

Committee on Resources

Subcommittee on Water & Power

Witness Statement

**TESTIMONY OF BRENDA JAHNS SOUTHWICK, ASSOCIATE COUNSEL,
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TO THE U.S. HOUSE OF REPRESENTATIVES COMMITTEE ON RESOURCES,
SUBCOMMITTEE ON WATER AND POWER**

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Good morning, Mr. Chair, and members. I am Brenda Southwick, representing the California Farm Bureau Federation. The Farm Bureau appreciates the opportunity to provide comments on the above-captioned matter. We represent more than 40,000 farming and ranching families, and more than 45,000 people who, although not directly involved in commercial agriculture, are very concerned about the continuing health of farming and ranching as the backbone of their communities.

ECONOMIC IMPACTS

By the year 2020, California expects to have to provide for a population of about 50 million people. We are currently working with a \$971 billion economy. To maintain this robust economy and ensure future prosperity we will need jobs and opportunities that can only be provided by meeting basic infrastructure needs. Water is a critical part of this infrastructure, particularly in a high technology-driven economy. Water also is critical to our quality of life. To be successful, a comprehensive Bay-Delta solution must treat the concerns of people as equally important to those of fish and wildlife.

ACCOUNTABILITY

We feel the Subcommittee is exactly on track specifically in asking about CALFED budgetary issues, particularly while you grapple with CALFED reauthorization and further financing. The Farm Bureau has spent a great deal of time with CALFED staff trying to decipher its use of past funding. Our primary focus has been to determine what steps specifically CALFED is taking to ensure that:

- (a) in a timely manner it reaches specific milestones in its efforts to produce a comprehensive Bay-Delta solution;
- (b) it is able to explain how these milestones will improve the Bay-Delta water supply and water quality concerns for all stakeholders; and
- (c) the funding CALFED receives has been obligated and expended in a cost-effective manner relative to these milestones.

The Farm Bureau has made a number of inquiries of CALFED, both oral and written, to try to gain an understanding of CALFED's financing, expenditures, and relevance/productive value of programs funded. To date, responses from CALFED have been less than satisfactory. We do believe, however, there will be a turning point in CALFED's responses based on a recent audit report.

Recently, the Department of Water Resources Internal Audit Office presented a report entitled, Review of the Accounting Practices and Procedures Used to Account for the \$60 Million in Proposition 204 Category

III Funding Audit Report No. 343. As we understand it, Category III projects include non-flow ecosystem restoration projects such as fish screens, habitat acquisition and pollution controls. We will have copies of the Audit Report made available for distribution to the Subcommittee if requested.

Rather than recite the numerous observations of the auditor and the recommendations for improving CALFED's accounting procedures, we want to focus on one particular item at this time. This item is covered in Observation Number 9 of the Internal Audit Report. Briefly, with respect to Category III projects funded by CALFED, the observation states, "it is unclear which government agency is taking the lead on fiscal responsibility or management of the project, which would include review of project costs." A chief concern expressed by the auditor was the lack of source documents to support progress reports and aid in the monitoring of large projects. Further, CALFED had not developed final site inspections or project acceptance procedures. These things are critical to a determination of whether the project has been effective and the money has been well spent.

Specific recommendations presented by the auditor to rectify this concern are listed as follows:

RECOMMENDATION

9. We recommend that CALFED define their project management responsibilities for each project specifically identifying their fiscal monitoring responsibilities and their production procedures for project closure. Each contract will need to be evaluated to determine which fiscal procedures are applicable and which are not. For contracts with other government agencies where fiscal responsibilities are shared, we recommend that each contract document certain aspects of the project and who has fiscal management responsibility. The purpose of formally documenting who has specific financial responsibility is to identify any deficit areas, avoid or eliminate overlapping and duplication of Government effort, and to provide more consistent treatment and requirements of contractors. Examples of the type of information that might be documented are below: (emphasis added)

- Names of Project Managers or persons involved in site inspections and typically what they are expected to do.
- Copies of site survey forms.
- Names of Contract Managers and what areas they are involved in.
- Contract review procedures.
- Preaudit of contractor cost structure.
- Plan for post audit.
- Invoice review procedures.
- Source documentation requirements.
- Invoice format.
- Indirect cost allowance.
- Other cost disallowance.
- Deliverables, milestones, documentation requirements.
- Review of contractor compensation structure.
- Correspondence of interest to other project partners (for example, notes of discussions at site meetings and notes during post award conferences, etc.)

