

**Assurances Work Group
Meeting Summary**

BDAC ASSURANCES WORKGROUP

Meeting Summary
October 24, 1997

The BDAC Assurances Workgroup held its eleventh meeting on Friday, October 24, 1997, from 9:00 a.m. until noon, in Room 1131 of the Resources Building.

BDAC Members present:

Hap Dunning, Chair
Rosemary Kamei
Stu Pyle
Alex Hildebrand

CALFED staff and consultants:

Mary Scoonover
Eugenia Laychak
Dave Fullerton
Mike Heaton

Others present:

Bill Dunn	Terry Young	Jim Monroe
Ken Bogdan	Tiki Baron	Patrick Leonard
Walter Kornichuk	Don Wagenet	Jim Chatigny
Penny Howard	Polly Smith	John Mills
Greg Zlotnick	Amy Fowler	Tom Hagler
Gary Bobker	Cynthia Koehler	John Mills
Cliff Schulz	Tom Zuckerman	Dennis O'Connor

1. Workgroup Chair Hap Dunning convened the meeting at 9:05 a.m. Meeting participants introduced themselves.
2. The meeting summary of September 9 was reviewed. There were no significant corrections.

3. Cliff Schulz reported on the status of the Ag-Urban Policy Group discussions. The Assurances and Finance Technical Team made a presentation to the Policy Group. There was substantial discussion of the need for a new entity to manage the ecosystem component of the CALFED program, to facilitate stakeholder participation and to ensure implementation consistent with an adaptive management approach.

The Ag-Urban assurances team will develop a matrix which displays several types of entities (e.g., trust, conservancy, public corporation, public agency) and tests each against a list of functions or tasks envisioned for the ecosystem program manager. The Ag-Urban technical team has also developed a short paper on how the ecosystem manager would operate in an adaptive management framework. They will shortly begin work on formation documents for a new management entity. The Ag-Urban technical team is also considering the problem of how to bring the federal agencies and contractors within the protective scope of a Habitat Conservation Program and the "no surprises" policy.

Tom Zuckerman asked Cliff if the idea was that some parties would get the benefit of "no surprises" and others would not. He was concerned that this might put senior water rights holders at risk, as was the result (in his view) of the 1994 Bay Delta Accord. Cliff responded that the Ag-Urban group is not considering any changes to existing water rights or water law, including public trust. The Ag-Urban representatives acknowledge that assurances, including the "no surprises" policy, will not be absolute.

Alex Hildebrand noted that this should mean that the "no net loss" concept applies to all water rights holders, not just the SWP and CVP exporters.

4. Cynthia Koehler reported that the Environmental Water Caucus is discussing assurance issues, and is particularly concerned about the issues related to the proposed HCP. Comments will be submitted in writing.
5. Hap opened the discussion on the status of the HCP scoping process by reminding the Workgroup that the draft assurances proposal under discussion is based on a hypothetical case study and that, at this point, the Workgroup has not made any recommendation to BDAC or CALFED regarding specific assurance tools. He expressed the concern that the process of scoping an HCP might affect the outcome or shape of the assurances package by prejudging the use of one particular tool.

Mary Scoonover said that the idea behind starting the scoping process was twofold: first, in order to preserve the option of selecting an HCP at the end of Phase 2, an HCP must be analyzed now; second, because some of the CALFED agencies favor using an HCP, it is important to get early public comment on and involvement in the decision making process.

There have been five public scoping meetings. CALFED has received numerous written comments. The scoping report, to be issued in November, will include these comments and the CALFED response. Mary summarized the comments received so far:

- Timing of the HCP; is it premature to begin now?
- Does this prejudice the contents of the assurances package?
- How can "no surprises" be provided at a programmatic level?
- How can "no surprises" be provided to federal contractors?
- What is the relationship between "no surprises" and adaptive management?
- What types of monitoring will be incorporated in the HCP?
- How will an HCP ensure recovery of threatened and endangered species?
- What is the shelf life of the "no surprises" protection and what is the term of the HCP?

Alex asked how CALFED can scope an HCP without first testing it against the solution principles and without impact analysis. Mary answered that the entire CALFED preferred alternative, including the assurances package, will be tested against the solution principles but it is premature to do it now. The only decision made so far is that an HCP should be considered, and in order to consider it, CALFED must start the scoping process.

Others comments and questions regarding the use of an HCP were offered by meeting participants and are summarized as follows:

- What is the relationship between the ERPP and the HCP? Does CALFED presume that either or both will be implemented, even without impact analysis or feasibility studies?
- What is the scope of the HCP? In the assurances discussion paper, the HCP applies primarily to the ERPP and new facilities. In the scoping document, the HCP appears to apply to the entire program.
- Environmental group representatives are specifically concerned that the scoping document says an Incidental Take Permit will be issued for the program, including project operations. How can an incidental take permit be issued or applied at the programmatic level?
- The ERPP may undergo significant revision before it is adopted in final form. How will this affect the scope of the HCP?
- Does scoping an HCP now take other assurances tools "off the table"?

