Draft Comment Letter: This version of the draft comment letter does not include lined out text and includes added text:

Lester Snow, Executive Director
CALFED Bay-Delta Program
1416 Ninth Street, Suite 1155
Sacramento, CA 94236-0001

Subject: Comments on the Revised Draft Programmatic Environmental Impact Statement/Environmental Impact Report, June, 1999

Dear Mr. Snow:

I am writing on behalf of the Delta Protection Commission to submit comments on the revised Draft Programmatic Environmental Impact Statement/Environmental Impact Report (RDEIR) for the CALFED program. The Delta Protection Commission is submitting these advisory comments based on the goals of the Delta Protection Act of 1992 and the policies in the Commission's adopted land use plan for the Primary Zone of the Delta.

The Commission's mandate is to protect and enhance the three existing land uses in the Delta: agriculture, wildlife habitat, and recreation; to assure orderly, balanced conservation and development of Delta land resources; and to improve flood protection. The challenge to CALFED is to work with the Commission, which represents a broad spectrum of Delta interests, to balance the land uses in the Delta--the "three legs of the stool".

While the Commission supports the overall CALFED planning process and its difficult challenge to resolve conflicting issues concerning water and wildlife in the Delta, the Commission continues to be concerned about the proposed impacts to land uses in the Delta Primary Zone.

While there have been some changes to the estimated areas to be impacted by the proposed program, those changes would be widespread in the Delta, and as noted in the RDEIR would have adverse impacts to regional economics and the existing social fabric of the Delta Primary Zone.

General Concerns:

The RDEIR still leaves several issues/policy areas unresolved. These key areas are of general concern to the Delta Protection Commission.

> First, the preferred alternative could result in the loss of between 125,000 acres and 166,000 acres of important agricultural land in the Legal Delta with no mitigation for that loss. The loss will exacerbate the predicted losses of agricultural land due to population

growth in the next 30 years. The loss of these lands in the Delta should be minimized and possibly mitigated. Mitigation for loss of agricultural land to urban development usually entails permanent protection for other agricultural lands in the form of conservation easements.

Mitigation strategies included in the RDEIR include: (1) supporting the Agricultural Land Stewardship Program in acquiring easements on agricultural land in order to prevent its conversion to urbanized uses and increase farm viability, and (2) developing buffers and other tangible support for remaining agricultural lands. Vegetation planted on these buffers should be compatible with farming and habitat objectives. It is not clear if these mitigation strategies will be implemented, or at what ratio for loss of agricultural land. It is not clear at what point in the process mitigation might be required.

CALFED has assumed that restricting acquisition to "willing sellers" is protective of agricultural land, however, limiting acquisition to a "willing seller" basis does not address the loss of agricultural land--a critical natural resource of the State.

Second, planning for recreation has been postponed to project level implementation of the CALFED program. This is a tremendous lost opportunity for planning for new recreational facilities and activities as part of the CALFED program. Already, projects receiving CALFED funding under the Category III program are not addressing recreation in project development. There is no CALFED policy which will ensure that recreation is considered part of CALFED projects. At a minimum, recreation planning should take place for each of the Stage 1 bundles, rather than on a project by project basis.

Third, There is a need for local input and review of the CALFED programs and projects. Until a governance program is developed, there is no forum for such review. The Delta Protection Commission has offered to provide such a forum in the Delta, and seeks to provide this role for CALFED funded projects.

Fourth, the lack of an implementable governance program could mean inconsistent implementation of the mitigation measures outlined in the RDEIR. The Commission is please that the current governance will now allow public attendance at the Policy Group meetings. However, public input into the CALFED decision-making process will continue to be limited. CALFED should develop a long-term governance plan as quickly as possible.

Preferred Alternative

The Revised Draft now includes a preferred alternative which includes:

- An aggressive program of habitat restoration in the Delta;

- Programs to enhance drinking water quality through a combination of source reduction, alternative sources of water, treatment, storage and possibly a new screened diversion on the Sacramento River near Hood (up to 4,000 cfs);
- Reduced impacts of pesticides, metals, turbidity, sedimentation, low dissolved oxygen, and toxicity of unknown origin;
- Levee improvements;
- Agricultural and urban water use efficiency including water conservation and water recycling;
- Water transfer program which will provide protection from third-party impacts; Enhanced watershed management;
- Possible groundwater and/or surface water storage; and
- Thru-Delta conveyance with the potential for a new diversion structure near Hood, South Delta improvements, and North Delta improvements (Chapter 2).

