

Creating an Entity to Handle Category III Responsibilities

Discussion Draft

Category III Steering Committee

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December 14, 1995

Executive Summary

Institutional Design

This document outlines principles for creating a more permanent entity to handle Category III responsibilities under the December 15 Bay-Delta Accord. Currently there is a need to create a mechanism ("entity") that is not only capable of handling financial and contractual aspects of the Category III parties' duties under the Accord, but can also be made accountable to the CALFED Policy Group. This new entity is to be both a means of fulfilling Category III obligations under the Accord for the longer term, as well as a means to immediately begin dealing with non-flow factors as identified by the CALFED Bay-Delta Program. The basic design of the entity ensures that Category III decisions and actions will be consistent with the CALFED Bay-Delta ecosystem objectives. The entity is expected to be an action-oriented program in which stakeholders and CALFED deal with the non-flow factor component of the CALFED Bay-Delta long-term approach. The Category III program will be coordinated with programs and projects undertaken by other entities also involved in restoring the Bay-Delta ecosystem. The proposed Category III entity will not take on a life of its own, independent of CALFED, and is expected to be a small, efficient institution with minimal overhead costs.

The Category III Program Mission Statement is:

To develop and carry out a program of Bay-Delta ecosystem restoration, in coordination with related efforts by others, and specifically targeted to address factors other than water flow and operational components directly covered by the Bay-Delta Accord and designed to better understand how these factors affect the ecosystem.

The minimum structure required to establish an entity capable of attracting and managing sizeable amounts of funding to carry out Category III programs and projects consists of a Board of Directors, an Executive Director, and staff (as needed). The Board will be composed of a mix of public and private representatives, as well as the Executive Director of the CALFED Bay-Delta Program.

Program Development

Each year, stakeholders, representatives from associated programs, and technical specialists will have an opportunity to participate in Category III program development activities. A six step process will be used for identifying, implementing, and evaluating management-control programs, projects, and special programs or projects to be funded under the Category III program: (1) program development; (2) preparing Management and Operating Plan; (3) public review; (4) approval from Category III Board of Directors; (5) implementation; and (6) monitoring and evaluation. Candidate management-control programs and projects could come from several sources, including: proposals submitted by project proponents; proposals recommended by the ad hoc teams or derived from the teams' recommendations; management-control programs or projects gleaned from existing reports; and special projects recommended by CALFED. Participants in the program development process may also make recommendations for special programs or projects related to the Category III mission, and consistent with the CALFED ecosystem objectives.

Prior to submitting the Management and Operating Plan to the Board of Directors for approval, the Category III Executive Director will offer stakeholders, representatives from associated programs, and technical specialists an opportunity to provide review comments. The Executive Director will also seek advice and recommendations on the Plan from the CALFED agencies and the CVPIA Program. Once submitted, the Category III Board of Directors will be asked to review the Management and Operating Plan and to make decisions regarding both overall funding levels for that year and allocations to the various proposed elements of the technical workplan. The Board will also be asked to approve that year's operating budget.

Activities funded under Category III will be subjected to three types of evaluation: 1) implementation audit; 2) evaluation of engineering success; and 3) an appraisal of effectiveness relative to the local biological resource of interest or concern. It is also expected that Category III activities will be part of a broader, ecosystem-wide evaluation conducted by CALFED concerning whether or not the full set of management-control programs and projects being undertaken throughout the area of concern are collectively contributing to meeting the CALFED Bay-Delta ecosystem objectives. Note that the Category III Program will not establish its own ecosystem objectives, independent of the CALFED Bay-Delta Program, or adopt sole responsibility for any single Bay-Delta ecosystem objective. The main purpose of using CALFED ecosystem objectives will be to help the Category III program focus on relevant and important non-flow factors.

Category III Program Development: 1995 - 1996

The CALFED *Core Actions Report* will be used as a one-time input to help initiate the Category III planning process. As well, the CALFED Ecosystem Technical Group will be asked to produce a *Category III Guidance Document*, synthesizing, from a Category III perspective, information pertaining to Bay-Delta ecosystem objectives, key factors influencing the objectives, and guidance concerning priority non-flow factors or activities recommended for inclusion within the Category III program. The Category III Board of Directors will adopt the finalized *Category III Guidance Document* to serve as a strategic 'blueprint' guiding Category III program development activities.

Status

This document represent the consensus view of the Steering Committee. In particular, there is general agreement that the institutional design described in this document can produce an entity that will permit effective fulfilment of Category III obligations created in the Bay-Delta Accord. Three key issues remain to be resolved: (1) nature of the entity; (2) composition of the Board of Directors; and (3) funding. The Steering Committee intends to resolve remaining issues by the end of January, 1996.

Acknowledgements

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1.0 Introduction

On December 15, 1994, the State of California, the Federal government, and participating California water user organizations along with fishing and environmental interest groups entered into an historic agreement establishing principles to enhance protection of the San Francisco Bay/Sacramento-San Joaquin Delta Estuary (Bay-Delta). That statement of *Principles for Agreement on Bay-Delta Standards* (Principles Agreement) created a framework for implementing a set of integrated water quality, flow, and operational control strategies to preserve and enhance estuarine habitat in the Bay-Delta while simultaneously respecting the multiple beneficial uses associated with the Estuary. It also stated that the signatories were committed to the implementation and financing of so-called "Category III" measures to address non-flow factors as part of a comprehensive ecosystem protection plan for the Bay-Delta.

1.1 Category III and the Principles Agreement

Under the Principles Agreement, participating urban and agricultural water users,¹ State and Federal agencies (represented by the California Water Policy Council and Federal Ecosystem Directorate, or CALFED), and environmental interest groups committed themselves to work in an open and collaborative process to determine priorities and financial commitments for implementation of Category III elements. The parties further committed to prepare and finalize a detailed plan for the implementation of Category III measures.

As shown in Appendix A, the Principles Agreement stated that the signatories are committed to implementation and financing of Category III measures as an essential part of a comprehensive ecosystem protection plan for the Bay-Delta. To fulfill this commitment, the signatories to the agreement endorsed a set of principles for Category III implementation.

1.2 Category III and the State Board's Water Quality Control Plan for the Bay-Delta

Since the Principles Agreement was adopted, the State Board has issued its final *Water Quality Control Plan for the Bay-Delta* (WQCP). Issuance of the WQCP followed a series of workshops conducted by the State Board during the summer of 1994 in order to gather information and recommendations for new standards to protect estuarine habitat and other beneficial uses associated with the Bay-Delta. Among the topics the State Board specifically sought to address during the workshops were fish and wildlife declines in the Estuary "from causes other than flows and diversions, such as pollution, introduced species, and habitat loss²" Thus, while the WQCP necessarily focused on establishment of standards and operational measures, it also included

¹ Participating water users were identified in the Principles Agreement as "CUWA/AG." CUWA/AG refers to a coalition of urban and agricultural water user organizations that includes the California Urban Water Agencies ("CUWA") and its members, the San Luis Delta/Menodta Water Authority, the Kern County Water Agency, and the Tulare Lake Basin Water Storage District. The Joint California Water Users group, or "Joint Agencies," is the successor to CUWA/AG.

