

IN RE THE MEETING OF THE)
BAY-DELTA ADVISORY COUNCIL)
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ORIGINAL

TRANSCRIPT OF PROCEEDINGS
Capitol Plaza Holiday Inn
300 J Street
Sacramento, California

Friday, October 30, 1998 at 8:41 a.m.

Reported by: THOMAS J. LANGE, RMR, CSR 4689

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1 COUNCIL MEMBERS:

2 SUNNE McPEAK, Vice Chair

3 LESTER SNOW, Executive Director

4 ERIC HASSELTINE, Contra Costa Council

5 STEVE HALL, Association of California Water
6 Agencies

7 ALEX HILDEBRAND, South Delta Water Agency

8 RICHARD IZMIRIAN, California Sportfishing
9 Protection Alliance

10 ROBERTA BORGONOVO, League of Women Voters

11 ANN NOTTHOFF, Natural Resources Defense Council

12 BYRON BUCK, California Urban Water Agencies

13 HAP DUNNING, The Bay Institute

14 BOB RAAB, Save San Francisco Bay Association

15 MIKE STEARNS, San Luis Delta Mendota Water
16 Authority17 ROBERT MEACHER, Regional Council of Rural
18 Counties

19 MARTHA DAVIS, Sierra Nevada Alliance

20 PATRICK WRIGHT, Designated Federal Official -
21 U.S. EPA

22 TOM DECKER, California Chamber of Commerce

23 DON BRANSFORD, Glenn-Colusa Irrigation
24 District

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1 COUNCIL MEMBERS: (cont'd)

2 HOWARD FRICK, Friant Water Authority/Arvin

3 Edison Water Supply District

4 STUART PYLE, Kern County Water Agency

5 EZE BURTS, Los Angeles Area Chamber of

6 Commerce

7 MARCIA SABLAN, City Firebaugh

8 EUGENIA LAYCHAK, Facilitator

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10 MARY SELKIRK

11 MARK COWIN Staff

12 CLIFF SCHULZ

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14 MARY SCHOONOVER

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1 (All parties present, the following proceedings were
2 had at 8:41 a.m.)

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4 VICE-CHAIR McPEAK: Ladies and Gentlemen, just
5 to announce to you what's going on, we do not yet have
6 counsel present and Lester Snow is stuck in traffic.
7 Mary Selkirk and I have decided that what we'd like to
8 do in the meantime while we are waiting at least for
9 counsel who is the lead star person, unless Roberta and
10 Hap want to do this on your own, we might even do that.
11 Mary is going to the car to get the definitions of
12 reliability that we generated yesterday.

13 We have been joined by, at least, Tom Decker
14 and Eze Burts who were not here yesterday. Welcome, we
15 are glad that you made the effort, extraordinary effort
16 flying in last night to join us today.

17 We went through yesterday in two different
18 breakout groups the proposed actions on four areas, one
19 being efficient water use, another being water quality,
20 storage and transfers, and attempted to reach further
21 concurrence and resolution on those actions to give
22 input to Lester and the CalFed staff.

23 We also got into a discussion of what do we
24 mean by reliability and so there was an attempt to
25 promulgate some proposed definitions. And Mary is

1 going to bring those in so we have those to at least
2 share with everyone here, and they are written out
3 which is why she went out to her car to get them.

4 And Lester will be here soon, and we are going
5 to have this morning first a report that Mary was
6 supposed to lead off on. You probably have your agenda
7 in front of you. It was to include, and will still,
8 the joint ecosystem restoration and assurances work
9 group meetings, so a report on that. Lester wanted to
10 head that up, talking about functions, duties and
11 principles on governance and then Roberta and Hap were
12 going to give a report.

13 Do you think, Roberta and Hap, that it would
14 work if you just started to share right now and then we
15 can get whatever we need from Lester and Mary when they
16 arrive?

17 MR. DUNNING: Sure.

18 VICE-CHAIR McPEAK: Good. I like this idea of
19 we can function without legal staff or staff at all.
20 We'll just do it. And if you really are good, let's
21 move on and decide the preferred alternative. I've got
22 a few ideas, okay. I've got a few ideas. There's
23 enough audience to watch us to keep us honest.

