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STATE OF CALIFORNIA
GRAY DAVIS, Governor
DEPARTMENT OF FOOD AND AGRICULTURE
WILLIAM (BILL) J. LYONS, JR., Secretary

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September 22, 1999

Mr. Rick Breitenbach
Assistant Director
CALFED Bay-Delta Program
1416 Ninth Street, Room 1155
Sacramento, California 95814

RE: Consultation on the CALFED PEIS/R (SCH#96032083)

Dear Mr. Breitenbach:

In accordance with your letter of June 29, 1999 in which the Department of Food and Agriculture (CDFA) is identified as an agency with jurisdiction by law with respect to resources affected by the CALFED Bay-Delta Program, I am pleased to provide you with the CDFA comments on the above referenced PEIS/R.

Your letter indicated that this was a formal request for comments of CDFA as a Trustee Agency and offered CDFA the opportunity to provide oral comments as well at any of the public hearings. However, as a CALFED Cooperating Agency that is a member of the Policy Group, I am submitting these comments recognizing that status.

The CDFA recognizes the challenges and complexity of the CALFED process and pledges its continued support towards bringing the planning and programmatic environmental review phase of the Program to a successful conclusion.

Sincerely,

Bill Lyons

William (Bill) J. Lyons, Jr.
Secretary

Attachment

Comments by the California Department of Food and Agriculture (CDFA) on the CALFED Bay-Delta Program June, 1999 Draft Programmatic Environmental Impact Statement/Environmental Impact Report (PEIS/R)

September 22, 1999

Standing and Basis for Comments by CDFA:

The California Department of Food and Agriculture (CDFA) is required, under California Law, to protect and promote Agriculture in the State. California Agriculture is a resource that provides the human population with the fundamental necessities of food and fiber. California Agriculture is also an element of the existing environment of California under CEQA.

California agriculture produced commodities valued at the farm gate at nearly $27 billion in 1997, accounting for more than half of the total United States production of fruits, nuts and vegetables. Agriculture continues to be a key part of the California economy providing one in ten jobs and more than $100 billion in production and related economic activities such as commodity hauling, processing and marketing, and the jobs and businesses that support production. California agriculture is also responsible for about $6.7 billion in export trade. California remains the leading agricultural state in the nation, as it has been for over fifty years.

California's rare combination of the natural resources of climate, land, and water, and the skill and experience of California farmers and farm workers have made agriculture in this State the most productive and diverse in the world. The preservation of this unique aspect of California's environment is essential the basic health and prosperity of future generations of the State and the Nation. Furthermore, the California Legislature has declared that one of the purposes of CEQA is to protect agricultural land.

The CDFA, as a CALFED agency, has participated in the preparation of the Draft PEIS/R. Scoping comments have been provided in several forums. CDFA and other participants in the process have raised the issues presented in this review many times before, during scoping and preparation of the Draft PEIS/R. In particular, the CDFA provided written scoping comments, and responded in writing to the previous Administrative Draft Environmental Impact Statement/Environmental Impact Reports dated January 12, 1998 and April 1999.

Overall Comment:

The draft PEIS/R is simply inadequate. It complies with neither the letter, nor the spirit of CEQA and the CEQA Guidelines. Nor does it comply with the principals which CALFED determined to operate within.

The CDFA has limited its comments to those related to the area of its jurisdiction, that is, the preservation and protection of agricultural resources. The CALFED program, as presented in this document, is a plan to develop ecosystem facilities and future water supply by acquisition and conversion of agricultural resources. The legislature and voters of California did not dictate this approach to CALFED. Rather, this was a discretionary decision made by CALFED staff, without public disclosure or adequate alternatives analysis, or compliance with any other of the many requirements for disclosure and public accountability, which CEQA places upon public agencies.

If the PEIS/R is certified as complete and adequate by a Notice of Determination (NOD) in its present form, it will not meet the requirements of CEQA for disclosure and cannot serve as a basis for meaningful public participation or public agency decision making. The PEIS/R is merely a post-hoc rationalization for decisions made by CALFED staff in an absence of public disclosure and accountability. Most of the CALFED program element planning documents do not follow the minimum requirements of CEQA. Therefore, the programs, projects, land or water acquisitions, or other discretionary actions described in the CALFED planning documents may legally be approved by CALFED, or any CALFED member agency, until an adequate Final PEIS/R has been certified.

The fundamental CALFED decisions (many of which are not even disclosed in the PEIS/R) appear to be based only on staff opinion and unscientific, agenda-driven decision-making. As a long time CALFED agency and participant in the CALFED process, the CDFA expected better of this extraordinarily lengthy, important, and expensive effort.

While CDFA remains highly critical of much of the CALFED effort to date, there are areas where significant, but incomplete progress has been made. In particular, the Water Use Efficiency Program and the Watershed Program and elements of the Water Quality Program offer great promise, but no assurance that it will be realized. The work of the Interagency Development Team, and modeling exercises by both DWR and the Bureau, which lead to the identification of an alternative that "provided greater technical performance" than the other alternatives cannot be ignored. The CDFA remains supportive of the CALFED process and its overall goals, objectives and solution principles.

