

STAKEHOLDER CONCERNS

This section describes the assurance concerns that stakeholders have voiced in workshops, public meetings and scoping meetings, written comments submitted to CALFED and the California Assembly Process, Assurances Work Group meetings and informal discussions with CALFED staff.

1. Environmental Groups

- a. Implementation of ecosystem improvements. Environmental groups want assurances that improvements in ecosystem structure and function will be implemented and achieved without changing the ecosystem restoration goals and objectives.
- b. Funding. They want an assurance of adequate funding for an agreed period of time, to carry out the restoration projects. Since the ultimate funding needs are not well defined, funding levels should include a margin of safety or be variable to reflect changes in perceived needs.
- c. Adaptive management approach. For those physical/biological improvements which cannot now be defined (final land use, flow pattern, water quality patterns), the environmental groups want a decision-making process (an adaptive management approach) to assure that valid decisions will be made in the future to achieve restoration. Such approach or process should provide for the modification of flow and diversion patterns and amounts and the implementation of restoration activities, whether through regulatory means or market mechanisms, based upon well defined goals and priorities. It should provide that the mission and goals of ecosystem restoration are insulated against weakening.
- d. Operations. Environmental groups want assurances that new and existing water facilities will be operated according to agreed upon operational rules.
- e. Water use efficiency. Environmental groups want assurances that urban and agricultural water users will use water as efficiently as possible.

2. Fishery Interests

- a. Water for fish. Fishery interests want an assurance that adequate fish flows and water quality will be provided and protected into the future.
- b. Habitat for fish. They will also want assurances that habitat restoration measures will be implemented.
- c. Regulatory certainty. Fishery interests will want an assurance that adaptive management will not lead to unreasonable regulatory constraints or limits on commercial or recreation fishing.

3. Export Urban

- a. Water supply reliability. Export agencies want assurances that the export water supply, in terms of quantity and reliability, will be adequate and sufficient to meet current and future demand at a reasonable cost.
- b. Water quality improvements. They also want an assurance that water quality of Delta exports will be maintained at a level that allows for affordable treatment to meet drinking water standards.
- c. Regulatory certainty. The exporters want assurance of regulatory certainty in the future (i.e., that regulatory constraints in the Delta will not change or will change only in accordance with a predetermined agreement or plan.)
- d. Costs. Export agencies want to know the limits of their financial obligations and that there is a reasonable relationship between their costs and the benefits received.
- e. Facilities. Facilities which are identified in the Program must be permitted, funded, constructed and operated according to agreed upon rules.

4. Export Agriculture

- a. Water supply reliability. Agricultural exporters want an assurance that in the future their water supply will be dependable, within reasonable hydrologic parameters, and of sufficient quality to meet demand at costs low enough to maintain production profitability and land values.
- b. Regulatory certainty. The agricultural exporters want protection from future regulatory constraints on exports from all possible sources (ESA, CVPIA, Clean Water Act, similar state laws).
- c. Costs. They want an assurance that additional water supplies produced by the CALFED Program will be affordable and that their share of costs will be in proportion to the benefits received from the Program.
- d. Facilities. Agricultural exporters want an assurance that any facilities included in the Program will be constructed, permitted and operated according to the agreed upon rules.

5. Delta Agriculture

- a. Water supply reliability. The basic assurance need is continued reliable access to enough high quality water to meet demand, at costs low enough to maintain profitability and land values.
- b. Delta protection. Delta interests want an assurance that the existing levee system will be maintained and that the Delta as a "common pool" will be protected.
- c. Water rights. Delta interests want an assurance that water rights and other contractual rights will not be impaired by the CALFED Program.

6. Upstream Agriculture

- a. Water rights. The basic assurance need for upstream agricultural agencies is that the water rights for the existing agricultural water supply will not be compromised in the future.
- b. Costs. Upstream interests want an assurance that there will be a rational relationship between costs and benefits received and that their share of the payments for the Program are well defined in advance and capped.
- c. Regulatory certainty. They want an assurance that existing and unavoidable regulatory constraints (such as fish screens) will be implemented in a way that provides some certainty of stability and durability (i.e., shelf life).
- d. Water transfers. To the extent that water transfers are a critical part of the preferred alternative, the upstream interests will need assurances that the water market will be operated and regulated in a way that protects and mitigates against third party economic and environmental impacts.
- e. Area of origin. They will also want an assurance that area of origin and watershed protection priorities will be maintained.

