Ecosystem Governance

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Mission for ecosystem governance structure

- Implement the CALFED Ecosystem Restoration Program (ERP) and achieve the ERP performance objectives

Principles that guide selection of governance structure

- Implement the program using an adaptive management framework
- Science based -- management based on scientific and biological principles and processes, which incorporates independent science review
- Be pro-active in restoring the ecosystem
- Implement the ERP as efficiently as possible; act quickly and responsively
- Integrate stakeholders in decision making process
- Assume no regulatory functions
- Retain focus on ERP implementation
- State/Federal Partnership *(stakeholder recommendation to include state/federal parity as a principle)*

Functions:

- Ability to manage a broad and complex program scope
- Implementation of ERP; achieve objectives and performance standards
- Coordination and consolidation of ecosystem restoration priority setting, implementation actions, monitoring, research and funding within the program scope
- Coordinate with CALFED oversight entity and with other CALFED programs
- Oversee and direct ecosystem monitoring, research and assessment

Duties/Responsibilities:

- Planning and program development
- Support and conduct science
- Acquire, hold rights to and manage land, water and other property by lease, purchase or easement; manage and operate the Environmental Water Account
- Participate in water management operations (through Ops Group)
- Implement the adaptive management framework in an effective and efficient manner
- Conduct or coordinate monitoring, data analysis, data accessibility and publication of the findings
- Administer & coordinate multiple funding sources / prepare program budget/ manage contracts and grants

Ecosystem Governance Options

1. Existing Agencies--No new entities
2. Federal Public Corporation
3. Private Non profit
4. Joint Federal State Agency
5. State Entity with Federal participation
6. Federal Entity with State participation

Option 1
<u>Existing agencies (DFG/USFWS) - No new entities</u>

Description
This option would rely on the Department of Fish and Game (DFG), and the US Fish and Wildlife Service (FWS) as the agencies responsible for ERP implementation. No new legal entities would be required.

1. Decision making process - DFG and FWS would each designate a high level staff person as ERP co-managers or executive directors of a joint ERP implementation management office. These managers would direct the program on a day-to-day basis and would supervise staff assigned from these two agencies (and probably other agencies as well.) Some implementation functions would be assigned to other federal, state or local agencies, depending on the specific project, available agency expertise, and the type of funding available, but all ERP projects and programs would be supervised and coordinated though the joint management office, and program responsibility and accountability would rest with the DFG/FWS partnership.

2. Agency coordination - There would be an operating agreement (an MOU or MOA) between DFG and FWS defining which agency would be responsible for which aspects of the ERP; for describing a consistent methodology for incorporating CMARP and other scientific input; for making adaptive management decisions and for measuring achievement of performance objectives.

There would be a multi-agency coordination committee to ensure that ERP programs and projects are implemented in a manner compatible and consistent with other CALFED programs (e.g., levees, water quality) and with related non-CALFED programs (e.g., AFRP).

3. Stakeholder involvement - There would be a stakeholder advisory committee to provide advice on overall ERP implementation.

4. Funding - State funding under Proposition 204, and other state sources, would be allocated to the Resources Agency and/or directly to the DFG budget for ERP implementation. Federal funds would be appropriated to USFWS for ERP implementation.

5. Legislation - No new legal entity would be created to govern the implementation of the ERP. However, legislation might be necessary to modify or enhance one or more agencies' legal authorities, powers and/or purposes, budget authorization or funding mechanisms.

<u>Advantages</u>

- Faster and easier to implement than other options; does not require legislation; can be in place before ROD.

- DFG and USFWS have been involved in development of ERP; maintains continuity.

- DFG and USFWS already work in coordination on many projects; established relationship exists.

-Provides direct advocate in congress for funding

Disadvantages

- Accountability for program implementation and meeting performance objectives is not focused on one agency ; no single agency with ERP as primary mission;

- Would require existing agencies to incorporate a very large complex program in addition to all other existing duties and responsibilities; could reduce the attention and focus needed to effectively implement the program.

- Potential for conflicts between existing regulatory responsibilities and ERP responsibilities. Examples of possible conflicts: ESA obligations vs. striped bass management; Suisun Marsh management issues; refuge water vs. instream flows; possible budget and funding conflicts between regulatory duties and resource management duties.