General Comments:

1. CEQA requires that the Lead Agency consider a reasonable range of alternatives to avoid, reduce, or mitigate any identified potentially significant adverse impacts on the existing environment. During scoping, the CDFA, as the public agency responsible under law to protect the agriculture of the State of California, identified agricultural resources as elements of the existing environment, which the proposed CALFED program could impact. Rather than consider a range of alternatives capable of avoiding, reducing, or mitigating the impacts identified in scoping, CALFED prepared a PEIS/R that does not consider a range of alternatives capable of achieving this fundamental goal of CEQA. None of the "alternatives" considered in the Draft PEIS/R vary in any meaningful way in their potential to significantly impact elements of the existing environment utilized for agriculture. The Alternatives Matrix at the end of the main document highlights this deficiency explicitly. None of the program elements vary among alternatives except for certain features of the Conveyance element. This approach to alternatives development and analysis within a PEIS/R is contrary to and does not address the purposes of PEIS/R under CEQA. The preferred method of dealing with potential impacts is to avoid them through a reasonable range of alternatives. "The purpose of an EIR is to identify the significant effects of a project on the environment, to identify alternatives to the project, and to indicate the manner in which those significant effects can be mitigated or avoided." (PRC sec. 21002.1 (a)) "Environmental impact reports (shall)...emphasize feasible mitigation measures and alternatives to projects." (PRC sec.21003 (c)) For the purpose of CEQA "feasible" is defined in section 15364 of the Guidelines as, "capable of being accomplished in a successful manner within a reasonable period of time, taking into account economic, environmental, legal, social, and technological factors." Furthermore, the CEQA Guidelines states that a major advantage of a Programmatic EIR is to allow for consideration of broad policy alternatives and program-wide mitigation measures at an early time. A primary use of a PEIR is to incorporate feasible mitigation measures and alternatives into subsequent program actions (Section 15168 of the Guidelines). For this reason the PEIS/R is inadequate and must be rewritten.

2. CEQA requires that the Lead Agency develop mitigation measures for unavoidable impacts. During scoping and preparation of the PEIS/R, the CDFA as the public agency responsible under law to protect the agriculture of the State of California, identified agricultural resources as elements of the existing environment, which the proposed CALFED program could impact, and proposed potential mitigation measures for impacts to elements of the existing environment utilized for agriculture. The Draft PEIS/R does not include many of the mitigation measures proposed by CDFA for impacts to elements of the existing environment which are utilized for agriculture.

The Lead Agency has developed highly detailed plans for achieving program goals (for example, the extraordinarily detailed ERPP), and so cannot claim that the future development is unspecified or uncertain. The failure to develop, disclose, and commit to implement mitigation for the massive adverse impacts on the existing environment which

this program element, and the CALFED program as a whole would cause is a fundamental flaw under CEQA. "Each public agency shall mitigate or avoid the significant effects...whenever it is feasible to do so." (PRC sec. 21002.1 (b)) For the purpose of CEQA "feasible" is defined in section 15364 of the Guidelines as, "capable of being accomplished in a successful manner within a reasonable period of time, taking into account economic, environmental, legal, social, and technological factors." For this reason the PEIS/R is inadequate and must be rewritten.

3. CEQA requires that a Lead Agency prepare a PEIS/R, which considers the whole of the action. The majority of the Program impacts to agricultural resources, as elements of the existing environment, would result from implementation and operation of the so-called "common elements" of the program. These "common elements" are, in fact, discretionary actions. During scoping, the CDFA, as the public agency responsible under law to protect the agriculture of the State of California, identified agricultural resources as elements of the existing environment, which the proposed CALFED program, (in particular, the Ecosystem Restoration Program, the Levee System Integrity Program, the Water Quality Program Common Elements) could impact. The PEIS/R contains no meaningful alternatives analysis of these "common elements," as CEQA requires for discretionary actions with a potential to significantly impact the existing environment, but rather proceeds as though these were part of the existing environment. The elements of the proposed program with the greatest potential for significant impacts do not vary from one alternative to another. The PEIS/R therefore does not consider the whole of the proposed action. For this reason the PEIS/R is inadequate and must be rewritten.

4. CEQA requires that the degree of specificity in a PEIS/R correspond to the degree of specificity involved in the underlying activity, which is described in the PEIS/R. CALFED has developed highly detailed plans for elements of the proposed program. In contrast, the treatment of the existing environment, impacts, alternatives capable of reducing or avoiding impacts and mitigation measures is extremely general, with all analysis of mitigation deferred to subsequent tiers of projects. Since the degree of specificity of the PEIS/R does not correspond to that of the underlying activity, the PEIS/R is inadequate and must be rewritten.

5. In addition to the clear requirements of CEQA regarding the level of specificity of an PEIS/R, Proposition 204 also has specific requirements for details of the expenditures of funds for ecosystem restoration, and an implicit requirement for impact analysis of the ERPP. Since the PEIS/R fails to meet the requirements of this law, the PEIS/R cannot be used to approve expenditure of those funds. CEQA requires a PEIS/R to contain statements of the uses of the PEIS/R. One of these uses is to satisfy the requirements of Proposition 204 to enable funds to be expended. The information required by the legislature should be presented in the PEIS/R.

6. CALFED is proposing actions, which would acquire and redirect the places and purposes of use of very large volumes of water. Also, some CALFED actions will greatly increase water usage. In particular, the actions of the ERPP which would result in conversion of irrigated farmland to wetlands and shallow water habitat, would probably

result in very significant changes in the volume and timing of water demand over the existing environmental conditions. The PEIS/R is silent on this extraordinarily important and significant impact, except a single vague, incorrect, and totally unsupported assertion that water demand of wetlands was close to that of open water. This failure is especially egregious due to the nexus of this impact to the fundamental needs of California for a reliable water supply, which is one of the very reasons why CALFED was established. Due to this failure, the PEIS/R is inadequate and must be rewritten.

