

11/25/97

**BDAC ASSURANCES WORKGROUP
DRAFT ASSURANCES PROPOSAL**

The CALFED Bay-Delta Program is developing a long-term comprehensive plan to restore the ecological health of the Bay-Delta and improve water management for beneficial uses. Once the CALFED agencies select a plan, they will need an implementation strategy, made up of a financing and assurances package, that assures the plan will be implemented and operated as agreed. In addition, the CALFED agencies will need a contingency process to address situations where a key component of the plan cannot be implemented or operated as agreed.

The Bay-Delta Advisory Council's (BDAC's) Assurances Workgroup has been meeting since August 1996 in an effort to craft a preliminary package of assurances. The Workgroup process and resulting discussions at BDAC have identified the building blocks necessary to craft an assurance package. The CALFED Bay-Delta Program staff and Assurances Workgroup identified assurance needs and issues for each of the program components; identified the assurance concerns of stakeholders; compiled a list of assurance tools; and developed guidelines for evaluating a package of assurances. (Figure 1 illustrates the Workgroup's process and summarizes these building blocks. Appendices A - D describe these elements in greater detail.)

The Workgroup's efforts to date have been aimed at crafting a preliminary package of assurances for a hypothetical case study because a preferred alternative has not yet been identified. Once a preferred alternative is identified, the assurances proposal will change to address that alternative. Although the Workgroup has not endorsed a single package of assurances for the case study, it has identified some areas of agreement, and offered options to address areas where no agreement currently exists. This preliminary assurance proposal is described in sections I. - VI. of this paper.

This proposal is based on alternative 3b, a dual conveyance alternative which includes both through delta and isolated conveyance elements plus storage. This alternative was selected for an assurances case study because it presents complex assurance issues. The use of this alternative as a case study does not represent any decision or recommendation by the CALFED agencies concerning selection of a preferred alternative or the outcome of the environmental review process.

This paper marks a refinement of previous workgroup papers in an attempt to identify areas of agreement and offer options for areas of disagreement. This proposal, as modified by the workgroup at its December 1997 meeting, will form the basis for the assurances portion of the implementation plan to accompany the draft Programmatic Environmental Impact Report and Statement addressing the CALFED Bay-Delta Program.

Regardless of which program alternative or assurance package is selected, the CALFED Bay-Delta Program must determine how to implement the program over several years. Because the Program likely will require a number of funding, legislative, regulatory, contractual and institutional changes, implementation will be a complex process. Additionally, the size of the Program and the nature of the Program components make it impossible to implement the entire program simultaneously. The Program, therefore, must be implemented in phases.

