BDAC ASSURANCES WORK GROUP

Meeting Summary
February 25, 1998

The BDAC Assurances Work Group held its 13th meeting on Wednesday, February 25, 1998, from 1:00 p.m. until 3:00 p.m. in Room 1131 of the Resources Building.

BDAC Members present:

Hap Dunning, Chair
Stu Pyle

CALFED Staff/Consultants

Mary Scoonover
Eugenia Laychak
Mike Heaton
Sue Lurie
Gwen Knittweis

Others present:

Wiley Horne	George Basye	Penny Howard
Stu Pyle	Ros Tobe	Jim Chatigny
Anthony Barnett	Robert Cermak	Cynthia Koehler
Dante Nomellin, Jr.	Ken Bogoan	Dan Keppen
Dante John Nomellin	John Mittan	Dave Smith
Amy Fowler	Terry Young	Tiki Baron
Margit Aranburu	Julie Tupper	Dennis O'Connor

1. Work Group Chair Hap Dunning convened the meeting at 1:00 p.m. Meeting participants introduced themselves.

2. The summary of the December meeting was reviewed. There were no additions or corrections.

3. Mary Scoonover presented the staff report.

E-016957

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a. The draft implementation strategy (included in the meeting packet) will be part of the Phase 2 Report which will accompany the draft EIR/EIS. It will be expanded to include a section on the financing plan.

A number of meeting participants had comments on various aspects of the draft implementation strategy. Comments addressed:

- The need for consistency between the program "vision" and implementation over the long term.
- The need for a monitoring process which sets up triggers for the contingency response mechanisms; the need to know when the program has gone off track.
- The lack of substance in the draft document; the absence of reference to various protective statutes such as area of origin, watershed protection and Delta protection acts; the absence of mechanisms to meet future needs in the areas of origin.

Other comments on the draft implementation strategy:

- Assurances must address the design of new facilities and protection of the "common pool", for example, an isolated facility must be designed so as to provide for water quality protection in the interior Delta and prevent seepage along the canal alignment.
- Portions of new storage facilities should be dedicated to environmental and outflow requirements.
- Exports should be limited to releases of stored water.
- CVP and SWP contracts should be revised to incorporate operational assurances.
- Assurances should provide for a mechanism to bring all parties before one court; may need a stipulated judgment on jurisdiction.
- Any new Delta facilities should be operated and controlled by an independent entity, not USBR or DWR.

There was discussion of the distinction between an assurance of the implementation of an action and a guarantee or assurance of an outcome or result of an action. We can guarantee that an action will be performed in a certain way, but cannot guarantee the results of the action. Environmental interests want strong assurances that vigorous efforts will be made to achieve objectives, based on ecological indicators, and that there will be high standards for changing or relaxing objectives or indicators. Performance measures and indicators will be included in the implementation plan for each component.

There was some discussion whether the draft implementation strategy document adequately reflected the importance of water quality for Delta water users.

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Three recommendations or positions of the Ag-Urban Group, which they believe to be critical to the assurances package, were summarized:

- There should be a management entity for the ERPP, which is sufficiently empowered with authority, money and water to effectively and adaptively manage the ERPP. This entity becomes a mechanism to provide assurances.
- Program implementation must be integrated under "one plan"; this is more than simple coordination.
- Ownership of conveyance and storage capacity by the ecosystem management entity may be an assurance for environmental protection and in-Delta water use.

A suggestion was made to include area of origin and watershed protection in the summary of assurance issues described in the draft implementation strategy document.

A concern was expressed that without adequate programmatic level findings and permits, the linkage between components, such as ERPP and facilities, would become tenuous. The need for such programmatic level findings and permits is not reflected in the draft implementation strategy document.

There was discussion of whether the implementation strategy would include a programmatic 404 permit or related findings as to the "least environmentally damaging" alternative. There is some concern that if such a finding is made with respect to the ERPP but not for other components of the program, such as facilities, the other program components are put at risk in the project specific permitting process. Some stakeholders believe that a program wide 404 permit may be necessary to provide component linkage.