7. At some time in the planning process, CALFED staff apparently determined that the water demands of the proposed program would be met by acquisition of existing developed water resources, rather than examine any other means of achieving the CALFED goals. This is especially true during Stage 1 of Phase III and may be true for the entire program. The PEIS/R does not disclose that this fundamental public policy decision was even made, nor is there any meaningful treatment of the environmental consequences of this decision, or alternatives to it. It appears that this fundamental discretionary decision was made in the absence of CEQA compliance. Therefore, the PEIS/R is inadequate and must be rewritten to consider this fundamental decision.

8. A PEIS/R can provide a number of advantages. Among these are:

- To provide an occasion for a more exhaustive consideration of effects and alternatives than would be practical in an EIS/R on an individual action. CALFED, however, has chosen to prepare a PEIS/R that has no discernable difference between the various alternatives with respect to their potential for significant adverse impacts on elements of the existing environment utilized for agriculture.
- To ensure consideration of cumulative impacts that might be slighted in a case-by-case analysis. CALFED, however, chose to prepare a PEIS/R that defers all mitigation for impacts to agricultural resources to subsequent tiers of CEQA review, where cumulative effects will be difficult to identify and likely impossible to mitigate.
- To allow the Lead Agency to consider broad policy alternatives and program-wide mitigation measures. CALFED, however, chose to prepare a PEIS/R that does not have broad policy alternatives that differ in any meaningful way in respect to the impacts to agricultural resources. CALFED has, contrary to CEQA requirements, deferred consideration of avoidance and mitigation of impacts to agricultural resources to subsequent site-specific projects, where there are unlikely to be feasible alternatives or program-wide mitigation measures.

9. By not considering alternatives capable of reducing impacts on the existing environment, and by not considering mitigation measures in the same level of specificity as the underlying programs proposed, CALFED has failed to produce a document which enables the public and decision makers to consider the full costs and consequences of the proposed action. Under CEQA, one of the purposes of discussions of both alternatives and mitigation measures are to define and disclose the true costs, both financial and environmental, of a proposal. CALFED has failed to produce a document, which accomplishes this fundamental goal. For this reason, the PEIS/R must be rewritten.

10. CEQA requires a PEIS/R to focus on the significant effects on the environment and methods to avoid, reduce or mitigate those effects. The PEIS/R, and indeed the entire CALFED planning process, have instead focused on a limited subset of the objectives of the program. This is perhaps best demonstrated by the extremely detailed planning documents prepared for the ERPP, prior to any consideration of impacts on the existing environment whatsoever, and wholly without alternatives analysis. Throughout the PEIS/R there is an unstated premise that goals of a limited subset of program elements somehow obviates the clear requirements of law. This is particularly evident when mitigation for impacts to existing wildlife habitat is discussed, as compared to discussions of mitigation for impacts to existing agricultural land. It is explicit CALFED policy that development of one habitat type that results in impacts to other habitat types will include mitigation of those impacts (mitigation of impacts caused by other mitigation actions). The PEIS/R does disclose that mitigation will likely occur on agricultural lands, but does not disclose that habitat mitigation would result in the need for additional mitigation for impacts to the existing agricultural environment. Furthermore, it is not explicit in the PEIS/R that any mitigation of impacts to the existing agricultural environment will in fact occur. Under CEQA adverse impacts to existing agricultural lands (prime, unique, statewide important) are considered significant and require the same consideration as significant impacts to all other features of the existing environment. For this reason, the PEIS/R, and the underlying planning documents such as the ERPP must be rewritten.

11. CEQA requires that a PEIS/R include discussions of any inconsistencies between the proposed project and applicable general plans and regional plans. The analysis shall examine the existing physical conditions as well as the potential future conditions discussed in the plans. The CALFED PEIS/R does not have any such analysis. In fact, the CALFED program was planned prior to any consideration or analysis whatsoever of adopted plans. This issue must be addressed at the programmatic level so that cumulative impacts may be disclosed and avoided or mitigated. For this reason, the PEIS/R must be rewritten.

12. A PEIS/R must consider all phases of a project when evaluating its impact on the environment. An example is the proposed massive redirection of land use from the existing environmental conditions (predominately irrigated agriculture) to predominately engineered civil works, designed to be operated as managed wetlands. The operation of these constructed facilities will have large impacts on future water use and adjacent agricultural lands. The PEIS/R has no disclosure or analysis whatsoever of the impacts associated with the operation of the proposed works. This issue must be addressed at the programmatic level so that cumulative impacts may be disclosed and avoided or mitigated. For this reason, the PEIS/R must be rewritten.