² SWRCB *Notice of Public Workshop*, March 25, 1994.

recommendations for future actions both within and outside the scope of the State Board's authority, such as recommendations for Category III activities³.

1.3 Category III and the Ad Hoc Working Group

Consistent with the mandate of the Principles Agreement, considerable effort was made to develop an implementation plan that reflected board consensus among a variety of interests, including participating water users, CALFED, environmental groups, and affected fishery interests. An ad hoc Category III Working Group, including representatives from each of these interests, was formed shortly after the Principles Agreement was announced. The Working Group met regularly until July 1995 to identify potential Category III measures, to define criteria for evaluating potential measures and setting implementation priorities, and to propose institutional mechanisms to provide funding and continued oversight of the Category III program. Results of the Working Group's collaborative effort, as well as its proposals for further work, are described in the *Category III Implementation Plan*, dated July 1995.

1.4 Category III and the Memorandum of Understanding

The ad hoc Category III Working Group also proposed assigning principal responsibility for carrying out Phase One implementation activities to a Category III Steering Committee. This proposal was accepted, and the overall parameters within which the Steering Committee are functioning is defined in a *Memorandum of Understanding Regarding Short-Term Category III Activities*, (MOU) a copy of which is attached as Appendix B.

Current composition of the Steering Committee is indicated in the Acknowledgements section, and includes representatives reflecting the interests of each of the following groups: the environmental community, the fishing community, and the agriculture / urban community. Each group is responsible on an ongoing basis for determining its representation on the Steering Committee. Responsibility for facilitating and staffing the Steering Committee's activities was assigned to CUWA/AG.

Two principal purposes of the MOU were to:

1. provide an interim mechanism for holding and disbursing initial commitments of funds for Category III activities, and
2. establish a more permanent structure capable of handling financial aspects of the Category III program and accountable to CALFED.

The Metropolitan Water District of Southern California has already made an initial contribution of \$10 million to fund Category III measures, and Metropolitan has been designated as the initial treasurer of that fund. The MOU also anticipated provision of additional initial financing for

³See WQCP at page 33.

Category III activities; these funding issues are currently being examined by a CUWA policy-level subcommittee (see Section 5.5).

Under the MOU, the current Steering Committee is empowered to carry out two important tasks: (1) executing the near-term projects it has approved, and (2) designing a more permanent mechanism for implementing the Category III program. The remainder of this document provides a list of principles pertaining to the latter task.

1.5 Overview of Category III Principles Document

This document contains principles describing the basic structure and operation of an entity designed to fulfil Category III obligations. These principles were developed by the Category III Steering Committee, and describe the purpose of the Category III program, the Category III Mission, organization of the Category III program, relationships with other entities and programs, plans for consultation with interested parties, and functioning of the Category III program (planning cycle). A glossary of key terms is also provided.

This document is not yet complete or finalized, and several key issues remain to be resolved. Nonetheless, the document represents the consensus view of the Steering Committee. In particular, there is general consensus that the institutional design described in this document can produce an entity that will permit effective fulfilment of Category III obligations created in the Bay-Delta Accord. The Steering Committee intends to resolve remaining issues by the end of January, 1996.

2.0 Basic Premises

- There is a need to create a mechanism ('entity') capable of handling financial and contractual aspects of the Category III parties' duties under the December 15 Bay-Delta Accord (see Appendix A);
- The Category III program will be accountable to the CALFED Policy Group (hereafter "CALFED");
- Category III Program priorities will be focused upon non-flow-related factors including, but not limited to, those already identified in the current Category III Memorandum of Understanding (see Appendix B), namely:
 1. unscreened water diversions in the Sacramento-San Joaquin Delta Estuary ("Bay-Delta"), along the Sacramento and San Joaquin Rivers, and other locations;
 2. waste discharge control and pollution prevention;
 3. legal fishing (sport and commercial);
 4. illegal fishing (poaching);
 5. land-derived salts;
 6. exotic species;
 7. riparian, wetland, and estuarine habitat restoration; and
 8. Delta channel alterations/local land-use modifications.
- Definitions for key words are provided in the Glossary.
- There is consensus among members of the Steering Committee on the principles outlined in this document. Outstanding issues are designated by "• Note: ..."

3.0 Purpose of the Category III Program

3.1 What the Entity is Intended To Be

- A means to fulfil Category III obligations under the December 15 Bay-Delta Accord, and to immediately begin dealing with non-flow factors as identified by the CALFED Bay-Delta Program;
- A method for ensuring that Category III decisions and actions are consistent with CALFED's Bay-Delta ecosystem objectives;
- An action-oriented program in which stakeholders and CALFED attempt to deal with the non-flow factor component of CALFED's long-term approach;
- A mechanism to handle financial aspects associated with carrying out such a program;
- A program that is coordinated with programs and projects undertaken by other entities involved in restoring the Bay-Delta ecosystem.

3.2 What the Entity is Not Intended To Be

- An invariable structure or institution that takes on a life of it's own, independent of CALFED; and
- A large, inefficient institution with significant overhead costs.

4.0 Category III Mission

- The Category III Program Mission Statement is:

To develop and carry out a program of Bay-Delta ecosystem restoration, in coordination with related efforts by others, and specifically targeted to address factors other than water flow and operational components directly covered by the Bay-Delta Accord and designed to better understand how these factors affect the ecosystem.

- Although the program is focused on restoration of the Bay-Delta ecosystem, the geographic area within which solutions may be sought is much larger, and is the same as that adopted by the CALFED Bay-Delta Program.
- Emphasis will be given to ecosystem restoration / enhancement directed at aquatic species and their supporting habitats at greatest risk from impacts associated with non-flow factors. Consistent with CALFED Bay-Delta ecosystem objectives, special emphasis will be placed on threatened and endangered species, candidates for threatened and endangered status, and - where appropriate and not in conflict with efforts to aid threatened or endangered species - species of importance for commercial and recreational fisheries.
- The Category III program is expected to benefit the security and reliability of both water supply and fisheries in the Bay-Delta.
- The Category III program will consist of a mixture of management-control programs, projects, and, as necessary, special programs or projects (see Glossary). As needed, the Category III program can also undertake experimental and demonstration projects.

