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SENATE

{ REPORT
107-171

CALFED BAY-DELTA AUTHORIZATION ACT

JUNE 24, 2002.—Ordered to be printed

Mr. BINGAMAN, from the Committee on Energy and Natural
Resources, submitted the following

R E P O R T

together with

ADDITIONAL VIEWS

[To accompany S. 1768]

The Committee on Energy and Natural Resources, to which was referred the bill (S. 1768) to authorize the Secretary of the Interior to implement the Calfed Bay-Delta Program, having considered the same, reports favorably thereon with an amendment and recommends that the bill, as amended, do pass.

The amendment is as follows:

Strike out all after the enacting clause and insert in lieu thereof the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the “Calfed Bay-Delta Authorization Act”.

SEC 2. DEFINITIONS.

For purposes of this Act:

(1) **CALFED BAY-DELTA PROGRAM.**—The term “Calfed Bay-Delta Program” means the programs, projects, complementary actions, and activities undertaken through coordinated planning, implementation, and assessment activities of the State and Federal agencies in a manner consistent with the Record of Decision.

(2) **CALFED POLICY GROUP.**—The term “Calfed Policy Group” means a committee of State and Federal agencies referenced in the Record of Decision and established to oversee the Calfed Bay-Delta Program, or the appropriate successor entity created as part of any permanent governing structure pursuant to section 4(d).

(3) **ENVIRONMENTAL WATER ACCOUNT.**—The term “Environmental Water Account” means the reserve of water provided for in the Record of Decision to provide water, in addition to the amount of the regulatory baseline, to protect and restore Delta fisheries.

(4) **FEDERAL AGENCIES.**—The term “Federal agencies” means the following:

- (A) The Department of the Interior (including the Bureau of Reclamation, Fish and Wildlife Service, Bureau of Land Management, and United States Geological Survey);
- (B) The Environmental Protection Agency;
- (C) The Army Corps of Engineers;
- (D) The Department of Commerce (including the National Marine Fisheries Service);
- (E) The Department of Agriculture (including the Natural Resources Conservation Service and the Forest Service); and
- (F) The Western Area Power Administration.
- (5) GOVERNOR.—The term “Governor” means the Governor of the State of California.
- (6) IMPLEMENTATION MEMORANDUM.—The term “Implementation Memorandum” means the Calfed Bay-Delta Program Implementation Memorandum of Understanding dated August 28, 2000, executed by the Federal agencies and the State agencies.
- (7) RECORD OF DECISION.—The term “Record of Decision” means the Federal programmatic Record of Decision dated August 28, 2000 issued by the Federal agencies and supported by the State.
- (8) SECRETARY.—The term “Secretary” means the Secretary of the Interior.
- (9) STAGE 1.—The term “Stage 1” means the programs and projects planned for the first 7 years of the Calfed Bay-Delta Program, as specified in the Record of Decision.
- (10) STATE.—The term “State” means the State of California.
- (11) STATE AGENCIES.—The term “State Agencies” means the following:
 - (A) The Resources Agency of California (including the Department of Water Resources and the Department of Fish and Game);
 - (B) The California Environmental Protection Agency (including the State Water Resources Control Board); and
 - (C) The California Department of Food and Agriculture.

SEC. 3. BAY DELTA PROGRAM.

(a) IN GENERAL.—The Record of Decision is approved as a framework for addressing Calfed Bay-Delta Program components consisting of water storage, ecosystem restoration, water supply reliability, conveyance, water use efficiency, water quality, water transfers, watershed, Environmental Water Account, levee stability, governance, and science. The Secretary and the heads of the Federal agencies are authorized to carry out the activities in the Record of Decision, subject to the provisions of this Act, so that the program goals consisting of protecting drinking water quality; restoring ecological health; improving water supply reliability, including additional water storage and conveyance; and protecting Delta levees; will progress in a balanced manner.

(b) AUTHORIZED ACTIVITIES—

(1) SPECIFIC ACTIVITIES AUTHORIZED.—The Secretary and the heads of the Federal agencies are authorized to undertake the activities described in this subsection in furtherance of Stage 1 of the Calfed Bay-Delta Program as set forth in the Record of Decision, subject to the provisions of this Act, if the activity has been subject to environmental review and approval as required under applicable Federal and State law, and has been approved and certified by the Calfed Policy Group to be consistent with the Record of Decision.

(A) WATER STORAGE.—Of the amounts authorized to be appropriated for fiscal years 2003 through 2005 under this Act, no more than \$200,000,000 may be expended for the following:

- (i) planning activities and feasibility studies for the following projects to be pursued with project-specific study:
 - (I) enlargement of Shasta Dam in Shasta County;
 - (II) enlargement of Los Vaqueros Reservoir in Contra Costa County; and
 - (III) in-Delta storage in San Joaquin and Contra Costa Counties;
- (ii) planning and feasibility studies for the following projects requiring further consideration:
 - (I) Sites Reservoir in Colusa County; and
 - (II) Upper San Joaquin River storage in Fresno and Madera Counties;
- (iii) developing and implementing groundwater management and groundwater storage projects; and
- (iv) comprehensive water management planning.

(B) CONVEYANCE.—Of the amounts authorized to be appropriated for fiscal years 2003 through 2005 under this Act, no more than \$125,000,000 may be expended for the following:

(i) South Delta Actions:

(I) South Delta Improvements Program to—

(aa) increase the State Water Project export limit to 8500 cfs;

(bb) install permanent, operable barriers in the south Delta;

(cc) design and construct fish screens and intake facilities at Clifton Court Forebay and the Tracy Pumping Plant facilities; and

(dd) increase the State Water Project export to the maximum capability of 10,300 cfs;

(II) reduction of agricultural drainage in south Delta channels; and

(III) design and construction of lower San Joaquin River floodway improvements.

(ii) North Delta Actions:

(I) evaluation and implementation of improved operational procedures for the Delta Cross Channel to address fishery and water quality concerns;

(II) evaluation of a screened through-Delta facility on the Sacramento River; and

(III) design and construction of lower Mokelumne River floodway improvements;

(iii) interties:

(I) evaluation and construction of an intertie between the State Water Project and the Central Valley Project facilities at or near the City of Tracy; and

(II) assesment of the connection of the Central Valley Project to the State Water Project's Clifton Court Forebay with a corresponding increase in the Forebay's screened intake;

(iv) other infrastructure improvements:

(I) evaluation and implementation of the San Luis Reservoir lowpoint improvement project;

(II) installation and operation of temporary barriers in the south Delta until fully operable barriers are constructed;

(III) actions to protect navigation and local diversions not adequately protected by the temporary barriers;

(IV) facilitation of water quality exchanges and similar programs to make high quality Sierra Nevada water in the eastern San Joaquin Valley available to urban southern California interests; and

(V) the Sacramento-San Joaquin Comprehensive Study.

(C) WATER USE EFFICIENCY.—Of the amounts authorized to be appropriated for fiscal years 2003 through 2005 under this Act, no more than \$295,000,000 may be expended for the following:

(i) water conservation projects that provide water supply reliability, water quality, and ecosystem benefits to the Bay-Delta system;

(ii) technical assistance for urban and agricultural water conservation projects;

(iii) water recycling and desalination projects, including projects identified in the Bay Area Water Recycling Plan and the Southern California Comprehensive Water Reclamation and Reuse Study;

(iv) water measurement and transfer incentive actions; and

(v) certification and implementation of best management practices for urban water conservation.

(D) WATER TRANSFERS.—Of the amounts authorized to be appropriated for fiscal years 2003 through 2005 under this Act, no more than \$5,000,000 may be expended for the following:

(i) increasing the availability of existing facilities for water transfers;

(ii) lowering transaction costs through permit streamlining; and

(iii) maintaining a water transfer information clearinghouse.

(E) ENVIRONMENTAL WATER ACCOUNT.—Of the amounts authorized to be appropriated for fiscal years 2003 through 2005 under this Act, no more than \$100,000,000 may be expended for implementation of the Environmental Water Account.

