

Agenda Item: 7
Meeting Date: July 8, 2004

CALIFORNIA BAY-DELTA PUBLIC ADVISORY COMMITTEE

CALFED BAY-DELTA PROGRAM MULTI-SPECIES CONSERVATION: Reinitiation of Programmatic Consultation For Covered Species. Evaluation of Progress Toward Achieving Milestones and Efficacy of Environmental Water Account

Description: This report provides information regarding the reinitiation of programmatic consultation for covered species for the purpose of evaluating progress toward achieving milestones and efficacy of the Environmental Water Account (EWA).

Recommended Action: This is an informational item only. No action will be taken.

Background

On August 28, 2000, the Programmatic Record of Decision (ROD) for the CALFED Bay-Delta Program was signed by 13 Federal and State agencies with management and regulatory responsibilities in the San Francisco Bay and Sacramento-San Joaquin Delta Estuary. With the signing of the ROD and attached documents, the agencies achieved programmatic Federal Endangered Species Act (FESA), California Natural Community Conservation Planning Act (NCCPA), and California Endangered Species Act (CESA) compliance for all CALFED Program elements and made program-level regulatory commitments for Delta exports. The reinitiation of consultation described below is necessary to extend programmatic compliance beyond September 30, 2004. This same reinitiation is also necessary to extend program-level regulatory commitments for exports beyond September 30.

Based on the analysis in the Multi-Species Conservation Strategy (MSCS) and the Final Programmatic Environmental Impact Statement/Environmental Impact Report (EIS/EIR), the CALFED Program agencies fulfilled the regulatory requirements for a programmatic evaluation of the CALFED Program as set out under Section 7 of the FESA of 1973, as amended (FESA; 16 U.S.C. 1531 et. seq.), and under the NCCPA (California Fish and Game Code, Section 2800, et. seq.) As a result of meeting those requirements, three regulatory documents were issued concurrently with the ROD:

(1) a programmatic biological and conference opinion (1-1-00F-184) by the U.S. Fish and Wildlife Service (USFWS); (2) a programmatic biological opinion by the National Marine Fisheries Service (NMFS); and (3) a programmatic Natural Community Conservation Plan (NCCP) Approval by the California Department of Fish and Game (DFG).

The programmatic biological opinions and the NCCP Approval contained a set of 119 "milestones." The milestones are a discrete set of actions that are intended to be carried out during the CALFED Program's Stage 1 (the first 7 years of the 30-year program). These actions are derived from the Final Programmatic EIS/EIR technical appendices, including the MSCS and program plans for the Ecosystem Restoration (ERP) and Water Quality Programs. The MSCS provides a program-level evaluation of the CALFED Program under FESA and NCCPA, just as the Final Programmatic EIS/EIR provides a program-level evaluation of the CALFED Program under National Environmental Policy Act and the California Environmental Quality Act.

USFWS, NMFS and DFG developed the milestones to ensure that the MSCS, ERP and Water Quality Program are carried out in a manner and level adequate to sustain programmatic FESA, NCCPA, and CESA compliance for all CALFED Program elements. In the CALFED Program ROD, USFWS, NMFS, and DFG committed to reinitiating FESA Section 7 consultation no later than 180 days before September 30, 2004, to evaluate progress toward achieving milestones and the efficacy of the EWA. This commitment was reiterated in the USFWS August 2000 biological opinion as a reinitiation statement. The agencies intend to reinitiate in early July 2004. Biological opinion(s) resulting from reinitiating consultation will extend programmatic FESA Section 7 permitting beyond the current expiration date of September 30, 2004.

A comprehensive assessment package was assembled by multiple agencies in a collaborative effort to evaluate progress to date. This assessment package reinitiates formal consultation under Section 7 of FESA of 1973, as amended (FESA; 16 U.S.C. 1531 et. seq.) for implementation of the CALFED Bay-Delta Program. According to the Conservation Agreement regarding the MSCS for the CALFED Bay-Delta Program, "the purpose of the reinitiation is to evaluate the efficacy of the EWA and progress toward achieving the milestones in conserving and promoting the recovery of Covered Species."

As such, the CALFED agencies are not proposing a new action during Section 7 consultation. Instead, reinitiation of consultation serves as the measure by which the CALFED agencies' commitments toward achieving milestones and implementing the EWA can be assessed and confirmed. The U.S. Bureau of Reclamation, on behalf of all Federal agencies, is reinitiating consultation. The California Resources Agency is also considered an applicant for this consultation. The Resources Agency represents DFG, California Department of Water Resources, California Bay-Delta Authority, and The State Reclamation Board for consultation purposes.

Simultaneous to extending programmatic permitting as described above, program-level regulatory commitments for the Central Valley Project and State Water Project Delta exports will be extended as described in the Conservation Agreement regarding Multi-Species Conservation Strategy signed with the ROD. Signatories to the Agreement acknowledged that program-level regulatory commitments would extend until September 30, 2004, and that an amendment to the Agreement could detail sufficient fishery protection assets that would be available after September 30, 2004. Thus, the Agreement will be amended to extend program-level regulatory commitments beyond September 30, 2004.

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