13. A PEIS/R is required to have a discussion of areas of disagreements among experts. There is substantial disagreement among experts as to the efficacy of constructing habitat and restricting diversions of water to reverse the decline of species in the Bay-Delta system, in particular, aquatic species. The reasons for the decline of aquatic species in the system are not known. As was pointed out by members of the CALFED Ecosystem

Restoration Program Science Review Panel, and others, the decline may well be due more to other stressors such as the massive invasion of the system by exotic species during the past 25 years, than to loss of habitat. This is reinforced by the fact that the habitat losses to agricultural use occurred many decades prior to the decline of recently listed species. If this is the case, the huge cost and significant impacts of the proposed program may be wasted. Even worse, the new habitat may simply enhance the populations of exotic species to the detriment of listed species. Consider, for example that over 90% of the biomass of planktonic life in the Bay-Delta system consist of species which were not present in the system 25 years ago. The decline of resident listed species could well be due to trophic effects within the ecosystem. As another example, the striped bass (an exotic species) is probably responsible for more loss of out-migrating salmon than any other factor, including water diversions from the system. An unlimited commercial and sport striped bass fishery might well do more to enhance salmon and steelhead runs than all of the extraordinarily expensive and environmentally damaging measures CALFED has proposed in the ERPP. Without this basic information, it is impossible for the public and decision-makers to be adequately informed. For this reason, the PEIS/R must be rewritten.

14. CEQA requires that a PEIS/R describe the existing environment in order to provide an understanding of the significant effects of the proposed project and the alternatives. There are several areas where the treatment of the existing environment is inadequate. There are inadequate data on the populations of species and suites of species which CALFED is taking actions to enhance. In particular, there are no data on recent trends of these species.

- During the past decade, especially, there have been massive public and private expenditures and redirection of agricultural land and water resources to enhance waterfowl and fish, especially anadromous fish. The extent to which the populations of these species have benefited from these efforts must be disclosed in the PEIS/R.
- Nowhere in the PEIS/R is there a complete discussion of the factors that cause loss to resident and anadromous fish in the CALFED study area. A significant omission is disclosure of predation effects, with quantitative disclosure of species responsible. CALFED has chosen to exclude predator control as a program element, but rather has focussed on very expensive and environmentally damaging alternatives.
- It appears that CALFED has focussed the agricultural land acquisition and redirection elements of the program on those lands with the most reliable, least cost, and highest quality water resources, and the best soils. Nowhere is the PEIS/R are these fundamental aspects of the existing environment described in meaningful detail. This is essential for an understanding of both the true impacts of the program, and the appropriate level of mitigation.

15. The courts have found that piecemeal approval of projects is improper. CALFED has engaged in piecemeal approval of projects under Category III Early Implementation actions with individually and cumulatively significant impacts on agricultural resources. Section 15004(b)(3) (A-C) of the CEQA Guidelines instruct lead agencies to not take actions (such as committing funding or entering land acquisition agreements) that would foreclose meaningful choice of alternatives or mitigation measures. Specifically,

CALFED has made discretionary decisions to approve funding to acquire and convert the use of agricultural land and water prior to completion of the PEIS/R and without any project-specific environmental documentation. The CDFA has identified acquisition of agricultural land and water as significant impacts on the existing environment. The PEIS/R must include an enumeration of all discretionary approvals made by CALFED and CALFED member agencies since issuance of the Notice of Preparation for the programmatic PEIS/R, which have a potential to impact agricultural resources. This includes approval of funding to other entities. This must also include a description of the CEQA compliance process undertaken by CALFED and any other entities involved on a project specific basis.

16. CEQA requires that a PEIS/R have some basis for statements and assertions. The PEIS/R is completely lacking citation or support for many of the fundamental assertions in the document. The PEIS/R is especially lacking a sound scientific basis for the fundamental approach of conversion of agricultural resources to achieve stated program goals. The PIES/R also provides no meaningful substantiation for claims made as to the beneficial impacts to the agricultural environment and beneficial socioeconomic impacts to agriculturally dominated regions and communities.

17. One of the stated goals of the program is to reduce conflicts within the system. The CALFED approach to this is inconsistent with its own solution principles. With no treatment of alternatives, impacts, or mitigation, CALFED staff has apparently determined to execute an unprecedented reallocation of natural resources from agriculture and appropriate them to other uses. Not only does this dramatically exacerbate conflict in the system; the total silence of the PEIS/R on this fundamental discretionary decision poisons the entire CALFED planning effort. It is difficult to envision how this can be rectified, unless CALFED incorporates protection of the agricultural environment into the program and achieves full CEQA compliance.

18. CALFED fails to adequately address cumulative impacts in the PEIS/R. The document merely identifies other programs and actions that currently exist that may impact the existing environment. However, CEQA explicitly requires that an analysis of Program actions be conducted in the context of other existing actions to determine cumulative impacts due to Program actions, rather than cumulative impacts due to other actions external to the Program. Chapter 3 and Appendix A are inadequate in this regard. The California Policy Seminar reported: "If there is one thing upon which everyone who has studied CEQA agrees, it is that effective large-scale impact mitigation cannot be undertaken on a piecemeal or project-by-project basis." Each and every ecosystem restoration action (or other action) taken by CALFED that adversely impacts agricultural resources has a cumulative effect on agricultural resources. Thus, these potential impacts must be identified, and cumulative impact mitigation developed and assured at the programmatic level.

Specific Comments:

Pg. iii-iv - Preface – Programmatic Impact Analysis – This section states that, "This level of analysis is consistent with the guidance for programmatic documents provided by…the CEQA Guidelines." The CDFA does not concur with this assertion. This document fails to meet the purposes of a PEIR, particularly regarding its treatment of program alternatives and strategies that would reduce avoid and mitigate for adverse impacts to the existing agricultural environment. Please refer to General Comment numbers 8, 9 and 10.