(F) INTEGRATED REGIONAL WATER MANAGEMENT PLANS.—Of the amounts authorized to be appropriated for fiscal years 2003 through 2005 under this Act, no more than \$250,000,000 may be expended for the following:

(i) establishing a competitive grants program to assist local and regional communities in California in developing and implementing integrated regional water management plans to carry out Stage 1 of the Record of Decision; and

(ii) implementation of projects and programs in California that improve water supply reliability, water quality, ecosystem restoration, and flood protection, or meet other local and regional needs, that are consistent with, and make a significant contribution to, Stage 1 of the Calfed Bay-Delta Program.

(G) ECOSYSTEM RESTORATION.—Of the amounts authorized to be appropriated for fiscal years 2003 through 2005 under this Act, no more than \$225,000,000 may be expended for the following:

(i) implementation of large-scale restoration projects in San Francisco Bay, the Delta, and its tributaries;

(ii) restoration of habitat in the Delta, San Pablo Bay, and Suisun Bay and Marsh, including tidal wetlands and riparian habitat;

(iii) fish screen and fish passage improvement projects;

(iv) implementation of an invasive species program, including prevention, control, and eradication;

(v) development and integration of State and Federal agricultural programs that benefit wildlife into the Ecosystem Restoration Program;

(vi) financial and technical support for locally-based collaborative programs to restore habitat while addressing the concerns of local communities;

(vii) water quality improvement projects to reduce salinity, selenium, mercury, pesticides, trace metals, dissolved oxygen, turbidity, sediment, and other pollutants;

(viii) environmental water acquisitions to improve fish spawning and survival in the Delta and its tributaries;

(ix) integrated flood management, ecosystem restoration, and levee protection projects;

(x) scientific evaluations and targeted research on program activities; and

(xi) strategic planning and tracking of program performance.

(H) WATERSHEDS.—Of the amounts authorized to be appropriated for fiscal years 2003 through 2005 under this Act, no more than \$75,000,000 may be expended for the following:

(i) building local capacity to assess and manage watersheds affecting the Bay-Delta system;

(ii) technical assistance for watershed assessments and management plans; and

(iii) developing and implementing locally-based watershed conservation, maintenance and restoration actions.

(I) WATER QUALITY.—Of the amounts authorized to be appropriated for fiscal years 2003 through 2005 under this Act, no more than \$125,000,000 may be expended for the following:

(i) addressing drainage problems in the San Joaquin Valley to improve downstream water quality;

(ii) implementation of source control programs in the Delta and its tributaries;

(iii) developing recommendations through scientific panels and advisory council processes to meet Calfed's goal of continuous improvement in Delta water quality for all uses;

(iv) investing in treatment technology demonstration projects;

(v) controlling runoff into the California aqueduct and other similar conveyances;

(vi) addressing water quality problems at the North Bay Aqueduct;

(vii) studying recirculation of export water to reduce salinity and improve dissolved oxygen in the San Joaquin River;

(viii) implementation of projects to enable San Francisco Bay Area water districts to work cooperatively to address water quality and supply reliability issues, including connections between aqueducts, water transfers, and infrastructure improvements that encourage regional approaches, including potential alternatives related to East Bay Municipal Utility District's contract with the Bureau of Reclamation dated July 20, 2001, that would improve water quality and water supply reliability in San Francisco Bay and Sacramento County Regions.

(ix) development of water quality exchanges and other programs to make high quality water available to urban areas; and

(x) development and implementation of a plan to meet all existing water quality standards for which the State and Federal water projects have responsibility.

(J) LEVEE STABILITY.—Of the amounts authorized to be appropriated for fiscal years 2003 through 2005 under this Act, no more than \$100,000,000 may be expended for the following:

- (i) assisting local reclamation districts in reconstructing Delta levees to a base level of protection;
- (ii) enhancing the stability of levees that have particular importance in the system through the Delta Levee Special Improvement Projects program;
- (iii) developing best management practices to control and reverse land subsidence on Delta islands;
- (iv) refining the Delta Emergency Management Plan;
- (v) developing a Delta Risk Management Strategy after assessing the consequences of Delta levee failure from floods, seepage, subsidence, and earthquakes;
- (vi) developing a strategy for reuse of dredged materials on Delta islands; and
- (vii) evaluating, and where appropriate rehabilitating the Suisun Marsh levees.

(K) SCIENCE.—Of the amounts authorized to be appropriated for fiscal years 2003 through 2005 under this Act, no more than \$100,000,000 may be expended for the following:

- (i) establishing and maintaining an independent science board, technical panels, and standing boards to provide oversight and peer review of the program;
- (ii) conducting expert evaluations and scientific assessments of all program elements;
- (iii) coordinating existing monitoring and scientific research programs;
- (iv) developing and implementing adaptive management experiments to test, refine and improve scientific understandings;
- (v) establishing performance measures, and monitoring and evaluating the performance of all program elements; and
- (vi) preparing an annual Science Report.

(L) PROGRAM MANAGEMENT, OVERSIGHT, AND COORDINATION.—Of the amounts authorized to be appropriated for fiscal years 2003 through 2005 under this Act, no more than \$30,000,000 may be expended for the following:

- (i) program-wide tracking of schedules, finances, and performance;
- (ii) multi-agency oversight and coordination of Calfed activities to ensure program balance and integration;
- (iii) development of interagency cross-cut budgets and a comprehensive finance plan to allocate costs in accordance with the beneficiary pays provisions of the Record of Decision;
- (iv) coordination of public outreach and involvement, including tribal, environmental justice, and public advisory activities under the Federal Advisory Committee Act; and
- (v) development of Annual Reports.

(2) AUTHORIZED ACTIONS.—The Secretary and the Federal agency heads are authorized to carry out the activities authorized by this Act through the use of grants, loans, contracts, and cooperative agreements with federal and non-federal entities where the Secretary or Federal agency head determines that the grant, loan, contract, or cooperative agreement will assist in implementing the authorized activity in an efficient, timely, and cost-effective manner.

SEC. 4. MANAGEMENT.

(a) COORDINATION.—In carrying out the Calfed Bay-Delta Program, the Federal agencies shall coordinate their activities with the State agencies.

(b) PUBLIC PARTICIPATION.—In carrying out the Calfed Bay-Delta Program, the Federal agencies shall cooperate with local and tribal governments and the public through a federally chartered advisory committee or other appropriate means, to seek input on program elements such as planning, design, technical assistance, and development of peer review science programs.

(c) SCIENCE.—In carrying out the Calfed Bay-Delta Program, the Federal agencies shall seek to ensure, to the maximum extent practicable, that—

- (1) all major aspects of implementing the Program are subjected to credible and objective scientific review; and

(2) major decisions are based upon the best available scientific information.

(d) **GOVERNANCE.**—In carrying out the Calfed Bay-Delta Program, the Secretary and the Federal agency heads shall undertake their activities in accordance with the terms of the Implementation Memorandum until such time as the Implementation Memorandum is replaced by approval of a permanent governing structure, whereupon the Secretary and agency heads shall undertake their activities in accordance with the permanent governing structure. The Secretary and the Federal agency heads shall work with their State counterparts to develop a permanent governing structure and shall seek congressional authorization and approval of the permanent governing structure, as necessary.

(e) **ENVIRONMENTAL JUSTICE.**—Consistent with Executive Order 12898 pertaining to Federal Actions to Address Environmental Justice in Minority and Low-Income Populations, it is the intent of the Congress that the Federal and State agencies should continue to collaborate to develop a comprehensive environmental justice workplan for the Calfed Bay-Delta Program and fulfill the commitment to addressing environmental justice challenges referred to in the Calfed Bay-Delta Program Environmental Justice Workplan dated December 13, 2000.

SEC. 5. REPORTING REQUIREMENTS.

(a) **REPORT AND CERTIFICATION BY CALFED.**—The Secretary, in cooperation with the Governor, shall submit a report of the Calfed Policy Group by December 15 of each year to the appropriate authorizing and appropriating Committees of the Senate and the House of Representatives that describes the status of implementation of all components of the Calfed Bay-Delta Program and that certifies whether or not the Calfed Bay-Delta Program is progressing in a balanced manner which allows all program components to be advanced, including additional water supply, ecosystem restoration, and water quality. The Secretary's report shall describe—

- (1) the progress of the Calfed Bay-Delta Program in meeting the implementation schedule for the Program in a manner consistent with the Record of Decision;
- (2) the status of implementation of all components of the Calfed Bay-Delta Program;
- (3) expenditures in the past fiscal year and year to date for implementing the Calfed Bay-Delta Program; and
- (4) accomplishments in the past fiscal year and year to date in achieving the objectives of additional and improved—
 - (A) water storage;
 - (B) water quality;
 - (C) water use efficiency;
 - (D) ecosystem restoration;
 - (E) watershed management;
 - (F) levee system integrity;
 - (G) water transfers;
 - (H) water conveyance; and
 - (I) water supply reliability.

