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Agenda Item: 9-4

Meeting Dates: February 9 and 10, 2005

JOINT MEETING WITH BAY-DELTA PUBLIC ADVISORY COMMITTEE

DIRECTOR'S REPORT

A. New Assistant to the California Bay-Delta Authority/Bay-Delta Public Advisory Committee

Jamie Cameron-Harley is serving as Interim Assistant to the Authority and BDPAC, replacing Heidi Rooks. Ms. Rooks was promoted to an Environmental Program Manager position with the Department of Water Resources.

B. Renewal of Bay-Delta Public Advisory Committee Charter

In accordance with the Federal Advisory Committee Act (FACA), all FACA committees must be renewed and filed every two years. The California Bay-Delta Public Advisory Committee is scheduled to terminate on August 15, 2005—two years from the date the renewed Charter was filed by the Secretary of the Interior, unless, prior to that time, the Charter is renewed in accordance with section 14 of the FACA. The U.S. Bureau of Reclamation, whose Regional Director serves as the Committee's Designated Federal Official on behalf of the Secretary, is working with the Authority to ensure the Charter is renewed for another two years prior to the August termination date.

State law provisions require the Authority to provide administrative support for the Committee, and to take any administrative actions necessary to maintain the Committee's status as an advisory committee under FACA. Authority staff continues to work with Federal partners on renewing the charter prior to its expiration date.

C. California Farm Bureau Federation Public Records Act Requests

On January 18, 2005, the Bay-Delta Authority received an extensive Public Records Act request from the California Farm Bureau Federation, asking for any and all documents containing detailed information about funding amounts listed by program element for the Authority for 2003-04 and 2004-05 in the CALFED Program crosscut budget. The request asks, with respect to totals listed for each element: (1) the source of funding; (2) the specific work, project, program, initiative, research, activity and/or personnel funded with the monies; (3) the current status of each of those activities; and (4) the CALFED goal(s) for that program element the specific activity helps meet. A copy of the request is attached to this item (Attachment 1).

The Farm Bureau also sent similar Public Records Act requests to State CALFED agencies whose allocations are also listed in the crosscut budget; namely, The Resources Agency, Department of Water Resources (DWR), Department of Fish and Game (DFG), Department of Conservation (DOC), Department of Forestry and Fire Protection, and the State Water Resources Control Board (SWRCB).

Consistent with the Authority's response letter to the Farm Bureau dated January 28, 2005 (Attachment 2), staff welcomes the opportunity, notwithstanding the significant workload associated with these requests, to continue to provide to participating stakeholders, such as the Farm Bureau, an open and transparent accounting of the CALFED Program.

D. Programmatic Litigation

1. 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 named in the Farm Bureau's latest complaint are sued via their executive officers: Governor Schwarzenegger; Michael Chrisman, The Resources Agency (Resources); Terry Tamminen, Environmental Protection Agency (CalEPA); Celeste Cantu, SWRCB; Lester Snow, DWR; Ryan Brodrick, DFG; Peter Rabbon, The Reclamation Board; Margit Aramburu, Delta Protection Commission; Darryl Young, DOC; Will Travis, Bay Conservation and Development Commission (BCDC); Sandra Shewry, Department of Health Services (DHS); and A.G. Kawamura, Department of Food and Agriculture (CDFA).

Summary of Case: The Farm Bureau filed this case in September 2000. It alleges that the CALFED Programmatic Environmental Impact Statement/Environmental Impact Report (EIS/EIR) violates the National Environmental Policy Act (NEPA) and the Administrative Procedures Act. It seeks an injunction against all State and Federal actions to implement the Record of Decision (ROD) until an adequate Programmatic EIS/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.

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 Federal agencies have filed their administrative record. A status conference was held on November 1, 2004. Plaintiffs have designated expert, Robert McKusick, who is being deposed on January 31, 2005. Defendants are to designate experts by

February 17, 2005. The opening brief as to Plaintiffs' NEPA claims is due to be filed on or before April 4, 2005; opposition briefs on or before May 24, 2005; and the reply briefs on or before July 25, 2005. The hearing is scheduled for September 6, 2005. Discovery on the State's jurisdictional issues is postponed pending dispositive motions.