Much of the preferred alternative appears to be, in concept, consistent with the Commission's Plan and policies, and legislative mandates. The impacts associated with the widespread proposed conversion of prime agricultural lands to habitat appear to be a significant redirected adverse impact, and is not consistent with the overall goals of the Commission.

Impacts to Agricultural Lands

The CALFED program would have very serious impacts on agricultural land uses in the Delta Primary Zone, and secondary impacts on agriculture-serving business in the Delta region. The Ecosystem Restoration Program Plan (ERPP) proposes to retire from agriculture and restore to habitat between 90,400 - 111,600 (page 4-10) acres of land over the next ~~25~~ 30 years. About half those lands would remain behind levees and about half those lands would be restored to tidal action. The Revised Draft states the total acreage of "Important Farmland" to be affected by all aspects of the CALFED program (ecosystem restoration, levee upgrades, storage, and conveyance) total 124,500 to 166,100 acres (page 4-15). As of 1993, there were 491,774 acres in the Delta Primary Zone, of which 378,160 acres were in agricultural use, 57,596 acres in habitat or uncultivated agricultural use (unirrigated grazing), and 51,000 acres were water-covered. For the entire Legal Delta, the area described in the DEIR, the numbers are: 738,493 acres total; 527,309 acres in agriculture; 82,845 acres in habitat or uncultivated agriculture; 61,119 acres of water-covered lands; and 67,219 acres of urban lands.

There are several major areas already owned by public agencies or nonprofit groups, or already planned and designated for restoration to habitat, including Sherman and Twitchell Islands, Prospect Island, Bouldin and Holland Tracts, Stone Lakes Wildlife Refuge, etc. which would result in thousands of acres of agricultural land being converted to habitat. these projects already in the planning stages appear to meet the goals for habitat enhancement behind levees without the need to acquire additional privately owned lands in the Delta. In the last year, CALFED has funded acquisition of several thousand additional acres of privately-owned agricultural land, including McCormack-Williamson Tract (1,654 acres) and Liberty Island (4,760 acres).

Comment: The ERPP and RDEIR state CALFED will conform to the suggestions in the "Ad Hoc" memo, which was reviewed by the Delta Protection Commission. The Ad Hoc memo recommends that restoration projects use publicly-owned land, prior to acquisition of additional privately-owned agricultural land. However, the Category III funding program is not using this criteria for funding projects.

The ERPP includes goals for over 60,000 acres of land to be restored to tidal action to provide fish spawning and rearing habitat in the Delta. Reopening areas to tidal action is only one of many actions recommended to lead to recovery of Delta native fishes, as outlined by the U.S. Fish and Wildlife Service in their November 1996 Recovery Plan. Highest priority actions (Priority 1) are: increased freshwater flows; protection of the freshwater nature of Delta aquatic habitat; reduced entrainment losses at the State and federal water projects; no net loss of shallow water (defined as less than 3 meters) habitat to dredging; and elimination of harvest of green sturgeon and wild runs of chinook salmon. Development of additional habitat and vegetation zones in the Delta are a Priority Two action in the Recovery Plan.

Restoration of dry land to shallow water habitat should be only one part of an overall strategy to enhance fish species and aquatic habitat in the Delta. Acquisition and restoration should be implemented over time in conjunction with other key actions designed to meet species population goals which can be developed and monitored as part of the ERPP. Thousands of acres of water-covered lands could be managed and/or enhanced to improve aquatic habitat values. Actions could include: placement of fill to create shallow water habitat; placement of root wads to provide hiding and spawning places; and removal of invasive plants.

Comment: The ERPP and RDEIR state that CALFED will conform to the suggestions in the "Ad Hoc" memo which recommends that restoration projects be started on water-covered areas prior to acquisition and retirement of additional privately-owned agricultural land.