The report shall discuss the status of Calfed Bay-Delta Program goals, current schedules, and relevant financing agreements.

(b) **STATEMENT OF BALANCE.**—Substantial progress in each of the categories listed in subsection (a) shall be considered in determining whether the Calfed Bay-Delta Program is proceeding in a balanced manner for purposes of making the certification provided for in subsection (a). In addition, in making such certification the Secretary, in cooperation with the Governor, shall prepare a statement of whether the program is in balance which takes into consideration the following:

- (1) Status of all Stage 1 actions, including goals, schedules, and financing agreements;
- (2) Progress on storage projects, conveyance improvements, levee improvements, water quality projects, and water use efficiency programs;
- (3) Completion of key projects and milestones identified in the Ecosystem Restoration Program;
- (4) Development and implementation of local programs for watershed conservation and restoration;
- (5) Progress in improving water supply reliability and implementing the Environmental Water Account;
- (6) Achievement of commitments under State and Federal Endangered Species Acts;
- (7) Implementation of a comprehensive science program;
- (8) Progress toward acquisition of the State and Federal permits, including Clean Water Act section 404 permits, for implementation of projects in all identified program areas;

- (9) Progress in achieving benefits in all geographic regions covered by the Program;
- (10) Legislative action on water transfer, groundwater management, water use efficiency, and governance issues,
- (11) Status of complementary actions;
- (12) Status of mitigation measures; and
- (13) Revisions to funding commitments and program responsibilities.

(c) **REVISED SCHEDULE.**—If the report provided for in subsection (a) and the statement of balance provided for in subsection (b) conclude that the Calfed Bay-Delta Program is not progressing in a balanced manner so that no certification of balanced implementation can be made, the Calfed Policy Group shall prepare a revised schedule and such other modifications, to ensure the Calfed Bay-Delta Program will progress in a balanced manner consistent with the intent of the Record of Decision. This revised schedule shall be subject to approval by the Secretary and the Governor, and upon such approval, shall be submitted to the appropriate authorizing and appropriating Committees of the Senate and the House of Representatives.

(d) **FINANCIAL SUMMARY.**—In addition to the report required pursuant to subsection (a), no later than February 15 of each year the Secretary shall submit to the appropriate authorizing and appropriating committees of the Senate and the House of Representatives a financial report containing a detailed accounting of all funds received by Federal and State agencies for implementing the Calfed Bay-Delta Program in the previous fiscal year, a budget for the proposed projects to be carried out in the upcoming fiscal year with the Federal portion of funds authorized under this Act, and a listing of all projects to be undertaken in the upcoming fiscal year with the Federal portion of funds authorized under this Act.

SEC. 6. CROSSCUT BUDGET AND AUTHORIZATION OF APPROPRIATIONS.

(a) **CROSSCUT BUDGET.**—The President's Budget shall include requests for the appropriate level of funding for each of the Federal agencies to carry out its responsibilities under the Calfed Bay-Delta Program. Such funds shall be requested for the Federal agency with authority and programmatic responsibility for the obligation of such funds. At the time of submission of the President's Budget to the Congress, the Director of the Office of Management and Budget shall submit to the appropriate authorizing and appropriating committees of the Senate and the House of Representatives an interagency budget crosscut report that displays the budget proposed for each of the Federal agencies to carry out the Calfed Bay-Delta Program for the upcoming fiscal year, separately showing funding requested under both pre-existing authorities and under the new authorities granted by this Act. The report shall also identify all expenditures since 1996 within the Federal and State governments used to achieve the objectives of the Calfed Bay-Delta Program.

(b) **AUTHORIZATION OF APPROPRIATIONS.**—There are authorized to be appropriated to the Secretary and the heads of the Federal agencies \$1,630,000,000 to pay the federal share of carrying out Stage 1 of the Record of Decision for fiscal years 2003 through 2005, in accordance with the provisions of this Act. The funds shall remain available without fiscal year limitation.

SEC. 7. FEDERAL SHARE OF COSTS.

The federal share of the cost of implementing Stage 1 of the Calfed Bay-Delta Program as set forth in the Record of Decision shall not exceed 33.3 percent.

SEC. 8. COMPLIANCE WITH STATE AND FEDERAL LAW.

Nothing in this Act preempts or otherwise affects any Federal or State law, including any authority of a federal agency to carry out activities related to, or in furtherance of, the Calfed Bay-Delta Program.

PURPOSE

The purpose of S. 1768, as ordered reported, is to authorize the Secretary of the Interior and other Federal agency heads to implement the Calfed Bay-Delta Program during fiscal years 2003 through 2005.

BACKGROUND AND NEED

The Bay-Delta is the region east of San Francisco Bay, where the Sacramento and San Joaquin Rivers converge. It supplies drinking water to over two-thirds of the people of California and irrigation water for over 7 million acres of highly productive agricultural

land. The Bay-Delta is the largest estuary on the West Coast, and supports over 750 plant and animal species. It is also the hub of two massive water projects, the Central Valley Project (CVP), operated by the U.S. Bureau of Reclamation, and the State Water Project (SWP), operated by the California Department of Water Resources. These two projects divert some 20 to 70 percent of the natural flows in the region, depending on water conditions. The Bay-Delta also marks the boundary between northern California, where most of the State's water supply originates, and southern California, where most of the population and consumptive demand exists. On average, in normal water years, over 5 million acre feet of water is exported south of the Delta by the two projects.

The Bay-Delta is in decline due to the decades of competing demands for its limited water resources. The area has experienced serious problems relating to water quality and fish and wildlife, raising compliance issues under both the Clean Water Act and the Endangered Species Act. Scores of species are in decline or are threatened or endangered. Water quality degradation makes it difficult and expensive to meet drinking water quality standards. Water supply reliability for urban and agricultural users is a difficult and challenging issue that has significant ramifications for the economy of the State.

The State and Federal Government entered into a Coordinated Operation Agreement (COA) in 1986, in order to coordinate operations of the CVP and the SWP. The COA received congressional approval in 1986 (Pub. L. No. 99-546). Subsequent to enactment of the Central Valley Project Improvement Act (Pub. L. No. 102-575, Title XXXIV) in 1992, and in large part as a result of issues related to water quality and fisheries impacts, State and Federal agencies signed an agreement in June 1994 to address these issues and to seek a long-term solution to the problems of the Bay-Delta.

In December 1994, State and Federal officials and representatives of agricultural, urban and environmental stakeholders signed what is known as the Bay-Delta Accord ("Principles for Agreement on Bay-Delta Standards between the State of California and the Federal Government"), which provides interim measures for ecosystem restoration and regulatory stability. The Calfed Program, a cooperative interagency effort, commenced in 1995, which agencies relying on existing statutory authorizations to undertake Program activities.

The stated mission of the Calfed Bay-Delta Program "is to develop and implement a long-term comprehensive plan that will restore ecological health and improve water management for beneficial uses of the Bay-Delta." ("Calfed Bay-Delta Program Annual Report 2001"). Federal agency participants in the Calfed Bay-Delta Program are: the Department of the Interior (including the Bureau of Reclamation, Fish and Wildlife Service, and the U.S. Geological Survey); the Environmental Protection Agency; the Army Corps of Engineers; the Department of Commerce (including the National Marine Fisheries Service); the Department of Agriculture (including the Natural Resources Conservation Service and the Forest Service); and the Western Area Power Administration. Participating State agencies are: the Resources Agency of California (including the Department of Water Resources and the Department of Fish and Game); the California Environmental Protection Agency

(including the State Water Resources Control Board); and the California Department of Food and Agriculture. The Calfed Policy Group, comprised of representatives of these Federal and State agencies, oversees implementation of the Program. The mandate of the Policy Group is to ensure effective, balanced, coordinated, and timely implementation of the Program.