24 But anyway, okay, Roberta and Hap, however you
25 wish to lead this off, please do.

1 MS. BORGONOVO: First of all, I think that you
2 all know that I chair the ecosystem restoration work
3 group and Hap chairs the assurances work group, and we
4 had some issues in common which is why we had a joint
5 meeting.

6 If you look at the introductory remarks, I
7 hope it doesn't confuse you but, basically, there will
8 be two discussions going on this morning and one
9 discussion will be the suggestion that there be a new
10 ecosystem restoration program entity that would
11 implement the ecosystem restoration program. Now I'm
12 going to refer to it as the ERP, I hope that's not too
13 confusing. But raise your hand, audience, if that is
14 confusing because we throw all of these words around.

15 That is different from the overall governance
16 of the CalFed program. And I know that Lester and
17 Patrick and Mary are going to address that, and we are
18 going to have that as part of the discussion in the
19 plenary that Sunne is going to lead. So this is a
20 separate issue that we wanted to put before you.

21 Last year when the ecosystem work group was
22 revising their ecosystem restoration program plan, they
23 were building upon the work of the CalFed staff which
24 has done extensive work in ecosystem restoration and on
25 the core team of scientists who have been developing

1 the strategic plan to guide the implementation of this
2 ERP.

3 That plan from the core team is out, and it is
4 certainly worth any of you reviewing it who are
5 interested in that. But one of the items that the
6 ecosystem core team came up with was this need for new
7 entity.

8 So in the core team recommendations, they are
9 recommending an adaptive management approach which
10 identifies clear measurable goals and objectives. It
11 would formulate hypotheses on alternative approaches to
12 achieving objectives. It would look at an initial
13 implementation strategy. It would look at criteria for
14 monitoring and program assessment, and it would look
15 for the process for revising implementation of strategy
16 over the long term.

17 The -- they address the need for an entity in
18 page 4 of their summary, and they thought that the
19 entity needed to first of all have considerable fiscal
20 and administrative independence, secondly that
21 scientific and public involvement should be included,
22 and third, that there should be dispute resolution.

23 It is this implementation entity that was the
24 crossover between Hap's group and my group. So when we
25 had the joint meeting, we did discuss this need for an

1 entity to govern the ERP.

2 One of the issues that arose was why is there
3 a need for a new ERP entity. It was not to say that
4 the program could not be administered as it is now, but
5 many of the people in both groups agreed that an ERP
6 entity to implement this ecosystem restoration program
7 plan would be the most efficient way of assuring that
8 the program plan was actually carrying out what it was
9 supposed to do.

10 It was certainly apparent from the discussion
11 within the work group that there is a reluctance on the
12 part of some, not necessarily all of the governing
13 entities that are represented in the overall CalFed
14 structure to consider yet a new entity.

15 So, the upshot of the work group was that
16 there was very strong consensus among the agricultural,
17 urban and environmental stakeholders that had been
18 involved in those two work groups, and there was also
19 this concurrence on the part of the core scientific
20 team to explore this. But they really said we needed
21 to make the case; that it was up to those of us who
22 believe that this was necessary to bring that to BDAC.
23 So that's the basis of our presentation here this
24 morning.

25 So basically, we have prepared some overheads

1 to guide our discussion and I'm going to ask Eugenia to
2 put them up.

3 MR. MEACHER: Sunne, could I ask a question of
4 Roberta real quick before she starts?

5 VICE-CHAIR McPEAK: Yes.

6 MR. MEACHER: Roberta, who is the core group?
7 How big is it and who are they?

8 MS. BORGONOVO: I happen to have that with me.
9 It's a group of scientists, Dr. Michael Healy, Dr. Wim
10 Kimerer, Dr. Matt Condolf, Rod Meade, Dr. Peter Boyle
11 and Dr. Bob Twist. (phonetic spellings) They are a
12 group of scientists that have worked in ecosystem
13 restoration.

