

**The Bay Institute • Clean Water Action • East Bay Municipal Utility District
Environmental Defense • Friends of the River • Marin Municipal Water District
Mono Lake Committee • Natural Resources Defense Council
Planning and Conservation League • City of Sacramento
San Francisco Public Utilities Commission • Sonoma County Water Agency**

November 10, 2004

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

Dear Mr. Wright:

The undersigned organizations recognize and appreciate the progress that the California Bay-Delta Authority (Authority) staff have made in refining its draft 10-year finance plan. This is an enormous undertaking with important implications for the future of the Bay-Delta Program. As a follow-up to our letter of October 8th, we would like to offer some additional observations regarding the October 7th version of the plan, and also propose a definition for what constitutes a “public benefit” and should therefore be financed with “public” funds.

General Comments

Although the draft 10-year finance plan claims to implement the beneficiary pays principle, it does not propose a mechanism for openly and fairly determining who will benefit from a specific project. The proposed cost allocations set forth in the draft plan are not supported by an analysis of who will benefit, and by how much, from a specific project. The draft plan relies on stakeholder work groups that have negotiated broad cost allocation formulas without any reference to evidence in the record. In our view, the Authority must conduct a public hearing process, making findings that are based on evidence in the record to support any cost allocations for each major project. In the absence of such a record, the plans for raising public funds to finance unmet funding needs of the Program will lack credibility. The Authority should also hold a similar process for establishing the appropriate structure for a surcharge, if one is imposed by the Legislature. Decisions regarding how to apportion the potentially \$16 billion cost of a 10-year CALFED program must be accomplished through a public hearing process with findings on the record, not through a series of stakeholder negotiations attended by a limited number of interests. We believe that such a process, while potentially demanding on all parties, will provide legitimacy for decision making. Cutting individual deals with beneficiaries behind closed doors is not an acceptable approach.

The draft plan significantly over-estimates the likelihood of future federal and state funding to finance the Bay-Delta Program over the next 10 years. The state has already assumed significant obligations for financing existing bonded indebtedness, and faces a multi-year effort to balance its budget, which will severely constrain new appropriations from the General Fund. Combined with limitations on securing new bonded indebtedness, it is highly speculative to assume that a large new state bond measure will be available in the amount estimated by the Authority over the next 10 years, without assurances from the California Department of Finance that such assumptions are warranted.

It is instructive to remember that, while the Federal Bay-Delta Act of 1996 authorized \$430 million for CALFED, only about half that amount was ever appropriated, even in a time of federal budget surpluses. Based on that experience, we believe it is unlikely that the Program will receive full appropriations over the next six years from the \$389 million authorized in the new CALFED bill that was just signed by the President. However, the draft plan not only assumes full appropriations of the \$389M from the new bill, it takes yet another leap of faith to suggest that \$1 billion in additional federal appropriations (not merely “authorizations”) will be available to meet the target established within the 10-year plan. In practical terms, achieving the desired \$1.4 billion in appropriations might require an authorization as high as \$3 billion. There is nothing on the horizon to support that expectation.

Generally, the plan does not provide any contingency in the event that these state and federal funds fail to materialize, nor does it assess the impacts of reduced funding. Even with the overly optimistic assumptions about future state and federal assistance for this program, the plan acknowledges that there remains a \$1.2 billion “gap” for which there is no source of funding, which is in addition to an already-proposed \$600 million new water user fee. Additionally, the Authority has not identified any source of funding or method for apportioning costs associated with CALFED’s proposed \$8.1 billion storage and conveyance infrastructure program which we assume will be primarily paid for by actual beneficiaries of those projects, rather than public funds. The draft 10-year plan projects funding shortfalls that will only be exacerbated by future costs of major storage and conveyance projects, even assuming appropriations under the new CALFED authorization bill. This could easily lead to tremendous pressure to impose an undifferentiated water surcharge fee on Bay-Delta system diverters that is not tied to the beneficiary pays principle. A realistic finance plan will improve the planning process and help develop projects that can be successfully implemented.