Stakeholders, including representatives of agricultural, urban, environmental, fishery, and business interest, and Indian tribes and rural counties, all participate in the collaborative effort. Input is provided through the Bay-Delta Advisory Committee, established pursuant to the provisions of the Federal Advisory Committee Act.

The California Bay-Delta Environmental Enhancement and Water Security Act (Division E, Title 1 of Pub. L. No. 104-208; Title XI of Pub. L. No. 104-333) was enacted in late 1996. The legislation authorized a total of \$430 million for fiscal years 1998 through 2000 for the Federal share of the costs of developing and implementing certain ecosystem restoration measures relating to the Calfed effort. Funds were appropriated under this authority in the amounts of \$85 million in fiscal year 1998; \$75 million in fiscal year 1999; and \$60 million in fiscal year 2000. Subsequent to the expiration of this authority, no funds were appropriated for the Calfed Bay-Delta Program in fiscal year 2001, and \$30 million was appropriated in fiscal year 2002.

In order to develop a long-term program, Calfed undertook an extensive planning effort. This resulted in a June 1999 Draft Programmatic Environmental Impact Statement/Environmental Impact Report (EIS/EIR) and a July 2000 Final Programmatic EIS/EIR. The planning effort was based on a collaborative process, with active stakeholder participation. On June 9, 2000, a framework agreement entitled "California's Water Future: A Framework for Action," was released. On August 28, 2000, the Federal and State agencies released the Record of Decision (ROD), setting forth a programmatic long-term plan for the Bay-Delta.

The ROD selects a preferred program alternative for the Bay-Delta Program, setting forth the long-term, overall direction of the 30-year Program. Under the ROD, the Calfed agencies will proceed with the specific actions in Stage 1, which covers the first 7 years, with overall projected Federal costs of \$2.4 billion. The ROD provides that the Calfed Bay-Delta Program continue as a Federal-State partnership intended to build a framework for managing water in California. According to the ROD, the objectives of the long-term program for restoration and management of the Bay-Delta estuary are four-fold: to restore the ecological health of a fragile and depleted Bay-Delta estuary; improve the water supply reliability for the State's farms and cities that draw water from the Delta and its tributaries, including 7 million acres of the world's most productive farmland; protect the drinking water quality of the 22 million Californians who rely on the Delta for their drinking water supplies; and protect the Delta levees that ensure the integrity of the Delta as a conveyance and ecosystem.

Under the ROD, the Program has the following components: water storage; ecosystem restoration; water supply reliability; conveyance; water use efficiency; water quality; water transfers; watersheds; Environmental Water Account; levee stability; governance; and science. The ROD describes the Calfed Bay-Delta Pro-

gram as one of the most extensive ecosystem restoration efforts ever proposed, the most intensive water conservation effort ever attempted, the most far-reaching effort to improve drinking water quality for Californians, and the most significant investment in water storage and conveyance in California in decades.

LEGISLATIVE HISTORY

S. 976, the “California Ecosystem, Water Supply, and Water Quality Enhancement Act of 2001,” was introduced by Senator Feinstein on May 25, 2001. On July 19, 2002, the Subcommittee on Water and Power held a legislative hearing to receive testimony on S. 976. On December 5, 2001, Senator Feinstein introduced S. 1768, the “Calfed Bay-Delta Authorization Act”. The Committee on Energy and Natural Resources considered S. 1768 at its business meetings on May 22 and June 5, 2002. At its business meeting on June 5, 2002, the Committee on Energy and Natural Resources ordered S. 1768 favorably reported with an amendment in the nature of substitute.

COMMITTEE RECOMMENDATION AND TABULATION OF VOTES

The Senate Committee on Energy and Natural Resources, in open business session on June 5, 2002, by majority vote of a quorum present recommends that the Senate pass S. 1768, if amended as described herein.

The rollcall vote on reporting the measure was 18 yeas and 5 nays as follows:

YEAS	NAYS
Mr. Bingaman	Mr. Domenici
Mr. Akaka	Mr. Nickles
Mr. Dorgan	Mr. Campbell
Mr. Graham ¹	Mr. Thomas
Mr. Wyden	Mr. Hagel
Mr. Johnson	
Ms. Landrieu ¹	
Mr. Bayh	
Mrs. Feinstein	
Mr. Schumer ¹	
Ms. Cantwell	
Mr. Carper	
Mr. Murkowski	
Mr. Craig	
Mr. Shelby ¹	
Mr. Burns	
Mr. Kyl	
Mr. Smith ¹	

¹ Indicates vote by proxy.

COMMITTEE AMENDMENT

The amendment in the nature of a substitute makes the following changes to S. 1768 as introduced:

1. Authorizes the Calfed Bay-Delta Program for 3 years as opposed to 5 years;
2. Reduces the overall authorization from \$2.4 billion to \$1.63 billion;

3. Limits the Federal share to no more than 33.3 percent of overall Stage 1 Program costs;
4. Requires Calfed Bay-Delta Program funding to come through several different Federal agencies with the specific programmatic responsibility for the activity rather than including all funding in the budget of the Bureau of Reclamation as had been done in the past;
5. Provides greater specificity with respect to authorized actions;
6. Adds appropriations levels for each Program component to ensure that the Program is proceeding in a balanced manner; and
7. Adds a provision containing criteria to be used by the Secretary for making an annual determination of balanced progress in the Program.

SECTION-BY-SECTION ANALYSIS

Section 1 contains the short title.

Section 2 defines terms used in the Act.

Section 3(a) approves the Record of Decision as a framework for addressing Calfed Bay-Delta Program components, and authorizes the Secretary of the Interior and heads of the Federal agencies to carry out the Record of Decision, subject to the provisions of the Act, so that the program goals will progress in a balanced manner.

Subsection (b)(1) authorizes the Secretary and the heads of the Federal agencies to undertake the activities described in the subsection subject to the provisions of the Act if the activity has been subject to environmental review and approval as required under applicable Federal and State law and has been approved and certified by the Calfed Policy Group to be consistent with the Record of Decision. The subsection sets forth activities authorized for fiscal years 2003 through 2005 and sets authorization limits under each of the listed areas. This paragraph authorizes the lead Federal agency for a Program component as currently designated by the Calfed Bay-Delta Program to carry out the specific activity listed. The Committee expects that the President's Budget will reflect this allocation of responsibility among the Federal agencies for carrying out the Program.

Subsection (b)(2) authorizes the Secretary and the Federal agency heads to carry out the authorized activities through the use of grants, loans, contracts, and cooperative agreements with Federal and non-Federal entities where the Secretary or Federal agency head determines such action will assist in implementing the authorized activity in an efficient, timely, and cost-effective manner.

Section 4(a) requires the Federal agencies to coordinate with the State agencies in carrying out the Calfed Bay-Delta Program.

Subsection (b) requires the Federal agencies to cooperate with local and tribal governments and the public in carrying out the Program.

Subsection (c) requires the Secretary to seek to ensure to the maximum extent practicable that all major aspects of implementing the Calfed Bay-Delta Program are subjected to credible and objective scientific review and that major decisions are based on the best available scientific information.

Subsection (d) requires the Secretary to undertake the Calfed Bay-Delta Program in accordance with the Implementation Memorandum on governance dated August 28, 2000, until such time as a permanent governing structure is approved. The Secretary and the Federal agency heads shall seek congressional authorization and approval of the permanent governing structure, as necessary.

Subsection (e) states the intent of Congress that the Federal and State agencies should continue to collaborate to develop a comprehensive environmental justice workplan for the Calfed Bay-Delta Program and fulfill the commitment to addressing environmental justice challenges referred to in the Calfed Bay-Delta Program Environmental Justice Workplan dated December 13, 2000.

Section 5(a) requires the Secretary, in cooperation with the Governor, to submit a report of the Calfed Policy Group by December 15 of each year to Congress describing the status of implementation of all components of the Calfed Bay-Delta Program and certifying whether or not the Program is progressing in a balanced manner.

Subsection (b) provides that substantial progress in each of the categories listed in subsection (a) shall be considered in determining whether the Calfed Bay-Delta Program is progressing in a balanced manner. In making the certification regarding balance, the Secretary, in cooperation with the Governor, is to prepare a statement of whether the Program is in balance taking into consideration items as set forth in the subsection. The intent of the provision is to help ensure that the Calfed Bay-Delta Program is carried out in accordance with the principles, linkages and commitments of the Record of Decision.