5.0 Organization of the Category III Program

- The minimum structure required to establish an entity capable of attracting and managing sizeable amounts of funding to carry out Category III programs and projects, consists of a Board of Directors, an Executive Director, and staff (as needed).
- The entity will be governed by a defined set of bylaws.

5.1 Nature of the Entity

- *Note: The Category III Steering Committee has deferred selecting a structure for housing the entity pending recommendations (due 12 January 1996) from a group of legal advisors. Options under consideration include:*
 - a) Public corporation;*
 - b) Non-profit corporation;*
 - c) Joint-powers authority; and*
 - d) Binding memorandum of agreement.*

Criteria for evaluating alternative options to house the Category III entity include the ability to:

- a) receive and disburse public and private funds;*
- b) enter into legal agreements and contracts;*
- c) create a governing board comprised of CALFED agencies, stakeholder, and possibly other members; and*
- d) transition into the long-term CALFED Bay-Delta Program.*

5.2 Board of Directors

- *Note: The Category III Steering Committee has deferred both defining the composition of, and outlining the decision-making process for, the Board of Directors, pending recommendations from a group of policy advisors (due 31 January). Some of the issues under discussion include:*
 - a) Must a new institutional housing be created, or is it suitable to adapt an existing structure?*
 - b) Is the range of representatives to be broader than the interests of the following groups: governments; environmental community; fishing community; and Agriculture / Urban community.*
 - c) How many representatives should each group have on the Board?*
 - d) How shall each group determine the composition of its representation on the Board?*
 - e) How will the Board of Directors reach decisions (e.g., consensus, majority)?*

- The Board of Directors will be composed of a mix of public and private representatives.
- The Executive Director of the CALFED Bay-Delta Program will be appointed to serve on the Category III Board of Directors.
- The Board of Directors shall actively encourage and facilitate governments, urban, agricultural, and environmental parties to perform in a timely manner those actions required of them under the December 15 Bay-Delta Accord and the subsequent Category III Memorandum of Understanding.
- The Board of Directors shall deal with financial matters in a manner consistent with principles listed in Section 5.5.
- The Board of Directors shall ensure prudent management of resources and will work to eliminate partisanship and financial self-interest when making funding decisions.
- The Board of Directors shall hold final authority over, and responsibility for, implementation of the Category III Program. At the same time, they will ensure that all Category III activities are carried out in a manner consistent with the CALFED Bay-Delta Program.
- The Board of Directors shall also ensure that all Category III Program activities are carried out in accordance with the December 15 Bay-Delta Accord, and are designed to address important non-flow factors identified by the CALFED Ecosystem Technical Group.

5.3 Executive Director

- The Board of Directors will select an Executive Director to lead and manage the Category III Program.
- The Executive Director will prepare annual recommendations for the Board of Directors in a "Management and Operating Plan". This plan will consist of two parts: (1) a "Technical Workplan," specifying management control programs, projects, and special programs or projects for implementation, along with supporting information on costs and funding options, and (2) a "Management Plan," describing management, staffing, and funding for the Category III entity.
- The Executive Director will ensure that local experts, agencies, and all other interested parties are given an opportunity to participate in the program development process leading up to preparation of the Management and Operating Plan.
- The Executive Director will ensure implementation of Board approved and funded management-control programs, projects, and special programs or projects.

- The Executive Director will be responsible for daily operations of the Category III entity and directing any staff.
- The Executive Director will be the main point of contact between the Category III Program and other entities.

5.4 Staff

- *Note: The Category III Steering Committee has not yet identified either the role of Category III professional staff or how they could be organized.*
- If needed, the Executive Director may request that agency staff participate in Category III activities.
- If necessary, the Executive Director will seek funding from the Board of Directors to hire office and professional staff to assist in the daily operations of the entity.
- Any staff will be organized by the Executive Director in a manner that is efficient in meeting the entity's mandate and reflects directions provided by the Board of Directors.

5.5 Funding

- *Note: The Category III Steering Committee has deferred dealing with funding issues, pending recommendations from a CUWA sub-group, due 31 January 1996. Some of the issues requiring discussion include:*
 - a) Appropriate allocation of funding responsibility between water users, state, and federal parties?*
 - b) What are feasible funding allocation formulas among user groups?*
 - c) Voluntary mechanisms?*
 - d) User fees?*
 - e) Credit for "in-kind" activities?*
 - f) Should funding be tied to specific projects?*
 - g) CALFED crediting policy for Category III funding contributions (including those made to date)?*
 - h) Model for funding allocations (e.g., collective, integrative)?*

5.6 Relationships with Other Entities and Programs

- Figure 1 illustrates some key relationships between the Category III entity and other entities and programs, such as the CALFED Policy Group, the CALFED Bay-Delta

Program, and the CVPIA Program. It may be useful to establish formal working relationships between these entities.