Chapter 1 – Project Description

Pg. 1-3 – Role of CALFED Agencies sidebar – This side bar must list the California Department of Food and Agriculture as a Cooperating Agency and not as an "other agency" at the bottom of the side bar.

Pg. 1-24 – Category III. "Actions funded through the Restoration Coordination Program must have appropriate environmental documentation, result in no potentially significant cumulative impacts, and must not limit the choice of a reasonable range of alternatives." The actions of CALFED in selecting, approving and implementing projects under this program are wholly inconsistent with the policy statement cited. Several projects entail agricultural land acquisition for conversion to habitat. These projects do cause significant environmental impacts as defined by CEQA and do result in significant cumulative impacts and may limit the choice of a reasonable range of alternatives. As yet, none of these projects has had appropriate environmental documentation prepared. The PEIS/R must include a specific policy as to how agricultural resources mitigation will be implemented, guidelines that describe appropriate environmental documentation, and how cumulative impacts to agricultural resources will be addressed.

Chapter 2 – Alternative Descriptions

Pg. 2-25 – Conveyance alternative 3F: "chain of lakes" configuration was discarded for various land use, water quality and cost impacts. However, a similar feature is included in the storage component and in the context of the Environmental Water Account and in the Revised Phase II Report on page 91. Is Delta island surface storage included in the CALFED Preferred Program Alternative? If so, to what extent? If so, the land area affected (Table 4-3 on page 4-13) does not seem to include the potential impacts. Nor does table 4-4 on page 4-15 where up to 15,000 acres is identified under the PPA storage component. This potential impact if part of the PPA needs to be fully discussed in the PEIS/R.

Chapter 3 – Summary Comparison of Environmental Consequences

Pg. 3-2 - 3.1.3 Summary of Potentially Significant Adverse Environmental Impacts – This approach to mitigation is wholly inadequate under CEQA. The preferred method of dealing with potential impacts is to avoid them through a reasonable range of alternatives. "The purpose of an PEIS/R is to identify the significant effects of a project on the environment, to identify alternatives to the project, and to indicate the manner in which those significant effects can be mitigated or avoided." (PRC sec. 21002.1 (a)) "Each public agency shall mitigate or avoid the significant effects...whenever it is feasible to do so." (PRC sec. 21002.1 (b)) "Environmental impact reports (shall)...emphasize feasible mitigation measures and alternatives to projects." (PRC sec.21003 (c)) For the purpose of CEQA "feasible" is defined in section 15364 of the Guidelines as, "capable of being accomplished in a successful manner within a reasonable period of time, taking into account economic, environmental, legal, social, and technological factors." Furthermore, the CEQA Guidelines state that a major advantage of a Programmatic PEIS/R is to allow for consideration of broad policy alternatives and program-wide mitigation measures at an early time. A primary use of a PPEIS/R is to incorporate feasible mitigation measures and alternatives into subsequent program actions. (Section 15168 of the Guidelines)

Mitigation is defined identically under NEPA and CEQA (sec. 15370 of the Guidelines). It includes avoidance by not taking certain actions, minimization by limiting the degree or magnitude of an action, rectification through repairing or restoring the impacted environment, reduction or elimination of impacts over time, and/or compensation by replacing or providing substitute resources or environments.

CEQA also requires that a discussion of mitigation measures shall distinguish between the measures which are proposed by project proponents to be included in the project and other measures that are not included but could reasonably be expected to reduce adverse impacts..." The Guidelines go on to state that, "Where several measures are available to mitigate an impact, each should be discussed and the basis for selecting a particular measure should be identified if one has been selected." (Sec 15126 (c))

Since the program will have significant impacts, then any future project under the programmatic PEIS/R, or pursued by any CALFED member agency, with any impact on agriculture whatsoever must be considered to have a significant impact on the environment. There are a number of reasons for this, but two examples will suffice for now. First, any site-specific project with any impacts on agriculture contributes to the cumulatively significant impacts of the program. Second, under CEQA it is improper to split a program into small parts that by themselves may not have significant impacts and deal with these in isolation.

Pg. 3-3 – 3.1.4 Summary of Economic and Social Effects and Table 3-4 – Beneficial impacts to agricultural economics and social issues are claimed but not substantiated. Adverse socioeconomic impacts ar also identified. There is no meaningful discussion of the net effects of the program, weighing the potential adverse effects and the claimed benefits to the agricultural industry and the workforce, businesses and communities it

supports. Please provide the qualitative methods used and whose professional judgement was used to make these claims. Are these claims consistent with those from the agricultural community whose professional judgement indicates an overall adverse impact from the PPA? Please explain the discrepancy of professional opinion and fully describe this area of controversy.

Pg. 3-3 – 3.2 Summary of growth-inducing impacts – This section states that, "it was assumed that any increased water supplies or increased water supply reliability associated with the Program would stimulate growth…" This may be a false assumption for regions of the Solution Area where agricultural water supplies are chronically short of existing demand. Please refer to the Mark Reisner report for the American Farmland Trust of September 1997, Water Policy and Farmland Protection. Improving water supply reliability to agricultural lands will improve the likelihood that agricultural lands will remain in agricultural production and not be sold for urban development. Given the current chronic water supply shortage to agricultural lands in the San Joaquin Valley, it is highly unlikely that improved water supply reliability, "could allow additional agricultural land to be developed". The current water supply system cannot meet existing agricultural water demands in average years let alone meet expanding agricultural demands. DWR Bulletin 160-98 shows a long-term trend for reduced irrigated agricultural lands into the foreseeable future that has been apparent since the mid-1980s.