14 The recommendations for the core team were
15 actually put together by input from the work group, the
16 ecosystem work group, and from the stakeholders who
17 have been involved in it.

18 MR. MEACHER: Those are the guys that wrote
19 the strategic plan, right?

20 MS. BORGONOVO: What they did is they were
21 working on the ecosystem restoration program plan that
22 was put out in the environmental documentation last
23 March. What they did is they came up with the
24 strategic framework for the way it would be
25 implemented, the principles that should guide it. And

1 it was really not complete until September 30th. I
2 don't think a lot of people have seen it, but it has a
3 lot of good information into it but it's gone back to
4 the CalFed management team. It's recommendations from
5 the core team back to CalFed on how to proceed.

6 MR. MEACHER: I have a suggestion that when a
7 document of this importance to BDAC is -- or to the
8 whole process is compiled, that we make every effort to
9 make sure every BDAC member gets one. I'm not sure
10 if -- I talked with Dick back in September about it. I
11 don't know if everybody in BDAC got a copy of this.

12 MR. HILDEBRAND: I would concur in that. I
13 think it's going to be a little difficult this morning
14 to be commenting on an arrangement to implement a plan
15 we haven't seen.

16 MS. BORGONOVO: I think that all we hoped for
17 this morning was to lay out the issues for you. I did
18 reference the scientific -- the strategic plan because
19 I think it's important. I think that the discussion
20 from our work group was in the BDAC packet, and mostly
21 what I'm going to be talking about this morning is the
22 recommendation that came out of the joint work group.
23 But I fully agree that it should be sent to all BDAC
24 members.

25 VICE-CHAIR McPEAK: Is it in a shape today

1 that it can be sent out?

2 MR. SNOW: Yeah.

3 VICE-CHAIR McPEAK: Okay, then look for it
4 soon.

5 MR. PYLE: Do I understand that you're saying
6 that the core team developed a plan for an implementing
7 entity?

8 MS. BORGONOVO: No, it was one of the
9 recommendations in one of their chapters, they saw the
10 need for a new entity. So, basically, when we had our
11 assurances and ecosystem joint work group, Steve Chaney
12 who manages the project and Dr. Matt Condolf were there
13 also and they were part of the discussion. I went back
14 and looked at the minutes; that's not reflected.

15 Basically, the idea of the ecosystem entity
16 had already been well underway within the assurances
17 work group, and it's why we had the joint meeting.
18 They were talking about the entity over there in their
19 group, we were talking about the need for some entity
20 in our group. We decided we needed some crossover.

21 VICE-CHAIR McPEAK: You'll probably recall
22 having seen that concept throughout a lot of different
23 documents including in the framework document that we
24 were working on for a while.

25 Part of what we are hoping today is going to

1 do is be an appropriate intermediate iterative step;
2 that is, trying to get an overview before there is the
3 final finishes on a formal proposal put out to the
4 public for comment, and instead get brainstorming
5 happening here so that both work groups, in particular
6 assurances but also as it impacts or affects ecosystem
7 restoration, here, the thoughts of BDAC.

8 So, the whole thrust this morning until we
9 adjourn at noontime is to look at these assurances, and
10 because the ecosystem restoration entity seems to be a
11 very significant concept at the heart of that as it's
12 being discussed by people in CalFed, the stakeholders,
13 et cetera, that we are getting this initial input.
14 Then we are going to get some more principles from
15 Lester and I guess Mary, and then we're going to do the
16 brainstorming so that any idea you have about
17 assurances we get out on the table that hopefully will
18 be taken into account magically in the next four weeks.

19 MS. BORGONOVO: I think we wanted to stress
20 that there were a number of issues that we agreed
21 needed to be part of any discussion of an ecosystem
22 entity. The way in which the ecosystem entity would
23 relate to the overall CalFed structure, the way in
24 which the comprehensive management and research program
25 that is being put together by CalFed would interact

1 with that, again, has its own CMARP nickname, and the
2 whole governing structure, these were all issues to be
3 determined. All we want to present to BDAC is this
4 recommendation for an entity that could focus upon the
5 implementation of the ecosystem program and could see
6 that whatever management tools it needed to implement
7 that program were in place.