-Lacking a governing board appointed by diverse interests could increase the programs susceptable to political influences

-Stakeholder concern that this option does not provide sufficient assurances for effective ecosystem program implementation

Option 2
Federal Public Corporation

Description

Federal law will establish a publicly chartered corporation within the Department of the Interior. The corporation would be a quasi-governmental entity and would be similar to the National Fish and Wildlife Foundation. It would be governed by a board of directors and would hire staff to implement the program.

1. Decision-making process - The staff will be responsible for the day-to-day implementation of the program and will rely on the board of directors for broader policy direction and priorities. The governing board will be made up of representatives of the Resources Agency, Department of the Interior, Department of Commerce (NMFS), local government (at least one from within the delta), and representatives of the environmental community, agriculture and urban water users who have knowledge and expertise in ecosystem restoration.

2. Agency coordination - The corporation would prepare its budget request as part of the Department of the Interior's. congress would appropriate money to Interior for the purposes of the corporation. The corporation would coordinate with agencies also conducting ecosystem restoration in the delta to assure efficient use of funds and maximum benefit from the funds available.

3. Stakeholder involvement - Stakeholders would be represented on the board of directors of the organization.

4. Funding - Federal funding would be dedicated to the organization by the Department of the Interior, or appropriate federal agency. Expenditure of the state bond funds would be directed by the Resources Agency, the agency assigned responsibility for spending $390 Proposition 204 funds following certification of the environmental impact statement and report. The organization could also seek private funding for the ecosystem restoration efforts.

5. New legislation – Federal legislation establishing the corporation and defining the duties to implement the ecosystem restoration program, the necessary authorities, its staff and governing board structure and its funding. State legislation may also be useful in defining the relationship between the Resources Agency and the Federal Corporation.

Advantages -

- Single-purpose corporation with the ability to focus on implementing the ecosystem restoration program and coordinating with others engaged in similar activities.
- May be able to streamline contracting procedures and requirements.

- Can have broad cross-section of stakeholders represented on the governing board.
- Can be responsible for reporting on expenditures and progress toward reaching ecosystem restoration goals.
- Can engage in fund-raising activities with private individuals.

Disadvantages –

- Cannot direct expenditures of state money.
- Multiple State and federal agencies remain responsible for the implementation of the program and expenditure of the funds. Does not provide for program consolidation into a quasi federal agency.
- Does not have governmental authority or the ability to direct other governmental entities.
- May be difficult to delegate agency authority to new corporation (CVPIA mitigation obligations, for example).

Option 3
Private Non-Profit

Description

A private non-profit entity will be established under California law that also meets the requirements of federal tax laws in order to maintain tax-exempt status. The non-profit would be a non-governmental entity established for a specific purpose, scope and by-laws. (The entity could be a non-profit established under 501c3(3) of the IRS code, or 501c3(4) (trust), or a supporting organization. The precise vehicle requires additional research. The advantages and disadvantages would be similar for any of the above options.) The non-profit would be governed by a board of directors and would hire staff to implement the program.

1. Decision-making process - The staff will be responsible for the day-to-day implementation of the program and will rely on the board of directors for broader policy direction and priorities. The governing board will be made up of representatives of the Resources Agency, local government (at least one from within the delta), and representatives of the environmental community, agriculture and urban water users who have knowledge and expertise in ecosystem restoration. It appears that federal legislation may be necessary in order to allow federal agencies to be a member of the board.

2. Agency coordination - The non-profit would work with the state and federal entities responsible for the public financing. In addition, the non-profit would seek to coordinate similar ecosystem restoration efforts within the same areas as the ERP.

3. Stakeholder involvement - Stakeholders would be represented on the board of directors of the organization.

4. Funding - Federal funding would be dedicated to the organization by the Department of the Interior, or appropriate federal agency. Expenditure of the state bond funds would be directed by the Resources Agency, the agency assigned responsibility for spending $390 Proposition 204 funds following certification of the environmental impact statement and report. The corporation could also seek private funding for the ecosystem restoration efforts.

5. New legislation – No new legislation is required to establish this option except that necessary to formalize federal agency participation on the board of directors or recognizing the organization as the appropriate entity to implement the ecosystem restoration plan.