Pg. 3-5 – Summary of Cumulative Impacts – Please refer to General Comment number 18 on page 8 of these comments.

Table 3-1 – Summary Comparison of Environmental Consequences – pg. 3-14 – Agricultural Land and Water Use: The No Action Alternative should also indicate that water supply reliability would probably decline under this alternative.

Pg. 3-21, Table 3-2 Summary of Beneficial Impacts– The beneficial impacts to agricultural land and water use are highly speculative and while asserted in various places in the document are wholly unsubstantiated.

Pg. 3-24, Table 3-3 Summary of Potentially Significant Adverse Impacts – Significant reductions of agricultural water supplies may result from CALFED actions (ERP, EWA, transfers, etc.) This impact should be identified in bold in the table. For example, it states on page 5.1-71, "Potential long-term adverse effects on specific regional agricultural and urban water supplies could result from increased water transfers." Also, it is likely that changes in purpose and place of use of agricultural water supplies will result from CALFED actions. This is a potentially significant adverse impact that must be added to this list.

Pg. 3-27, Table 3-7 Summary of Irreversible and Irretrievable Commitment of Resources – Agricultural water as well as land should be identified in this table.

Pg. 3-28, Table 3-8 Summary of Potentially Significant Adverse Cumulative Impacts – All regions should be identified for agricultural land and water use impacts. While land

use impacts may not result in the Bay and other service areas, agricultural water supply impacts may in fact result, and as such they should be identified.

Chapter 4 – Guide to Impact Analysis and Description of Land Use Assumptions

Pg. 4-6 Cumulative Impacts – Please refer to General Comment number 18 on page 8 of these comments.

Pg. 4-7 and 4-8 (fifth bullet) - Mitigation Strategies – This discussion of mitigation strategies is wholly inadequate. Please refer to General Comment numbers 2, 8, 10, 15, 17 and 18 of these comments.

Pg. 4-9 – The second paragraph in section 4.3 states, "Although impacts in the range of these acreage estimates are possible, the affected acreage likely would be considerably less because these estimates do not include reductions in the land use changes that could take place based on measures that may be implemented in Phase III to avoid, minimize, or mitigate these changes." There is no assurance that such measures will be implemented. Assurances in the form of an agricultural resources mitigation policy are needed in the PEIS/R by the time of the Record of Decision/Notice of Determination. Many actions have already taken place under the Category III Early Implementation Program with no environmental documentation, and thus no mitigation. Other projects have had inadequate documentation prepared, resulting in legal action against the lead agencies.

Pg. 4-11 – The inadequate discussion of steps to reduce farmland impacts is cited below with comments.

The Program would take a variety of steps to reduce effects on farmland, including:

- Implementation of the Ecosystem Restoration Program would occur over many years. The implementation process would include extensive local community, landowner and stakeholder involvement. *This action is laudable, but is not mitigation.*
- Habitat restoration efforts would focus first on developing habitat on public land where appropriate. *The qualifier "where appropriate" can provide full discretion to CALFED agencies to acquire land without any accountability. A process under CALFED to determine appropriateness that includes strong agricultural representation is needed.*
- If no public land is available, restoration efforts would focus next on land acquired from willing sellers and that provides substantial benefits for ecological processes, habitat, or species. *This is not mitigation and does not reduce associated impacts due to reallocation of agricultural resources.*
- Where small parcels of land are needed for waterside habitat, acquisition efforts would seek out points of land on islands where the ratio of levee miles to acres farmed is high. *This is not mitigation, and in fact would likely result in cumulative impacts that must be mitigated.*
- The Program would obtain easements on existing farmland that would allow for minor changes in agricultural practices, thus increasing the value of the crops to

wildlife. *This strategy could reduce impacts, but may also result in impacts that may require mitigation (in addition to landowner compensation).*

- Where possible, floodplain restoration efforts would include provisions for continued agricultural practices, which would be renewed on an annual basis. *This action may or may not result in impacts to agricultural land. The qualifier "where possible" again gives CALFED agencies unbridled discretion. See comment to second bullet, above.*

Pg. 4-3 – Table 4-3 – Estimates of land Area Affected by Storage and Conveyance – This table shows a range of 0-15,000 acres of land affected in the Delta. This range would indicate that in-Delta storage that may convert 30,000 acres or more of prime agricultural land in the Delta is not included in the range of alternatives. However, the Phase II Report on page 91 lists the potential of 230 TAF of in-Delta storage as under consideration. This inconsistency needs to be rectified.

Pg. 4-14 – Mitigation necessary to offset impacts on wildlife as a result of implementing the levee system integrity, water quality, conveyance, and storage elements may affect additional agricultural lands. There is no equal treatment of different features of the environment when the need for mitigation is discussed. Here CALFED recognizes that mitigation for impacts to wildlife habitat resulting from other CALFED actions to enhance wildlife habitat may adversely impact additional agricultural lands, but nowhere does CALFED even recognize in a similar fashion that the existing agricultural environment must be treated similarly under CEQA.