8 So going back to our presentation, we did come
9 up with overall principles -- yeah, the second one --
10 to guide this entity. We thought it needed to
11 implement using an adaptive management framework. It
12 needed to manage based on scientific and biological
13 principles and processes. It needed to be proactive in
14 restoring ecosystems, and I'll define proactive for
15 you. It isn't a trial and error approach but it
16 entails putting forth two or more alternative
17 hypotheses about system dynamics and then exploring
18 which is the best hypotheses for -- through management
19 actions. We thought it also needed to be responsible
20 for meeting the performance standards of the ERP and it
21 needed to implement the ERP as efficiently as possible.

22 We then discussed the following functions and
23 responsibilities for an entity, and I'm going to let
24 Hap discuss that because a lot of this has come out of
25 the assurances work group also.

1 MR. DUNNING: Let me just remind people what
2 the assurances work group is all about. It was
3 established, appointed by Mike Madigan back in the
4 summer of 1996. The idea of the assurances work group
5 is to do whatever can be done to increase confidence
6 that whatever preferred alternative is adopted will be
7 implemented as anticipated.

8 We understand there's always surprises and so
9 forth, we understand that we've got to stay away from
10 any sense of guarantees. But our overall goal is to do
11 whatever we can to make it -- to raise the confidence
12 level, really, of the various stakeholders that
13 whatever is agreed at the end of this long process will
14 happen as we anticipate, or if there are changes they
15 will be changes in accordance with some kind of
16 understood protocol.

17 So we have talked about a lot of things in the
18 couple of years we have been working, but a major item
19 as Roberta indicated has been this matter of a new
20 entity, and I think it's very important as we talk this
21 morning to keep in mind we really have two questions on
22 the table.

23 There's the question of whether there should
24 be a new entity to manage the ecosystem restoration
25 program, then there's the separate question of overall

1 structure for CalFed. And you have to keep those
2 separate. They are related certainly. Our work group
3 is cognizant of the second question and planning to
4 work on that some more, but at the present time, the
5 only actual recommendation we're bringing to you, the
6 only thing upon which we seek concurrence is the
7 general idea that there should be a new entity
8 established to run the ERP.

9 We sort of got our main ideas pulled together.
10 If we get concurrence from BDAC today, we would go
11 ahead into what you might call the design stage.
12 There's lots of very important questions as to how you
13 put this together. This would involve state and
14 federal agencies. There's lots of different
15 possibilities as to what kind of creature legally it
16 would be.

17 I think in considering the problem, the best
18 starting point is something Lester said yesterday. If
19 you recall, when he was providing his remarks
20 appreciating the work that Judy Kelly for CalFed, he
21 started out by saying, CalFed does not exist. CalFed
22 today has no legal existence, it is not a formal entity
23 of any kind. It has had to be put together by creative
24 cooperative efforts involving these 14 state and
25 federal agencies.

1 So I think we all need to congratulate Lester
2 and the other CalFed staff about the way they put this
3 together, but we don't think it's the way to go in the
4 long run. If we are serious about having an ecosystem
5 system restoration program that's going to take
6 decades, we think that we should avoid all of the
7 transaction costs that go into trying to work out
8 cooperative arrangements on contracting and hiring and
9 all these other things with many different agencies and
10 we ought to have a separate entity to do it. It should
11 have its own legal existence somehow, and we haven't
12 really got a recommendation yet as to precisely how it
13 will be formed and it should have an appropriate set of
14 powers. Some of the things shown to the overhead
15 indicate what the powers would be.

16 The basic concept, without getting into the
17 details of particular powers, is that this would be a
18 managerial entrepreneurial organization. It would not
19 be regulatory. It would have no regulatory authority
20 whatsoever. The existence of this organization would
21 not change the regulatory responsibilities now held and
22 exercised by many other agencies.

23 This is an organization that would have money.
24 It would have rights to water. It would hopefully fold
25 in restoration efforts like those going on pursuant to

1 the Central Valley Project Improvement Act, and it
2 would work, of course, with other agencies. We are not
3 saying this agency would do everything, but it would
4 kind of be the manager of ecosystem restoration in this
5 area that CalFed has targeted.

