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AGENDA ITEM # 7

To: Delta Protection Commission

From: Margit Aramburu, Executive Director

Subject: Excerpts from Interim Report of the Senate Select Committee on the CALFED Program

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Attached for your information are the Chairman's Recommendations regarding the CALFED Program. The entire report is available for $4.00 (includes shipping and handling) plus current California sales tax, from:

Senate Publications
1020 N Street, Room B-53
Sacramento, CA 95814
(916) 327-2155

Chairman's Interim Report of the Senate Select Committee on the CALFED Water Program

Senator K. Maurice Johannessen
Chairman

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CALIFORNIA LEGISLATURE

SENATE SELECT COMMITTEE ON CALFED

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September 24, 1998

Honorable John Burton
President Pro Tempore of the Senate
Office of the President Pro Tempore
Room 205, State Capitol
Sacramento, CA 95814

Dear Senator Burton:

The attached interim report is an analysis of the testimony and materials presented at the Senate Select Committee on the CalFed Water Program hearings held on May 13, June 9, June 29, and August 5.

The hearings examined various aspect of the CalFed Bay-Delta Program, including the alternatives proposed by CalFed, various issues and challenges that face the program, and the general oversight mandated by Senate Resolution No. 252.

Witnesses and written comments submitted by members of the public, interest groups, and elected officials provided a number of insights and recommendations.

I am confident that the Legislature will find the information and recommendations helpful as it formulates policies that will help in solving the Bay-Delta ecological problems, and the management of California's water supply. Additional copies of this report can be obtained by contacting Senate Publications at (916) 327-2155.

Sincerely,

K. MAURICE JOHANNESSEN
Chairman

KMJ:pzh

VIII. CHAIRMAN'S RECOMMENDATIONS

Based on the written comments and testimony presented to the Senate Select Committee on the CALFED Water Program to date, the Chairman makes the following recommendations:

A. CALFED Procedures

RECOMMENDATION: Serious questions have been raised about the scientific basis of DWR Bulletin 160-98 estimates. CALFED must state with certainty that the foundation of EIS/EIR assumptions are based on sound science and accurate data. The Chairman strongly urges CALFED to correct inaccuracies included in the modeling and assumptions of the EIS/EIR, by working with the California Research Bureau, the Department of Water Resources and other CALFED agencies to correct the errors identified in the Bulletin 160-98 methodology.

RECOMMENDATION: The EIS/EIR lacks necessary economic information allowing the public to assess the impacts of the plan on their respective regions. CALFED has also failed to adequately identify meaningful mitigation strategies. Additional errors and missing information outlined in this Report make a judicious re-evaluation necessary. CALFED should delay the release of the preferred draft alternative and correct the massive deficiencies of economic analysis in the EIS/EIR. Failure to include this information makes it impossible for CALFED to credibly comply with the solution principle of no redirected impacts "...when viewed in their entirety, within the Bay-Delta, or to other regions of California."

RECOMMENDATION: CALFED's solutions must rely on all stakeholders in the Bay-Delta participating. Presently, urban and agricultural interests bear the brunt of water use efficiency and water quality program program impacts. The role of environmental responsibilities is not addressed in the EIS/EIR. CALFED should incorporate data contained in the Refuge Water Supply ICP Task Force Report into the EIS/EIR and the Ecosystem Restoration Program Plan. The Chairman requests CALFED explain how they will compensate for the additional water use of lands converted to habitat.

RECOMMENDATION: There are clearly defined guidelines and procedures for State agencies to exercise the authority granted to them by the the legislative process. One of the chief reasons for these procedures is to prevent the abuse of power. Bulletin 160-98 states that CALFED has suggested that the State Water Resources Control Board could be asked to "pursue its obligations to investigate waste and unreasonable use more vigorously" as part of a water use efficiency plan. The Chairman requests CALFED to explain the intent of exercising the Constitutional authority of the State Water Resources Control Board as a part of the Program.

RECOMMENDATION: California must increase flood control protection and storage capacity for additional water yield to benefit anticipated needs. These facilities would increase supply, enhance groundwater recharge capabilities, improve habtiat along the Pacific Flyway, and other environmental needs. This is efficient use of our resources are a principle part of responsible planning for future generations. CALFED should elevate the storage element, from a *variable* to a **common** element of the CALFED Program.