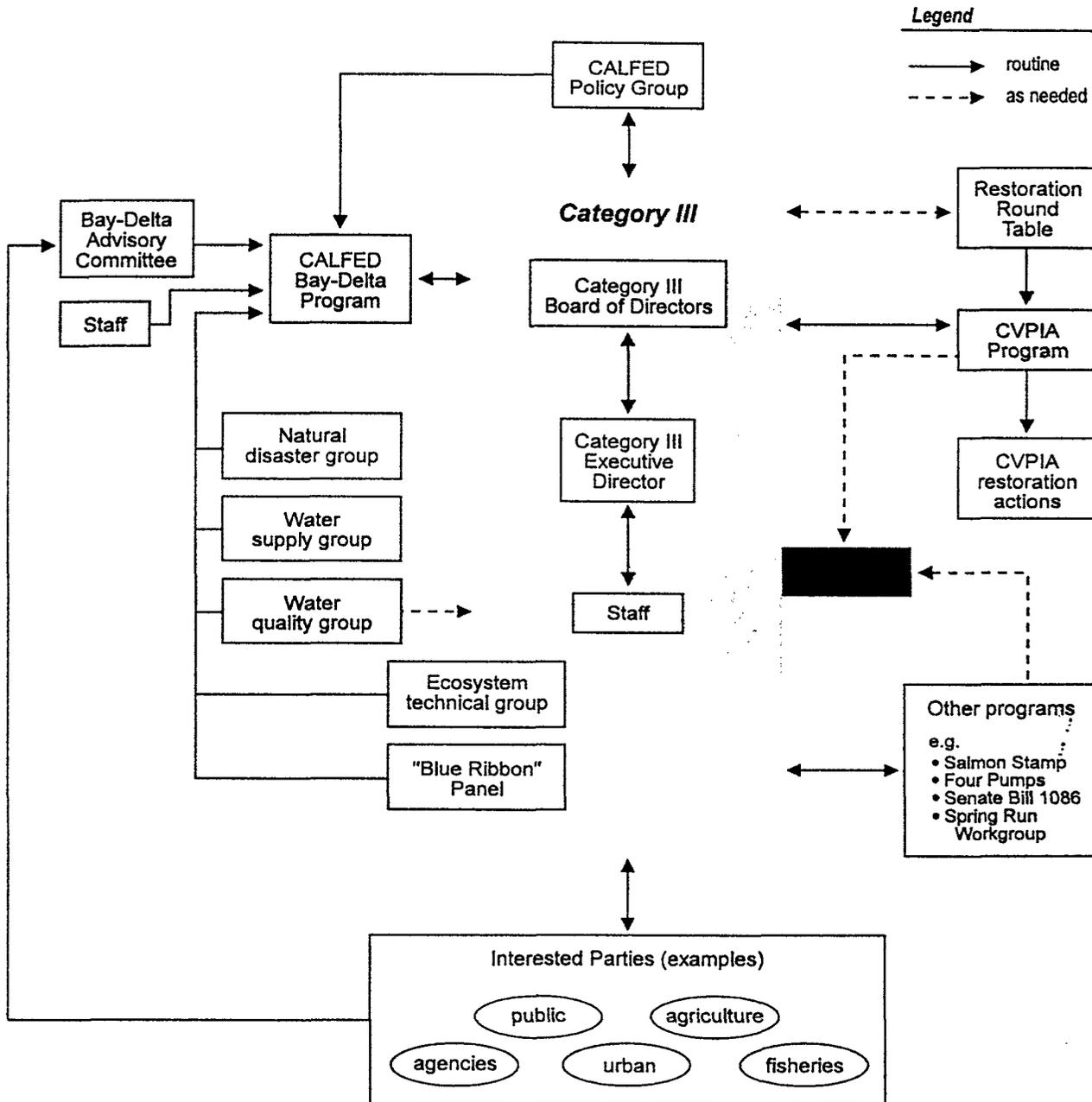


Figure 1: Organization of Category III Program.

- In time the Category III entity is also expected to cultivate informal, utilitarian relationships with many other processes and entities.

- The CALFED Ecosystem Technical Group will provide leadership in identifying specific Bay-Delta ecosystem objectives. It is expected that the Group will provide the best available guidance to the Category III process in a timely manner.
- The CALFED Ecosystem Technical Group, along with other technical specialists and members of the CALFED "Blue Ribbon" Panel, will provide information concerning non-flow factors important to achieving the Bay-Delta ecosystem objectives established by the CALFED Bay-Delta Program.
- There should be close communications between the Category III program and other entities and programs regarding priorities and coordination of programs and projects.
- It is expected that joint project funding of management-control programs, projects, and special programs or projects will be possible with other entities and programs, such as the CVPIA Program.

6.0 Functioning of the Category III Program

- Management-control programs, projects, and special programs or projects for funding will be chosen annually in a methodical, forthright, and public process.
- A six-step process will be used for identifying, implementing, and evaluating management-control programs, projects, and special programs or projects to be funded under the Category III program: (1) program development; (2) preparing Management and Operating Plan; (3) public review; (4) approval from Category III Board of Directors; (5) implementation; and (6) monitoring and evaluation.
- Figure 2 illustrates the planned process, with the Category III planning cycle contained within the shaded area. Note the legend: rectangles refer to specific products, ovals designate important activities, and hexagons indicate key entities.

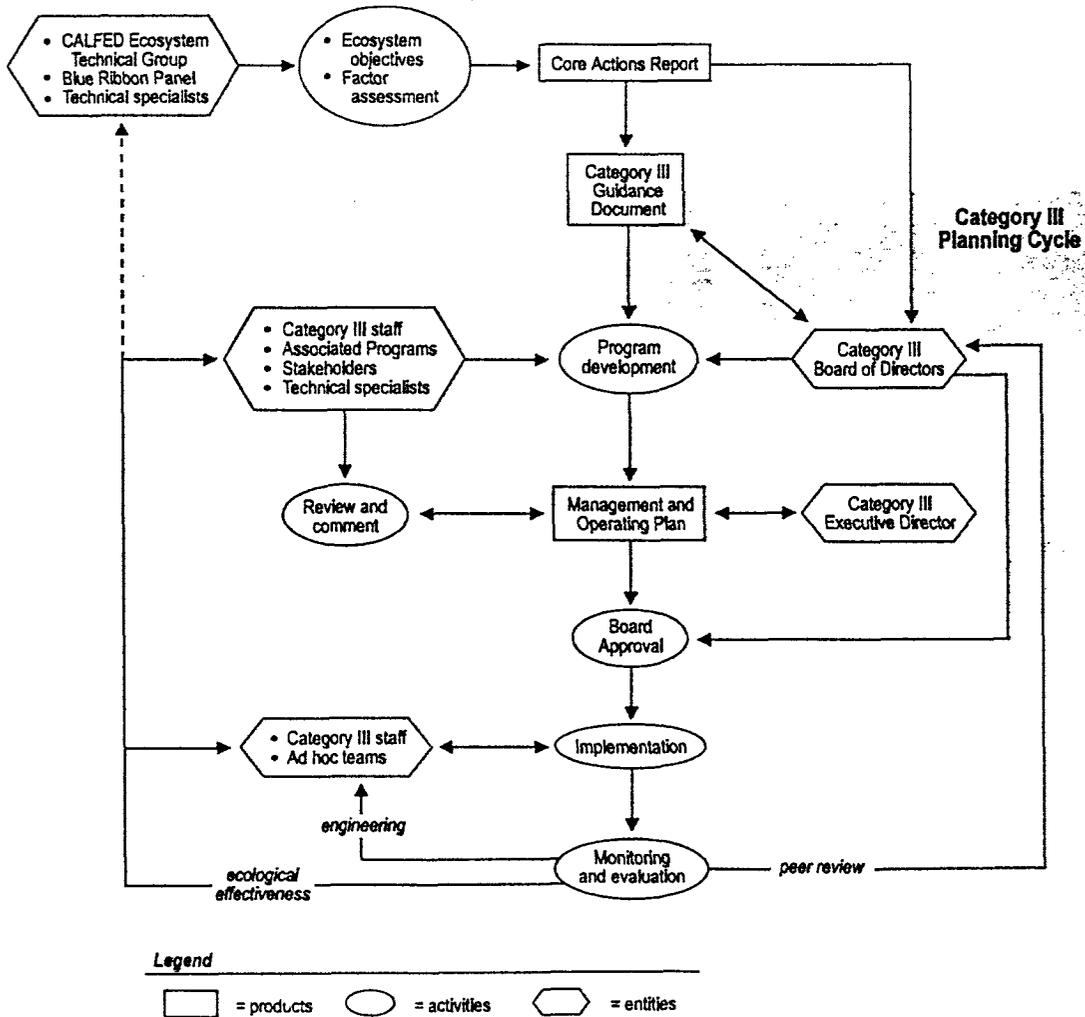


Figure 2: Category III Planning Cycle.