6 So, I think from a political point of view the
7 salient fact is that this is one issue on which all of
8 the stakeholder -- major stakeholder groups at least,
9 are strongly united. Cliff Schulz has come to our
10 meetings on a regular basis speaking on behalf of the
11 urban and agricultural stakeholders, Cynthia Koehler
12 has come on a regular basis speaking on behalf of the
13 environmental stakeholder groups, and they have worked
14 together. And I think we, in terms of stakeholders,
15 have quite an interesting consensus on this.

16 The problem is that the agencies seem to be
17 reluctant. We never -- it's a little frustrating
18 because our meetings, we never get an agency person who
19 comes in and says in so many words this is what's wrong
20 with your idea, this is why we shouldn't have a new
21 agency, this is why the existing agencies can do all of
22 this. What we tend to get are messengers. Messengers
23 who say, well, you guys better be aware there's some
24 reticence, there's some reluctance, there's a lack of
25 receptivity, there is dormant hostility. You know, so

1 it's all kind of obscure. But I think it's real. And
2 I think that people on BDAC have to understand that
3 this is at some level contentious.

4 VICE-CHAIR McPEAK: Very good. Is there more
5 of an overhead that you're going to provide, Eugenia?

6 Why don't you do that, and then I guess Lester
7 is going to also speak on it. I have a couple of
8 questions and we are open to taking comments.

9 Roberta.

10 MS. BORGONOVO: I just wanted to mention that
11 Cynthia Koehler and Craig Schulz will be here later as
12 part of our discussion and they did make a presentation
13 to the CalFed policy group, and they have sent in a
14 joint letter which is the last letter in the BDAC
15 packet. So we were trying to build upon what was sent
16 out in the BDAC packet so people would have an
17 understanding.

18 Also, Patrick Wright will be certainly
19 commenting, and he has also been one of our
20 participants in this discussion.

21 VICE-CHAIR McPEAK: We are going to get
22 Patrick, but first we're going to get Alex, then Bob,
23 and then I'll ask a question and we'll get to Patrick.

24 Alex.

25 MR. HILDEBRAND: I'm open-minded as to whether

1 or not we need to have a legal CalFed, so to speak,
2 make Lester visible, but --

3 MR. DUNNING: This is about a legal ERP
4 management, not the whole CalFed.

5 MR. HILDEBRAND: That's what I'm coming to. I
6 don't understand how we can have an entity like this
7 that just addresses ERP and how then you would see that
8 the balanced decisions are made between the ERP
9 objectives, flood protection objectives, the land use
10 objectives, the water supply objectives for other
11 purposes, and CalFed isn't just ERP.

12 So my inclination is to feel if we're going to
13 have a legal entity, it should address the entire
14 package and not just some component of it. You
15 wouldn't want to have some entity that's just going to
16 look at water historics, for example, just going to
17 look at flood control. I don't think you can have one
18 that just looks at ERP. You have to look at this in a
19 balanced way, and it isn't clear to me how the entity
20 that's under discussion would do that.

21 So, whether I would be for or against a thing
22 depends not just on whether we need a legal entity, but
23 whether that entity is going to be comprehensive.

24 VICE-CHAIR McPEAK: Hap?

25 MR. DUNNING: Well, this entity we're

1 proposing would not be thinking about the other
2 aspects. It would be focused on the ERP. We have to
3 decide then what the structure for the overall CalFed
4 would be. It might be something very similar to what
5 we have had now, a cooperative effort among many
6 agencies, or there might be an over-arching entity
7 created. That discussion has to take place.

8 But as the core scientists have said, as
9 people in our work group have said, people in the
10 ecosystem restoration work group have said, just
11 looking at the ecosystem program and starting with this
12 program, what's it take to make it really work, and
13 this program is so vital to all the stakeholders it's
14 really in some sense a central piece here, everybody
15 seems to conclude it will work best if there's some
16 specialized entity that's running it.