Chapter 5 – Physical Environment

The treatment of water supply issues in section 5.1 when compared with the March 1998 Chapter 6 pg. 6.1-10 – 75 is wholly inadequate. There is now no meaningful discussion of the affected environment and existing conditions and therefore no way to determine impacts relative to Water Supply Reliability resulting from CALFED actions in the Preferred Program Alternative. In Chapter 6 of the March 1998 draft there was a reasonable though inconsistent discussion of water supply sources for each region (local surface, ground water, CVP, SWP). This meaningful information is nowhere to be found in the current PEIS/R. This important information needs to be included in the document in a consistent manner that uses normalized 1995 year for the existing environment discussion. The discussion of each river in each region provides no useful information. The discussion of agricultural water supplies by region in the existing environment section of Chapter 7 is useful, but is still in need of revision. Please see comments below (pg. 7.1-6 – Table 7.1-3 and applicable sections on agricultural water use). The reader should at least be referred to this section of the document.

Pg. 5.1-3, 5.1.2 - There is also controversy over effectiveness of ERP actions to restore fisheries and improve water supply reliability and over the role of other system stressors on Delta fisheries. These areas of controversy should also be identified in the PEIS/R.

Pg. 5.1-71 – Mitigation Strategies – The document states, "Conversion of Delta land use from agriculture to wetlands and marshes under the Ecosystem Restoration Program could result in increased water use and potential negative impacts on agricultural and urban water supply reliability. The cumulative beneficial effect of all actions under the Preferred Program Alternative, including the Water Quality Program, Water Use Efficiency Program, Water Transfer Program, conveyance improvements, and potential new water storage facilities, is expected to significantly outweigh this potential loss of water supply, resulting in no significant adverse impacts." If agricultural land conversion and associated water supply impacts occur prior to development of new water supplies, the cumulative beneficial impacts will not occur, since there will be a seven to fifteen year lag time between he adverse impact and the beneficial impact. Therefore, the CDFA strongly disagrees with how these benefits and the need for mitigation are discussed in this section. This section needs to be rewritten.

Chapter 7 – Agricultural Land and Water Use

Pg. 7.1-1 – The first side bar should state the CALFED policy that adverse effects to agricultural resources will be fully disclosed and avoided or mitigated as required by CEQA. The second side bar is misleading, as it presents only one possible outcome of the PPA. The other is reduced water supply reliability (this could be construed as increased certainty of supply) and increased flooding of agricultural land in the Delta due to in-Delta surface storage development.

Pg. 7.1-2 Potentially Significant Adverse Impacts – It is likely that changes in purpose and place of use of agricultural water supplies will result from CALFED actions. This is a potentially significant adverse impact that must be added to this list.

Pg. 7.1-2 Mitigation Strategies – This laundry list of mitigation measures is inconsistent in its approach, incomplete in identifying potential mitigation measures and strategies, and is devoid of any treatment of how the policy statement in the first paragraph of section 7.1.1 on page 7.1-1 will be implemented. Please refer to the attached material provided previously by CDFA that addresses this issue.

Pg. 7.1-4 – Areas of Controversy – Another area of controversy that needs to be identified here is the controversy as to when for the purposes of CEQA does an impact take place during a land acquisition activity.

Pg. 7.1-6 – Table 7.1-2 – This table on irrigated acreage should also rely on 1995 data, rather than data obtained from 1986 to 1995. These data are readily available from the appropriate County Agricultural Commissioners.

Pg. 7.1-6 – Table 7.1-3 and applicable sections on agricultural water use. The information presented is from 1985 to 1990. The existing environment is defined as 1995. The information presented needs to be updated to 1995 to adequately describe the existing environment in terms of agricultural water supply and water use. The existing environment changed radically after CVPIA implementation in 1992.

Pg. 7.1-8 – 7.1.3.2 Delta Region existing agricultural land use – The last paragraph of this section discusses conversion of agricultural land to urban uses. A similar discussion needs to be included that discusses conversion of agricultural lands to habitat uses. The Stone Lakes NWR, the Yolo By-pass Wildlife Area, the North Delta NWR, the DWR Sherman and Twitchell Island acquisitions are some of the projects that come to mind.

Pg. 7.1-13 – Significance Criteria – The CDFA support the significance criteria listed on this page. The CDFA recommends that an additional significance criteria be added: Any impacts on agricultural surface water supplies which in turn leads to increased groundwater pumping that would cause or exacerbate overdraft or reduce water supply reliability of existing agricultural lands.

Pg. 7.1-20 – 7.1.7.2 – Consequences, Delta Region, Storage – The proposed Delta Wetlands project alone would convert over 16,000 acres of agricultural land in the Delta. Flooding of Woodward and Victoria islands could result in conversion of additional agricultural lands and change the place and purpose of use of agricultural water supplies. This needs to be addressed properly, consistently and completely in the PEIS/R.

Pg. 7.1-29 – Additional Impacts Analysis – This important information should be included in the appropriate sections of this chapter and not segregated where it is not easily accessible to the reader. It should be noted that CALFED is funding actions to support CVPIA implementation, Stone Lakes NWR expansion and North Delta NWR expansion (prior to completion of its PEIS/R). These activities must be considered a part of CALFED, as they are implemented by CALFED agencies and funded by CALFED. As such, they cannot move forward without appropriate and complete environmental review and documentation.

Pg. 7.1-30 – section 7.1.11 Mitigation Strategies – This section is wholly inadequate. Please refer to General Comment numbers 2, 8, 10, 15, 17 and 18 of these comments.

