

**Governance Issue/ Background paper
July 12, 1999**

This issue / background paper provides additional information to Policy Group members for the July 12, 1999 governance meeting for several of the "Key Questions". Information on the long-term governance issues is not included at this time, but should be available for the meeting.

1. *Are the principles and functions for a CALFED Oversight entity appropriate?*

The principles and functions (listed in Attachment 2) for oversight of the CALFED program were developed with BDAC and Policy Group input. The principles and functions need to be agreed to prior to developing the governance structure or form (i.e. form follows function). The principles and functions should be used as the guiding criteria for modifying the existing governance structure/form or developing a new structure. Although the Policy Group structure will continue in the interim until a long-term structure is in place, the current structure should be evaluated and modified if necessary to better meet the principles and functions.

Additional considerations should also be in mind when deciding to either modify or develop a new governance structure. In a Natural Resources Law Center report to CALFED (*Design of a New Regional CALFED Environmental Restoration Implementation Organization: Preliminary Considerations 2/98*) the following "Ten Lessons" from past experiments in regional water management are provided. This report has recently been rereleased to the Policy Group. Although many of these lessons are already addressed in the current CALFED structure and mission, the lessons are still relevant.

1. Consider Political Viability
2. Let Function Dictate Structure
3. Consider Broad Trends in Federalism and Intergovernmental Relations
4. Foster a Regional Perspective
5. Utilize a Problemshd Orientation
6. Utilize a Process Orientation
7. Do not Burden Administrative Bodies with Fundamental Policy Issues
8. Recognize the Importance of Conflict Resolution
9. Design Mechanisms for Accountability
10. Promote Flexibility and Creativity

2. *Can the existing Policy Group process be improved to better address the principles and functions for CALFED oversight?*

The primary features or processes that should be reviewed and possibly modified or clarified to better address the oversight principles and functions are:

- decision-making protocols

- membership
 - and stakeholder and public involvement
- Each of these features is discussed below.

3. ***What should the decision-making protocol be for Policy Group in the interim? Should the decision rules vary depending on the type of decision being considered?***

Issues/concerns. Throughout the CALFED planning process, the Policy Group has preferred to refrain from voting on policy issues or other decisions they have considered over the past four years. Instead, the Policy Group has relied on discussion aimed at achieving consensus, with no formal votes taken or formal expression of individual agencies' positions. As the CALFED Program progresses into implementation, many millions of dollars will be appropriated for all the CALFED programs, and public and legislative scrutiny will be appropriately high. The current process for CALFED Policy Group decision-making is not clearly defined and therefore:

- Reduces the efficiency of the decision-making process because the process is unclear and can delay decisions;
- Reduces the accountability of the CALFED program and the Policy Group because the process is not easily communicated to the public and legislatures;
- Reduces the durability of Policy Group decisions if what is agreed to is not clearly understood by all members.

The way in which an organization functions is influenced by many factors but the basic functioning of the organization, however, is something that can be in large part, consciously designed. In the majority of regional water organizations governed by a group of representatives from other agencies and political jurisdictions, the most important design consideration is the selection of a decision-rule since it is this rule that determines the relative allocation of power among the members and the selection of dispute resolution tactics and strategies. Closely tied to the selection of the decision-rule is the allocation of voting privileges among participating entities. The importance and controversial nature of selecting the decision-rule should not be underestimated. Only in those organizations that are highly independent or that are confined to apolitical and technical tasks, can the issue of decision-rule selection be subordinated to other concerns (NRLC, Reike 1998, Wandschneider, 1984, Kenney, 1993).

It is recommended that the Policy Group consider a variety of more formal decision-making protocols to reflect levels of agreement among CALFED agencies. Given the range of types of decisions the Policy Group is asked to consider, it is likely that different decision protocols may be appropriate for different types and levels of decisions. For example, the Policy Group made a decision recently to retain the current organizational structure as the interim governance structure for CALFED. This was a broad and important policy decision for which consensus on both the Federal and State sides was essential. Therefore it was appropriate for that type of broad policy decision, that the Policy Group rely on a consensus decision protocol. Some options for consensus decisions are described below.

The Policy Group routinely is also asked to weigh in on CALFED Program decisions which are less policy-oriented in nature, and for which broad consensus may not be necessary for the Program to proceed. For example, it is conceivable that a CALFED member agency may object to a particular restoration project proposed by the Program and approved by both the Ecosystem Roundtable and BDAC. In this case it may be appropriate for the Policy Group to adopt a voting protocol. A variety of voting protocols is described below. It is likely that as the Program evolves into full implementation over the next two to four years, the application of decision rules will be more defined and refined.

Decisions by Consensus. Consensus is a term that is broadly misunderstood. True consensus building is a method for reaching decisions which seeks to maximize agreement among parties and help them say yes. Some options for Policy Group consensus decisions include the following (these options apply only to voting members of the Policy Group):

1. One federal view, one state view, both in agreement (suggested by Felicia Marcus at the June meeting). Differences among agencies are resolved internally on the federal and/or state side.
2. Unanimity of all individual CALFED agencies.
3. Unanimity minus one (or two or three or other number)

Within any of these varieties of decision rules, it is possible to discriminate gradients of agreement, i.e., a graduated continuum along which an agency can place itself, to define areas of agreement more precisely than the polarities of total support or total opposition. If the Policy Group chooses a consensus decision rule for certain policy decisions, the concept of "gradients of agreement" may be helpful in clarifying exactly what each agency is agreeing to, while allowing a policy decision to move forward.

Voting protocols. Other CALFED decisions to be made by the Policy Group may lend themselves to a voting decision rule. Some options for voting include the following:

3. Simple majority. All voting members have one vote, majority rule.
2. Super majority. A certain percentage of voting members has to assent for a decision to move forward.
3. Majority of voting agencies from each side (Federal and State)
4. Majority of voting agencies for each side, with affirmative vote of designated agencies required on specific designated issues (e.g., USFWS or DWR affirmative vote required for approval of the operations plan or funding of the proposed Environmental Water Account)

It should be noted here that under the current governance structure, each individual agency retains its full authority, and any votes taken would in no way proscribe any agency's ability to oppose any CALFED action. It is hoped, however, that given the agencies' explicit support of the CALFED approach to resource management, serious agency objections will prove to be the exception rather than the rule.