6.1 Category III Program Development: 1995 - 1996

- Figure 2 also illustrates a mechanism designed to help 'jump-start' the Category III planning process. It is expected that the CALFED Core Actions Report (see Section 6.2) will be a one-time input to help initiate the Category III planning process. Thereafter, the Category III planning cycle will rely on the processes described within the shaded box. Of course, in subsequent years there will continue to be substantial input required from other entities and programs, as described in Chapter 7.
- Table 1 indicates that the Category III Steering Committee plans to make 1996 funding choices for management-control programs, projects, and special programs or projects by May 1996. The timeline indicates how this could happen. Note that the inaugural Category III Management and Operating Plan is expected to be submitted to the Board of Directors by May 1996.

Table 1: Proposed Category III Timeline: 1995-1996.

Activity	Milestone
Category III Steering Committee expanded to include Executive Director of CALFED Bay-Delta Program	December 1995
CALFED Bay-Delta Program establishes both Ecosystem Technical Group and Blue Ribbon Panel	January 1996
Resolution of outstanding Category III issues	February 1996
Category III Guidance Document available	March 1996
CALFED Core Actions Report available	March 1996
Category III institutional modifications (e.g., Board of Directors established)	April 1996
FY 1996 Category III Management and Operating Plan submitted to Board of Directors	May 1996
FY 1996 funds committed for selected management-control programs, projects, and special programs / projects	May 1996
Formal establishment of Category III entity	July 1996

6.2 Core Actions Report / Category III Guidance Document

- By March 1996, the CALFED Bay-Delta Program is expected to produce a document identifying core actions that would begin restoring the Bay-Delta ecosystem. The process

leading up to development of this report is expected to involve both (i) articulation of specific Bay-Delta ecosystem objectives (see Section 6.2.1), as well as (ii) identification of important actions and key factors that need attention for achieving the Bay-Delta ecosystem objectives (see Section 6.2.2). This process will culminate with publication by CALFED of a *Core Actions Report*.

- At the same time, the CALFED Ecosystem Technical Group will also produce a *Category III Guidance Document*. This document will synthesize, from a Category III perspective, information pertaining to Bay-Delta ecosystem objectives, key factors influencing the objectives, and guidance concerning priority non-flow factors or activities recommended for inclusion within the Category III program.
- The Category III Board of Directors will review these two documents. As described in Section 7.4, the finalized *Category III Guidance Document* will eventually serve as a strategic 'blueprint' guiding Category III program development activities.

6.2.1 Bay-Delta Ecosystem Objectives

- The CALFED Ecosystem Technical Group will establish clear, specific Bay-Delta ecosystem objectives that together describe the future state of the Bay-Delta ecosystem. While this process may not be complete and final for some time, a provisional set of objectives will be made available by March 1996.
- Information describing the Bay-Delta ecosystem objectives will include: (i) the measurable endpoints or indicators at the core of the objective, (ii) when in time the objective is expected to be achieved, and (iii) and where in space the objective applies.
- **The Category III Program will not establish its own ecosystem objectives**, independent of the CALFED Bay-Delta Program, or adopt sole responsibility for any single Bay-Delta ecosystem objective.
- The main purpose of using the CALFED Bay-Delta ecosystem objectives at this time will be focus the Category III program on relevant and important non-flow factors (see Section 6.2.2). The Bay-Delta ecosystem objectives will not be directly used to judge progress of, and achievements by, the Category III program (see Section 6.8).

6.2.2 Factor Assessment

- Initially, key factors influencing the indicators or endpoints described by the Bay-Delta ecosystem objectives will be identified, **regardless of whether or not they fit within Category III**. It is expected that this list will become stable fairly quickly, and will evolve only slowly as new data and information become available.

- Once key factors have been identified, the subset of important non-flow factors will be catalogued. This will require specifying where, in space, the factors are most critical. This function will be performed by the CALFED Ecosystem Technical Group. These experts will be asked to provide recommendations to Category III on which non-flow factors offer the greatest and most immediate opportunities to advance toward the Bay-Delta ecosystem objectives. At this point it is important that *all relevant non-flow factors* be identified; determining whether or not an important factor is already being adequately handled comes later in the process.
- It is expected that, initially, the Category III Program will be focused upon non-flow factors such as, but not limited to, those already identified in the current Memorandum of Understanding (see Chapter 2). This list may also be expanded to include other activities relevant to the Category III mission and consistent with the CALFED Bay-Delta ecosystem objectives.
- The *Category III Guidance Document*, is expected to contain precise recommendations pertaining to non-flow factors or activities to be incorporated into the Category III program. Recommended activities may include management-control programs, projects, and special programs or projects.
- Consistent with the Principles for Implementation of Category III (see point 3 in Appendix A), the *Category III Guidance Document*, is also expected to focus on, and to contain recommendations concerning, Category III activities (e.g., monitoring) needed to improve available information for adaptive management

6.3 Adoption of *Category III Guidance Document* by Category III Board

- The Category III Board of Directors will review the *Core Actions Report* and *Category III Guidance Document*, and use this information to establish clear and explicit guidance for those who are to engage in the ensuing Category III program development process.
- It is expected that the Board will charge the Executive Director with developing a comprehensive, multi-year Management and Operating Plan describing the overall Category III strategy for dealing with the identified factors.
- Some of the expected features of the Management and Operating Plan include:
 - promote integrated, innovative, adaptive approaches to dealing with non-flow issues;
 - facilitate and coordinate with non-flow programs and projects throughout the basin;
 - audit improvements in non-flow factors throughout the basin and make periodic public reports;
 - foster attitudes, perceptions, and behavior that support and reflect needed changes in non-flow factors; and
 - work with others in helping set priorities for programs and projects related to non-flow factors.

- The Management and Operating Plan should be designed in light of priorities and activities of other entities, to avoid duplication of effort.

6.4 Program Development Process

- Once the *Category III Guidance Document* has been approved by the Category III Board of Directors, the Executive Director will undertake a consultative process to identify elements of a technical program for the upcoming year. Stakeholders, members of the public, government agencies, and others will be invited to participate in discussions and deliberations leading to formulation of the components of the Category III Program for the upcoming year.
- Through the consultative process, participants will identify important initiatives required to deal with non-flow factors. This discussion should be specific, in terms of where initiatives are required in space, and when in time they are most critical. Participants may also recommend studies and analyses necessary to better identify critical factors and appropriate management responses.
- The *Category III Guidance Document* will serve as the overall 'blueprint' guiding the development of the Category III program.