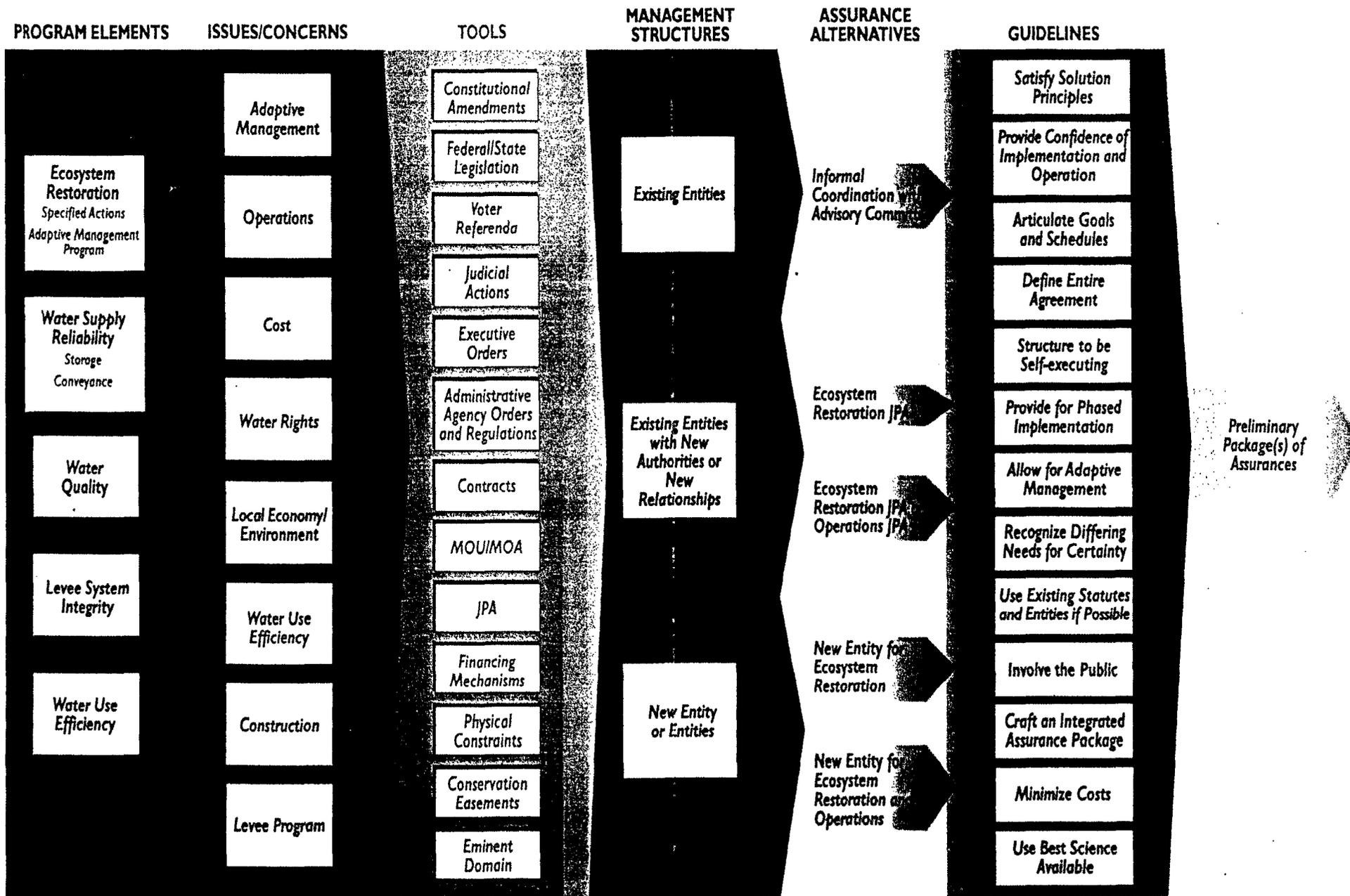
The challenge in implementing a program in phases is to allow actions that are ready to be taken immediately to go forward, while assuring that each interest group has a stake in the successful implementation of the entire program over the implementation period. A phased implementation strategy, therefore, should have the following characteristics:

- each phase should be completed before the next phase can begin;
- each interest group should have strong inducements to support the completion of each and every phase; and
- program elements which are outside of the control of the CALFED agencies should be implemented as early as possible to reduce the risk that outside actors may affect implementation.

A proposed phasing plan is offered at section VII. of this paper.

Clearly this proposal and the phasing plan require significant additional refinement. This paper is intended to outline the discussion thus far by identifying areas of agreement and offering options for areas of disagreement. If this summary version is acceptable, the workgroup would be asked to turn next to adding greater detail to the proposal. The effort to craft a package of assurances will be ongoing for the remainder of time between the draft and final environmental documents. A final implementation plan including a financing and assurances proposal will be completed for the final environmental document.

IMPLEMENTATION: ASSESSING ASSURANCES



E-002141

Preliminary Assurance Proposal

I. Program-Wide Assurances

A. Implementing Document -

1. Structure:

Option 1. Implementation Agreement - would provide a blueprint for implementing the program. The elements of an implementation agreement would be described in the Programmatic EIR/EIS. In addition the CALFED Agencies and stakeholders would sign the agreement as an indication of their support for the program.

Option 2. Implementation Plan - would also provide a blueprint for implementing the program. It would be part of the final Programmatic EIR/EIS.

2. Contents - an implementing document would include:

- a. the program to be implemented;
- b. a financing plan including sources of revenue and cost allocations;
- c. the method of ESA/CESA compliance;
- d. the formation, structure, governance, purposes and powers of any new entities to implement the ERPP;
- e. the process for pursuing new and modified permits for water quality and water rights;
- f. a phasing plan and contingency process;
- g. a description of the state and/or federal legislation needed to carry out the program;
- h. the purpose, structure, scope of authority and representation of a stakeholders advisory committee;
- i. all contracts, agreements, regulatory modifications, and any other tools necessary to assure that each component will be described in

as great a detail as is available at the conclusion of the Programmatic EIR/EIS.

