

Committee on Resources

Testimony

Subcommittee on Water and Power

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**TESTIMONY OF
ROBERT W. PERCIASEPE
ASSISTANT ADMINISTRATOR FOR WATER
U.S. ENVIRONMENTAL PROTECTION AGENCY
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OF THE COMMITTEE ON RESOURCES
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BACKGROUND

Good morning Mr. Chairman and members of the Subcommittee on Water and Power Resources. I am Robert Perciasepe, Assistant Administrator for Water in the U.S. Environmental Protection Agency (EPA). I have also been designated as the lead federal official in the joint federal-State CALFED Bay-Delta Program by the Secretary of the Interior and the Administrator of EPA, and am appearing here today on behalf of the federal Departments and Agencies that are members of what we have called "ClubFed," the coordinating group for federal participation in the CALFED process. I appreciate the opportunity to testify.

As you may know, the CALFED program is a partnership between the State of California and the federal government, charged with developing a long-term comprehensive plan that will restore ecological health and improve water management for beneficial uses of the Bay-Delta system. The original CALFED federal members include EPA, the U.S. Fish and Wildlife Service, the Bureau of Reclamation, and the National Marine Fisheries Service. Collectively, these federal members are referred to as "ClubFed." We are now making this partnership forum even more effective by bringing in additional federal agencies as members of ClubFed: the U.S. Army Corps of Engineers; the Natural Resources Conservation Service and the U.S. Forest Service in the Department of Agriculture; the Bureau of Land Management and the U.S. Geological Survey in the Department of the Interior; and, the Western Area Power Administration.

The Bay-Delta, as the hub of California's water system and the largest and most productive estuary on the West coast, has for decades been the focus of competing interests -- economic and environmental, urban and agricultural. Development activities such as hydraulic mining, dredging and channelization, flood control, unscreened water diversions, pollution, and large-scale water supply projects have contributed to the degradation of the Bay-Delta's ecosystem. This degradation resulted in many problems, including declining water quality, decreasingly reliable water supplies, deteriorating fish and wildlife populations, and a fragile Delta levee system. Perhaps more importantly, it also resulted in gridlock among the competing stakeholder interests -- environmental, agricultural, and urban water users.

On December 15, 1994, federal Cabinet officials, key California officials, and leading stakeholders signed

the momentous Bay-Delta Accord ("the Accord"). Though this Accord was indeed momentous in itself, its primary importance lay not so much in what it achieved at that time, as in the process it launched, and the promising future for the Bay-Delta it allowed all the interested parties to build.

The Accord was most important because it represented a recognition that a consensus-oriented process was the only route to fix the problems of the Bay-Delta, and that the California water wars were ultimately futile and pointless for everyone involved. The contestants in those wars recognized that every major party, acting alone, could stop the initiatives of every other major party. But no major party could achieve its core objectives alone, without the agreement of the others. That recognition was clearly true when the Accord was signed. Almost two and a half years later, the futility of efforts by some participants to go around that process in various ways makes it clearer than ever -- the consensus-oriented route is the only route that will work for anyone, because it has to work for everyone.

Today, I would like to briefly discuss, from the standpoint of the federal "ClubFed" agencies, what we have achieved since the Accord was signed, and where we are going -- both with respect to our involvement in the CALFED long-term process, and with respect to the funding authorization in the California Bay-Delta Enhancement and Water Security Act that the President signed last fall.

ACHIEVEMENTS UNDER CALFED AND THE BAY-DELTA ACCORD

The Accord defined water quality standards, set up coordinated water project management, created a program to improve aquatic habitat by non-flow actions, and established a long-term process for defining a plan of action to fix the problems of the Bay-Delta. The Accord also provided an atmosphere of greater near-term "certainty" in California water management for all stakeholders, that would enable the cooperative efforts to take root and grow. The Bay-Delta consensus process has produced much of this certainty, with benefits for water users, the environment, and the California economy. To sustain this progress, and get long-term solutions that provide lasting certainty, all CALFED agencies and stakeholders must continue to work within the consensus-oriented process.

State Water Quality Standards: The State Water Resources Control Board adopted in May, 1995 a water quality plan for standards that reflects the Accord. EPA Region 9 approved the State standards on September 26, 1995. In contrast, efforts prior to the Accord to put water quality standards in place for the Bay-Delta had been unsuccessful. ClubFed members are working with stakeholders and the State to find ways to meet these standards that will also address the concerns of the agricultural and urban users of San Joaquin River water. We have made a great deal of progress in this effort and are hopeful of reaching an agreement that the State can finalize within the time frame specified in the Accord.