6.4.1 Identifying Needed Category III Activities

- The following points illustrate the general logic sequence that will be used in guiding program development:
 - Determine what management-control programs, projects, and special programs / projects are needed to effectively address the factor or issue of concern;
 - Determine what is already being done to manage or control the factor, or address the issue;
 - Based on the first two steps, determine what additional management-control programs, projects, and special programs / projects, relative to what is already being done, are needed for effective management or control of the factor, or to address the issue;
 - Identify candidate management-control programs, projects, and special programs / projects and their feasibility (see Sections 6.4.2, 6.4.3);
 - Determine how much money would be needed for each action, who would carry out the action (i.e. receive the funds), and identify which of these additional management-control programs, projects, and special programs / projects could be supported by Category III Program funds; and

- Submit recommendations to the Executive Director for management-control programs, projects, and special programs / projects to be funded by the Category III program.
- As described in Sections 6.4.2 and 6.4.3, it is expected that management-control programs, projects, and other activities ultimately selected for inclusion in the workplan will be a mix of proactive initiatives as well as selections from among received proposals.

6.4.2 Management-Control Programs and Projects

- Candidate management-control programs and projects could come from several sources, including:
 - Proposals submitted by project proponents;
 - Proposals recommended by the ad hoc teams or derived from the teams' recommendations;
 - Management-control programs or projects gleaned from existing reports; and
 - Special projects recommended in the CALFED Core Actions Report.
- The program development process will assess candidate management-control programs and projects using specific criteria developed for this purpose. A very important criterion is how well a candidate activity fits within the blueprint outlined in the *Category III Guidance Document*.

6.4.3 Special Programs and Projects

- Participants in the program development process may make recommendations for special programs or projects related to the Category III mission, and consistent with the CALFED Bay-Delta ecosystem objectives.
- special programs and projects should address critical environmental needs (gaps) that are not already being addressed by other programs or entities.

6.4.4 Technical Workplan

- The Executive Director or Category III staff will compile all of the recommendations from the program development process into the Technical Workplan portion of the Management and Operating Plan. This section will provide an organized description of the recommended mix of initiatives, along with accurate and detailed information on the specific management-control and project initiatives being proposed. Required information will include: what, who, how, where, when, funding, evaluation scheme, relationship to specific CALFED Bay-Delta ecosystem objective(s), and relevance to the *Category III Guidance Document*.

- In consultation with other involved parties, the Executive Director will make necessary revisions to bring the total budget in line with available funds.
- The Technical Workplan will include a schedule of budget obligations consistent with the longer term nature of management-control programs and some projects.
- The Technical Workplan will include a summary of management-control programs and projects not recommended for funding in that budget cycle, so that the Board and public are aware of alternatives.
- Based on comments received from the review process (see Section 6.5), the Executive Director will prepare a recommended Management and Operating Plan for approval by the Category III Board of Directors.

6.4.5 Management Plan

- The Executive Director will develop the Management Plan portion of the Management and Operating Plan for the upcoming year. This section will include recommendations concerning management, staffing, and funding for the Category III entity.

6.5 Public Review

- The Executive Director will arrange for stakeholder, agency, and public review of the Management and Operating Plan. Review comments will be used to revise the plan, as needed, and final recommendations will then be forwarded to the Category III Board of Directors.

6.6 Board Meeting: Priorities and Funding

- At the Category III Board meeting, board members will be asked to review the Management and Operating Plan and to make decisions regarding both overall funding levels for that year and allocations to the various proposed elements of the Technical Workplan.
- The Board will also be asked to approve that year's operating budget.

6.7 Implementation

- The Category III Executive Director will be responsible for implementing the directions described in the Management and Operating Plan, at funding levels set by the Board.

6.8 Evaluation

- The CALFED Bay-Delta ecosystem objectives will not be used directly as measures of success; such measures will be crafted for each management-control program or project individually.
- Activities funded under Category III will be subjected to three types of evaluation:
 - 1) *Implementation Audit*. Were the sanctioned management-control programs and projects implemented as planned?
 - 2) *Engineering success*. Was the management-control program or project correctly designed to achieve the anticipated benefits and was it implemented in accordance with that design? (e.g. 'Were approach velocities and mesh size achieved when the screen was installed and operated?') This evaluation will be unique to each action but easily developed and measured.
 - 3) *Effectiveness*. Did the management-control program or project affect the local biological resource in the expected fashion? (e.g. 'Did mortality of target species in the vicinity of the newly screened intake decline?') Evaluations of this sort will be similar within each class of action. The value of this information will be greatly increased if standardized measures within each category can be agreed upon. Comparable results will allow comparisons of cost-effectiveness and permit valid adaptive management responses.
- It is also expected that Category III activities will be part of the broader evaluation conducted by the CALFED Bay-Delta Program concerning:
 - 4) *Restoration*. Did the management-control program or project contribute to meeting CALFED Bay-Delta ecosystem objectives? (e.g. 'Is the beneficial use associated with the indicator species better protected?') This type of evaluation must be viewed in the context of all other factors. Such evaluations are not appropriate for assessing success of individual actions undertaken by the Category III program. Nevertheless, information from such a system-wide evaluation is important for adaptively evaluating and refining the overall Category III program.

7.0 Consultation with Interested Parties

- As outlined in Chapter 6, each year, stakeholders, representatives from associated programs, and technical specialists will be given an opportunity to directly participate in program development activities. This will involve (1) identifying needed management-control programs, projects, and special programs or projects; (2) developing a multi-year Category III plan describing how specific management-control programs, projects, and special programs or projects will be used to help achieve CALFED Bay-Delta ecosystem objectives; and (3) formulating recommendations for specific management-control programs, projects, and special programs or projects to be funded in the upcoming fiscal year by the Category III entity.
- The Category III Executive Director may promote formation of ad hoc technical teams, composed of representatives from relevant agencies and organizations and individuals with special knowledge and expertise, to assist in synthesizing results from the program development process into the Technical Workplan portion of the Management and Operating Plan.
- Ad hoc technical teams may be organized along programmatic themes. For example, some ad hoc teams may be established to deal with a particular "factor" (e.g., the pesticide team, the unscreened diversion team), while others may be created to work toward attainment of particular Bay-Delta ecosystem objectives (e.g., the spring run team). The requirement for, organization of, and performance by each ad hoc team could be examined annually by the Executive Director.
- Stakeholders, representatives from associated programs, and technical specialists will be given an annual opportunity to provide review comments to the Executive Director on the proposed Management and Operating Plan, prior to recommendations being forwarded to the Board of Directors.
- The Executive Director will also seek advice and recommendations from the CALFED agencies and CVPIA Program prior to submitting the Management and Operating Plan to the Board of Directors for approval.
- As needed, the Executive Director of the Category III Program will convene peer review panels of independent experts to review technical activities of the Category III entity or to provide unbiased evaluations of the effectiveness of Category III activities (management-control programs, projects, and special programs or projects).