17 MR. HILDEBRAND: Yeah, but the program we have
18 doesn't spell out how you handle all these interfaces.
19 And we are already in a situation of doling out
20 millions and millions of dollars for ERP purposes
21 without, so far as I can see, examining how compatible
22 that is with maintaining flood protection, with the
23 water rights of people upstream and that sort of thing.

24 So I'm apprehensive about something that has
25 the kind of power you seem to be talking about without

1 the checks and balances that you would have in an
2 overall kind of entity.

3 VICE-CHAIR McPEAK: If I could ask Eugenia to
4 start the list of comments she's going to be recording.
5 We didn't think we'd get into brainstorming this early,
6 but your brains seem to be functioning so we will do
7 that. I'm sorry.

8 What I'm hearing being raised is, how do you
9 have -- how can you have a viable entity that is
10 focused on implementing the ERP. Another question is,
11 how can you have a separate entity that doesn't take
12 into account other aspects of the CalFed implementation
13 and what's the interface between other agencies, other
14 aspects of the CalFed implementation, if there is a
15 separate ERP. So, those are issues.

16 I think we should give Hap and Roberta the
17 opportunity to respond one more time, and then I'll go
18 to Robert and then I've got Byron.

19 MS. BORGONOVO: That was a major issue that we
20 saw needing to be resolved, the way -- exactly the way
21 the entity would relate to the overall CalFed structure
22 is a major issue. But we decided that they had to be
23 taken in sequence and I'm sure that's the way CalFed
24 left -- laid it out this morning. The overall
25 governance issue is an issue, the way in which the

1 entity relates to the overall governance issue is
2 another entity, and then the whole way in which the
3 governing structure for the ERP has to come after that
4 work is done.

5 So that's one of the issues that Hap will be
6 continuing to discuss in his assurances work group on
7 November 12th.

8 MR. DUNNING: Can I come back one more time on
9 your question, Alex? I think the best way to approach
10 it is to look at each of these discrete functions
11 within CalFed and say what's the best way to get that
12 job done. We have looked at the ERP, they've looked at
13 the ERP in Roberta's work group, and we have decided to
14 propose that a new entity to run it is the best way to
15 get the job done.

16 Suppose down the road that their decision is
17 made to have surface -- new surface storage facilities
18 constructed. Suppose there's a decision to have an
19 isolated conveyance facility. I think you should do
20 the same thing; you should look at those facilities and
21 say what's the best way to get that done. Should they
22 be built as part of the CVP? Should they be built as
23 part of the state water project? Should they be built
24 as some kind of joint state/federal project and
25 operated conjointly by those two management entities?

1 Or maybe somebody would say, no, no, there ought to be
2 a new entity to do it.

3 I don't know the answer to that question, but
4 I'm just saying we shouldn't not do the right thing
5 with regard to ecosystem management because we are not
6 sure what we are going to do to do the right thing with
7 regard to facilities or flood control or any of those
8 other things which understandably are of great concern
9 to people.

10 MR. HILDEBRAND: I would raise the same
11 question if we were talking about an entity to do one
12 of these other things, seems to me there has to be an
13 overall oversight system to see that they're operating
14 in a compatible manner. And if you are going to give
15 water rights and land condemnation rights and all kinds
16 of things to this entity, I'm not sure how a
17 management -- an oversight group is going to manage
18 that.

19 VICE-CHAIR McPEAK: Okay. Let me --

20 MR. DUNNING: Maybe I was unclear, but
21 certainly there would be some sort of overall CalFed
22 management. What's not decided is what the proposal is
23 for --

24 MR. HILDEBRAND: I can't --

25 VICE-CHAIR McPEAK: I've totally lost control

1 here. Everybody be quiet. See, I know that when
2 Lester says "Can I make a comment." He had already
3 told me as you guys were going at it, you know, this is
4 a good prelude to what Mary is going to tell us because
5 she's going to put into context how these things
6 relate. And I told him that was a kind way of telling
7 me I was ahead of his game plan. So we are trying to
8 record that.