Subsection (c) provides that if the report provided for in subsection (a) and the statement of balance provided for in subsection (b) conclude that the Program is not progressing in a balanced manner so that no certification of balanced implementation can be made, the Calfed Policy Group shall prepare a revised schedule to ensure that the Program will proceed in a balanced manner. The revised schedule will be subject to approval by the Secretary and the Governor and shall be submitted to the Congress.

Subsection (d) requires the Secretary to submit a financial summary to the Congress by February 15 of each year.

Section 6(a) requires the President's Budget to include requests for the appropriate level of funding for each of the Federal agencies to carry out its responsibilities under the Calfed Bay-Delta Program. The funds shall be requested for the Federal agency with authority and programmatic responsibility for the obligation of the funds. At the time of submission of the President's Budget, the Director of the Office of Management and Budget is to submit to the Congress an inter-agency budget crosscut report that displays the budget proposed for each of the Federal agencies to carry out the Calfed Bay-Delta Program for the upcoming fiscal year. The report is to identify all expenditures since 1996 within the Federal and State governments used to achieve the objectives of the Calfed Bay-Delta Program.

Subsection (b) authorizes to be appropriated to the Secretary and the heads of the Federal agencies \$1,630,000,000 to pay the Federal share of carrying out Stage 1 of the Record of Decision for fiscal years 2003 through 2005, in accordance with the provisions of

the Act. The funds are to remain available without fiscal year limitation.

Section 7 provides that the Federal share of the cost of implementing Stage 1 of the Calfed Bay-Delta Program as set forth in the Record of Decision shall not exceed 33.3 percent.

Section 8 states that nothing in the Act preempts or otherwise affects any Federal or State law, including any authority of a Federal agency to carry out activities related to, or in furtherance of, the Calfed Bay-Delta Program.

COST AND BUDGETARY CONSIDERATIONS

The following estimate of the costs of this measure has been provided by the Congressional Budget Office:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, June 18, 2002.

Hon. JEFF BINGAMAN,
Chairman, Committee on Energy and Natural Resources,
U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for S. 1768, the Calfed Bay-Delta Authorization Act.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Julie Middleton.

Sincerely,

BARRY B. ANDERSON
(For Dan L. Crippen, Director).

Enclosure.

CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

S. 1768—Calfed Bay-Delta Authorization Act

Summary: S. 1768 would authorize the appropriation of \$1.63 billion to implement the first seven years (known as Stage I) of the Calfed Bay-Delta program (CALFED). Assuming appropriation of the authorized sums, CBO estimates that implementing S. 1768 would cost \$1.2 billion over the 2003–2007 period. S. 1768 would not affect direct spending or receipts; therefore, pay-as-you-go procedures would not apply.

A consortium of 18 federal and state agencies in California participate in the CALFED program, which is designed to increase water yield and environmental benefits, as well as improve water quality, the reliability of water systems, the efficiency of water use, watershed management, water transfers, and levee protection in the San Francisco Bay and the Sacramento-San Joaquin Delta (known as the Bay-Delta watershed).

S. 1768 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act (UMRA) and would impose no costs on state, local, or tribal governments. The funds authorized by this bill would benefit the state of California and local governments in that state. Any spending by those governments to participate in the CALFED program would be voluntary.

Estimated cost to the Federal Government: The estimated budgetary impact of S. 1768 is shown in the following table. The costs of this legislation fall within budget function 300 (natural resources and environment).

	By fiscal year, in millions of dollars—					
	2002	2003	2004	2005	2006	2007
SPENDING SUBJECT TO APPROPRIATION						
CALFED spending by the Bureau of Reclamation under						
current law:						
Budget authority	0	0	0	0	0	0
Estimated outlays	50	55	0	0	0	0
Proposed changes:						
Authorization level	0	543	543	544	0	0
Estimated outlays	0	54	163	299	353	353
CALFED spending by Federal agencies under S. 1768:						
Authorization level	0	543	543	544	0	0
Estimated outlays	50	109	163	299	353	353

Basis of estimate: For this estimate, CBO assumes S. 1768 would be enacted near the start of fiscal year 2003 and that the authorized amounts would be appropriated each year. Based on information from the Bureau of Reclamation and the historical spending patterns of similar programs, CBO estimates that the resulting outlays would total \$1.2 billion over the 2003–2007 period and an additional \$0.4 billion thereafter.

Pay-as-you-go considerations: None.

Intergovernmental and private-sector impact: S. 1768 contains no intergovernmental or private-sector mandates as defined in UMRA and would impose no costs on state, local, or tribal governments. The funds authorized by this bill would benefit the state of California and local governments in that state. Any spending by these governments to participate in the CALFED program would be voluntary. The bill would limit the federal share of CALFED projects to one-third of the total cost.

Previous CBO estimate: On February 8, 2002, the CBO transmitted a cost estimate for H.R. 3208, the Western Water Security Enhancement Act, as ordered reported by the House Committee on Resources on November 7, 2001. The cost of the Senate bill is lower than that of the House Resources Committee's version because the former would not authorize funding for the Small Reclamation Loan Program, a new competitive grant program, an environmental mitigation project at the Salton Sea in California, or feasibility studies, as the Resources Committee version did. In addition, the Senate bill would authorize the appropriation of \$1.6 billion for CALFED implementation while the House Resources Committee's bill would authorize \$600 million for the same purpose.

Estimate prepared by: Federal costs: Julie Middleton; Impact on state, local, and tribal governments: Marjorie Miller; Impact on the private sector: Cecil McPherson.

Estimate approved by: Robert A. Sunshine, Assistant Director for Budget Analysis.

REGULATORY IMPACT EVALUATION

In compliance with paragraph 11(b) of rule XXVI of the Standing Rules of the Senate, the Committee makes the following evaluation of the regulatory impact which would be incurred in carrying out

S. 1768. The Act is not a regulatory measure in the sense of imposing government-established standards or significant responsibilities on private individuals and businesses.

No personal information would be collected in administering the program. Therefore, there would be no impact on personal privacy.

Little, if any, additional paperwork would result from the enactment of S. 1768.

EXECUTIVE COMMUNICATIONS

On December 11, 2001, the Committee on Energy and Natural Resources requested legislative reports from the Department of the Interior and the Office of Management and Budget setting forth Executive agency recommendations on S. 1768. These reports had not been received at the time this report was filed. The testimony provided by the Secretary of the Interior at the hearing on S. 976 as well as a letter received from the Assistant Secretary of the Interior for Water and Science relating to S. 1768, follow:

STATEMENT OF GALE A. NORTON, SECRETARY, U.S. DEPARTMENT OF THE INTERIOR

I am pleased to appear before this subcommittee to provide the Department's testimony on S. 976, the California Ecosystem, Water Supply, and Water Quality Enhancement Act of 2001.

S. 976 would authorize funding through the Secretary of the Interior, as well as governance and management authorities, for the implementation of a comprehensive, balanced, and timely water management and environmental restoration program in California commonly referred to as the CALFED Bay-Delta Program, as reflected in the Federal Record of Decision (ROD) issued August 28, 2000. The purpose of the program is to increase water yield and environmental benefits, as well as improved water system reliability, water quality, water use efficiency, watershed management, water transfers, and levee protection.

As the Committee can imagine, our new Administration faced a substantial number of major resource issues of high priority upon assuming office. In the area of water, virtually every western state has issues of concern and controversy demanding our attention. With the confirmation of Assistant Secretary for Water and Science, Bennett Raley and Commissioner of Reclamation, John Keys we are able to begin dealing substantively with many of the issues before us. We await the nomination and confirmation of an Assistant Secretary for Fish and Wildlife and Parks and a Director for the Fish and Wildlife Service to further assist interagency efforts.

On the Columbia River, the Colorado River and in the Central Valley of California, among others, we are beginning our examination of the results of multi-year, multi-million dollar planning and negotiation efforts. We are looking not only at the results of these enormous work efforts but also at the process used, both internal and external, and the information that was relied upon to make de-

cisions. In addition we are examining the data which provided insight on the biological and socio-economic consequences of these major initiatives.