2. State court cases

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

Petitioners: California Farm Bureau Federation and several individual farmers

Respondents: State of California; The Resources Agency, Secretary of Resources; CalEPA, CalEPA Secretary

Summary of Case: The Farm Bureau filed this case in State court after the Federal district court dismissed a California Environmental Quality Act (CEQA) claim that had been part of their original NEPA lawsuit (described above). Defendants won all issues in the trial court and the Farm Bureau appealed. The Farm Bureau alleges that the CALFED Programmatic EIS/EIR violates CEQA and seeks an injunction of all Program activities until the alleged CEQA violations are cured. This case has been coordinated in Sacramento Superior Court with Regional Council of Rural Counties (below).

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)

Petitioners: Regional Council of Rural Counties, Central Delta Water Agency, South Delta Water Agency, and individual farmers

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

Summary of Case: The complaint alleges that the CALFED Programmatic EIS/EIR violates CEQA and that the Project would harm the Delta. They also contend that the ROD is illegal under several water law theories. This case was coordinated in Sacramento Superior Court with *Laub v. Davis* (above), and the two cases have been consolidated on appeal.

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.

E. Environmental Water Account Litigation

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

Petitioners: California Farm Bureau Federation

Respondents: The following State agencies were sued in addition to those directors and secretaries in their official capacities: Resources (Michael Chrisman); CalEPA (Terry Tamminen); CDFA (A.G. Kawamura); DWR (Lester Snow), DFG (Ryan Broddrick); DHS (Sandra Shewry); and California Bay-Delta Authority (Patrick Wright)

Summary of Case: On April 16, 2004, the Farm Bureau filed this CEQA action challenging the adoption of a Final EIS/EIR covering operation of the Environmental Water Account (EWA) through 2007, the end of the first stage of implementation of the CALFED Program. The Farm Bureau alleges the EIS/EIR does not adequately address "agricultural resources" when analyzing impacts, alternatives, mitigation, and other issues regarding operations of the EWA.

Current Status: The administrative record was fully lodged as of October 7, 2004, and an answer was filed on behalf of DWR and Lester Snow on November 5, 2004. Both parties filed their statement of issues. The State agencies other than DWR demurred, asking to be dismissed from the lawsuit on the ground that the lead agency is the proper respondent in a CEQA case. On December 23, 2004, the court overruled the demurrer, finding that it could not discredit the Farm Bureau's factual allegations that every agency sued "is implementing" the EWA. The Court noted that most or all such agencies may demonstrate from the record that they have no CEQA duties and relief may not be ordered against them. A status conference is set for February 18, 2005. The current briefing schedule is that the Farm Bureau's opening brief will be due on or before March 25, 2005; the State's opposition brief will be due on or before May 10, 2005; and the Farm Bureau's reply brief will be due on or before June 3, 2005. The CEQA merits hearing will be on July 1, 2005.



CALIFORNIA FARM BUREAU FEDERATION

EXECUTIVE OFFICES

2300 RIVER PLAZA DRIVE, SACRAMENTO, CA 95833-3293 · PHONE (916) 561-5520 · FAX (916) 561-5690

January 14, 2005

Mr. Patrick Wright
Director
California Bay-Delta Authority
650 Capitol Mall, 5th Floor
Sacramento, CA 95814

VIA MESSENGER

RE: Public Records Act Request for:
Data on Expenditures Relating to California Bay Delta Authority
Programs, from 2002 to Date

Dear Mr. Wright:

Under the California Public Records Act (Gov. Code Sections 6250-6270), the California Farm Bureau Federation ("Farm Bureau") is formally requesting the California Bay-Delta Authority ("Authority") provide information regarding prior and current expenditures relating to the implementation by the Authority's CALFED programs, beginning year in 2002 until the present.

