

Issue Paper
Bay-Delta Accord Extension
July 6, 1998

Last December, the Bay-Delta Accord was extended by the state and federal agency signatories (but not the stakeholders) until December 31, 1998. For a number of reasons, we are now contemplating whether an additional extension beyond that date is warranted. A draft memorandum is attached that describes what actually happens when the Accord expires. This memorandum considers two questions: (1) the length of the extension, and (2) the nature of the extension.

(1) LENGTH OF EXTENSION

Options: Tie to CALFED ROD
 Tie to SWRCB Final Decision
 Tie to Limited Time Period with Coordinated Actions

Tie to CALFED ROD. The agencies could extend the Accord until the CALFED Record of Decision is finalized (currently targeted for the fall of 1999), after which time the assurances provisions and commitments in the ROD (and any other accompanying documents) would take over the functions of the Accord. The primary advantage to this approach is that it would most likely be the last Accord extension we would have to consider, in that it covers the entire indefinite-length period preceding a final ROD. The major disadvantages to this approach are (a) that it extends the Accord commitments for an indefinite and unknown period of time that could stretch onward significantly if the CALFED process falters or is delayed for other reasons; and (b) that it does not provide any leverage on the agencies and stakeholders to actually complete the CALFED process.

Tie to SWRCB Final Decision. The agencies could extend the Accord until the SWRCB final decision on the water rights process is released (currently targeted for the latter half of 1999). The advantage of this approach is that, if we assume that the SWRCB will continue extending WR Order 95-6 (Interim Implementation of the Standards by the two Projects) until it finalizes a new decision, both the regulatory mandate to meet the 1995 WQCP standards and the commitment of the projects to do so (in the Accord extension) would continue uninterrupted. The disadvantages are (a) once again, agency commitments are extended for an unknown and possibly indefinite period tied to an outside process (namely, the water rights hearing process); and (b) again, we lose potential leverage on the SWRCB process to expeditiously complete its water rights hearings.

Tie to CALFED ROD for a Limited Time Period with Coordinated Actions. In this blended approach, the agencies would extend the Accord for a specific period of time, with the time period chosen to encourage both the completion of the many related processes and the coordination of these same related processes. In effect, this approach would extend for a period designed to coincide with the probable completion date for the CALFED ROD, but would put a specific time limit qualifier on the extension so that delays in reaching agreement on the

CALFED ROD would not make this an open-ended extension. This approach recognizes that there are several interrelated regulatory and planning efforts occurring this year, and proposes that these processes be coordinated. These efforts, and the current target completion dates, include:

<u>Activity</u>	<u>Targeted Completion Date</u>
CALFED Record of Decision	Fall of 1999
SWRCB Water Rights Decision	Fall of 1999
NMFS Decision on Chinook listing	Feb 1999
Joint Flood Planning Interim Report to Congress (Corps)	April 1999
BOR/DWR Operational Plans for Water Year 2000	Fall of 1999
CVPIA PEIS ROD	Spring 1999
CVPIA Trinity Flows ROD	Spring 1999

This list suggests that a number of important decisions could converge in the fall of 1999. By extending the Accord for a period of 9 to 12 months (through Sept to Dec 1999), the agencies could both (a) encourage these other processes to be completed promptly, and (b) allow for the processes to be coordinated so that the different decisions don't work at cross-purposes to each other. The agencies need to consider what the actual time frame should be in this 9 to 12 month range, taking into account likely completion scenarios for the CALFED ROD and the SWRCB process. Note that a 9 month extension would be consistent with a recent Club FED recommendation to the SWRCB that WR Order 95-6 be extended for a short 6 to 9 month period.

The major decisions that presently do not appear to fit into the Fall 1999 time frame are the final ROD on the CVPIA PEIS and the final decision on Trinity River flows, both of which are scheduled for Spring 1999, and the Corps Interim Report on Flood Control, also scheduled for release in Spring 1999. The CVPIA PEIS ROD schedule probably cannot be extended without creating issues for contract renewals. Further delays in Trinity River flow decision or the Corps Interim Report on Flood Control may also be problematic. Although these spring decisions must be taken into account in the fall decisions, it is unclear whether delaying any of these three spring actions into the fall would yield any benefits.

