

Prerequisites to a Working EWA

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Here are some thoughts on what we will need to put in place in order to have a fully functional EWA. We might be able to get by on less initially. However, in the long-run, we will need to put the EWA on a firm legal footing if we expect to rely on it as a major part of the CALFED solution.

Functions

What will the EWA actually do. Based on these functions, we can then project institutional needs. As always with such lists, we can argue about what topics are core functions and which are the institutional implications of other core functions. I have tried to be inclusive and not quibble over categories.

- Analyze biological monitoring data. This will provide the foundation for real time management activities.
- Control some biological monitoring. Depending on real time conditions, the EWA may wish to focus monitoring efforts in order to develop information needed for operations. It will not be able to rely exclusively upon monitoring conducted by other agencies.
- Modify State and Federal Project operations on a virtually real-time basis, as constrained by the "no harm" principle and regulations. This includes:
 - Modify south Delta export rates (up and down)
 - Modify reservoir release rates (up and down)
 - Shift pumping between the Tracy and Banks pumping plants.
 - Use surplus storage, pumping, and conveyance capacity
- Reimburse the Projects for net expenses caused by EWA activities.
- Purchase and lease water. Buy options for water. Purchase and lease storage. Purchase and lease conveyance capacity. Sell and lease all of the same.
- Gain approval for variances to certain regulatory standards on a virtually real-time basis. The most obvious example is the E/I standard. However, variance might also be needed for AFRP standards and other standards.
- Acquire a legal right to control water and infrastructure designated for the EWA. This includes (properly qualified) rights to:
 - capture and hold water in Project storage.
 - divert water using Project facilities.
 - utilize unused Project capacity.
 - provide flows above regulatory minima.
 - purchase and sell water.
 - purchase and sell storage and conveyance rights in non Project facilities.

- Use EWA assets in order to promote well-defined biological priorities. These priorities will include both normal operations based upon best available science and operations to support scientific experimentation.
- The EWA may have some rights to define biological priorities. However, these rights may also reside in other institutions as well (e.g., the regulatory agencies).
- Perform environmental review for proposed activities.
- Subordinate EWA activities to overall ERP priorities
- Subordinate EWA activities to ESA priorities

These two subordinations are not easy to reconcile. The ERP calls for actions to support overall ecosystem function. The ESA calls for protection of individual species, even at the expense of overall ecosystem function. To a large extent, EWA priorities are likely to be determined by the degree to which the EWA becomes the foundation of a "no surprises" commitment from the regulatory agencies. If the EWA carries the primary responsibility providing ESA protection, then the EWA will necessarily give a high priority to protection of listed species. Moreover, EWA assets will tend to be locked into place. If the EWA is more an enhancement agency, but responsibility for ESA protection continues to fall upon the Projects, then EWA priorities will become more balanced and EWA assets could more easily be shifted out of the EWA and into other ERP activities. For example, if habitat were determined to provide greater payoffs per dollar spent, some EWA assets might be sold and the proceeds used to fund additional habitat creation.

Carrying out the functions

These functions constrain the form of the EWA. Nevertheless, a number of institutional approaches may be able to satisfy these functions. Here are some initial thoughts:

- The need for near real-time activity – direction and analysis of monitoring, and operational decisionmaking – imply that day to day EWA operations should be integrated. Individual EWA operational decisions should not require and preapproval from multiple agencies.
- However, overall governance of the EWA – the setting of priorities, the approval of experiments, feedback on past operations, etc. – need not be completely integrated.
- The greater the weight placed upon the EWA to deal with operational ESA issues, the greater the control that the regulatory agencies will have over EWA governance. The agencies might control the EWA directly. Alternatively, the EWA could be made responsible for meeting ESA operational patterns on behalf of the Projects. In this case, the regulatory agencies would or could control the EWA indirectly through their biological opinions (of course, if this approach eliminated EWA flexibility, then it would also destroy the benefits of shifting to an EWA in the first place).

- Many EWA activities could be nested within the existing State and Federal Projects. That is, many EWA activities could be structured through contracts with the Projects, without the need to obtain independent EWA rights. This is so because the Projects already have the flexibility to perform many EWA actions, but have no incentive to do so because of increased cost, loss of supplies, and risk to contractors. The following functions could be satisfied through contracts with the Projects:

- Reductions and increases in export rates.
- Reductions and increases in releases from storage
- EWA access to surplus storage and conveyance.
- EWA rights to a share of new Project storage and pumping capacity.
- A methodology for keeping track of EWA water and debts within the state and federal Projects.

- Other EWA activities functions could be carried out through contracts with other water agencies:

- Demand shifting would require a contract with MWD
- Water and storage purchases in involving non Project agencies.

- Some EWA functions would require regulatory action. For example:

- If EWA is to have the right to relax the Delta export standards in order to build up water south of the Delta, then the SWRCB would need to delegate to the EWA the right to propose variances, subject to approval or veto by the SWRCB (a right the SWRCB has already granted to the Operations Group).
- EWA control over in-stream flows might be obtained through an environmental water right. That is, existing regulatory minima, as well as uncontrolled flows might be converted into a tradeable water right held by the EWA. This water would then become off limits to reallocation or future development, except with the permission of the EWA.
- EWA enhancements in flow conditions above existing conditions or rights might be secured through environmental water transfers (e.g., under Section 1707) such transfers would need both the approval of the seller and the SWRCB.

- If EWA is a key part of some grant of "regulatory certainty, then funding for EWA must be very firm. The regulatory certainty can be no more certain than EWA funding.
- Similarly, ordinary EWA operations would be severely hampered by an insecure funding stream. The EWA would not be able to take on storage debt. Nor could it purchase options unless it had certainty that future money would be available pay off debts and to take advantage of option contracts.

What is needed to have a working EWA by the end of the year 2000?

Inasmuch as the State and Federal Projects already have the authority to perform many of the functions proposed for the EWA, setting up an ad hoc structure should not be particularly difficult, provided that we begin now. A more official structure could take longer. The following would allow the EWA to begin operations as early as water year 2000 on a crude basis, with more extensive operations by the year 2001.

- Gain commitments from the State and Federal Projects to operate in support of the ad hoc EWA, provided that the operations do not harm their contractors.
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- Dedicate funding to the EWA