On all of the matters before us, one conclusion is uniformly applicable: we will continue to work toward solutions and we will make decisions that reflect the President's commitment to the balanced and sensible resolution of resource issues across our Nation.

In the case of CALFED, we find the comprehensive and integrated nature of actions proposed and the commitment to the development of a credible science program in support of the decisionmaking process are all laudable. The manner in which federal and state administrations have worked may be considered a model for solutions to resource management problems. Likewise, we feel that we can secure similar success in achieving the goals of CALFED in the context of our responsibilities in all western states.

Clearly, significant progress has been made in the dedication of state and federal monies for ecosystem improvements in the watersheds that constitute the Sacramento-San Joaquin Delta and the San Francisco Bay. On the Federal side, Congress has appropriated nearly \$500 million for CALFED related efforts, for Central Valley Project Improvement Act and CALFED initiatives focused on improving the aquatic and terrestrial habitats of the CALFED solution area.

A Record of Decision is in place that captures years of planning on all program elements of ecosystem restoration, levee system integrity and improvement, water supply and reliability improvements, water quality improvement, improved water use and efficiency, improvements to the upper watersheds, water transfers, storage, and conveyance.

Congress needs to authorize the CALFED program so we can proceed with balanced progress on all resource fronts. The Department also recognizes that outstanding issues are still in need of resolution and we are committed to finding those solutions expeditiously and in concert with this Committee, with the Congress, the administration of Governor Davis and the stakeholders who have been so actively and constructively involved.

I would like to express my deep appreciation to the Committee for your obvious commitment to making significant progress with the CALFED program. I also appreciate the consistent concerns demonstrated by this Committee that progress be made and for your work efforts in developing the bill being considered today. Your continued willingness to work with the Department and the Administration on this matter is of real and continuing importance to us.

S. 976 is an important step forward. Clearly, additional authorizing legislation is required to proceed with the complete program. We support the purposes and many of the provisions of the bill. However, we also have a number of concerns with the bill as written, and we believe some

modifications are necessary. We would like to continue working with the Committee to achieve a bill we can fully support and which will implement the CALFED program consistent with the ROD and agreements reached in the Bay-Delta Accord of 1994 and the CALFED framework agreement. We note that S. 976, like other CALFED legislation before the Congress, would be quite expensive.

The results of the CALFED planning process reflect an attempt to balance competing needs and interests. The CALFED planning process brought together agricultural, urban, environmental and business stakeholders with the state and federal agencies in an effort to build agreements on the approaches to managing California's complex water and natural resource issues. We recognize that solutions to any set of problems as large and interconnected as those facing California will be complex. However, all interests must respect the needs and concerns of others. The CALFED ROD attempts to recognize the core interests of all the parties and build a solution that reduces the conflicts in the existing and long-established system and to balance competing interests for comprehensive progress. In addition, consideration should be given to analysis of impacts of the ROD on tribal trust assets, as discussed in the ROD. With the support of Congress and the State of California, CALFED can lead the way in a collaborative process that includes extensive participation of all stakeholders to provide many long-term solutions to California's water management and infrastructure improvement needs.

The "Fed" side of the CALFED Program demonstrates a cooperative planning and coordination effort among ten Federal agencies, including U.S. Fish and Wildlife Service, the U.S. Bureau of Reclamation, the U.S. Geological Survey, and the Bureau of Land Management, within the Department of the Interior, as well as the U.S. Environmental Protection Agency, National Marine Fisheries Service, U.S. Forest Service, Natural Resources Conservation Service, U.S. Army Corps of Engineers, and Western Area Power Administration.

CALFED history and background

The CALFED Bay-Delta Program is a response to the water management and ecosystem problems that came so clearly into focus in the drought of 1987 to 1992 experienced within the Bay-Delta system. Furthermore, the historic and ongoing conflicts between water management for supply and fishery protection give rise to the urgency of the CALFED program. The waters of Sacramento and San Joaquin Rivers converge in the Sacramento-San Joaquin Delta, which is the largest estuary in the West Coast, and discharges into the San Francisco Bay and to the Pacific Ocean. The Bay-Delta is a maze of waterways and channels that carry over 40 percent of the State's total runoff to the Bay and provides drinking water for more than 22 million Californians, important habitat for over 750 plant and animals species, irrigation water for most of the \$27

billion agricultural sector, and water essential to the manufacturing and commercial sectors of the State. Over the past decades, California has witnessed declines in water quality, fish, wildlife and associated habitat, and the reliability of water supplies. The goals of CALFED, which the Administration fully support, are to reverse all these trends.

In December 1994, the State and Federal governments signed the Bay-Delta Accord, which signaled a new approach to managing the Delta and finding solutions to longstanding problems in California. In 1995, CALFED was initiated as a cooperative, interagency effort to reduce conflicts in the Bay-Delta, modernize water management and infrastructure, and to make investments aimed at reducing stressors for species and improving the habitat. The CALFED Program has been envisioned as a three-phase process:

- Phase I objectives were to identify and define the problems confronting the Bay-Delta System and develop a mission statement, program objectives, and alternative actions for further study. During Phase I CALFED concluded that each program alternative would include a significant set of program actions which were grouped into elements to address problems associated with the ecosystem and water management infrastructure.
- Phase II objectives were to develop a preferred program alternative, conduct a comprehensive programmatic environmental review process, and develop an implementation plan focusing on the first 7 years (Stage 1 of implementation). Phase II objectives were achieved through issuance of the Final Programmatic Environmental Impact Statement/Environmental Impact Report (IS/AIR) in July 2000 and a Record of Decision signed on August 28, 2000.
- CALFED is currently in Phase III, a long-term process implementing specific actions to achieve the goals of the CALFED program. Phase III objectives are to implement the plan selected in the IS/AIR over the next 25 to 30 years. State 1 of implementation, for the first 7 years, is underway. Site-specific, detailed environmental review and feasibility level analysis will occur during Stage 1 prior to implementation of each proposed action.

CALFED program accomplishments

In the past several years substantial progress has been made on a number of complex water and natural resource issues through the combined efforts of the public and state and federal agencies working together as CALFED. The greatest accomplishment of the CALFED effort so far is bringing all the State and Federal agencies together to produce the CALFED Record of Decision, signed August 28, 2000, which documents the comprehensive plan for improving California's water supply and water quality, as well as restoring ecological health in the Bay Delta. This Committee has received copies of the most recent annual report of accomplishments which details progress in many

CALFED program areas. We particularly would like to bring your attention to the many creative approaches to addressing historic areas of conflict such as the Environmental Water Account.

Also of interest is the CALFED Science Program. We expect this program to provide peer review of the science and information underlying all elements of the CALFED program from adaptive management, to ecosystem improvement projects, to project operations and beyond, we expect CALFED to be supported by a strong and credible science program.

Public workshops have been and are being undertaken by the program on scientific components of public controversies and are clarifying the state of scientific knowledge, thereby reducing the level of controversy. In the near term, these workshops include issues associated with Delta Cross channel operations, effectiveness of the Environmental Water Account for salmon and Delta smelt, salinity effects of levee breaches, and the use of scientific adaptive management. Additional workshops will be undertaken as topics are identified.

CALFED funding

From FY 1998 to FY 2000, Congress appropriated \$190 million for the CALFED Ecosystem Restoration Program and an additional \$30 million for other program elements, including projects to improve water supply reliability. These funds were provided through an account in the Bureau of Reclamation budget, but funding for specific projects or programs has been transferred to participating Federal agencies based on plans developed by CALFED. As noted above, CALFED agencies have used these and other funds to screen water diversions for the benefits of fish and farmers, restore degraded habitat, establish an environmental water program, develop conjunctive use projects and develop a state and federal water operations plan. No funds were provided for this account in FY 2001, largely because the appropriations committees deferred to the authorizing committees to review the Program and develop any needed legislation.

The ROD outlines a partnership of State, Federal, and private funding, and estimated that a total of \$8.7 billion from state, federal, and private sources would be needed for the Program's implementation. According to Governor Davis, the State is moving forward to finance implement actions called for in the ROD. In order to support the Federal side of this unique partnership, it is important that appropriate legislation be enacted to authorize Federal Government participation as contemplated by the ROD.