Late last year, the Authority unanimously approved a 10-year Finance Plan which would substantially reduce the funding share of the state general public user while increasing the financial burden on other water users. *See* CALFED Bay-Delta Program Finance Plan ("Plan"), December 2004, at 5. Specifically, the Plan estimates there will be a 15 percent shift from state monies, which fund the public benefits associated with the program, to water users, other local agencies, recreation, commercial fishing, flood protection and hydropower recipients in the form of user fees. *Id.* These new contributions from water users could help pay for the Ecosystem Restoration Program, the Environmental Water Account, the Levees Program, and the Science Program. *See Id.* at 11.

The Plan also explains that a long-term and stable funding strategy must be based on several foundational elements, including transparency, accountability and fairness. Thus, based on this principle, discussions regarding the Plan "need to take place in an open and transparent process that brings a diversity of stakeholder and agency views to the table," "annual assessment" to "take stock" of funding matters must take place, and cost-sharing "must continue to adhere to the beneficiary-pays" and "not blur the line between public and water user cost-shares." *Id.*

The Farm Bureau is a non-governmental, non-profit, voluntary membership organization working to protect and improve the ability of farmers and ranchers engaged in production agriculture to provide a reliable food and fiber supply through responsible

stewardship of California's resources. Farm Bureau believes that both public and private beneficiaries of the Authority's programs should pay their fair share of the program costs. Farm Bureau also believes, however, that before future funding decisions can be made regarding what "fair share" means in terms of dollars, the Authority and participating agencies need to explain to the public how the prior funding has been utilized. As recognized in the Plan¹, the issue of accountability is key to achieving consensus as to what constitutes the appropriate cost sharing formula.

Accountability begins with the Authority providing accurate and complete information regarding the specific work, project, program, initiative, research, activity and/or personnel funded by your department as part of the Authority's CALFED commitments. Specifically, please provide copies of any public record², including writings³, containing the information requested below. Please note that under the Public Records Act, the Authority must, within a limited period, provide copies of identifiable records that match the description of the information Farm Bureau wishes to gather. Gov. Code § 6253, (b) and (c).

A. *Ecosystem Restoration* - According to the CALFED Crosscut Budget⁴, the Authority spent \$114,740,00 in 2003-04, and \$779,000 in 2004-05. Please provide information regarding:

1. The source of the funding.
2. The specific work, project, program, initiative, research, activity and/or personnel funded with these monies.
3. The current status of the work, project, program, initiative, research, activity and/or personnel funded with these monies.
4. Which CALFED Ecosystem Restoration Program goal(s) did each specific work, project, program, initiative, research, activity and/or personnel funded with these monies help meet.

¹ "For each program there are water user concerns regarding the appropriate water user share, which water users should contribute, when the contribution should begin, and *how the CALFED Program will be held accountable to those funding it.*" CALFED Bay-Delta Program Finance Plan, December 2004, at 11. [Emphasis added].

² Government Code Section 6252, subsection (e) defines public records as including "any writing containing information relating to the conduct of the public's business prepared, owned, used, or retained by any state or local agency regardless of physical form or characteristics." Gov. Code § 6252(e) (2004).

³ Government Code Section 6252, subsection (f) defines writings as any handwriting, typewriting, printing, photocopying, transmitting by electronic mail or facsimile, and every other means of record upon any tangible thing any form of communication or representation, including letters, words, pictures, sounds, or symbols, or combination thereof, and any record thereby created, regardless of the manner in which the record has been stored. Gov. Code § 6252(f) (2004).

⁴ *California Bay-Delta Program Crosscut Budget*, located at www.ca|water.ca.gov/Budget/Crosscut_Budget_1-27-04.pdf.