7. Upstream Rural

- a. Water supply reliability. The rural counties want an assurance that water needed for agriculture and future urban development is not shifted out of the upstream areas. Related to this is a concern that exporters use water as efficiently as possible.
- b. Area of origin. Rural counties want protection of area of origin and watershed priorities under state law.
- c. Watershed management. These agencies are also looking for some assurance of a revenue stream to support watershed management programs.

8. Upstream Urban

- a. Water rights protection. The basic assurance need is protection of their water rights and supply, e.g., continued ability to divert high quality water above the Delta.
- b. Costs. Upstream urban interest want an assurance that their share of Program costs will be quantified and capped.

9. San Joaquin Tributaries/friant

- a. Water supply. The basic assurance need is that the CALFED Program will have no significant water cost or impact on their water rights. There are concerns about the need for environmental water on San Joaquin system (where will this water be obtained? at whose cost?) which may need to be addressed by assurances.

10. East San Joaquin

- a. Water supply reliability. These interests want an assurance of long-term reliable supply of water, at an affordable cost.
- b. Area of origin. They want an assurance that the area of origin and watershed protection priorities under state law will be upheld.
- c. Groundwater protection. They want an assurance that the CALFED Program will not result in further groundwater overdraft problems in eastern San Joaquin County.

11. Delta Recreation

- a. Recreation access. Recreation interests want some degree of assurance that the Program will not materially impair the use of the Delta for recreational purposes.

12. Urban Business Interests

- a. Economic climate. Urban business interests want an assurance that the CALFED Program implementation will bring an end to the water wars, provide healthy environmental conditions and ensure high quality, reasonable cost water for the future economic development of the State.

13. Rural/Agricultural Related Business And Labor Interests

- a. Economic climate. Business and labor interests which are dependent on agricultural production want assurance that Program implementation will not result in significant disruption of the agricultural economy and job opportunities.

14. San Francisco Bay Interests

- a. Bay protection. Interest groups concerned with the protection of the San Francisco Bay want an assurance that implementation of the CALFED Program will not adversely affect the availability of pulse and flushing flows in and through the Bay.

TOOLS OR METHODS OF ASSURANCE

This section describes a preliminary list of tools and methods of assurances available to meet the assurance needs and stakeholders' concerns.

1. **Constitutional Amendments.** Federal or state. Article X §2 of the California Constitution, for example, calls for the reasonable and beneficial use of all water. Constitutional amendments are difficult to obtain, and difficult to modify once obtained.
2. **Statutes.** Federal or state. Examples of statutes that govern management of a resource include the state and federal endangered species laws, state and federal water quality statutes (the Porter-Cologne Act and the federal Clean Water Act), state and local land use statutes and the federal Central Valley Project Improvement Act. Statutes may be modified by act of Congress for federal statutes and by the Legislature for state statutes.
3. **State voter referenda.** Voter referenda can be used for a variety of purposes, but the most common are to enact particular legislation (such as Proposition 13 which enacted constitutional and statutory limits on local financing and property taxation) or to approve particular bond measures (such as the series of California Parks and Wildlife bond measures or the bond measure funding Bay-Delta ecosystem measures [Proposition 204]). Modification of voter referenda is normally more difficult than modifying statutes, and at a minimum requires action by the Legislature.
4. **Regulations.** Federal or state. Adopted by administrative agencies to guide implementation of their duties and obligations. An example is the California Environmental Quality Act (CEQA) guidelines. Regulations are proposed by federal or state agencies and subject to public review and comment prior to adoption. Regulations may be modified by administrative agencies.
5. **Judicial actions.** Federal or state court judgments, orders, validations, consent decrees. Can be modified only by future judicial decrees or statutory changes passed by Congress or the Legislature. Examples: the Racanelli decision on the 1978 Water Quality Control Plan and the California Supreme Court opinion in the National Audubon case, particularly the application of the "public trust" doctrine.
6. **Executive orders.** The President and Governor both may issue executive orders. The Governor issued an executive order to form the Water Policy Council, for example. Executive orders may be modified by action of the President or Governor.
7. **Administrative agency orders.** Examples are water right permits or permit amendments. Administrative agency orders are applications of statutes and regulations to a particular individual or group. They can be modified by subsequent order, but generally require notice and a hearing before the agency may do so.

