, starting a 30-calendar day review period that will end on March 5, 2004. The reports are available on the web site listed below. Two public meetings have been scheduled to provide further details on the investigations and answer any related questions. The first meeting will be at the Jean Harvie Community Center Auditorium, 14273 River Road, Walnut Grove on February 24, from 9:00 a.m. to 12:00 p.m. The second meeting will be in Sacramento at the California Bay-Delta Authority, 650 Capitol Mall, 5th Floor, in the Delta Room, February 25,

from 1:00 p.m. to 4:00 p.m. Written comments can be sent via U.S. mail to Jeremy Arrich, DWR, DPLA, PO Box 942836, Sacramento, CA, 94236-0001 or via other delivery to 901 P Street, Room 213A, Sacramento, CA, 95814, or emailed to arrich@water.ca.gov. The studies are available on the web at

http://calwater.ca.gov/Programs/Storage/InDeltaStorageReports_2003/InDeltaFeasibilityStudies_Jan2004.shtml

Water Use Measurement Public Meetings: The Authority is seeking public input on the topic of appropriate agricultural and urban water use measurement. There are a series of public meetings at several sites throughout California to report on the status of a Staff Proposal for measurement implementation and to receive feedback. Meeting presentations will include: a description of the challenges facing water use management and planning in California and the need for improved measurement; a description of the new measurement and reporting actions being forwarded in the Staff Proposal that will highlight the potential impact on water suppliers, funding and timeline considerations for implementation, and the possible need for new regulations and/or legislation; an explanation of the rationale behind the proposed new measurement and reporting actions; and plans for additional presentations to the public and the policy-makers. A copy of the Staff Proposal for Urban Water Use Measurement along with a 2-page Executive Summary may be found at the CBDA website at:

<http://calwater.ca.gov/Programs/WaterUseEfficiency/WaterUseEfficiency.shtml>. Hard copies may be requested by calling Hilda Smith at 916-445-5461. For more information on the following public meetings, go to <http://www.calwater.ca.gov/calendar/calendar.shtml>.

Tuesday, February 17, 2:00 p.m. – 4:00 p.m.
East Bay Municipal Utilities District
375 11th Street, Training Resources Center
Oakland

Friday, February 20, 2:00 p.m. – 4:00 p.m.
Modesto Irrigation district
1231 11th Street, MID Meeting Room (2nd Floor)
Modesto

Wednesday, February 25, 1:00 p.m. – 3:00 p.m.
Escondido Hall, Mitchell Room
201 North Broadway
Escondido

Friday, February 27, 1:00 p.m. – 3:00 p.m.
Kern County Water Agency
3200 Rio Mirada Drive, Board Room
Bakersfield

BDPAC and Subcommittee Meetings: The Bay-Delta Public Advisory Committee is scheduled to meet March 11 in addition to several subcommittee meetings in February. Upcoming meetings include the Water Use Efficiency Subcommittee on February 18, the Ecosystem Restoration Program Subcommittee on February 19, the Environmental Justice and Watershed Subcommittees on February 20, and the Drinking Water Quality Subcommittee meeting on February 27. Meeting notices are posted on the Program calendar at <http://www.calwater.ca.gov/calendar/calendar.shtml>.

New Program Contact for BDPAC: Heidi Rooks is the new contact for the Bay-Delta Public Advisory Committee since the Program said farewell to Eugenia Laychak after 8 years of dedicated service. Heidi also continues to be the assistant to the California Bay-Delta Authority. For information on BDPAC or the Authority, Heidi can be reached at (916) 445-0533, or by email at hrooks@calwater.ca.gov.

Other News

Water-efficient Clothes Washers Approved: The California Energy Commission has approved regulations that will help the State save billions of gallons in water use from washing machines. If also approved by the Federal government, California would be the first state in the nation to have water-efficiency rules for washing machines. Studies show that approximately 20 percent of a household's water is used by washing machines. Increasing the efficiency of the machines could save as much as 19 billion gallons of water over the next 15 years. The regulations now go to the State's office of administrative law and then to the Federal Department of Energy, which must issue a waiver before the law can go into effect as scheduled on January 1, 2007. More info can be found at:

http://www.energy.ca.gov/appliances/clothes_washers/index.html.

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THE SECRETARY OF THE INTERIOR
WASHINGTON

FEB 19 2004

The Honorable Arnold Schwarzenegger
Governor of California
Sacramento, California 95814

Dear Governor Schwarzenegger:

President Bush has asked me to reply to your letter of January 9, 2004, pertaining to the CALFED Bay-Delta Program. We are indeed anxious to join with you in developing a strong partnership to advance the CALFED Program. In addition, we look forward to working with you and your administration on a host of other water, energy, and environmental challenges where our Federal and State agencies have been working together for decades.

We agree with your characterization of the history and importance of the CALFED Program, and the hope it holds for reducing conflicts among competing interests. A strong Federal and State partnership is essential if we are to effectively address the many challenges that have arisen in the course of transitioning from a planning process to an implementation program. One of our greatest challenges will be to adjust the program to recognize that funding on both the Federal and State sides simply cannot meet the expectations laid out in the planning documents. In addition, we must continue to work closely together as we move from a planning exercise to actual implementation of the measures that will provide the balanced progress required by CALFED.

Relative to authorizing legislation, both Assistant Secretary for Water and Science Bennett Raley and I have testified on the need for and our support of Congressional authorization of the CALFED Program. We have met numerous times with the authors of CALFED legislation and continue our active engagement to move legislation forward. In this regard, we are becoming concerned that the lack of a resolution of local issues may make it impossible for the California delegation to move forward with authorizing legislation this year. I hope that these issues can be resolved quickly.

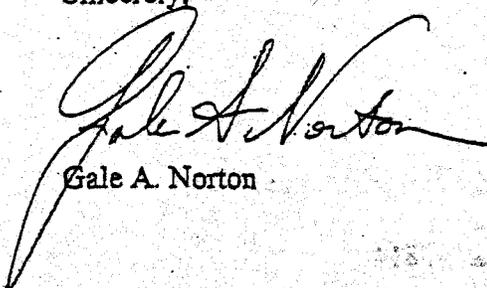
As we saw with the issues on the Colorado River and the California Quantification Settlement Agreement of last year, hard work and good will can bring progress, balance, and certainty. These results are essential for the well being of the people, farms, and ecosystems that all of our water projects serve in California.

The Honorable Arnold Schwarzenegger

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I invite you to meet with Assistant Secretary Raley, who serves as my CALFED representative, and myself to discuss CALFED in greater depth.

Sincerely,

A handwritten signature in cursive script, appearing to read "Gale A. Norton". The signature is written in dark ink and is positioned above the printed name.

Gale A. Norton