- j. a process and schedule for finalizing pieces of the implementing documents that may not be complete by the time of the Final Programmatic EIR/EIS.
 - i. A description of how the CALFED agencies would coordinate implementation and monitoring of the long-term plan.
- B. Phasing Plan - detailing a sequence of events for implementation and a description of which actions would be done in each phase. Shown in greater detail at section VII following.
 - C. Contingency Plan - describing the process to be followed in the event that unforeseen circumstances prevent key components from being implemented or operated as agreed. The process is yet to be developed.
 - D. Any proposed state or federal legislation would adhere to the CALFED Bay-Delta Program's four project purposes: ecosystem restoration, water quality, water supply reliability, and system integrity. Proposed legislation for support of one program component would be tied to support of all program components.
 - E. The CALFED agencies would act as a coordinating and oversight committee to aid implementation.
 - F. A citizens advisory committee whose members would be jointly appointed by the Secretary of the Interior and the California Resources Secretary would provide advice to the CALFED agencies throughout implementation. Other citizens committees may also be established to fulfill specific roles during implementation. See II.E., for example.

II. Ecosystem Restoration Program Plan

- A. Implementing Entity
 - Option 1. Existing Entities
 - a. Responsibility and funding for implementing and monitoring the ERPP would be given to individual CALFED agencies.

- b. The agencies would execute a memorandum of understanding describing their tasks and responsibilities.
- c. Agencies would also commit to coordinating their ERPP activities with the other CALFED agencies.
- d. CALFED agency secretaries or directors would meet as a policy guidance council to oversee implementation and to seek to resolve any disputes among the CALFED agencies.
- e. The CALFED agencies would work within their existing legal authorities. Legislation would not be necessary to modify or create an implementation entity. Legislation may be needed to allow existing entities the authority needed to implement the ERPP.

Option 2. Joint Powers Authority

- a. The CALFED agencies would form a joint authority to implement the ERPP. The joint powers agreement would describe the structure, authority and governance of the authority.
- b. The CALFED agencies would not transfer any regulatory authority, but would provide funding and other powers possessed by the agencies necessary to implement the ERPP.
- c. State and federal legislation may be necessary to provide authority not commonly held by the CALFED agencies, but necessary to implementing the ERPP.
- d. The joint authority would appoint an executive director who would be authorized to hire staff adequate to carry out the program including monitoring and adaptive management.

Option 3. New entity.

- a. State and federal legislation would establish a new public agency to:
 - 1) implement the ERPP including the adaptive management plan; and
 - 2) manage water allocated for environmental purposes.

- b. The authority would be governed by a board of directors jointly appointed by the Secretary of the Interior and the California Secretary for Resources that would include representatives of the CALFED resource agencies.
 - c. The board of directors would appoint an executive director who would be authorized to hire staff adequate to carry out the program including monitoring and adaptive management.
 - d. The authority would prepare an annual budget and establish funding priorities for restoration and monitoring actions.
4. Any ecosystem restoration entity would have the power to:
- 1) acquire water through purchase, lease, etc;
 - 2) acquire property through purchase, lease, etc;
 - 3) participate in incentive programs and market transactions;
 - 4) contract with private parties and public agencies;
 - 5) receive funding from public and private sources;
 - 6) spend money;
 - 7) and other powers necessary to implement the ERPP.

B. Adaptive Management

- 1. Clear articulation of the process to modify vision, goals, implementation objectives, targets and actions.
 - a. Vision is fixed.
 - b. Goals are fixed.
 - c. Implementation objectives may only be changed _____
 - c. Targets may be changed _____
 - d. Discretion over actions remains solely with the ERPP implementing entity.

2. Financing: Initial investment of \$_____
 - a. The federal government has authorized \$430 million and appropriated \$85 million thus far.
 - b. California voters approved \$450 million through Proposition 204.
 - c. additional contributions for the initial investment will come from _____.
3. Financing: Ongoing funding outside of the scope of the state and federal annual budget process is necessary. Fees on water users within the delta watershed, varying by the amount of reuse of the diverted water, will fund the ongoing ecosystem restoration effort.

These fees could be linked to the timely completion of water supply facilities in order to link the ecosystem restoration program and the water supply reliability program's success.

- C. The Department of the Interior would seek legislation assigning management of the Central Valley Project Improvement Act's fish and wildlife water, Restoration Fund and Anadromous Fish Restoration Program to the CALFED ecosystem restoration entity.
- D. Scientific Review. The ecosystem restoration entity will establish an independent scientific review process to assess the progress of restoration and monitoring actions, as well as the status of planning efforts for future actions. The review panel will prepare a report annually recording their findings and recommendations.
- E. A citizens advisory committee would be created to oversee implementation of the ERPP. The committee would provide advice to the ecosystem restoration entity on any aspect of implementation and monitoring or planning efforts for future actions.
- F. Endangered Species - The ERPP incorporates existing recovery plans. Section 7 consultation combined with a section 10 Habitat Conservation Plan will address all ERPP actions.
 1. It is not yet clear which ERPP actions would be covered by a section 7 consultation and which would be covered by an HCP/NCCP.