The plan should clearly describe how the Authority intends to implement the proposed new fee for water users, and acknowledge the potential that a water user surcharge could be imposed by the Legislature, as was proposed in June 2004. The failure to grapple with the unmet needs (which will be much greater if state and federal funding does not materialize and if any CALFED proposed storage or conveyance

infrastructure projects advance) could increase the odds that the Legislature will approve a broad, ill-defined surcharge. We believe the Authority should receive public testimony on this issue of public funding, and that it should conduct careful discussions regarding the prospects of a water surcharge. The Authority should make recommendations to the Administration and the Legislature regarding the issue of a possible water surcharge to ensure that such a surcharge is not treated as a de facto “water tax”. If the Authority does not exercise leadership on this issue, we believe the issue of a water surcharge will nevertheless be raised in the legislative arena by others.

Public Benefits

We are pleased that our October 8th letter is prompting careful and extensive discussion about how “public benefits” are defined, which lies at the heart of the beneficiary pays principle. With input from all of the stakeholders, the Authority should define how it will determine “user benefits” and “public benefits” for the purposes of allocating the \$16 billion in proposed CALFED costs. The issue is complicated by the fact that public benefits are often difficult to quantify. As a result, the most practical approach to defining such benefits is by exclusion of known, measurable benefits to resource users. To the extent that it can be demonstrated that projects provide clear public benefits, we believe that proportional public funding would be appropriate. Specifically regarding water use efficiency projects (conservation, recycling, and desalination), all have the potential to provide public benefits to the extent that they reduce diversions from the Bay-Delta system. We encourage the Authority to develop mechanisms to demonstrate these reductions. **In this vein, we propose the following definition:**

“Public benefit” means the direct and indirect improvement(s), which do not accrue to specific communities or to a specific entity or group of entities, resulting from a project undertaken to further the purposes of the August 2000 CALFED Bay-Delta Program Record of Decision. In general, public benefits are widely dispersed among various communities and cannot be readily quantified. Project mitigations undertaken pursuant to obligations under CEQA, NEPA or other statutes are not considered public benefits. Projects, or portions of a project, that are intended solely to benefit specific communities, or a specific entity or group of entities, are not considered to provide public benefits.

In order for a project, or portion of a project, to be determined to provide public benefits, the Authority shall determine, after public hearings and findings made on the record, that one or more of the following factors applies to the project or portion of a project:

(A) It provides ecosystem benefits that meet, or assist in meeting, goals in the Ecosystem Restoration Program;

(B) It provides an alternative to increased diversions from rivers and streams as a means of meeting demand, with priority given to projects that will reduce reliance on such diversions;

(C) It will reduce pollutants entering receiving bodies of water;

(D) For a flood control project, that the project, or a portion of a project, will achieve multi-objective flood management principles, including any or all of the following benefits: agricultural conservation, ecosystem protection and restoration, support for the recovery of threatened or endangered species, recreational opportunities, and protection of infrastructure that serves critical public health and safety;

(E) It will benefit multiple economically disadvantaged communities, as defined in subdivision (a) of Section 79505.5 of the Water Code;

(F) It will address a critical or emergency need to meet regulatory requirements, or provides protection from an immediate threat to public health or safety.

In conclusion, we believe that the work done so far on the draft finance plan indicates considerable progress. However, it remains incomplete to the extent that it does not provide a clear framework for implementing the beneficiary pays principle, and avoids confronting the funding shortfall.

Thank you for the opportunity to share these views.

Sincerely,



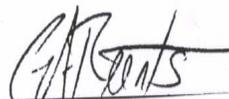
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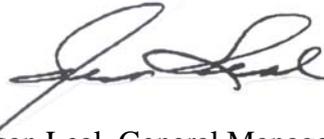
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