Chapter 8 – Compliance with Applicable Laws, Policies, and Plans and Regulatory Framework

Pg. 8-1 – This first page indicates the approach CALFED plans to take concerning further environmental documentation during Phase III. This approach is wholly inadequate as it provides no opportunity to address cumulative impacts resulting from the program in its entirety. These cumulative impacts, including but not limited to agricultural land conversion, cannot be addressed on a piecemeal site-specific basis as is proposed here.

- Please state the basis for the assertion made in the second paragraph and side bar that, "Because of the programmatic nature of the document, not all environmental laws and regulations (or all aspects of those laws and regulations) pertain to the Program at this phase of the process."

Pg. 8-2 – section 8.1.1 NEPA/CEQA – This section or Chapter 4 should discuss the purpose of a programmatic IES/R. Please refer to General Comment number 8 of these comments and specifically to section 15168, sub sections (a)(4), (b)(1-4), (c)(3) of the CEQA Guidelines. The purpose of a PEIS/R is for early development of alternatives, statements of policy and programwide mitigation measures.

Pg. 8-8 – section 8.1.7 – FPPA compliance – This section is not adequate. It relies on subsequent tiering with no policy for avoidance and mitigation of impacts. This section references chapters 4 and 7 as the foundation for mitigation for project specific actions, but provides no policy for how mitigation measures will be implemented. This approach also provides no opportunity to address and mitigate cumulative impacts and implement programwide mitigation measures. This is a fundamental purpose of a PEIS/R that is not being fulfilled.

8.1.10 Executive Order 11990 – Protection of Wetlands – Federal – The current state policy towards wetlands protection and development as expressed in The Governor's Executive Order concerning Wetlands protection in California should also be referenced (Executive Order W-59-93). It includes language recognizing the importance of agricultural land and private property protection.

There is no discussion of consistency of the CALFED PPA with the Williamson Act, the Agricultural Lands Stewardship Program, the NRCS Conservation Reserve Program or the Conservation Reserve Enhancement Program. These should be discussed.

Chapter 9 – Mitigation Strategies Monitoring Plan

CEQA requires that a PEIS/R identify mitigation measures for any significant environmental effect identified. This draft only addresses site-specific mitigation for impacts of later tiers of projects subsequent to the certification of the Programmatic PEIS/R. The programmatic PEIS/R must address programmatic level mitigation for program level impacts. This is the only feasible way to address cumulative impacts. This must also be addressed in Chapter 9. Without mitigation at the programmatic level, the programmatic PEIS/R will be inadequate.

Pg. 9-1 – section 9.1 Introduction – This section references mitigation measures strategies adopted in the Final PEIS/R be used to guide subsequent project-specific documents. However, nowhere in the PEIS/R is any statement that any mitigation strategy or measure will be adopted. All are only proposed. Please refer to section 9.2.

Pg. 9-1 – section 9.2 Mitigation Strategies – The thrust of the discussion in 9.2 is that all specifics of mitigation will be deferred until subsequent tiers of approvals. Mitigation strategies are "proposed" and provide an array of actions that "could" be used, and will be used to "guide proposed mitigation." This section goes on that CALFED "will consider those strategies" and "may develop and consider" mitigation measures. This discussion is wholly inadequate and provides no statement of policy towards mitigation of impacts to existing agricultural resources. It provides no assurances that any mitigation will be implemented at the program level or the site-specific level. This

approach does not provide for equal treatment of various features of the existing environment as provided by CEQA.

CEQA requires that the degree of specificity of a PEIS/R correspond to the degree of specificity of the underlying activity that is described in the PEIS/R. CALFED has chosen to develop highly detailed plans for certain elements of the proposed program, for example, the 1,000 plus page ERPP. Having done so, CALFED cannot abrogate its responsibility to produce a PEIS/R with the same level of specificity for mitigation measures as it has for the proposed program elements. Mitigation is part of the project, and it must be developed and disclosed at the same level of specificity as the proposed actions in order for the public and decision makers to understand the whole of the proposed program, including the costs. This is of particular concern in the context of CALFED staff statements that impacts to agricultural elements of the environment would not be mitigated and that Statements of Overriding Considerations would be written instead. If this approach is in fact being considered by CALFED, then this discretionary action must be clearly disclosed. A CALFED policy statement that such an approach with respect to agricultural resources would not be used by CALFED at the programmatic or site specific level would be appropriate to include in the PEIS/R.

Pg. 9-3 - Section 9.3 Monitoring and Reporting Process – This section begins with the following: 'The discussion about the monitoring and reporting process contained in this document is consistent with the programmatic nature of CALFED Phase II environmental documents. The discussion is general because most specific actions have not been determined at this time." The CALFED program has developed highly detailed plans, and as noted above, unless each of these incorporates impact analysis and mitigation in the same detail as the underlying proposal, the PEIS/R is inadequate. Furthermore, nowhere is there programmatic level mitigation, as is appropriate for a programmatic PEIS/R and required to address cumulative impacts.

Attachment A

Pg. A-35 – add the North Delta Wildlife Refuge to the list of actions that may contribute to cumulative impacts.

Alternatives Matrix – There are no alternatives listed in the matrix except for three conveyance features (screened intake at Hood; North Delta Channel Modifications; open channel from Hood to CCF). This matrix summarizes the failure of CALFED to develop and analyze alternatives to each of the CALFED program elements that could avoid and reduce impacts to features of the existing environment such as agricultural land and water.