

BDAC ASSURANCES WORK GROUP

Meeting Summary

July 30, 1997

The BDAC Assurances Work Group held its ninth meeting on Wednesday, July 30, 1997 from 9:00 a.m. to Noon, in Room 1131 of the Resources Building.

BDAC Members present were:

Hap Dunning (Chair)

Invited participants present were:

Dennis O'Connor Elizabeth Patterson

CALFED Staff/Consultants present were:

Eugenia Laychak Dave Fullerton Mike Heaton
Greg Zlotnick (other CALFED staff)

Others present were:

Amy Fowler Bill Johnston Cliff Schulz
John Mills Bill Dunn Jim Moore
Tiki Baron (others - see attached sign up list)

1. Work Group Chair Hap Dunning convened the meeting at 9:10 AM. Meeting participants introduced themselves.
2. Mike Heaton requested that the third sentence of the last paragraph on Page 5 of the June 19 Meeting Summary be deleted. There was no objection. There were no other changes to the June 19 Meeting Summary.
3. Cliff Schulz reported that the Ag-Urban group continues to meet but has been concentrating on CVPIA issues for the last couple of months. In particular, they have been discussing issues arising out of Interior's proposals for the Section 3406(b)(2) water (the 800,000 acre feet for fish and wildlife) and the proposed Delta actions of the Anadromous Fish Restoration Program (AFRP). These issues, however, are relevant to CALFED also, because part of the CALFED process must include agreement on interim operations until the ERPP and any new facilities are on line. One of the issues is how the CVPIA programs and actions can be integrated into the broader CALFED program.

A second issue under consideration by the ag-urban technical team is the role of a Habitat Conservation Plan (HCP) or an HCP-type agreement. There have been a couple of preliminary meetings on this subject. One of the more difficult issues is whether or how the federal agencies and/or federal contractors can be given the benefit of Interior's "no surprises" policy if in fact this policy only applies to Section 10 and not to Section 7 actions and consultations.

Cliff also reported that the ag-urban technical teams will make a presentation to the ag-urban policy group on a tentative "table of contents" for an "umbrella agreement" or "Accordo Grande" which would provide the foundation of a CALFED assurances package and implementation plan. Other issues to be presented to the ag-urban policy group are the governance and management entity for the ERPP, the relationship between ERPP and water supply; and some concepts on indemnity or insurance for water users.

4. There was a brief discussion about whether an HCP can be used as a vehicle for providing the benefit of the "no surprises" to the parties to a Section 7 consultation. The CALFED agencies are looking into this issue and policy options will be developed and considered.
5. With regard to the CVPIA issues, Alex Hildebrand pointed out that the (b)(1) reoperations have the potential to adversely affect non CVP water users and that this issue needs to be examined in the context of CVPIA implementation and integration with the CALFED Program.
6. Dave Fullerton then reviewed and summarized the revisions to the Case Study (Part I of the 7/21/97 discussion paper). The Case Study is based on Alternative 3(b). Some additional detail has been provided, particularly operational assumptions which have implications for assurances.

Alex Hildebrand raised some questions about the case study, particularly regarding the flows on the San Joaquin River. The basic point was whether the case study includes some actions which are physically impossible or highly improbable.

Greg Zlotnick asked for more explanation of the idea of converting existing regulatory flow requirements into property rights. Dave responded that the concept is to trade regulatory requirements for a market based approach to meeting environmental needs. This could be done by providing the ecosystem manager with a block of water and/or funds sufficient to compete in the market for the needed water. The objective of this proposed approach is to provide the ecosystem managers with more flexibility in meeting standards as the ERPP and new facilities come on line. There is some question as to how this would affect the enforcement of existing or baseline requirements.

Elizabeth Patterson and Stu Pyle both asked for more detailed development of this idea (moving from regulatory approach to market based approach) in the next draft of the discussion paper.

John Mills commented that he still has some problems with terminology and definitions in the CALFED documents. It is still not clear what is meant by the term "water user" for instance. Does this mean all water users, or does it refer only to export water users, or some other specific group of water users? Also, John expressed continued concern for the impacts of additional water acquisition in the counties of origin.

Amy Fowler asked for clarification of the relationship between the ecosystem manager, the water projects and the State Board, particularly with respect to "real time" operations and monitoring. Dave Fullerton responded that part of the intent behind giving the ecosystem manager a block of money and water was to allow market transactions to replace regulatory responses to problems associated with project export pumping.