There was a discussion about staging of implementation in Phase III. (Work Group participants decided that to avoid confusion in terms, the words "staging" or "stages" would be used rather than "phasing" or "phases"). The distinction was made that in some cases it may not be necessary to complete a stage before going on to the next stage. It may be more accurate to say that certain findings must be made, or actions within a stage must occur, before the program can move on to the next stage.

b. Betsy Rieke will be working on institutional and management options for ERPP implementation. She and Doug Kenney have drafted a report which will be sent to Work Group members. This report reviews work already done by staff and the Work Group and also looks at some other models. One of their premises is that ERPP management cannot be viewed in isolation from other program implementation, oversight and stakeholder assurance issues.

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c. CALFED staff continues to meet with agency staff to discuss ESA compliance and related assurance issues. The end product is expected to be a "conservation strategy" which will address, in a unified way, the various federal and state endangered species issues (Federal section 7 and section 10; state sections 2081 and 2090; NCCP) for Category 3 and ecosystem restoration projects, ERPP implementation, other program component implementation and program mitigation requirements.

One of the questions to be addressed in the conservation strategy is which actions can permitted at the completion of Phase 2 or early in Phase 3 and which actions will not get permitted until further out (in time) in Phase 3.

The goal of the conservation strategy is to provide all parties a similar level of assurance with respect to the ESA compliance and permitting issues, so that all stakeholders will know their obligations and the limits of their obligations.

The conservation strategy will be discussed in a Draft EIR/EIS appendix on regulatory compliance.

There was some discussion about the difference between actions which could be permitted at the end of Phase 2 as opposed to those which would be permitted later in Phase 3. Concern was expressed again about the impact on linkage. It may be that to protect linkage a project which is permitted or can be permitted in Phase II can nevertheless not be implemented until another project can also be permitted in Phase III. This approach might be necessary in some cases to protect the concept of "getting better together."

The was a brief discussion about the penalty for non-compliance with the conservation strategy. The view was expressed that, for the water suppliers, violation of a condition of the HCP or the conservation strategy could cause the loss of the incidental take permit which governed the operation of the projects.

In response to a question, Mary said that the agency staff are discussing the issue of legal jurisdiction, i.e., will it be necessary for a single court to have jurisdiction over both state and federal agencies in order to be able to deal with conservation strategy implementation and compliance matters.

4. There was another discussion of staging issues. Some consideration should be given to the idea of providing more specific assurances for the early stages of implementation and developing a process to deal with assurance issues raised in later stages of implementation.

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5. Sue Lurie presented a summary of her research project report. Her report examines assurance and implementation issues which arose in three large resource management programs: the Chesapeake Bay, the Everglades and the Columbia River.

   The purpose of the analysis was to look for ideas on what assurance mechanisms for these programs did or did not work in the context of that specific program, and to consider whether there are any lessons for the CALFED program from these other areas.

6. Mary reported that work is continuing on the development of an assurances proposal to be included in the implementation strategy. Issues which will be addressed are the institutional and management questions; phasing and linkage, contingency response, and financing. Also, there will be an implementation plan and assurances for each component.

   There was a discussion about the relationship of the CALFED assurance package to the current negotiations for water bonds. Some concern was expressed that if the bonds authorize money for facilities, this could negatively affect the linkage needed in the CALFED assurances package. On the other hand, a bond authorization for facilities money does not mean that facilities will be constructed if there is not an agreement on the CALFED package of program components and assurances. Bond language can include trigger or conditioning mechanisms as did Prop. 204 (which restricts the availability of environmental restoration money until there is a final EIR/EIS.)

   There was a discussion about the distinction between reversible and irreversible decisions. The gist of the discussion was that there should be equity between actions for water supply and environmental restoration, and that irreversible commitments of resources for water supply should be accompanied by equivalent commitments for environmental protection.

7. Sue Lurie presented a summary of her memorandum dated February 10, 1998, on the development of a matrix for a contingency response plan. This will be discussed in more detail at the next meeting.

8. The next Work Group meeting is set for April 28. Major topics for the agenda are: ERPP and levee component integration, staging, the contingency response process, and CALFED management, governance and oversight issues.

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