More Reliable Water Allocations: Because of the Bay-Delta process, working through its joint federal-State Coordination Group, the Central Valley Project (CVP) water contractors have received more reliable allocations of the available water during the past two years. This demonstrates that, by working together, State and federal agencies can coordinate and more flexibly harmonize water allocations to habitat, farm and urban users of CVP water. Previously, user conflicts sometimes prevented contract allocations from being provided even when water was physically available. Recognizing that this is a greater challenge in drier years, the Interior Department is working to develop a protocol for making these allocations, to provide greater certainty about how the allocation process will work.

This year's flooding experience also shows us the limits to any human problem-solving approaches dependent on the weather. When a single, huge rainstorm forces the massive release of stored water to

prevent an immediate catastrophe, and is then followed directly by a prolonged, total, unseasonable drought, no human plumbing on earth can produce enough water for all purposes. We must note, in all humility, that we can only do the best we can with what nature gives us to work with.

Support from the Financial Markets: Prior to the Accord, the financial markets sounded alarms about the effect that water policy uncertainty could have on California's municipal credit ratings. Standard & Poor's, among those previously concerned, found the Accord "...represents a major step in alleviating many of S&P's credit concerns." (Credit Week Municipal, 2/27/95).

Richard Rosenberg, Chairman and CEO of BankAmerica Corp., reaffirmed that a consensus process was essential to this progress, stating to the Water Education Foundation (of Sacramento, CA) on March 30, 1995 that the Accord is "a critical first step towards a new era of water management in the State.... we must deal with California water issues in California and include all Californians." Similarly, the Bay Area Economic Forum wrote on June 20 to Senator Feinstein that major changes to the Accord "would threaten to unravel the Bay-Delta Agreement and jeopardize the mutual trust that has developed among all of the different players."

These initial reactions from the California financial community have proven to be both perceptive and prophetic about the most important benefits of the Accord. CALFED and its extensive stakeholder processes are the means by which we "include all Californians" in our Bay-Delta long-term planning and near-term decision-making. This has also enabled us to keep all participants, governmental and private sector alike, in the CALFED processes and at the table negotiating their differences, instead of taking outside routes in futile attempts to get a one-sided answer.

Category III: The Bay-Delta Accord included a commitment to undertake non-flow ecosystem restoration activities to improve the health of the Bay-Delta ecosystem. This effort is commonly referred to as "Category III", and the Bay-Delta Accord estimated the costs of the non-flow ecosystem restoration activities to be \$180 million.

Category III's central purpose was to get effective non-flow measures for ecosystem restoration into place while the CALFED process worked out long-term solutions. In other words, the Accord recognized the need to fund and carry out measures, in the short term, to address the variety of non-flow related factors that have contributed to the historical decline of the Bay-Delta's ecological resources. To date, the water user community has contributed almost \$22 million to fund Category III projects -- including \$20 million from Metropolitan Water District, and smaller contributions from several San Francisco Bay Area water districts. The \$22 million in stakeholder funding has leveraged funds from other sources such as the Central Valley Project Improvement Act (CVPIA), State and federal agencies, and non-governmental entities, to support \$61.5 million worth of projects.

A working group of stakeholders and agency personnel identified Category III non-flow habitat improvement projects as appropriate for funding, and 38 have been or are being implemented to date. These projects, such as installation of new fish screens at critical water diversions and restoration of spawning habitat in important upstream tributaries, will substantially improve aquatic habitat. They will, as intended, be even more effective in conjunction with the CALFED ecosystem restoration activities.

I would like to provide just a couple of examples of projects that have been undertaken with Category III funds. Category III funds, in conjunction with several other sources, enabled the acquisition of the 4,356-acre Valensin Ranch to greatly expand the Cosumnes River Preserve and provide necessary wetlands and

upland habitat. These funds were also used to install five fish screens for water diversions located in the Suisun Marsh, one of the largest contiguous brackish marshes in the U.S. Finally, Category III funds were used to restore a segment of Butte Creek to natural conditions by removing four unscreened diversion dams, enabling the unrestricted passage of salmon.

In designing the process to identify and move forward on Category III projects, the CALFED agencies were faced with the challenge of moving quickly to maximize near-term Category III progress before the start of long-term program, while working to build a consensus on difficult issues of Category III operation and financing. The CALFED agencies struck a pragmatic balance by establishing a formal mechanism (through the Ecosystem Roundtable) to provide direct stakeholder input on near-term restoration activities, including decisions on use of Category III funds.

Now we have the potential for a dramatic new infusion of funding. When California voters approved Proposition 204 last November, they made available \$60 million in State funds to add to the existing pot. New federal funds appropriated under the authorization of the California Bay-Delta Enhancement and Water Security Act, can be explicitly available for use in Category III projects. The CALFED agencies hope Congress will look favorably on the President's FY 1998 budget request for full funding under the Bay-Delta Act, to enable the federal government to match California's support and commitment reflected in its Proposition 204 funds for Category III purposes in Fiscal Year 1998. These new State and federal contributions add to the impetus for a wide range of stakeholders to support Category III financially, as the Bay-Delta Accord envisioned.