- B. *Environmental Water Account* - According to the CALFED Crosscut Budget, the Authority spent \$56,000 in 2003-04, and \$55,000 in 2004-05. Please provide information regarding:
1. The source of the funding.
 2. The specific work, project, program, initiative, research, activity and/or personnel funded with these monies.
 3. The current status of the work, project, program, initiative, research, activity and/or personnel funded with these monies.
 4. Which CALFED Environmental Water Account Program goal(s) did each specific work, project, program, initiative, research, activity and/or personnel funded with these monies help meet.
- C. *Water Use Efficiency* - According to the CALFED Crosscut Budget, the Authority spent \$739,000 in 2003-04, and \$333,000 in 2004-05. Please provide information regarding:
1. The source of the funding.
 2. The specific work, project, program, initiative, research, activity and/or personnel funded with these monies.
 3. The current status of the work, project, program, initiative, research, activity and/or personnel funded with these monies.
 4. Which CALFED Water Use Efficiency Program goal(s) did each specific work, project, program, initiative, research, activity and/or personnel funded with these monies help meet.
- D. *Water Transfers* - According to the CALFED Crosscut Budget, the Authority spent \$2,000 in 2003-04. Please provide information regarding:
1. The source of the funding.
 2. The specific work, project, program, initiative, research, activity and/or personnel funded with these monies.
 3. The current status of the work, project, program, initiative, research, activity and/or personnel funded with these monies.
 4. Which CALFED Water Transfers Program goal(s) did each specific work, project, program, initiative, research, activity and/or personnel funded with these monies help meet.
- E. *Watershed* - According to the CALFED Crosscut Budget, the Authority spent \$7,636,000 in 2003-04, and \$172,00 in 2004-05. Please provided information regarding:
1. The source of the funding.
 2. The specific work, project, program, initiative, research, activity and/or personnel funded with these monies.
 3. The current status of the work, project, program, initiative, research, activity and/or personnel funded with these monies.
 4. Which CALFED Watershed Program goal(s) did each specific work, project, program, initiative, research, activity and/or personnel funded with these monies help meet.

- F. *Drinking Water Quality* - According to the CALFED Crosscut Budget, the Authority spent \$393,000 in 2003-04, and \$150,000 in 2004-05. Please provide information regarding:
1. The source of the funding.
 2. The specific work, project, program, initiative, research, activity and/or personnel funded with these monies.
 3. The current status of the work, project, program, initiative, research, activity and/or personnel funded with these monies.
 4. Which CALFED Drinking Water Quality Program goal(s) did each work, project, program, initiative, research, activity and/or personnel funded with these monies help meet.
- G. *Levees* - According to the CALFED Crosscut Budget, the Authority spent \$211,000 in 2003-04, and \$14,000 in 2004-05. Please provide information regarding:
1. The source of the funding.
 2. The specific work, project, program, initiative, research, activity and/or personnel funded with these monies.
 3. The current status of the work, project, program, initiative, research, activity and/or personnel funded with these monies.
 4. Which CALFED Levees Program goal(s) did each specific work, project, programs, initiative, research, activity and/or personnel funded with these monies help meet.
- H. *Storage* - According to the CALFED Crosscut Budget, the Authority spent \$371,000 in 2003-04, and \$334,000 in 2004-05. Please provide information regarding:
1. The source of the funding.
 2. The specific work, project, program, initiative, research, activity and/or personnel funded with these monies.
 3. The current status of the work, project, program, initiative, research, activity and/or personnel funded with these monies.
 4. Which CALFED Storage Program goal(s) did each specific work, project, program, initiative, research, activity and/or personnel funded with these monies help meet.
- I. *Conveyance* - According to the CALFED Crosscut Budget, the Authority spent \$1,098,000 in 2003-04, and \$556,000 in 2004-05. Please provide information regarding:
1. The source of the funding.
 2. The specific work, project, program, initiative, research, activity and/or personnel funded with these monies.
 3. The current status of the work, project, program, initiative, research, activity and/or personnel funded with these monies.
 4. Which CALFED Conveyance Program goal(s) did each specific work, project, program, initiative, research, activity and/or personnel funded with these monies help meet.