After we reviewed reams of documents made available by CALFED late last year, our accountants concluded that reporting on CALFED expenditures was neither uniform nor readily accessible. There is a great need for standard procedures and a means of presenting information in a format that any stakeholder,

whether accountant or lay person, can understand. As a start to reaching this level of accountability, we have the following list of things CALFED should do to reach the objective of transparency. The list is general, and we consider it a work-in-progress. We think these items should form a minimum requirements list for CALFED reauthorization and/or further funding. Briefly, the items are as follows:

- (1) A list of all sources of funding for the CALFED Bay-Delta Programs (state/federal/in-kind);
- (2) A list of all federal and state organizational entities that are involved in contracting and accounting for all transactions involving the CALFED Bay-Delta Program;
- (3) A list of all organizational entities that are assigned fiscal responsibilities and duties and the accounting systems maintained by those entities for all accounting cycles within the CALFED Bay-Delta Program (state and federal);
- (4) A list of the written accounting procedures used to account for the CALFED expenditures (i.e., standard accounting methods). If they are not in place, what is the timeline for putting them in place?
- (5) An accounting for discrepancies in reporting use of funds to various members of Congress and the California Legislature, e.g., the Senate Select Committee on CALFED.
- (6) A list of verification procedures for contractor/subcontractor credibility (i.e., bonding requirements) and follow-up on contract implementation (i.e., site inspection and project acceptance criteria and procedures, 10 percent withholding).
- (7) Steps taken to arrange for an independent audit (per CALFED's response to Internal Auditor's recommendations) and a timeline for completion.

TRANSPARENCY

Our second primary concern is the steps CALFED must take to rectify faulty record-keeping procedures. Based on oral and written inquiries, we have become aware of a database problem with CALFED's ability to both describe in any detail ecosystem restoration projects that have been undertaken, and the consequences for water supply in undertaking the various projects. In the spirit of cooperation, we presented CALFED with a list of questions we thought the project applicants should be able to answer both prior to receiving CALFED funding and as a means of explaining how the project will further the objective of a comprehensive Bay-Delta solution. CALFED's latest Project Solicitation Proposal ("PSP") contains both good and bad news on this account. The good news is CALFED took steps to remedy some of our concerns on the following items:

Local Government/Community Notification:

All applicants must provide a copy of the letters they sent to the local land use planning agencies. Also, they must develop a community outreach plan. They must identify when, and how, they will notify neighboring landowners, regarding their projects.

Environmental Compliance:

All applicants must identify whether they have to comply with either of the environmental review statutes (NEPA/CEQA), who is the lead agency, how and when they will comply. They must provide a copy of the completed environmental documentation. If they do not have to comply with either of the environmental

review statutes, they must state why the project is not covered.

Access to Private Property:

If an applicant is undertaking activities on land owned by third parties, the applicant must have written permission from the landowner before the application is deemed complete.

Location of the Project:

The applicant must provide a marked USGS Quad map, specifying longitude and latitude, digital location information, and photos of the project site. However, they are not required to provide an assessor's parcel number up-front. (The package states in strong language the applicants are waiving privacy rights, so the exact parcel numbers should be no secret.)

Budget:

All applicants must provide a detailed budget. The PSP sets forth standard contract terms. There are terms specific to the granting of Prop 204 funds. (Any other funding sources also should be specifically identified.)

Regions:

The PSP has a map of all of the regions. The applicants must state their project's region.

Release of Study Data:

All data will be released. The applicants specifically waive confidentiality. Even some preliminary data will be released.

Agricultural Lands Identification:

If there is a physical change to the land, the applicant must answer the following questions (physical change in land is defined as "grading, breaching levees, and planting vegetation").

- Is the parcel enrolled in a Williamson Act contract?
- Current zoning?
- Current land use?
- Current General Plan designation?
- Is the land prime farmland, unique, of statewide importance, etc, (there is a place to check "Don't Know")?
- Acres subject to land use change?
- Is the parcel currently farmed or grazed? *(The only problem with this inquiry is land that is being fallowed as a common agricultural management practice or was recently farmed is not covered. The PSP only addresses "current" use, not recently ceased or historic use.)*
- Is the parcel being purchased "in-fee" or through an "easement?"
- If, yes -- How many farm employees are employed; also farm employees per acre?
- Who will hold title?
- Will existing water rights be acquired?
- Will applicant change the water right or modify the delivery?

