

Agenda Item: 3
Meeting Date: September 9, 2004

CALIFORNIA BAY-DELTA PUBLIC ADVISORY COMMITTEE

DIRECTOR'S REPORT

Budget

SB 1113, the Budget bill, was signed by the Governor on July 31, 2004. Consistent with the Governor's proposal, the Budget provides \$8.3 million General Fund for the California Bay-Delta Authority (Authority). This represents a \$2.7 million General Fund reduction from the previous year. The Budget also provides over \$23 million in Proposition 50 bond funds for CALFED programs administered directly by the Authority (Ecosystem Restoration and Science). Overall, the Authority and CALFED implementing agencies will have a budget of approximately \$650 million including State, bond, and all other funds.

SB 1107, the Resources budget trailer bill, was signed by the Governor on August 16, 2004 and includes language related to Proposition 50 expenditures. The Legislature also adopted supplemental report language related to the Science Program. Agreement was not reached on trailer bill language related to user fees and CALFED financing.

The Proposition 50 language and supplemental report language are as follows:

CALFED Grant Programs Consistency With The Record Of Decision

Section 79509.6 is added to the Water Code to read:

(a) For the purposes of ensuring compliance with Section 79509, the California Bay-Delta Authority shall review regulations, guidelines, or criteria that are proposed by an implementing agency to carry out a grant program for projects and activities that meet the following criteria:

(1) The project is located within the CALFED solution area as defined in the CALFED Final Programmatic Environmental Impact Statement / Environmental Impact Report dated July 2000.

(2) The project wholly or partially assists in the fulfillment of one or more of the goals of the CALFED Bay-Delta Program.

(b) Except for projects financed pursuant to Chapter 6 (commencing with Section 79545) or Chapter 10 (commencing with Section 79570), The California Bay-Delta Authority may review, and comment to the appropriate implementing agency with regard to, a proposal to award a grant pursuant to this division on behalf of a project that meets the criteria set forth in subdivision (a) for the purposes of determining whether or not the project is consistent with the CALFED Programmatic Record of Decision.

(c) To avoid any delays in project awards, the opportunity for review by the California Bay-Delta Authority pursuant to subdivision (b) shall be incorporated into the grant program schedules established by the implementing agencies.

(d) For the purposes of this section, "implementing agency" has the same definition as that set forth in subdivision (h) of Section 79402.

CALFED Science Program Report

3870-001-0001—California Bay-Delta Authority- The CALFED Science Program.

(a) The science program (implemented by the California Bay-Delta Authority) shall, by January 10, 2005, report to the Legislature with a plan to develop and implement a research agenda designed to answer the following questions:

(i) How much water is necessary for the full recovery of all delta dependent fish species designated on either the State or Federal endangered species lists as either endangered or threatened? To what extent, if at all, is this amount of water in addition to that which is provided under the current regulatory regime?

(ii) What time of year is the additional water identified in (i) needed?

(iii) Are there other characteristics of the additional water identified in (i), such as temperature, that are critical to recovery of these species, and if so what are those characteristics?

(b) As part of the research agenda described in (a), the science program may address any other questions related to the water needs of threatened or endangered fish that the science program deems appropriate.

Legislation

SB 1353 (Perata) was amended to revise the definition of “designated employee” and “public official” in the Political Reform Act to exclude any Federal officer or employee serving on a State or local government agency in an official Federal capacity. This bill is sponsored by the Fair Political Practices Commission and if enacted, will enable Federal members to participate in public Authority meetings. SB 1353 passed the Legislature and is currently on the Governor’s desk awaiting action.

SB 1155 is currently on the Governor’s desk awaiting action. This bill would require the Director of Department of Water Resources (DWR) in collaboration with the Secretary of the Interior to develop a plan to meet the existing permit and license conditions for which the Department has an obligation by January 1, 2006. The bill would require the plan to be developed and filed with the State Water Resources Control Board (SWRCB) and the California Bay-Delta Authority prior to increasing the existing permitted diversion rate at Banks Pumping Plant.

Federal Authorization – The House and Senate will return from recess September 6, 2004. Staffs continue to work together to resolve the differences between H.R. 2828 (Calvert) and S. 1097 (Feinstein). Both bills authorize \$389 million to help implement the CALFED Bay-Delta Program and provide for Federal agency participation in the California Bay-Delta Authority. The 108th Congress is scheduled to adjourn on October 1, 2004; however, this is a target date and may be revised.

Litigation Update

A. Programmatic Litigation

1. Federal case

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

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 the State defendants filed an answer on February 2, 2004. A status conference was held on January 20, 2004. The Federal agencies were given until August 27, 2004 to file the administrative record and all discovery was stayed until that date. Another status conference was set for November 1, 2004 to determine how the case will proceed.

2. State court cases

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

Current Status: The State defendants won on all issues at trial. The case is now on appeal and the parties' briefing was completed on May 11, 2004. In June, The Nature Conservancy was permitted to file an amicus curiae brief supporting the Programmatic EIS/EIR. The Farm Bureau's response was filed on July 16, 2004.

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

Current Status: The State defendants won on all issues at trial. The case is now on appeal and briefing was completed on May 11, 2004.

B. EWA Litigation

California Farm Bureau Federation v. Mike Chrisman, et al. Sacramento Superior Court

Current Status: The Farm Bureau has agreed to, and the court has approved, an extension of time to prepare the administrative record until August 2004. The settlement meeting required by CEQA was held on May 27, 2004. A hearing date of December 10, 2004 has been set; and the parties will confer on briefing deadlines to meet this date.