In response to these questions and concerns, Mary explained that while some of the CALFED agencies have expressed a general preference to use an HCP as part of the

ERPP and the assurances package, there has been no decision to do so. However, failing to scope an HCP now would make its timely development later more difficult.

After extensive discussion, it seemed to be the sense of many of the meeting participants that Mary and Tom Hagler should communicate to CALFED management that many of the stakeholder representatives have serious concerns about the timing of the scoping process and the perception that CALFED has already decided that an HCP and an incidental take permit will be developed for the Bay-Delta Program. Several people also expressed the view that the CALFED decision making process should not make the work product of the Workgroups superfluous and that CALFED decisions should not be made without the benefit of stakeholder advice and recommendations generated through the BDAC process.

6. Mary reviewed the proposal for assuring the implementation of the levee component of the program, as described on pages 14 and 15 of the discussion paper dated 10/14/97. Robert Cooke, the new program manager for the levee component, introduced himself to the group and informed the Workgroup of the schedule for completing the draft program component document.

Tom Zuckerman said that the assurances proposal was not consistent with the prior discussions of the levee technical team. Specifically, he expressed serious reservations with the conditions proposed in Paragraph 5. For example, there has never been any discussion about limits on drainage discharge from Delta islands as a condition of receiving levee maintenance funds. Tom also expressed the concern that the assurances proposal implied that funding would be provided on a one time basis. Continued maintenance funding is essential.

Alex Hildebrand said that he still had concerns about the adequacy of the emergency response program.

Tom said he thought the assurances package was supposed to provide an assurance of continued maintenance of the levees, but that the proposal as written seemed to be more concerned with protecting exporters.

Mary explained that staff was looking for a sense from the Workgroup whether the proposal in the abstract was using the right tools. Tom and Alex said they could not agree to anything in the abstract, and that they want to see what the program is before agreeing to assurances. They also suggested that there needs to be more explicit discussion about the relationship between the levee program and the ERPP.

Heaton identified the three major assurance issues which were intended to be addressed by the proposal: long-term funding for levee maintenance, emergency response reliability, and integration between ERPP actions and levee maintenance. Mary suggested that staff would review the program component, clarify the

assurance issues and redraft the assurance proposal for additional consideration. At the request of Workgroup members, Rob Cooke will convene the levee technical team to review and comment on the assurance proposal.

7. Mary reviewed the major difference between the three proposed assurance alternatives. She noted that the water quality and water use efficiency assurance proposals are generally the same across all three alternatives and asked for discussion and comment on those.

Some of the questions and concerns are summarized as follows:

- What is the geographic scope of the water quality component and the water quality assurances?
 - What is the basis for the proposal regarding standards for efficient use of reclaimed water?
 - What are the events or mechanisms which trigger a shift from voluntary compliance to a regulatory mode of ensuring compliance with standards?
 - Which entity or agency will be responsible for monitoring drinking water quality in the Delta?
8. There was considerable discussion among several meeting participants about the need for quantifiable performance standards or indicators in both the water quality and water use efficiency components as well as the ERPP. Some participants believe that assurances should be designed to ensure results or outcomes. Others believe we cannot assure results, only that we can ensure implementation of actions intended to achieve results.

In the next version of the discussion paper, staff will attempt to reflect these comments by developing some suggestions for incorporating performance measures, indicators or standards into the program components, describing the use of benchmarks or milestones for determining if the indicators or standards are being met. These will be integrated with the tiered or layered approach to assurances, which moves from voluntary, to incentive based to regulatory or legal action based enforcement measures.

9. Tom Zuckerman observed that the assurance package cannot commit the State Board to a future decision. We can only propose or recommend actions to the Board. Mary concurred and said she had received the same comment from counsel to the State Board.
10. Finally, there was a brief discussion of the need for more stakeholder involvement in the dispute resolution process. John Mills expressed the view that program

oversight cannot be left to the CALFED agencies and that stakeholders will need to have a more active and participatory, rather than a purely advisory role.

It was also suggested that one way to address this would be to give the proposed ecosystem manager in Alternative 1 (DERA) broader responsibility for implementation of the entire program, rather than limit DERA to implementation of the ERPP.

Dennis O'Connor suggested that it will be necessary to have a centralized budget administration as well.

11. The next BDAC Assurances Workgroup is scheduled for December 3, 1997.