Benefits of S. 976

The Bay Delta is the hub of the State's water supply system and an area of unsurpassed ecological importance. Single-purpose efforts to solve problems in the past have failed adequately address the comprehensive nature of the

Bay-Delta resources and problems and the conflicts between supply and demand. S. 976 would provide authorization for continued Federal participation in the CALFED Bay-Delta Program and to meet Record of Decision commitments. As such, the Administration supports many elements of this bill, recognizing that some modifying language may be needed.

In particular we are supportive of three primary principles outlined in the bill.

Balanced Approach.—The authorizing language needs the CALFED principal of comprehensive planning by outlining and providing authority to carry out a water supply plan to promote the ecological health and improve water management in the Bay Delta.

Measurable Goals and Objectives.—The legislation would provide for developing measurable goals and objectives for implementing and documenting “significant” progress in achieving the ROD’s program elements and the proposed ecosystem enhancement and water supply program actions. Further, the legislation calls for utilizing credible and objective scientific review and basing decisions on the “best available, independently peer-reviewed information.”

Governance, Local Coordination, and Public Involvement.—The legislation affirms that the participating Federal agencies would help operate the Bay-Delta Program through a permanent governance structure that encourages local and regional partnerships in implementing the Program. The legislation also specifies that State area-of-origin rights would be preserved. Further, the legislation recognizes the need for participating Federal agencies to cooperate with state, local, and tribal governments, non-governmental organizations and the public to obtain input on program implementation planning, design, technical assistance, ecosystem restoration, and peer review of science efforts.

Concerns with S. 976

Despite the progress that has been accomplished through the CALFED Bay-Delta Program, the Administration has some significant concerns relative to the legislation before the Subcommittee today. In addition to the major concerns noted below, we would like to work with the Committee to address technical and other changes as it considers this legislation.

Cost Sharing.—One of the central components of the ROD is the notion of “beneficiary pays,” whereby users who benefit from investments in the infrastructure should pay for those benefits. The ROD contemplated the Federal Government, the State, and project beneficiaries each sharing roughly one-third of the costs of implementation. S. 976 generally establishes a maximum Federal cost-share of 50% for each project or activity, but does not otherwise indicate how the cost-share should be determined. We do not object to the 50% ceiling, however, we believe that the cost-sharing should otherwise be consistent with

current law or policies. Depending on the project purpose, under current law local sponsors are required to provide up to 100 percent of a project's cost (e.g., for costs allocated to municipal and industrial water supply projects). We wish to stress the importance of clarifying and integrating cost-sharing measures into the program. We would like to clarify that assignment of operation and maintenance costs will be consistent with general policies.

Project Authorizations.—We are also concerned about provisions of the bill that seem to authorize construction of projects before they have completed the normal Administration review of economic and environmentally feasibility. Some language also circumvents Congressional oversight of individual projects. Consistent with longstanding policies, we believe that authorization for construction should be provided only after the Administration and Congress have completed a full and favorable review of project economics and environmental feasibility.

Authorization of Appropriations.—Sections 3, 4, and 5 of the legislation state that appropriations are authorized “* * * in such sums as are necessary * * *” to carry out the actions authorized by the particular section. This appears to imply that there is unlimited funding authority for implementing the CALFED Program. Further, it is not clear whether all appropriations will be coming through the Department of the Interior, or whether the concept of a cross-cut budget will be employed and appropriations will be made directly to the participating Federal agencies which, in some instances, would lead to greater efficiency.

Reporting and Oversight.—In general, the reporting and oversight requirements are unclear; it is not apparent which agency is specifically responsible for the compilation of data for submission to Congress. The ROD states that the CALFED staff would be responsible for associated program reporting requirements, however the legislation implies that this would be the responsibility of the Secretary of the Interior.

Conclusion

The history of the settlement of California and the ensuring development of its water resources is replete with political and legal battles. Although agreement on water management may not be immediately achievable, the CALFED Program is a step in reaching a common vision of actions needed for progress. CALFED represents a new approach to an old problem by combining the interests of state and federal agencies with regulatory power over the Bay-Delta together with urban, environmental, and agricultural users, who each have a vested interest in the maintenance and improvement of the Bay-Delta. The CALFED Program has shown water managers, policy makers and the public how to move California toward more equitable and efficient water and ecosystem management. Continued implementation of the CALFED plan offers the opportunity for a long-term solution to the critical prob-

lems confronting the Bay-Delta. Specifically, the Department will continue to operate the Central Valley Project in accordance with the provisions of the State's Water Quality Control Plan, Central Valley Project Improvement Act, the Endangered Species Act, and other applicable statutes. The Department is aware of the importance of meeting its environmental commitments, and the importance to the water users of adequate water supply reliability. For these reasons, the Department will continue to work through the CALFED process to improve the environment, and increase the system's water management flexibility.

We believe that the bill attempts to offer a balanced approach toward implementing the ROD commitments and would allow the Federal government sufficient authority to continue to participate in the CALFED program. We look forward to working with the Committee and others in Congress to address the Administration's concerns. Mr. Chairman, I would like to reiterate my appreciation to the Committee and others for continuing to work with the Department to address the significant water and environmental issues facing the West.

I would be pleased to answer any questions you may have.

U.S. DEPARTMENT OF THE INTERIOR,
OFFICE OF THE SECRETARY,
Washington, DC, May 14, 2002.

Hon. DIANNE FEINSTEIN,
U.S. Senate,
Washington, DC.

DEAR SENATOR FEINSTEIN: In response to your request, I am pleased to provide an update on our views of the CALFED program and on your bill, S. 1768. First, I would like to express my deep appreciation for your commitment and leadership, as well as that of Congressman Calvert to making significant progress with the CALFED program. I also appreciate your efforts in developing legislation to authorize funding for the CALFED program. The Secretary and I have pledged that the Department will continue to work through the CALFED process to improve the environment and increase the system's water management flexibility. Let me reiterate that sentiment and reaffirm that the Department is committed to making CALFED work.

We firmly support the CALFED program and the concepts embedded in the Record of Decision (ROD) which set forth the activities to be undertaken under CALFED. We recognize there is a long history of conflict over many of the issues CALFED addresses. However, absent CALFED we believe the result would be conflict and stalemate where all stakeholders and resources suffer. By addressing a broad range of complementary programs in a balanced manner, CALFED can ensure that the interests of all the stakeholders are recognized and addressed.

The CALFED program holds great promise for those who benefit from the use of the Bay-Delta and for restoration of the Bay-Delta's ecological health. However, our ability to move forward on a broad

basis is limited until the CALFED program is authorized. The Administration believes it is critical to authorize the program and begin implementing it so that we can show improvements to the water management infrastructure, conditions for fish and wildlife, and water quality. This is one of the reasons why your legislation is so important.

While we support S. 1768 and moving forward with implementing the CALFED program, we must note that the Administration has significant concerns regarding the implementation of the following program elements.

- Language in the existing Implementation Memorandum stating that the CALFED program should have no significant redirected impacts will likely make implementation of the CALFED plan difficult to manage. It is not realistic to assume that changes to the ecosystem and an integrated water delivery and storage system will not have effects which ripple throughout the system. To address this concern, we believe the authorizing legislation must ensure the comprehensive and balanced nature of the CALFED Program, with strong and clear beneficiaries pay provisions.

- We are also concerned that the programmatic language concerning cost-sharing and beneficiaries pay arrangements may invite future conflict. Project beneficiaries should pay for project benefits; beyond that, a $\frac{1}{3}$ federal, $\frac{1}{3}$ state, $\frac{1}{3}$ local cost share should prevail, except in those situations where the local cost-share, under existing agency laws and regulations, is higher.

- It is important that any CALFED legislation authorizes funding for the participating federal agencies and ensures that these funds are spent in accordance with the mission of the CALFED program.

- We are concerned about the cost of the program and believe that legislation needs to authorize an integrated program that can fund balanced implementation in the current fiscal climate.

- Finally, regardless of the exact form of the authorization process, any project submitted as part of a CALFED project authorization bill must first go through the normal Administration review process, as spelled out in Executive Order 12322.

We have discussed these issues at various times and look forward to working with you to address them. We believe that if legislation authorizing CALFED does not pass, the existing problems and challenges of managing water in California will continue to produce significant economic and environmental conflicts.