2. The term of an HCP/NCCP would be the same as the ERPP (25 - 30 years).
 3. The geographic scope of an ERPP HCP would be only as broad as that of the ERPP, but could be narrower depending upon the actions to be covered.
 4. The species to be covered by an HCP/NCCP are still being determined. An HCP/NCCP would only cover those species for which adequate information is available. Species not covered by the HCP/NCCP would not be covered by section 10's "No Surprises" policy. Section 7 may provide assurances where section 10 cannot. Staff is still exploring the nature and extent of these assurances.
 5. An ERPP HCP/NCCP would include monitoring, scientific review, adaptive management and adequate funding to implement the plan.
 6. Members of the public would be consulted during the development of an ERPP HCP/NCCP.
 7. HCP/NCCP Extraordinary Circumstances Financing: A reserve fund of \$_____ would be set aside from the initial ecosystem restoration funding and placed in an interest bearing account for 10 years following certification of the Programmatic EIR/EIS to be used to address endangered species needs not otherwise met by the ERPP HCP/NCCP.
- G. California Endangered Species - The California ESA and the Natural Communities Conservation Planning process would address ERPP actions. The State process would be coordinated with the federal process.
- H. Water Supply - see Water Supply Reliability Plan.
1. Adequate new supplies to meet the designated minimum flow standards.
 2. Access to water markets in order to augment instream flows.
- I. Water Quality - The CALFED agencies and the ecosystem restoration entity would propose revisions to the Bay Delta Water Quality Control Plan (WQCP) which would include environmental water quality and outflow requirements. The proposed revisions would include revised operational rules for existing delta facilities which would control until any new facilities were operational. When new facilities became operational, the CALFED agencies and ecosystem restoration entity would again propose necessary revisions to the WQCP.

III. Water Supply Reliability Plan

- A. Implementing Entity - existing entities implement new facilities and manage them consistent with CALFED Program and in consultation with CALFED agencies including ERPP implementing entity or entities. The CALFED agencies would enter into a memorandum or understanding detailing who will take the lead in building the new facilities and how their operations will be integrated with existing Central Valley Project and State Water Project facilities and operations. The Coordinated Operating Agreement (COA) between the Department of Water Resources (DWR) and the U.S. Bureau of Reclamation (USBR) will be amended to reflect the changes required by the long-term CALFED Bay-Delta Program plan.
- B. Financing - Generally, those who benefit from new facilities will pay for them.
 - Option 1. Water users pay for a share of the costs proportionate to the benefits received from the facilities and the public pays for the environments' share. For example, the benefits of new storage may be divided 1/3 for agricultural, urban and environmental interests and the costs would also be divided in thirds.
 - Option 2. Water users pay for new facilities including any portion allocated to environmental purposes.
- C. Operational Criteria and Rules
- D. Federal Endangered Species
 - Option 1. Section 7 consultation only.
 - Option 2. Section 7 consultation and Section 10 HCP.
- E. California Endangered Species - California ESA and NCCP. This process would be coordinated with the federal one.
- F. Clean Water Act section 404 - A 404 analysis will be included in the Programmatic EIR/EIS. The Environmental Protection Agency and the U.S. Army Corps of Engineers will select the least environmentally damaging practicable alternative as part of their participation in and review of the Programmatic EIR/EIS. DWR and USBR will apply for permits for specific facilities during Phase III.

G. Water Rights

1. Modification of water rights.
2. Rules for wheeling water through the state and federal facilities and water transfers to minimize third party and environmental impacts.
3. Rules for conjunctive use programs including provisions minimizing third party and environmental impacts.

IV. Water Quality Plan

- A. Implementing Entity. The plan's goals, targets and water quality parameters of concern will guide expenditures by federal, state and local agencies. A significant amount of available resources will be aimed at source control.
- B. Financing
- C. Implementation Plan. A water quality implementation plan committing CALFED to research, feasibility evaluation, pilot studies and prioritizing expenditures would occur in Phase III of the CALFED Bay-Delta Program.
- C. The programmatic water quality actions are not expected to have an impact upon endangered species.