That was the good news. The bad news is the bias displayed in the Project Solicitation Proposal against balancing the needs of all water interests. Examples of this bias are briefly described below:

The PSP has certain goals that all applicants must further, to wit:

1. CALFED notes the following project objectives that affect control of water supply and availability:
 - a. Applicants are to focus attention on species that are “most affected” by the water projects. (PSP, p.17)
 - b. CALFED targets all of the bypasses for government ownership. (PSP, p.34.) The Yolo Bypass is specifically mentioned. (PSP, p.34.)
 - c. CALFED states restoring flow regimes (timing of water releases) is a priority. (PSP, p. 18)
 - d. Applicants are asked to investigate how fish are trapped by diversions. CALFED asks for specific evidence to support their conclusion that diversions are hurting fish. (PSP, p.27.)
 - e. The PSP mentions urban areas may contribute to water contamination, but farming is really the focus. (PSP, p.21) CALFED specifically mentions the San Joaquin River as the focus on dissolved oxygen, which is the focus of TMDLs for that river. (PSP, p. 36.) Applicants are asked to find the link between agricultural activity and water quality. (PSP, pp. 37 and 44) CALFED focuses on agriculture’s impacts on the central valley as a specific study topic. (PSP, p. 36)
 - f. The floodplains are the focus of CALFED’s land purchases. CALFED says it may not buy the entire floodplain but it might get close. CALFED notes creating flood meanders as a specific goal. (PSP, pp.32-33.)
 - g. The PSP identifies many problems with dams and levees. (PSP, pp.30-33, 39)
2. CALFED identifies the impacts associated with losing agriculture as a study issue.
 - a. CALFED seeks studies of the impacts of the loss of agriculture on communities, etc. (PSP, p.45,38)
 - b. CALFED also is looking for wildlife friendly farming programs. (PSP, p 45.)

AGENCY CREDIBILITY AND SCIENCE

Any biological initiatives undertaken by CALFED must be (a) supported by valid and relevant scientific evidence produced by credible sources; (b) subject to unbiased scientific peer review; and (c) concurred in by all agencies with permitting/enforcement authority both with regard to objectives and means of implementation. To aid in accomplishing these goals, biological data, analyses and models must be completely accessible to all interested persons. Published data sources should be used whenever possible. Unpublished data must be adequately referenced for assurances of credibility. Moreover, the agencies with permitting/enforcement authority must agree on (1) existing habitat conditions and (2) the affected populations of species. The agencies also must concur on pursuit of common biological conclusions using the same biological baselines, databases and models. The present heavy-handed regulatory approach is unacceptable and unsupportable in this regard. It is extortion, plain and simple.

FARMLAND AND WATER CONVERSIONS

Apart from specific PSP considerations, CALFED has set goals for habitat acquisition. As part of

CALFED's Ecosystem Restoration Program, the program that will have the most devastating impacts on farmland and water resources under CALFED's current plan, CALFED states the following:

The general priorities for restoration activities will be first on existing public lands as appropriate, second to work with landowners in voluntary efforts to achieve habitat goals including the acquisition of easements, third a combination of fee and easement acquisition, and fourth an acquisition of fee title as necessary to achieve Program objectives. Acquisition will be on a willing seller basis and with emphasis on local coordination and partnership and include appropriate mitigation for agricultural resource impacts. The intent is to maximize habitat benefits while minimizing land use impacts. (Revised Phase II Report at p. 119.)

CALFED already has funded the conversion of at least 33,877 acres of farmland to habitat. Of this total, only 6,019 acres has been identified as involving existing habitat or restoration of public lands or existing degraded habitat. It appears CALFED intends to honor its commitments to farmers and ranchers more in the breach.

Even more disturbing than CALFED's intended conversion of farmland to habitat, which we conservatively calculate at up to 1,056,178 acres, is the intended conversion of farm water resources. It appears the amount of water that will be removed from farmland use and devoted to habitat and fisheries uses ranges from 186,905 acre-feet to 402,891 acre-feet. These estimates, however, do not include all in-stream flows because they have not been quantified by CALFED, and do not adequately account for increased use in acre-feet per acre of wetlands habitat developed.

The mitigation of the loss of farmland and water environment as required by law thus far has been lightly set aside by CALFED as a matter for future, indeterminate levels of consideration. Farmers and ranchers find it difficult to believe in CALFED's sincerity and commitment to both the continued viability of farming and the need to avoid or mitigate losses of farmland when we find CALFED already, prior to publishing any Record of Decision, has funded, approved or acquired farmland and water rights for conversion on at least 41 ecosystem restoration projects. These projects are proceeding with minimal public notice and the inadequate environmental review that has been a hallmark of the CALFED-funded farmland acquisitions.