The RDEIR now includes information about the water consumption of tidal wetlands and open water areas (five acre-feet per year) versus irrigated agricultural crops (two acre-feet per year of irrigation water), and states that "potential water supply impacts can be minimized by carefully selecting the areas for habitat restoration in order to control the amount of additional water supply needed to maintain the aquatic or riparian vegetation, or by reducing the water applied to flooded seasonal wetlands in dry years" (Page 7.1-13). The RDEIR states that between 166,800 and 220,800 acre- feet of additional water supply could be needed in the Delta for tidal and nontidal habitat restoration (page 7.1-18), but does not discuss the source of that water or if individual projects will be required to assure water for restoration projects.

Comment: The RDEIR now includes information about water consumption in ecosystem restoration sites, but the amount of water needed may be underestimated. The consumption of water ranges from a low of five acre feet per year, up to seven acre feet per year.

The State has adopted a policy to protect the Delta waters from intrusion from the salty waters of San Francisco Bay. The program, carried out by Department of Water Resources, identifies and protects the Eight Western Islands (Bethel, Bradford, Holland, Hotchkiss, Jersey, Sherman, Twitchell, and Webb). The ERPP seeks to restore 10% of the leveed lands in the Delta to tidal action. There is no discussion of possible salinity impacts associated with reopening 10% of the Delta to tidal action, nor any analysis of methods or techniques to carry out such a program in a manner that would protect water quality in the Delta for in-Delta uses and for export purposes.

Comment: The DEIR should address the impacts to water quality, particularly possible salinity intrusion, which may result when large areas are restored to tidal action, as proposed in the ERPP.

The DEIR lists mitigation measures proposed to minimize adverse impacts to agricultural lands in the Delta including:

1) restore existing, degraded habitat first;
2) develop habitat on public land first;
3) absent public lands, acquire and restore lands acquired from willing sellers where at least part of the reason to sell is economic hardship (land that floods frequently or levees that are too expensive to maintain);
4) for lands for waterside habitat, seek land on islands where the ratio of levee miles to acres farmed is high;
5) obtain easements on farmlands which would allow for minor changes in agricultural practices thus increasing the value of crops to wildlife;
6) floodplain restoration efforts would include provisions for continued agricultural practices on an annual basis; and
7) conversion would occur over an extended time period; the conversion process would include extensive community, landowner, and stakeholder involvement.

Comment: The Delta Protection Commission supports the inclusion of conditions in the ERPP, including enhancement of water covered land for emergent habitat. The Delta Protection Commission request that in addition CALFED:

1) develop and implement individual management plans for private agricultural properties and develop funds to offset costs of voluntary implementation of such plans;
2) develop and implement individual management plans for privately-owned lands managed for wildlife habitat, such as duck clubs and upland hunting clubs, and develop funds to offset costs of voluntary implementation of such plans; and
3) develop programs to address stressors to avoid duplication of existing regulatory programs and which address the needs of existing land uses.

Comment: Acquisition and retirement of additional privately-owned agricultural lands should be conditioned to ensure: (1) proposed restoration projects shall not adversely impact Delta water quality, particularly salinity levels; and (2) proposed restoration projects shall not adversely impact existing uses on adjoining lands or adjacent islands.

The RDEIR states that the Ecosystem Restoration Program "could convert up to 112,000 acres of important farmland...this conversion is a potentially significant unavoidable adverse impact on agricultural use (page 7.1-17)." Mitigation strategies in the RDEIR include: (1) supporting the Agricultural Land Stewardship Program in acquiring easements on agricultural land in order to prevent its conversion to urbanized uses and increase farm viability, and (2) developing buffers and other tangible support for remaining agricultural lands; vegetation planted on these buffers should be compatible with farming and habitat objectives.

Comment: The DEIR should analyze the need to mitigate the loss of prime agricultural land under CEQA and include specific mitigation. Possible mitigation could include permanent protection of agricultural lands through conservation easements; these easements could help carry out the goals of the ERPP's wildlife friendly agriculture component, or the watershed management program.