A Solid Start on Building Long-Term Bay-Delta Solutions: As CALFED Executive Director Lester Snow's statement describes in more detail, we have created a joint State-federal CALFED Bay-Delta Program office, and staffed it using State and federal resources and personnel. A broad-based Bay-Delta Advisory Committee (BDAC) of stakeholders has been convened, and regularly counsels the State and federal agencies on aspects of the long-term solution. The CALFED Program has developed three major alternatives for the long-term solution addressing the Program's objectives -- of water quality, water supply, ecosystem restoration, and levee stability. These alternatives are being evaluated in a Programmatic Environmental Impact Report and Statement (EIR/EIS). The expedited schedule calls for the CALFED agencies to identify a preferred alternative by September of this year and release the programmatic document for public review in November.

CALFED BAY-DELTA FUNDING REQUEST FOR FISCAL YEAR 1998

Last Fall, Congress passed and President Clinton signed into law the California Bay-Delta Enhancement and Water Security Act. This new law authorizes funding of up to \$143 million per year for three years, which shall be "in addition to baseline funding levels ... for currently authorized projects and programs ... for the purpose of Bay-Delta ecosystem protection and restoration." The Bay-Delta Act states that this funding is the "initial federal share of the cost of developing and implementing" the Category III program and the "ecosystem restoration elements of the long-term CALFED Bay-Delta program."

The Bay-Delta Act also requires the Office of Management and Budget to submit, as part of the President's Fiscal 1998 budget, "an interagency budget crosscut" for Fiscal Years 1993 through 1998. This crosscut is to show levels of federal spending "on ecosystem restoration and other purposes in the Bay-Delta region, separately showing funding provided or requested" under both existing and this new Bay-Delta Act authority.

In his Fiscal Year 1998 budget, the President requested the full \$143.3 million in new funding for Bay-Delta ecosystem restoration and Category III purposes that was authorized by the 1996 Bay-Delta Act. In his FY 1998 budget request, the President also met the statutory requirement for a budget cross-cut. The Bay-Delta cross-cut includes an estimate for the baseline of federal spending for "ecosystem restoration and other purposes" in the Bay-Delta of \$70 million, a 250 percent increase over the FY 1993 funding level of \$20 million. Let me clarify that this amount reflects federal agencies' pre-existing spending for Bay-Delta purposes. This baseline amount is in addition to the President's FY 1998 request for \$143.3 million in new funding. In other words, the President's FY 1998 budget requests a total of \$213.3 million for ecosystem restoration and other activities in the Bay-Delta.

CALFED's FY 1998 Program

Regarding the specific actions to be funded by the CALFED program, the Bay-Delta Act is not a great deal more explicit or detailed than that which is set forth in the brief quote cited above. We must therefore answer the question about the President's FY 1998 budget, "funding for what functions to accomplish what goals?"

The funding authorization in the Act itself refers to the ecosystem restoration elements of the long-term CALFED program. While that program is still under development, and the environmental review process on a preferred alternative is not scheduled to be completed until the latter half of 1998, CALFED has identified an FY 1998 program of activities that will be beneficial to each alternative being considered for the long-term program. Investment in these "no regrets" early actions is important to maintain momentum in preparation for the decades of work ahead on the long-term program, and will build support and commitment for implementing the full alternative chosen. Federal funding authorized under the Bay-Delta Act will also provide the necessary match for the State's funding under Proposition 204.

The CALFED FY 1998 program is part of a larger, five-year program of activities common to all three alternatives, drafted in consultation with stakeholders, with federal ClubFed agency staff closely involved in development and review at every stage. The program was framed to provide early implementation benefits and generate information valuable for adaptive management activities when the long-term Program is undertaken. While many early action projects are for ecosystem restoration, substantial activities are anticipated in each of the four long-term program elements, including water quality, levee vulnerability, and water supply.

Projects pursued for early implementation must: (1) have appropriate environmental documentation; (2) have no significant adverse cumulative impacts; and, (3) not limit the choice of a reasonable range of alternative or affect the selection of a preferred alternative. Under the President's FY 1998 proposal, the Secretary of the Interior will be required to approve plans outlining how funds appropriated under the Bay-Delta Act authorization will be spent.

The federal and non-federal funding total currently projected for the FY 1998 CALFED program of common actions is \$260 million, of which about \$143 million is proposed by the President's FY 1998 Budget request under the Bay-Delta Act. The majority of the \$260 million is for ecosystem restoration actions, and the remainder is for actions under the other three program elements.