Sincerely,

BENNETT W. RALEY.

ADDITIONAL VIEWS OF SENATOR KYL AND SENATOR CRAIG

We appreciate the efforts that the Senator for California has made to address the concerns raised with this legislation. We have had several discussions and considerable progress has been made in providing some definition to what is a very expensive initial commitment to what will likely be an even more expensive multi-year program

We still have some concerns, however.

While we would prefer to continue work on the legislation in Committee so that we can present a complete package to the Senate, we understand the desires of the Senator from California to have some action in Committee before we become tied up in the Energy Conference. We believe there is an understanding that we will continue to work on concerns previously raised as we proceed to the floor, and with that understanding, we do not object to moving this legislation at the present time.

We do want the Committee report to reflect some of the issues that we and other Members have with the amendment before us, and that we will try to work out those concerns before the legislation is brought up in the full Senate. Those concerns fall into several areas.

Our first concern is the need for balance between conservation and environmental objectives and the need for additional water supplies, including additional storage. Senator Feinstein has been very up-front in her belief that California must have additional storage to meet its needs and we should ensure that this program guarantees that. We need to have balance in this interim program as well as in the overall multi-year program if we later authorize it. We have the experience of the CVP legislation and the original CALFED authorization where those expectations were not met.

Our second concern is past commitments to water users. Section 3408(j) of the CVP legislation required the Secretary of the Interior, within three years, to develop a plan to replace the water taken from them under that legislation and actually replace that water within 15 years. That hasn't happened. We are now seeing portions of the CVP Restoration Fund going to CALFED and some of the project improvements that will increase yield, such as raising Shasta Dam, also being considered as part of CALFED. We know Senator Feinstein is also concerned about the effect on water users and only reluctantly backed off from her earlier assurance language, but we do need to keep some faith with our past promises.

Quite frankly, we think we need some better understanding of where California is going and how much the federal government will ultimately be asked to pay. This measure focuses on the BayDelta, but it has implications for California's water future. Some of the House measures go much further and include provi-

other parts of the State, although none have so far tackled Salton Sea.

We certainly understand the politics of water, and don't think it would be helpful to the Senator from California if we got into how California will meet its 4.4 requirement. However, in fairness, we need to know that California will abide by its promise to reduce Colorado River water to its 4.4 million acre feet entitlement before we commit the federal government to funding yet more water projects for California.

A final concern is the overall cost. We appreciate that large and complex water problems can be very expensive. Nonetheless, we must make certain we don't commit ourselves to a multi-billion dollar program for the Bay-Delta only to find that we need a somewhat smaller program in Northern California, a somewhat more expensive program in Southern California, and an enormously more expensive program for the Salton Sea.

We also have a fair-sized delegation from the Pacific Northwest with concerns on the Columbia River Basin, a number of Upper Basin Members who have ecosystem concerns as well as authorized but unfunded storage programs, and other members with their own specific concerns. At some point, we need to take stock of where we are going.

The cost to the federal government in the latest amendment is \$1.6 billion over three years, but that may not be the entire tab since we have seen both the Administration and the Appropriations Committees allow other authorities to be used to further the CALFED program. The language in the amendment that calls for a cross-cut budget and requires any agency obligations to come from appropriations to that agency and be reflected in that agencies' budget will help. It would be nice to have that information now so we could determine with some greater precision exactly what we will be spending and whether we really need an additional \$1.6 billion to make certain that all parties interested in this program remain at the table when the feasibility studies come in.

We have made considerable progress and we again want to express our appreciation to the Senator from California for her willingness to continue to work on our concerns.

JON KYL.

LARRY E. CRAIG.

ADDITIONAL VIEWS OF SENATOR KYL

The ability of the State of California to live within its Colorado River entitlement of 4.4 million acre feet in years of normal supply has implications far beyond the borders of California. As the single largest user in the lower basin of the river, California's continued use in excess of its entitlement draws down the large water reservoirs shared by Arizona and Nevada. In an already over-allocated system, the Colorado River basin states are experiencing severe drought conditions this year. In the lower basin, Arizona and Nevada are both absolutely dependent upon a well-managed Colorado River system to supply our citizens with the municipal, industrial and agricultural water upon which our economies depend.

The California Colorado River Water Use Plan, or "4.4 Plan" as it is sometimes called, was intended to create a real incentive within California to solve its own water problems by making reasonable transfers from the large agricultural demand in the southern deserts to the municipal demand of Metropolitan Water District of Southern California on the coastal plain. Indeed, Arizona agreed to voluntarily forego some of its own precious Colorado River water supply to insure California a "soft landing" as it worked its way through the implementation of the California Colorado River Water Use Plan, because we were committed to seeing these transfers occur. Now that plan is threatened by a lack of consensus among Californians to make these transfers in the manner originally contemplated. While we must sympathize with Californians, and do our best to assist them in this time of difficulty, Arizona cannot continue to allow California to exceed its allotment in these dry years without an effective step-down plan in place.

The Interim Surplus Guidelines, adopted by former Secretary of the Interior Bruce Babbitt on January 25, 2001 (66 Fed. Reg. No. 17, p. 7772), specifically provide that if the California Colorado River water contractors have not executed the necessary agreements to implement the California 4.4 Plan by December 31, 2002, the Interim Surplus Guidelines will be suspended and water allocations will be made instead on the Bureau of Reclamation's "70R" strategy. That means no surplus water for either California or Nevada in 2003 from the Colorado River. Without surplus, California will be forced to cut back to 4.4 million acre feet, regardless of the consequences. Most, if not all of that burden will fall on Metropolitan Water District of Southern California. The Interim Surplus Guidelines can only be reinstated if California "completes all required actions" and manages to reduce California agricultural demand to 3.74 million acre feet in calendar year 2003. That reduction action will not occur without a major agreement in place to effectuate the agricultural-to-urban transfers.

Arizona supports the California Colorado River Water Use Plan because it represents a solution to a long-standing problem that will fix the problem once and for all. We cannot, in these times of drought and full demand for the Colorado River resource, continue to apply band-aid solutions. Arizona and the entire Colorado River basin need the certainty that comes with a comprehensive California plan. Without that certainty, Arizona will have no choice but to strictly enforce its rights under the 1964 allocation decree in *Arizona v. California*.

JON KYL.

ADDITIONAL VIEWS OF SENATOR BURNS

During the hearing and mark up of this bill, I expressed several concerns including its overall cost, the need for water storage as a primary goal, and its effects on agricultural producers in the Central Valley. While Senator Feinstein worked with my colleagues and I to limit the authorization to \$1.6 billion over three years, that is a huge commitment of taxpayer dollars. I have worked on a number of rural water projects and Indian water settlements for Montana, and I know how difficult these are to authorize and pay for. I would hate to see rural Montanans go without drinkable water as a result of this project, and I will be watching to make sure the immediate goals of CALFED are achieved before we go any further.

Beyond my concerns over cost and project priority, one of the reasons I have taken an interest in this bill is due to its impact on farmers. This bill does nothing to ensure reliable water supplies to farmers in the Central Valley. I appreciate Senator Feinstein's willingness to work with the producers and her understanding that this country relies upon farmers for our safe, affordable food supply.

The CALFED Record of Decision and this bill take a very broad approach to water quality, but I believe they are both missing a very important element. Neither addresses the issue of how, or why, reliability of Central Valley Project contract Supplies for south-of-the-Delta Central Valley Project contractors has diminished since CVPIA was implemented in 1992. Or, more importantly, how those reliability and supply issues will be improved as we move forward.

It is vital that the Secretary of Interior prepare a report describing what agreements and commitments have been made by Interior officials to address the water deficiencies for Central Valley Project contractors since October 1992, and a plan of action to further improve the current situation. A second report should identify specific fish, wildlife, and restoration requirements that have reduced water availability for Central Valley Project operators, and the observed population effects of those policies. It would be a mistake to move forward without addressing the supply issues we currently face.

This bill does not do all it could for farmers. But I will continue to work with Senator Feinstein until we get closer to where we need to be.

CONRAD BURNS.

CHANGES IN EXISTING LAW

In compliance with paragraph 12 of rule XXVI of the Standing Rules of the Senate, the Committee notes that no changes in existing law are made by the bill S. 1768 as ordered reported.