The RDEIR includes analysis of economic impacts, however, the RDEIR states that under NEPA and CEQA, the RDEIR must discuss the social and economic impacts, but they would not result in physical changes to the environment so they are not "significant environmental impacts". (page 7.2-2). The Revised Draft states "Adverse effects on agricultural economics include the loss of ...farmland to other uses, such as habitat or levee setbacks. Direct effects result from these losses, such as loss of farm revenue and production opportunities; indirect effects include less labor demand, reduced farm spending for goods and services, and associated regional economic and fiscal effects. These effects would be most concentrated and most substantial in the Delta Region" (page 7.2-28). The chapter on Regional Economics states "Potential adverse effects on farm revenues and employment that occur as agricultural lands in the Delta are converted to other uses may not be avoidable" (page 7.10-25). The chapter on Agricultural Social Issues states "Farm worker and other agriculture-related job losses resulting from Program actions may result in adverse agricultural social effects...jobs...may be eliminated with no replacement. Job loss is considered a substantial adverse agricultural social effect of the program. The loss of revenues and increased services burdens on some local governments and districts also could present an adverse social effect." (page 7.3-23).

Comment: CALFED should include appropriate mitigation for the identified impacts.

The RDEIR describes possible in-Delta surface storage of water and identifies four islands as possible sites: Victoria, Bacon, Holland, and Woodward Islands. These islands total approximately 20,000 acres (this is inconsistent with Table 4-3 which states Delta storage as ranging between 0 and 15,000 acres).

Comment: In-Delta surface storage of water on Delta islands would remove substantial lands from agriculture and could result in seepage on nearby or adjacent lands and/or islands. Acquisition and/or conversion of privately-owned agricultural land for in-Delta surface storage should not result in seepage which could adversely impact adjoining or adjacent lands and/or islands.

Impacts to Wildlife Habitat:

The Delta's agricultural lands have long been recognized as key seasonal wildlife habitat for migratory waterfowl. The Central Valley Habitat Joint Venture has been working for the last ten years to protect agricultural lands in the Delta, enhance seasonal habitat values, and enhance year round habitat values. The value of flooded agricultural lands versus tidal marsh is rated by program biologists as three times as valuable, largely based on the high caloric value of the agricultural residue available to the migratory waterfowl.

Comment: The DEIR should evaluate the impact to migratory waterfowl of the loss of up to 115,000 acres of agricultural lands to water-covered habitat and managed wetlands.

Agricultural fields and pasture lands are recognized as feeding areas for several important species including the threatened Swainsons Hawk and Greater Sandhill Crane. Minimal description is included regarding these species and their habitat needs.

Comment: The DEIR should evaluate the impact to threatened species such as Swainsons Hawk and Greater Sandhill Crane of the loss of up to 115,000 acres of agricultural lands in the Delta to water-covered habitat and managed wetlands.

The ERPP assumes that restoration of several tens of thousands of acres of agricultural lands to water-covered habitat will result in spawning and rearing habitat needed to delist endangered aquatic species. At this time, there is no or minimal data regarding the value of restored habitat for spawning and rearing of key aquatic species in the Delta. The U.S. Fish and Wildlife Service's plan for recovery of native Delta fishes (November 1996) describes a number of factors deemed critical to enhancing these species; very little scientific research has taken place to determine what criteria are key to development of a successful restoration project. No sites have yet been planned and restored. Areas that have been returned to tidal action have resulted from unplanned levee breaks--Big Break, Franks Tract, Little Holland Tract, Mildred Island, etc, with no management of those sites.

Comment: The DEIR should more thoroughly describe the "suite" of actions deemed critical to restoration of aquatic species, and likely phasing and partnering of restoration activities.

The DEIR indicates that due to the influence of the State and federal project pumps in the South Delta, restoration of habitat should be focused in the North and East Delta. The DEIR states "habitat restored in the south Delta would have the least value to Delta species. Restored habitat in the central Delta would also be of minimal value..."(page 6.1-34).

Comment: The DEIR should evaluate the value of habitat restored in the Central and South Delta as part of a program to restore general ecosystem health in the Delta, rather than locating all aquatic habitat restoration in the North and East Delta to avoid impacts of the project pumps.

The DEIR states that restoration of large areas to wetland habitat will increase the amount of available mosquito breeding habitat and suggests integrating various mosquito control methods.

Comment: The RDEIR includes mitigation measures to control mosquito breeding habitat and to replace lost funding for mosquito abatement activities (page 7.12-18).