Advantages -

- Single-purpose organization with the ability to focus on implementing the ecosystem restoration program and coordinating with others engaged in similar activities.
- May be able to streamline contracting procedures and requirements.
- Can have broad cross-section of stakeholders represented on the governing board.

- Can be responsible for reporting on expenditures and progress toward reaching ecosystem restoration goals.
- Can engage in fund-raising activities with private individuals.
- Can adopt by-laws to govern the operations of the organization.

Disadvantages –

- Cannot direct expenditures of state or federal money.
- Multiple State and federal agencies remain responsible for implementing the ERP and spending any public money.
- Does not have governmental authority or the ability to direct other governmental entities.
- Probably impossible to delegate agency authority to new corporation (CVPIA mitigation obligations, for example).
- Tax-exempt status limits the types of activities in which the organization can participate.
- By-laws can probably be changed with notice and following specified procedures.

Option 4
Joint Federal - State Agency

Description

A new joint federal - state agency would be established to manage and implement the ERP. There are no known working models of such an agency, but this agency would have some of the attributes of an agency like the Tahoe Regional Planning Agency (which is based on an interstate compact between Nevada and California and federal authorization).

1. Decision making process The new agency would be empowered to carry out all the functions necessary to implement the ERP, including the powers to own and manage land and water. This agency would be independent of any other state or federal agency, but for budget and/or administrative reasons, it could be deemed to be within both the Resources Agency and the Department of Interior. It would be governed by a 7-9 member board of designated federal (2) and state (2) agency representatives, as well as local government (2) and stakeholder representatives (1-3). The governing body would hire an executive director, who would manage and direct day to day operations of ERP implementation.

2. Agency coordination - A board with both state and federal representatives will increase coordination between those agencies. Receiving direct federal and state funding will allow for more efficient coordination. The new agency will also be responsible for coordinating with the non CALFED related Programs (e.g. AFRP) and with the other CALFED programs (e.g. levees, water quality etc.)

3. Stakeholder involvement - Stakeholder representatives would be members of the governing body of the new entity. Public input would also be through the public board meetings.

4. Funding - Federal and state money would be directly appropriated to the new agency to carry out the ERP and for necessary administration. The entity could also receive state bond money.

5. New legislation - A joint federal - state agency would require both federal and state legislation. The legislation would provide parallel authorizations for federal and state agency participation and enumerate the powers and purposes of the new agency. The legislation would have to specify whether federal or state law would apply in a number of areas, such as access to records, public information and meetings; conflicts of interest; status of agency employees; contracting and procurement rules.

Advantages and Disadvantages

Advantages

- Authorizing legislation can be specifically drafted to include all desired functions and principles, powers and purposes.

- ERP would be primary focus of new entity. High degree of accountability since responsibility for ERP is clearly assigned.

- Can have state, federal and stakeholder representatives on a governing board.

- Can draw from state and federal laws for authorities. Can assume state or federal authorities as appropriate.

- Can receive direct appropriations from state and federal sources.

- As a governmental entity, more ability to influence actions of the other state and federal agencies. To the extent Congress and federal agencies support transfer of other programs to the new joint entity, consolidation of programs can occur.

Disadvantages

- There is no good model for a joint state/federal entity with similar functions and responsibilities.

- Complexity of legislation may result in longer period of time necessary to become established (possibly 2-4 years?).

Option 5
State Entity with Federal Participation

Description.

A Conservancy within State government, with federal participation, would be established to implement the Ecosystem Restoration Program. The Conservancy would be a semi-autonomous department-level entity under the Resources Agency. The Conservancy Board would hire an Executive Director, who in turn would hire staff to carry out the ERP. Models include the Coastal Conservancy.

The Conservancy would need to coordinate with the CALFED Overall Entity on project timing, overall funding, permitting and environmental review, monitoring, accounting and evaluation/reports. Its relationship to the Oversight Entity would be the same as other participating State agencies.

1. Decision-making process- Decisions would be made by a Conservancy board. It would be governed by a 7-9 member board of federal (2) and state (2) agency representatives, as well as local government (2) and stakeholder representatives (1-3). Day-to-day management and administrative decisions would be handled by the Executive Officer and staff.