Glossary

Note: *italicised* words are defined elsewhere in this listing

Bay-Delta: San Francisco Bay / Sacramento-San Joaquin Delta Estuary.

Bay-Delta ecosystem goals: general statements that, taken together, describe the overall aspirations underlying programs and projects intended to achieve *ecosystem restoration* in the Bay-Delta ecosystem (e.g., improve and increase aquatic and terrestrial habitats and improve ecological functions in the Bay-Delta system to support sustainable populations of diverse and valuable plant and animal species).

Bay-Delta ecosystem objectives: specific statements describing structural and / or functional ecological endpoints associated with *ecosystem restoration* in the Bay-Delta ecosystem (e.g., improve and increase aquatic habitat and improve ecological functions in the Bay-Delta system to support a sustainable population of Spring run chinook in {specific geographic location}).

CALFED: refers to the joint California / Federal CALFED Policy Group, composed of State and Federal agencies (represented by the California Water Policy Council and Federal Ecosystem Directorate).

CALFED Bay-Delta Program: refers to the program created under the auspices of the CALFED Policy Group.

CALFED Blue Ribbon Panel: This group is to be established by the CALFED Bay-Delta Program and will be composed of a relatively small number of individuals covering a range of disciplinary expertise and experience. As currently envisioned, the Panel would be composed of "blue-ribbon" scientists, some of whom may already be involved with other processes in the region (e.g., IEP Science Advisors Group, San Francisco Estuary Project), while others may be from outside the region.

CALFED Ecosystem Technical Group: This group is to be established by the CALFED Bay-Delta Program and will be composed of a relatively large number of individuals (around 20 members) covering a range of disciplinary expertise and experience. As currently envisioned, the Group would be composed of agency experts, consultants with considerable relevant experience (both field and theory), and consultants representing stakeholders (some of whom may also be involved with other processes, e.g., IEP Science Advisors Group, San Francisco Estuary Project).

Category III entity: Refers to the institutional mechanism created to develop and carry out the *Category III program*.

Category III Memorandum of Understanding: Document developed in July 1995 describing terms of reference covering: (i) Category III parties relationships, (ii) a mechanism for developing and recommending a more permanent structure for the Category III program, and (iii) a mechanism for holding and disbursing initial commitments of Category III funds (see Appendix B, below).

Category III Program: Refers to activities carried out in accordance with the *December 15 Bay-Delta Accord* that are designed to address factors, other than water projects, that (i) are adversely affecting the Bay-Delta ecosystem, or that (ii) offer opportunities for improving the quality and integrity of the Bay-Delta ecosystem. In practice the Category III program may consist of a mixture of *management control programs, projects, and special programs or projects*.

December 15 Bay-Delta Accord: On December 15, 1994, the State of California, the Federal government, and participating California water user organizations and environmental interest groups entered into an historic agreement establishing principles to enhance protection of the San Francisco Bay/Sacramento-San Joaquin Delta Estuary ("Bay-Delta"). That statement of Principles for Agreement on Bay-Delta Standards ("Principles Agreement") created a framework for implementing a set of integrated water quality, flow, and operational control strategies to preserve and enhance estuarine habitat in the Bay-Delta while simultaneously respecting the multiple beneficial uses associated with the Estuary. It also stated that the signatories were committed to the implementation and financing of so-called "Category III" measures to address non-flow factors as part of a comprehensive ecosystem protection plan for the Bay-Delta (see Appendix A, below).

ecosystem restoration: the process of establishing structural and functional attributes to the Bay-Delta ecosystem that are deemed desirable as described by the *ecosystem goals and ecosystem objectives* established by the *CALFED Bay-Delta Program*.

Management and Operating Plan: Annual Category III plan prepared for the Board of Directors and carrying recommendations describing the mixture of *management control programs, projects, and special programs or projects*, as well as management, staffing, and funding requests for operating the *Category III entity*.

management-control program: Refers to non-*project* actions necessary to control or manage a factor affecting the Bay-Delta ecosystem. Such a program can include, but is not limited to: regulatory actions; assessment of effects of factors or control / management actions; routine monitoring; development of methods for control or management; technical assistance, development of monitoring methods; and development and support of voluntary programs. An example of a management-control program would be those actions necessary to control or manage ballast discharges in the Bay-Delta (e.g., regulatory actions, technical assistance, development of voluntary programs).

"non-flow" factors: Influences, other than water flow, that (i) are affecting the structure and function of the Bay-Delta ecosystem, or that (ii) if manipulated, would be helpful in achieving ecosystem objectives established by the *CALFED Bay-Delta Program* for the Bay-Delta ecosystem.

project: Actions consisting of construction and installation of facilities, physical modifications, or the purchase of land or other appurtenances. Projects can be part of a management-control program.

special programs or projects: Programs or projects necessary to address an environmental need not adequately addressed by *management-control programs or projects* selected for other reasons.

Appendix A

Principles for Implementation of Category III (Attachment C from 15 December 1994 Bay-Delta Accord)

The State and Federal governments and agricultural, urban and environmental interests are committed to the implementation and financing of "Category III" measures as an essential part of a comprehensive ecosystem protection plan for the Bay-Delta Estuary.

To achieve this objective we agree to the following principles:

1. *Level of funding:*

Category III activities are expected to require a financial commitment estimated to be \$60 million a year.

2. *Sources of funds:*

It is anticipated that new sources of funds will be required to adequately finance Category III activities. A process for evaluating existing funding and possible reprioritization will be used to finance a portion of Category III activities. Additional funds will be secured through a combination of Federal and State appropriations, user fees, and other sources as required.

3. *Monitoring:*

It is further agreed that monitoring is a high priority in addition to the Category III elements, and has a high priority for separate funding.

4. *Unscreened diversions:*

It is agreed that the highest priority Category III activity for funding is the screening of currently unscreened diversion points in the Bay-Delta watershed. An evaluation of the benefits of a screening program for listed species will be conducted immediately and used to improve listed species survival no later than during the 95/96 water year.

5. *Consensus process:*

CUWA/AG will work with CALFED and environmental interests in an open process to determine precise priorities and financial commitments for the implementation of all Category III elements. The CUWA/AG work plan currently being developed will be revised consistent with these Principles.

6. *Deadline:*

This process will be under the sponsorship of CUWA/AG, which commits to an open and collaborative approach involving CALFED and the environmental community. It is agreed that detailed implementation for these Principles will be finalized before publication of the final SWRCB standards, which is currently planned by March 31, 1995.