V. Delta System Integrity Plan

- A. Emergency Plan. An interagency emergency response program would be created and administered by DWR. The program would define protocols to follow in the event of levee(s) failures and assure that initial funding and necessary equipment would be available in a timely manner.
- B. Minimum Levee Standards. DWR would administer funds for ongoing levee maintenance enabling all local districts to attain PL-99 standards by a date certain through cost-sharing. Any needed improvements on critical western delta islands would be completed prior to construction of any new water supply facilities.
- C. Funding for additional levee improvements would require consistency with the ERPP.
- D. Financing

- E. Federal and State ESA Compliance. A section seven consultation or HCP/NCCP would provide protection of endangered species during levee maintenance, and would in turn provide assurance to the levee owner the conditions under which maintenance could occur.

VI. Water Use Efficiency

- A. Urban water agencies would implement best management practices for conservation and water reclamation. The California Urban Water Conservation Council (CUWCC) would certify only those urban agencies which meet specified requirements.
- B. Agricultural water agencies would implement efficient water management practices. The Agricultural Water Management Council (AWMC) would certify only those agricultural water agencies which meet specified requirements.
- C. Wildlife refuge managers would implement efficiency practices.
- D. Financing. DWR and USBR would provide incentives and assistance programs to encourage water conservation. \$_____ necessary to implement this program would be financed by _____.
- E. Endangered Species. The water use efficiency plan is not expected to have an impact upon endangered species.
- F. In addition, any water user receiving benefits from the CALFED Bay-Delta Program would be required to meet the applicable urban, agricultural or refuge water conservation measures described above.
- G. If after two years from certification of the Programmatic EIR/EIS local agencies do not have certified conservation plans lose eligibility for financial incentives or technical assistance programs.

H. Additional Enforcement.

- Option 1. Failure to meet the conservation requirements could result in denial of access to facilities for transfers, a penalty fee added to the cost of water, or reductions in the amount of water delivered.
- Option 2. If after two years a sufficient percentage of water agencies have not voluntarily met the conservation standards and targets described above, state legislation would be proposed to make those standards mandatory.

Option 3.

VII. Phasing Plan

- A. Phase I - activities occurring between the present and certification of the final Programmatic EIR/EIS. Present through December 1998.
 - 1. Draft implementation document (plan or agreement) and circulate for agency and public review and comment. The document will be a compilation of all the actions necessary to assure implementation of the Program. The document should be as detailed as is possible in the time allotted.
 - 2. Describe how the Program is to be managed in the near term. If new entities or authority is needed to implement the ERPP, some interim manager should be selected. This interim manager would oversee implementing the ERPP until a new entity or authority is operational. It will be necessary to spell out this entities' responsibilities, authority, financing, and how it relates to the other CALFED agencies.
- B. Phase II - transitional phase during which the Program moves from planning to implementation. January 1998 - December 1998. As soon as possible following certification of the Programmatic EIR/EIS, the following would begin:
 - 1. Introduce state and/or federal legislation necessary to implement the solution. This includes:
 - a. creating or modifying entities, their authority or relationships;
 - b. seeking federal authorization and appropriations;
 - c. securing state approval to sell general obligation bonds; and
 - d. modifying existing legislation regarding water transfers, coordinating CVPIA restoration fund expenditures, etc.
 - 2. Draft contracts and agreements to govern implementation. This would include:
 - a. joint powers authorities, MOUs, MOAs, or other forms of agreement among the CALFED agencies; and
 - b. contracts between agencies and stakeholders.

3. Sign and execute the HCP/NCCP implementation agreement.
 4. Establish a forum for discussions with members of the public throughout this phase.
 5. Finalize the process to address circumstances which prevent key program components from being implemented or operated as agreed.
- C. Phase III - near-term implementation. January 1999 - December 1999.
1. Establish a stakeholder advisory committee.
 2. Begin implementing the levee stabilization program and emergency plan.
 3. Complete site-specific analysis and seek permit authority for any new facilities or operations.
 4. Begin implementing ERPP with existing entities until new or reformulated entity is operations.
 5. Implement ecosystem restoration monitoring plans.
 6. Begin implementing water use efficiency and water quality programs.
- D. Phase IV - long-term implementation. January 2000 - December 2030.
1. Transfer implementation responsibilities and funding to new or modified ecosystem restoration entity.
 2. Transfer HCP/NCCP implementation responsibilities and funding to new or modified ecosystem restoration entity.
 3. Construct new facilities and implement new operational rules and criteria.
 4. Execute modified coordinated operations agreement governing new and existing facilities and operations.
 5. If all program components are being implemented substantially as agreed, all funding would be available to complete all program components.
 6. If all program components are not being implemented substantially as agreed, the process to address these circumstances would be triggered.

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.