2. Agency Coordination- The Conservancy would act as the lead to coordinate with the other CALFED programs, with the Oversight entity, and with other related non-CALFED programs. Direct project implementation would most often be done by existing agencies and organizations through contracts or other agreements.

The Conservancy would have a high degree of independence. Most functions would be carried out independently, including policy-setting, priority-setting, project work and stakeholder relations. Resources Agency would coordinate with the Conservancy on overall funding and State budget policy. Staff would be State employees, and State laws would apply to meeting rules, court venues, etc.

Stakeholder Involvement- Stakeholders would have one to three seats on the Conservancy board, allowing direct participation in decision making. As with other State entities, participation would be encouraged through public hearings and workshops.

Funding- State bond funds and annual State appropriations could be received and expended directly by the Conservancy. Depending upon bond and appropriation language, the Conservancy could have a wide authority to decide how best to spend these funds. The Conservancy would be under the same funding and expenditure rules and restrictions that apply to other State agencies, unless modified in the authorizing legislation.

Federal funds would be appropriated to a cooperating federal agency and passed through to the Conservancy. The degree of federal agency control of the funds would depend on the type of appropriation to the federal agency, and the associated budget language. Control could range from simple accounting and audit requirements all the way up to substantial policy direction of funds. Federal budget language could also direct the federal funding agency, and other federal agencies, to cooperate with the Conservancy and its purposes.

New Legislation- State legislation to create and fund the Conservancy would be required. Also, Congressional legislation allowing federal representatives to be members of the Conservancy board would be required.

Advantages

- As a State agency, the Conservancy would interface well with other State agencies. As a government agency, it would have more influence over other state and federal agencies than would a non-governmental option.

- The conservancy structure has been used before in State government, and is familiar to the Legislature, the Legislative Analyst and Dept. of Finance. This familiarity increases political viability.

- A Conservancy with a specific ERP mission would provide a clear structure for accountability, and would have the ERP as its focus.

- Federal participation would be included through voting seats on the Conservancy. Legislation could be written to allow future integration of federal agencies in a joint agency.

- Because the Conservancy would have board members appointed by both the Governor and Legislature, as well as federal members, it would have substantial autonomy. Also, enabling legislation could include intent for a high degree of autonomy.

Disadvantages

- Federal funding is not integrated into the structure.

- State civil service, accounting, expenditure and contracting requirements could slow program implementation, although authorizing legislation could provide some streamlining.

- Federal funding through an existing agency could give considerable latitude to that agency regarding expenditure of funds.

- Separate ERP entity is subject to focused reductions in budget appropriations.

Option 6
Federal Agency With State/Stakeholder Participation

Description

This option would require federal legislation to create a new federal agency with a governing board that includes federal, state and stakeholder representatives. For federal appropriation purposes, it would fall within the Department of the Interior structure, reporting directly to the Secretary. The CALFED oversight entity would advise the Secretary regarding the ecosystem entity's budget and progress in relationship to other CALFED entities.

Decision-making Process. This agency would be led by a 7-9 member board of directors, but managed day-to-day by an executive director and staff. The Board would include two representatives each from federal, state and local (in-Delta and tributary) agencies, and 1 -3 public /stakeholder members. While the President would appoint the Board members, his appointments would come from lists provided by state officials and stakeholder organizations.

Agency Coordination. This agency would coordinate with other state and federal agencies through both its board membership and the CALFED oversight entity.

Stakeholder Involvement. Stakeholders would participate in the decision-making directly as Board members and indirectly through the oversight entity's advisory council.

Funding. As part of the Department of the Interior, it would submit a budget request to Congress through Interior, and to the State Legislature through the Resources Agency. State funding would be appropriated to the Resources Agency and coordinated with the new federal entity but not appropriated directly to the federal entity.

New Legislation. Federal legislation would be required to create this entity. Companion state legislation would not be required, but would be helpful to authorize state participation and appropriations.

Advantages

- Clear authority and mandate from the federal level, but with participation from the state. Relationship to Interior provides federal advocate.
- Participation from stakeholders in decision-making process.
- Direct federal appropriations available.

Disadvantages

- Subject to Interior's budget cap and other general federal requirements.
- Similar organizations have legislative sunset provisions.
- May lead to delay in creation in order to get Congressional approval.