Appendix B

Memorandum of Understanding Regarding Short Term Category III Activities July 1995

WHEREAS, representatives of the State and Federal governments and the urban, agricultural and environmental communities agreed, on December 15, 1994, to a statement of "Principles for Agreement on Bay-Delta Standards" (the "Statement of Principles"), which Statement includes the implementation of so-called "Category III measures;" and

WHEREAS, the Statement of Principles commits the State and Federal Governments, agricultural, urban, and environmental interests to the implementation and financing of Category III measures (estimated to require a financial commitment of Sixty Million Dollars (\$60,000,000) per year) as an essential part of a comprehensive ecosystem protection plan for the Bay-Delta; and

WHEREAS, the program of Category III measures is focused upon improving specific non-outflow-related factors including, but not limited to: unscreened water diversions in the Sacramento-San Joaquin Delta Estuary ("Bay Delta"), along the Sacramento and San Joaquin Rivers and other locations; waste discharge control and pollution prevention; legal fishing (sport and commercial; illegal fishing (poaching); land-derived salts; exotic species; riparian, wetland, and estuarine habitat restoration; and Delta channel alterations/local land-use modifications; and

WHEREAS, the Statement of Principles provides that the water user community agrees to make available an initial financial commitment of ten million dollars (\$10,000,000) annually for three years towards funding Category III activities, and the Metropolitan Water District of Southern California agreed to guarantee the initial annual financial commitment for water user funding of Category III activities described in the Statement of Principles; and

WHEREAS, it was agreed in the Statement of Principles for Implementation of Category III that urban and agricultural water suppliers will work with State and Federal agencies and environmental interests concerned with the Bay-Delta in an open process to determine precise priorities and financial commitments for the implementation of all Category III activities; and

WHEREAS, the urban, agricultural and environmental parties to this Memorandum of Understanding wish to provide for an interim mechanism that will develop and recommend a permanent structure for their participation in the management of the Category III program, that will provide for coordination with the State and Federal government parties to this Memorandum of Understanding, and that will provide a mechanism that will hold and disburse initial commitments of Category III funds until the permanent structure can be developed and implemented.

NOW, THEREFORE, IT IS AGREED by the undersigned that:

1. On February 15, 1995, the Metropolitan Water District of Southern California deposited Ten Million Dollars (\$10,000,000) for the exclusive purpose of funding Category III measures, as an initial contribution towards a fund established for the purpose of funding Category III measures.
2. Subject to the availability of necessary appropriations or approvals, the urban, agricultural, and environmental parties to this Memorandum of Understanding may (but are not obligated to) contribute additional initial financing for Category III activities, 1) by contributing to a Category III fund established for that purpose, or 2) by funding specific Category III projects approved by the Steering Committee described hereinafter. Subject to the availability of necessary appropriations or approvals, State and Federal government parties to this Memorandum of Understanding may assist in funding category III activities by consultation with CALFED. The Steering Committee (or its successor once a mechanism for long-term implementation is established) will develop a process for crediting all initial contributions made pursuant to paragraph 1 and this paragraph toward longer-term, Category III financial responsibilities.
3. the Metropolitan Water District of Southern California ("Metropolitan") shall act as Treasurer of the Category III Fund pursuant to the terms of this Memorandum of understanding unless and until replaced by another party or until termination of this Memorandum of Understanding. For this purpose, Metropolitan shall maintain a separate account designated as the "Category III Fund," which account shall be open for inspection upon reasonable notice by any of the signatories of this Memorandum. The Category III Fund shall be held in an account maintained with Metropolitan's regular and usual financial institution for such purposes.
4. An interim Category III Steering Committee ("Steering Committee") shall be established upon completion of the Category III Implementation Plan. The Steering Committee shall reflect the interests of each of the following groups: the environmental community, with a total of two representatives; the fishing community, with a total of two representatives; the agricultural community, with a total of two representatives; and the Ag/Urban community, with a total of four representatives. Each group shall separately be responsible on an ongoing basis for determining the composition of its representation on the Steering Committee. CALFED will appoint a total of six individuals to serve as liaisons with the Steering Committee. The Steering Committee, in consultation with the CALFED liaisons, shall identify and prioritize Category III measures. The Steering Committee shall have the power to develop and recommend a permanent institutional framework for the urban, agricultural and environmental parties' implementation of the Category III program. It also shall have the power to carry out the urban, agricultural and environmental parties' duties under the Category III Implementation Plan in the interim, including the power to approve Category III measures pending the establishment of a permanent institutional framework and to determine whether urban, agricultural and environmental parties' funds will be committed for the implementation of such projects. The Steering Committee shall reach decisions that reflect the consensus of all its members.
5. To facilitate the carrying out of its responsibilities, the Steering Committee shall form an Advisory Committee. The Advisory Committee shall be broad based, comprised of individuals possessing specialized knowledge of the Bay-Delta including its hydrology and its aquatic resources.

resources. The Advisory Committee is intended to recommend, subject to Steering Committee concurrence, expenditures from the Category III Fund for early implementation of projects.

6. The urban, agricultural, and environmental parties hereto, in cooperation with the State and Federal governments and other interested parties, intend to promptly establish a permanent mechanism to manage the urban, agricultural and environmental parties' participation in Category III programs on a long-term basis. Accordingly, it is anticipated that the administrative mechanism provided herein will be superseded by an alternative administrative mechanism intended to operate over the longer term. The Steering Committee provided for herein shall have the power to transfer funds collected hereunder to such administrative mechanism.
7. Category III funding issues will be addressed by a policy-level sub-committee convened expressly for that purpose. Among other things, this sub-committee shall address the identification of incentives to contribute to the Category III Fund established by Metropolitan and the development of mechanisms to allocate Category III funding responsibilities. The Steering Committee and/or the long-term Category III structure will be guided by the policy sub-committee's resolution of these issues.
8. Participation in this Memorandum of Understanding is on a voluntary basis. Participation in activities pursuant to this Memorandum is not, nor may it be construed to be an admission of responsibility or liability for protection measures in the Bay-Delta system. Further, participation by an agency shall not be precedence for compelling participation in Bay-Delta protection activities.
9. Participation in this Memorandum of Understanding shall not confer jurisdiction or enforceability to any person or agency over any signatory. The parties have entered into it voluntarily and no rights to any other person or agency are accorded by participation in the Memorandum.

This Memorandum of Understanding shall remain in full force and effect until superseded by the long-term arrangement referred to in paragraph 6. Any party wishing to terminate their participation in the Memorandum may do so by providing written notice to all of the undersigned parties or their attorneys, upon which time the Memorandum will have no further force or effect as to that party. Termination by any one party shall not invalidate this Memorandum as to any party not tendering its own independent notice of termination.