RECOMMENDATION: The CALFED Program has converted over 17,000 acres of land to habitat. These aquisitions have been made without "safe harbor" regulations in place to protect adjacent property owners. CALFED puts neighboring property owners at risk without providing proper safeguards. While the Bay-Delta Advisory Council Assurances Work Group is trying to formulate these regulations, CALFED ***must*** develop them on a *priority* basis.

RECOMMENDATION: CALFED has failed to identify the locations of land aquisitions and the economic impacts of land conversions on local governments. Geographic Information System (GIS) resources exist that allow CALFED to identify the location of state and federally owned land, classified by type of habitat. GIS can also identify the exact location of property aquired by CALFED. CALFED should work with participating agencies to develop and present this information. Inclusion in the EIS/EIR will allow local governments to evaluate the loss of tax revenues and give

CALFED a basis for developing appropriate mitigation measures to offset those losses.

RECOMMENDATION: In addition to CALFED's Program plans involving land aquisitions of more than 390,000 acres, the Report has identified numerous plans and programs of participating CALFED agencies. All of these plans focus on habitat aquisition and management, with varied amounts of acreage targeted for conversion. All plans by the state and federal agencies participating in the CALFED Program need to be detailed and their objectives thoroughly discussed in a comprehensible manner. All plans, state and federal, that deal with land use changes, water supply and water rights and/or use modifications, land acquisitions, re-directed economic and/or physical impacts should be fully identified and analyzed by CALFED.

RECOMMENDATION: CALFED is a "program" and not an entity accountable for its actions. While state and federal agencies have their regulatory authority, the Program's progression indicates the need for final decision making responsibility. Without proper organizational structure, the Legislature and the public will continue to lack confidence in the CALFED Program's fairness, equity, and direction. The Chairman requests CALFED to suggest the remedy to best solve this deficiency.

RECOMMENDATION: CALFED states its programmatic EIS/EIR does not meet the "project specific" requirements of the California Environmental Quality Act. The Office of Planning and Research developed objectives and criteria for agencies of the State in preparing EIR's and negative declarations. One of these criteria, establishing "significant effect" in California Public Resources Code Section 21083, Subsection (c) states, "The environmental effects of a project will cause substantial adverse effects on human beings, either *directly* or *indirectly*." (Emphasis added) The intent of this language and the mandates of CEQA on CALFED agencies seems clear. The Chairman requests CALFED explain how these requirements apply to participating agencies, but don't apply to the Program.

B. Legislative

RECOMMENDATION: CALFED is an ongoing program, approaching the end of Phase II and the beginning of Phase III. Based on the scope of the

mandate of Resolution 252, the need to examine the requirements of CEQA/NEPA on the Program, and CALFED's impacts on water rights and areas of origin, the Chairman has requested an extension of the term of the Committee. The Chairman is also reviewing member requests to hold hearings in Northern, Central, and Southern California.

RECOMMENDATION: CALFED has failed to respond to communicatons from the Chairman regarding key elements of the plan. Additionally, in at least one case, the response from CALFED bordered on inadequate. Letters of request from the Chairman represent communications from the California State Senate. CALFED should respond to legislative inquiries in a timely, accurate, and complete manner or the Chairman will be forced to issue subpeonas to obtain the information and schedule hearings of inquiry on the issue.

RECOMMENDATION: CALFED targets over 390,000 acres of land for conversions to a variety of habitat. Other state and federal agency plans and programs target large amounts of land for similar purposes. The total cumulative impacts of all land conversions must be considered. The legislative intent of the CEQA exemption for land aquisitions for wildlife habitat purposes, was not meant for massive land aquisition plans. The Chairman will introduce legislation that will subject all land acquisitions for wildlife conservation purposes, to the requirements of CEQA. The Chairman will also urge similar legislation be introduced on the federal level.

C. Fiscal Audit and Reporting

RECOMMENDATION: Statements of the U.S. Senate Appropriations Committee, the lack of the established reporting requirements under Proposition 204, and the accounting and tracking errors discovered in materials provided to the Chairman, cause a sufficient question of the current accounting practices of the CALFED Program. As a result, the Chairman will ask the Controller of the State of California and the U.S. Government Accounting Office (GAO) to organize an audit of CALFED. The Controller will be asked to provide the Legislature with a report of the audits findings.

RECOMMENDATION: Upon completion and transmittal of the results of the audit requested of the Controller and U.S. GAO, the Chairman will introduce legislation requiring the Director of the Resources Agency to produce an annual report of CALFED Program expenditures for Legislative review.