Impacts to Recreation:

The DEIR describes a number of actions which could be implemented to protect habitat and habitat values which would affect recreational boating activities. Actions include adoption of speed zones and temporary, seasonal, or permanent closure of Delta waterways.

Comment: The DEIR should outline the circumstances and legal authorities which would be exercised to implement the controls on boating in the Delta described in the DEIR. The information about existing speed zones is incorrect.

The DEIR states that if recreational facilities are displaced, mitigation should include the relocation of a similar facility in a nearby location.

Comment: The DEIR should explain how this program would be exercised, and how suitable locations for replacement facilities would be identified, and approvals obtained.

The DEIR states that the restoration and redesign of existing levees and the design of new levees should accommodate vehicular access and parking for shoreline fishing, boat launching, swimming, hiking, bicycling, and wildlife viewing.

Comment: The DEIR should describe how such sites would be supervised, and how appropriate support facilities such as restrooms and trash receptacles would be provided and maintained. The DEIR should also describe how appropriate sites would be identified to minimize conflicts with agricultural uses and wildlife habitat values.

The DEIR does not address the requirements of the Davis-Dolwig Act of 1961 which specifies

that planning for public recreation use is to be part of project formulation for activities in connection with State-sponsored water projects. No such component is included in the description of the CALFED conveyance project elements.

Comment: The DEIR should be amended to include reference to the Davis-Dolwig Act of 1961, and to include a public recreation component for the CALFED program.

Recreation Chapter 7.7 includes the following mitigation strategies:

- As part of the project-specific implementation strategy and planning for all Program actions, considering and incorporating to the extent feasible recreational improvement and enhancement as part of the project features;
- Working with recreational interests...to protect and enhance recreational boating and other recreational resources in all project areas;
- Conducting an analysis of boating circulation to ensure that appropriate alternative routes are identified and clearly marked if boating circulation in the Delta is to be modified due to temporary, seasonal, or permanent channel closures or to speed restrictions;
- Restoring and designing existing and new levees to accommodate vehicular access and parking for [recreation uses] whenever feasible;
- Maintain boating access to prime boating areas...for recreational purposes even if flow control barriers are constructed; and
- Offsetting adverse impacts...from temporary and permanent barriers..by providing portage facilities, boat locks, and public information regarding alternate access, and
- ...relocating or building similar recreational facilities if Program actions require the permanent closure of a recreation facility.

Comment: The RDEIR should include a description of the processes or mechanisms which would ensure that these actions are taken. The CALFED program should include a programmatic master plan for recreation improvements, or ensure that recreational planning takes place at the "bundle" level, rather than at the project specific level.

Impacts to Delta Levees:

The DEIR describes the proposed improvement to the existing Delta levees--primarily to the non-project levees-- which would bring those levees to a more stable standard, PL 84-99. PL 84-99 is an agricultural standard which ensures that levee crowns are one and a half feet above the 100-year flood elevation and include minimum slopes of two to one on the water side and slopes of three to one to five to one on the land side depending on the soil conditions.

Comment: The proposed standard, PL 84-99, is included as the recommended standard for Delta non-project levees in the Commission's Land Use and Resource Management Plan for the Primary Zone of the Delta. The CALFED recommended oversight group for the levee program is very large and would include many

agencies/entities not now involved with Levee subvention program implementation. The program currently works extremely well under the oversight of the Secretary for Resources, the Department of Fish and Game, the State Board of Reclamation and the Department of Water Resources.

Summary:

The Delta Protection Commission supports the CALFED concept of "getting better together". The Commission wants to continue to participate in the CALFED process, and work with CALFED and its staff to develop a reasonable and effective overall program which will protect and enhance the unique resources of the Primary Zone of the Delta, while moving towards the goals of the CALFED program.

The Commission continues to offer its meetings as a forum for review and public input, and its staff to further CALFED programs in the Delta. The Commission continues to support balance between the existing land uses in the Delta--agriculture, recreation and wildlife habitat, and assure that all three will be considered together, not one to the detriment or loss of the others. We look forward to continuing to work with CALFED to meet its goals.

Sincerely,

Patrick N. McCarty
Chairman

cc: Delta Protection Commissioners