We see nothing in the current PSP that will rectify this situation by pointing project applicants in the direction of existing public lands or partnerships with local landowners as the focus for habitat development.

Our third primary concern is grassroots participation in any comprehensive CALFED Bay-Delta solution. We have stressed repeatedly, both in public forums and private meetings with CALFED, the need for local participation by landowners in particular as well as active engagement of local governmental representatives in the solution-finding process. It is not acceptable for CALFED to consult with these communities as mere commentators or to simply order them to implement CALFED's decisions.

As representatives of farming and ranching families with a stake in a vibrant rural community, the Farm Bureau supports the CALFED mission as described most recently in the June 1999 Revised Phase II Report and SB 900 (1996). Adherence to these objectives and principles requires that CALFED treat all "stakeholder interests" as equally important to a comprehensive resolution of Bay-Delta problems. We are deeply concerned and growing increasingly distrustful, as well as disappointed, because of CALFED's seeming inability to communicate at any level, whether policy or technical, internal or public, the importance of ongoing farming and ranching viability, including the preservation of the land and water resources farmers and their communities need.

The CALFED Bay-Delta Program Mission Statement, Objectives and Solution Principles are stated in the June 1999 Revised Phase II Report as follows:

The mission of the CALFED Bay-Delta Program is to develop a long-term comprehensive plan that will restore ecological health and improve water management for beneficial uses of the Bay-Delta system.

CALFED developed the following objectives for a solution:

- Provide good water quality for all beneficial uses.
- Improve and increase aquatic and terrestrial habitats and improve ecological functions in the Bay-Delta to support sustainable populations of diverse and valuable plant and animal species.
- Reduce the mismatch between Bay-Delta water supplies and current and projected beneficial uses dependent on the Bay-Delta system.
- Reduce the risk to land use and associated economic activities, water supply, infrastructure and the ecosystem from catastrophic breaching of Delta levees.

In addition, any CALFED solution must satisfy the following **solution principles**:

- **Reduce Conflicts in the System.** Solutions will reduce major conflicts among beneficial uses of water.
- **Be Equitable.** Solutions will focus on solving problems in all problem areas. Improvements for some problems will not be made without corresponding improvements for other problems.
- **Be Affordable.** Solutions will be implementable and maintainable within the foreseeable resources of the Program and stakeholders.
- **Be Durable.** Solutions will have political and economic staying power and will sustain the resources they were designed to protect and enhance.
- **Be Implementable.** Solutions will have broad public acceptance and legal feasibility, and will be timely and relatively simple to implement compared with other alternatives.
- **Have No Significant Redirected Impacts.** Solutions will not solve problems in the Bay-Delta system by redirecting significant negative impacts, when viewed in their entirety, within the Bay-Delta or to other regions of California.

The Farm Bureau's assessment of CALFED's activities to date compels us to conclude CALFED is failing to adhere to its mission and conform to these stated objectives and solution principles.

Specifically, the Farm Bureau has insisted CALFED prepare for public scrutiny and agency decision-making the following documents:

1. An agricultural resources mitigation protocol to address any redirection of land or water to non-agricultural uses;[1](#)
2. A cumulative impacts analysis protocol to address the practices and procedures that (a) will ensure maximum collaboration and coordination among CALFED member agencies and stakeholders; and (b) will spell out performance milestones by which CALFED will measure how projects and programs are contributing to meeting the Mission Statement, Objectives and Solution Principles as reiterated above.

3. An assurances package (see Exhibit F), that can be incorporated into the Record of Decision for implementation of the Ecosystem Restoration Program Plan and the Multispecies Conservation Strategy in reference to their effects on agricultural resources.

In closing, the Farm Bureau would like to thank the Subcommittee for providing us with the opportunity to express our views. We cannot overstate the need for Congressional oversight in this process to ensure (1) CALFED accountability; (2) transparency of information so that we have accurate reporting and a means of understanding the information that is being provided; (3) agency credibility and peer-reviewed scientific bases for programs and projects; and (4) specific milestones and timelines for determining whether tasks undertaken are effective in meeting the needs of competing water users in a balanced manner and bringing us closer to resolving these complex problems. Without these things, we cannot support reauthorization of CALFED or its further funding.

1. Protocol: a) a signed document containing a record of the points on which agreement has been reached by negotiating parties preliminary to a final treaty or compact . . . (Webster's New World Dictionary, Second College Ed., (1970), David Guralnick, Editor.)

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