The NMFS decision on listing chinook salmon merits special consideration. NMFS is presently under both a statutory deadline and a court supervised agreement that calls for a decision on listing in February 1999. This time frame could be extended under very limited circumstances (and subject to the court's agreement) for an additional 6 months. In spite of this

timeline, there is still substantial merit in coordinating the substance of the NMFS decision with both the CALFED ROD process and the SWRCB process so that any possible NMFS prescriptions can take these other decisions into account.

The disadvantage to a specific-time extension is the possibility that some of these related processes may not be completed on time, so that we may need to consider an additional extension in the future.

(2) NATURE OF THE EXTENSION

After substantial discussion between lawyers and policy makers, and after several months of negotiations, the current extension of the Accord was cast as a single sentence: "The representatives of the State and Federal Governments agree to extend their commitments as stated in the [Bay Delta Accord] until December 31, 1998."

Although brilliant in its precision and brevity, this extension left unanswered many questions that have arisen about the Accord since its adoption in 1994. The current extension essentially gave up on any attempt to resolve differences in interpretation between the State and Federal signatories. These differences of interpretation involved primarily the "no net loss" provisions of the Accord, but questions have also been raised about the proper role of the Operations Group (Ops Group) in "relaxing" standards. In addition, the current extension did not attempt to involve the stakeholder signatories.

In considering an extension of any length, the agencies have four major options for the nature of the extension:

- Extend the Accord as per the current extension
- Extend the Accord as per the current extension, but clearly articulate the respective positions on the interpretation issues
- Extend the Accord after reaching agreement on interpretation
- Extend the Accord and expand its scope to include a broader range of issues

Extend the Accord as per the current extension. The easiest approach is to once again defer any discussion or action on the Accord interpretation differences between the State and Federal agencies. The disadvantage to this approach is that these issues continue to be a source of contention in the Ops Group and in implementing the CVPIA and 1995 WQCP standards.

Extend the Accord as per the current extension, but clearly articulate the respective positions on the interpretation issues. One approach that was under consideration by Club FED in the initial Accord extension was to extend the Accord using the simple one-sentence document, but to release a Club FED letter articulating the Club FED interpretation of the relevant issues. A similar approach could be employed in this subsequent extension, with the State and Federal signatories each "clarifying" their respective positions on the issues in disagreement. The advantage of this approach is that it clarifies the different positions for both the agencies and stakeholders, so that further discussions and decisions can take these positions into account. The

obvious disadvantage to this approach is that it is contentious and may inspire an escalation of the rhetoric at a time when we are trying to reach consensus.

Extend the Accord after Reaching Agreement on Interpretation. Third, the agencies could insist on reaching a mutually-acceptable resolution on the issues of Accord interpretation, and incorporate this resolution into the Accord extension. The advantage to this approach is that it would curtail the ongoing arguments about "no net loss" and Ops Groups activities. The disadvantages are that it would be contentious, probably at a fairly visible level, and may in fact not reach resolution.

Extend the Accord and expand its scope to include a broader range of issues. Finally, the agencies could take advantage of this opportunity to negotiate an "Accord" that includes a broader range of water issues (such as Trinity River flows or particular assurances on certain additional ESA listing possibilities). The advantage of this approach is that it would provide better definition on how the agencies intend to treat these new issues. The disadvantages are (1) that it might incense many stakeholders if they are omitted from the negotiation of any such broader accord, and (2) if stakeholders are included in the discussion, this negotiation will necessarily become the major focus of everyone's efforts, which will detract from the need to develop agency and stakeholder consensus around the longer term CALFED program.

On balance, given the probable short-term nature of this extension of the Accord, many of the agencies believe that the first approach discussed above (extending the Accord in its present form without anything further) is the most productive approach and more conducive towards reaching a consensus on the broader CALFED Program.