In response to Liz Howard's question about whether this idea was consistent with the concept of adaptive management, Dave suggested that the ecosystem manager would be an "adaptive manager" and that the ideas (of adaptive management and market based approach to environmental water needs) are complementary and consistent.

7. Mike Heaton then described the contents of a Principles Agreement, which would serve as the foundation of the Assurances Package. This is basically the outline of an "umbrella agreement" or "Accordo Grande", modeled on the December 1994 Bay Delta Accord. It would include or incorporate specific agreements or proposals on the contents of the CALFED Program, how the Program will be paid for, implemented and how implementation will be assured and how disputes or contingencies will be handled.

Alex raised a question about the level of agreement which would be required before it could be concluded that any agreement had been reached. Who decides what level of agreement is adequate or when a "critical mass" of agreement among agencies and stakeholders has been reached?

John Mills asked a question about the timing of the Principles Agreement and whether it could be accomplished by November of 1998. If not, what is the implication for CEQA challenges, due to statute of limitations?

Elizabeth Patterson asked whether the Assurances Package will be part of the Project Description for CEQA/NEPA purposes or whether assurances and implementation are outside the scope of the CEQA/NEPA process. This is a difficult technical question and will be deferred until the next meeting, pending legal review.

Cliff suggested that more discussion of dispute resolution mechanisms and phasing/sequencing of Program implementation would be useful in developing an assurances package.

8. Heaton then described the proposal for the formation of a new entity, the Delta Ecosystem Restoration Authority (DERA), to serve as the Delta ecosystem manager and to carry out the ERPP. An extensive discussion about various attributes of DERA followed.

Work Group participants had a number of questions about the proposed management structure, which can be summarized as follows:

- What are the boundaries (geographic and legal) of DERA authority?
- Is the scope of DERA authority coterminous with CVPIA authority? What is the DERA role in implementation of (b)(2) water and the AFRP?
- How will DERA deal with FERC and other upstream issues?
- What is DERA's role in the HCP?
- There were a number of questions and comments about how DERA Board of Directors should be appointed; who the Board should represent; the number of Board members; whether or not the CALFED agencies should be represented on the Board; the proper level and distribution of stakeholder representation.
- Is the name appropriate? Does it indicate a bias against consumptive uses of water?
- Is DERA a construction and operations entity or does it provide funds for local management of restoration projects?

There was some general discussion about whether or not DERA should have any regulatory authority. As proposed, DERA would have none and no agency would give up any existing regulatory authority. Some participants suggested that DERA might need more authority. Others suggested that more thought must be given to DERA's functions before we can talk about the proper level of legal authority.

9. Due to time constraints, the discussion on DERA and the proposed assurances packages was deferred until the next meeting to allow for a brief discussion of sequencing and phasing of Program implementation. Dave Fullerton explained the flow chart attached to the discussion paper, which describes one possible sequence of phased implementation.

There was some discussion about the level of detail required for the programmatic permits, and the timing or sequencing of permit issuance relative to implementation of the HCP, ERPP funding, imposition of water user fees and implementation of other Program components. Generally, the question is what is the order of events (permits, funding, actions)?

10. There was a brief discussion of the revised Guidelines. These are intended to provide benchmarks or qualitative criteria for assessment of the Assurance Package. There was some specific discussion about how stakeholders and/or the public generally should be represented in the implementation of the CALFED Program and how this can be assessed as an element of the Assurances Package.
11. Several items were identified for discussion at the next meeting. These are:
 - the question whether the assurances package is part of the CALFED project description for CEQA/NEPA analysis;
 - refinement of the hypothetical assurance package, particularly the idea of using a market approach rather than a regulatory approach to providing water for environmental purposes; the role and function of DERA; and sequencing and phasing;
 - assurances for the other components of the Program;
 - testing of the assurances packages against the guidelines.
12. Finally, Eugenia reviewed the meeting schedule, as follows:

Tuesday, September 9, 1997	- 9:00 a.m. - 12:00 p.m.
Friday, October 24, 1997	- 9:00 a.m. - 12:00 p.m.
Wednesday, December 3, 1997	- 9:00 a.m. - 12:00 p.m.
Wednesday, January 14, 1998	- 1:30 p.m. - 4:30 p.m.
Wednesday, February 25, 1998	- 1:30 p.m. - 4:30 p.m.