8. **Contracts.** Legal agreements between two or more individuals or entities. Generally, no one party may unilaterally modify the terms or conditions of a contract. Enforcement may be specified in the terms of the contract and remedy for breach is available through the courts.
9. **Memoranda of understanding/agreement.** MOU/MOAs are interagency agreements with varying levels of specificity. Many are general agreements to cooperate that may be terminated at will by any party. Others are more specific and bind the agencies to a particular financial or programmatic commitment. The CALFED Agencies' MOU describing the roles and responsibilities of each agency with respect to preparation of the Bay-Delta Programmatic EIR/EIS is an example.
10. **Joint powers agreements.** State law authorizes public agencies (including federal, state and local agencies) to enter into agreements in which they "jointly exercise any power common to the contracting parties." Federal legislation would be needed to authorize a federal agency to participate in a joint powers agreement with a state agency.
11. **Financing mechanisms.** Various processes are available for generating capital and operating revenues. Water user fees are one example.
12. **Bond measures.** Provisions in the authorizing legislation or in the bond instruments could be used to establish Program requirements, schedules or related commitments.
13. **Market incentives.** Market forces can be used to encourage or discourage specific behaviors. For example, a water transfer market can create an incentive to use water more efficiently so that the unused portion can be sold.
14. **Physical constraints.** Constructing a conveyance facility to carry a specified amount of water is one example of a physical solution to an assurance problem.
15. **Parallel implementation.** Implementing elements of differing components in parallel processes might provide an assurance that one component is not completed before another is begun.
16. **Public oversight/public involvement process.** Public involvement, public advisory processes and dispute resolution mechanisms will be part of the assurances program.
17. **New institutions.** Created to implement, manage or fund any of the Program components. For example, an environmental water authority may be created by federal and state statute to ensure adequate supplies of water for environmental purposes in the future.

18. **Multiple Species Protection Plans.** A recent tool evolving out of the federal and state endangered species programs is the multiple species protection plan. These plans, which are usually called Habitat Conservation Plans (HCPs) under federal law, and Natural Community Conservation Plans (NCCPs) under California law, generally preserve a portion of a particular habitat for one or more species, and at the same time provide some certainty or stability for the public and private land owners by limiting future regulatory actions in the same area.

19. **Programmatic permitting.** Regulatory assurances could be provided in some circumstances but a programmatic permitting process for the CALFED Program, which would incorporate certain agreements regarding the actions to be required in the event of future regulatory constraints.

GUIDELINES

The Guidelines should be viewed as rule-of-thumb criteria to help in the development and evaluation of individual assurances and assurance packages. Note that there is overlap between some of the guidelines.

- **Satisfy the solution principles (implementable, durable, affordable, equitable, reduce conflicts, no significant redirected impacts).**
- **Provide high confidence that identified actions will be taken and that identified programs will operate as promised.** The Program simply cannot guarantee performance. Ecosystem function and population targets cannot be assured within a finite budget. Water supply reliability levels cannot be guaranteed given the possibility of future climate change. Also, the assurance package should not be used to compensate for perceived problems in the solution itself.
- **Ensure that the solution contain clearly articulated performance criteria and proposed schedules for attaining Program goals.**
- **Specify that the written description of the solutions constitutes the entire agreement.** Parties' unstated assumptions about the implementation of particular components should not be binding.
- **Structure the solution to be self-executing.** The CALFED solution, once implemented, should be minimally dependent upon discretionary actions by actors outside the solution framework.
- **Include recovery mechanisms.** The solution should contain internal mechanisms capable of responding to surprises and disappointments.
- **Provide for implementation of the entire Program, even if that implementation occurs in stages or phases.**
- **Allow for adaptive management, wherever the current state of knowledge is inadequate to made definitive choices now.**
- **Allow for variations in the need for certainty on discrete program components.** Some parts of the Program may need to be "set in stone," whereas in other areas the parties may be willing to agree to a more open-ended or flexible process. This may contradict the adaptive management guideline in some cases.

- **Work within existing statutes, regulations and institutions where feasible.**
- **Involve the public in decision making.** In order to maximize the likelihood of continued public support, the solution should contain mechanisms for soliciting, influencing and responding to public opinion.
- **Craft an integrated package of assurances that work well together.**
- **Minimize costs.** The proposed assurance package should be structured so as to provide the necessary assurances at the lowest possible cost.