Cost-Share Agreement

We recognize that the CALFED agencies need to have a cost-sharing agreement in place by September,

1997. A high-level interagency group is developing an agreement which will meet the requirements of the Bay-Delta Act and Proposition 204. This agreement is intended to apply to interim activities (including those in the CALFED FY 1998 program) prior to the availability of a final programmatic environmental review document, as well as to the long-term program.

The agreement will also include a framework of principles for cost-sharing on the overall CALFED program. Because the longer-term process is not yet defined and will be described in conceptual terms, later amendments to the initial agreement are contemplated that will be consistent with the framework of principles and will define the long-term process as decisions are made on it.

Defining Projects and Actions -- A New Way of Doing Business I am sure that the Subcommittee's members recognize that this discussion has not addressed what is ordinarily a central focus of significant funding requests -- that is, a detailed description of projects and actions for which the funding will be used. Lester Snow's testimony addresses this question at length.

I will simply summarize with a general description of how CALFED will proceed. The identification of projects and development of detailed project plans will involve the same processes of close interaction and consultation among Lester Snow's staff, CALFED agency staff, and stakeholders that have brought us where we are today on the CALFED FY 1998 Program and the CALFED long-term process. Final approval of projects will involve the same processes of discussion and agreement among all the CALFED agencies that have been successful to date and that have brought all of the panelists together to this table.

We recognize that this is not ordinarily how federal project spending gets defined. In the language I quoted above, Congress also recognized that -- in the way that the Bay-Delta Act defined the purposes for which the funding was authorized. Essentially, funding was authorized for actions to be named later by the consensus-oriented CALFED process. In other words, Congress recognized the necessity for a literally extraordinary legislative response to what is an equally extraordinary partnership -- CALFED.

We envision that the decisions on which agencies, or stakeholders, will undertake and pay for each activity will be made in the same process and on the same consensus terms that we have used to identify projects for the FY 1998 program. There is no allocation of funds among the federal agencies to be set before the fact. Rather, the allocations will follow the CALFED decisions on which department or agency has the most appropriate capability or experience to carry out a category of activities.

The fact that, as an EPA official, I am advocating for funding to be channeled through the actions of another federal department says a great deal about the different way in which we are doing business here. These are not federal or State projects, Interior or EPA projects we envision from the common program, although federal or State agencies will carry out many of them. Rather, they will be products of the CALFED federal-State partnership, which also includes stakeholders in a truly collaborative capacity.

CONCLUSION

Why Support The Bay-Delta Process? While we believe that this process for deciding on action projects is what Congress envisioned when it passed the Bay-Delta Act last Fall, we do not ask for your support solely on that basis, or solely from the confidence you can take from the record of the many CALFED achievements since the Accords were signed. It is fair for you also to ask, "why do we believe the CALFED process will continue to work as we move into Fiscal Year 1998 and beyond?"

Let me answer that question. First, the process is built on a strong, core partnership with the State. We, the federal and State signatories, jointly created that partnership in the Framework Agreement of June, 1994. We gave it substance and clear direction with the signing of the Accord. We continue to cement and augment it -- by our contributions in staff, resources and work to Lester Snow's CALFED effort; by our steady and timely progress in assembling the long-term plan; and, by our continuing collaborative work on all the formal and informal Teams that make CALFED go. These efforts to date provide us with the trust and confidence that we can, and will, work through any problem in a cooperative, consensus-oriented way.

Second, ClubFed has provided for a degree of coordination among federal agencies that may well be unprecedented in a natural resources program of this magnitude. I am not saying we head off any problem before it occurs -- I doubt that it is humanly possible to do that in any large organization -- but no ClubFed agency makes major Bay-Delta decisions without consultation with and accountability to the rest of the team. By providing a common forum for regular interaction on these issues, ClubFed has improved our communication and coordination with each other, the State, and stakeholders on Bay-Delta matters and on other, related issues beyond Bay-Delta -- proving that success can be infectious. The strong interest of the six new members of ClubFed in joining the partnership is powerful testimony to the effectiveness of ClubFed and the importance of the CALFED long-term effort.

Third, the strength of the CALFED process is rooted in the close and continuing involvement of all major stakeholder groups. Any government agency worth its salt, at any level of government, should have learned by now that you make the most durable and effective decisions by bringing in the people affected and finding out their needs, concerns, and thoughts about different ways of solving problems. Being listened to seriously, and being able to take a hand in guiding the overall effort, keeps all the players at the table, and compounds their investment in making the consensus-oriented process work. And as that investment by all of us keeps growing, the successes we achieve together -- most recently in joining to support Proposition 204 and the Bay-Delta Act -- bring us closer to the goal of a durable, long-term solution for the Bay-Delta. Thank you again for your invitation to testify, and for your consideration of support for this path-breaking initiative.

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