- J. *Science* - According to the CALFED Crosscut Budget, the Authority spent \$13,000,000 in 2003-04, and \$299,000 in 2004-05. Please provide information regarding:
1. The source of the funding.
 2. The specific work, project, program, initiative, research, activity and/or personnel funded with these monies.
 3. The current status of the work, project, program, initiative, research, activity and/or personnel funded with these monies.
 4. Which CALFED Science Program goal(s) did each specific work, project, program, initiative, research, activity and/or personnel funded with these monies help meet.
- K. *Oversight and Coordination* - According to the CALFED Crosscut Budget, the Authority spent \$7,891,000 in 2003-04, and \$6,707,000 in 2004-05. Please provide information regarding:
1. The source of the funding.
 2. The specific work, project, program, initiative, research, activity and/or personnel funded with these monies.
 3. The current status of the work, project, program, initiative, research, activity and/or personnel funded with these monies.

Farm Bureau does not believe that any of the public records requested are exempt from disclosure by express provisions of law. In the unlikely event the Authority disagrees with our assessment, Farm Bureau asks the Authority to articulate, in writing, why it believes certain public records are exempt. Gov. Code § 6255. Please be reminded that, according to the Public Records Act, you still have a duty to release any reasonably segregable portion of a record that is not itself exempt. Gov. Code § 6253(a).

Although we are aware of our rights to institute a proceeding for injunctive or declarative relief or writ of mandate to enforce our right to receive copies of the requested public records under Gov. Code section 6258, we appreciate in advance your cooperation in this important inquiry and eagerly await your response within the statutorily imposed time limit of 10 working days from receipt of our request.

Sincerely,



GEORGE J. GOMES
Administrator

Cc:

Mr. Gary Hunt, Chair
California Bay-Delta Public Advisory Board
Mr. Alfred G. Montna, Member
California Bay-Delta Authority
Mr. Michael Chrisman, Secretary
California Resources Agency
Mr. Alan Lloyd, Secretary
California Environmental Protection Agency
Richard Costigan, Legislative Affairs Secretary
California Governor Arnold Schwarzenegger
California Assembly Budget Committee
California Assembly Water, Parks and Wildlife Committee
California Senate Budget and Fiscal Review Committee
California Senate Natural Resources and Water Committee
Senator Diane Feinstein
Senator Pete Domenici
The Honorable Jerry Lewis
The Honorable Richard Pombo
The Honorable John Doolittle
The Honorable Dan Lungren
The Honorable George Radonovich
The Honorable Dennis Cardoza
The Honorable Devin Nunes
The Honorable Jim Costa



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January 28, 2005

Mr. George Gomes
Administrator
California Farm Bureau Federation
2300 River Plaza Drive
Sacramento, CA 95833-3293

Re: Public Records Act Request dated January 14, 2005

Dear Mr. Gomes:

This letter responds to your Public Records Act request dated January 14, 2005, to Authority Director Patrick Wright, which was received on January 18, 2005. Specifically, your letter asks for detailed information according to the funding amounts listed by program element for the Authority for 2003-04 and 2004-05 in the CALFED Program crosscut budget.

As you know, the CALFED Program is unique with regard to the public nature of the collaborative effort and the extent to which fully engaged and participating stakeholders, such as the Farm Bureau, have had, and continue to have, an opportunity to obtain and share relevant information and influence the direction of the Program through the Bay-Delta Public Advisory Committee, its various subcommittees, and other public venues.

While we are therefore disappointed to receive your request outside of this established public process, we have nevertheless conducted a preliminary review and determined that we have non-exempt documents that are responsive to your request. However, we remind you that the Public Records Act does not require us to compile and/or generate lists or other documents that are not currently in existence and in our possession.

As a point of clarification, kindly note that the crosscut budget referenced in your letter is outdated. Therefore, we will use the updated amounts in the most-recent crosscut budget, which is available on our website, as the basis for our response.

Based upon the extensive nature of the request, we estimate that non-exempt, responsive documents will be available for review and/or prepaid photocopying (20 cents per page, plus packaging and postage) on or around April 29, 2005. We will notify you in writing if the proposed schedule changes.

Sincerely,

A handwritten signature in black ink, appearing to read 'Chris Stevens', is written over a horizontal line.

Chris Stevens
Chief Counsel