9 I think we understand the essence of what you
10 two or three are debating. If I might ask your
11 indulgence to get Supervisor Meacher and Byron Buck and
12 then get to Mary, maybe, maybe, it will also be more
13 helpful.

14 But in the meantime, Lester, do you want to
15 comment?

16 MR. SNOW: I was never trying to give subtle
17 instruction. Let me make that clear.

18 VICE-CHAIR McPEAK: I was too dense to
19 understand the direct message.

20 MR. SNOW: Okay, I think I'll move on.

21 There is a point on this discussion that I
22 would like to make, one, to remind people of what the
23 report we got from Betsy Ricky (phonetic) at the
24 University of Colorado indicated on this topic, which
25 was you cannot close out your structure for the

1 ecosystem restoration until you've talked about the
2 broader umbrella structure and how things relate.

3 And to kind of maybe further that point, since
4 I think Ryan Broderick was probably overcome by his
5 cold he's been fighting and is not here today, the
6 state side of CalFed has even very recently made it
7 clear that they, too, think that you have to see the
8 broader umbrella structure before you do the fine
9 tuning of what the ecosystem entity might be, or as
10 Alex points out, what a levy entity might be, et
11 cetera.

12 So the two do get linked. You can develop the
13 job description quite separately, but there is the
14 issue of linkage. And I think Mary is going to try to
15 put some of that in context. But I wanted to remind of
16 the report we got from the University of Colorado, and
17 then also kind of where the state is at this point.

18 VICE-CHAIR McPEAK: Thank you.

19 Supervisor Meacher, Byron, then Patrick, then
20 Mary.

21 MR. MEACHER: Thank you.

22 I think Alex pretty much -- his dialogue with
23 Hap covered a lot of my concerns about this. I have
24 looked at this strategic plan and there is a direct
25 suggestion from that science team, if I'm not correct,

1 on what this governance structure would look like, if
2 I'm not mistaken. And I would encourage every BDAC
3 member to look at that and I would submit, seeing as
4 how I have seen this, that I -- as I would say and I
5 have said all the way through my tenure on BDAC, that
6 you need a resource economist. I'm begging you as a
7 BDAC member to start using a resource economist in some
8 of these scientific review panels or governance
9 structures, as we look at implementing these different
10 programs.

11 And I was also a little bit concerned in that
12 suggestion that it looked to me, and I could be wrong,
13 Hap or Roberta, but it was primarily this governance
14 structure would be made up in their suggestion from the
15 science panel of scientists, and they were pretty firm
16 that out of state scientists not even connected to our
17 ecosystem be part of that team.

18 So I'm just -- I mainly want to encourage BDAC
19 to take a close look at the strategic plan and review
20 that suggestion, and I don't know how much weight you
21 guys have put on that suggestion that's written in that
22 document at this stage.

23 MS. BORGONOVO: We saw it definitely as taking
24 a look at their work, but the core scientists that
25 worked on that did come from many disciplines; many of

1 them, however, were from California. But there are
2 whole different ways in which you could make sure that
3 science is integrated into the decision making.

4 And one of the things that the assurances work
5 group looked at that I asked to have sent to me were
6 several case studies. There are many ways of doing it.
7 I think that the danger of raising the issue or all of
8 these questions, we see all of these questions as very
9 legitimate and very necessary to be explored. There
10 are many, many different ways of putting together the
11 entity. But I also agree with Lester that you have to
12 have the overall structure for all the CalFed programs
13 determined because that will determine your governing
14 structure, how you will put it together.

15 And the way in which you integrate science,
16 there are lots of suggestions out there. Independent
17 scientific review is not necessarily part of the
18 decision making, and the scientists who went for the
19 independent peer review did come from out of state, but
20 the decision makers on the ERP would be people within
21 California that are involved in the program now. But
22 that's a very legitimate question.

23 MR. MEACHER: That's all.

24 VICE-CHAIR McPEAK: Thank you, Bob.

25 Byron.

1 MR. BUCK: Lester really made my comments,
2 except for one and I'll just hold that one and see if
3 Mary picks it up.

4 VICE-CHAIR McPEAK: Patrick.

5 MR. WRIGHT: I don't know if I can be any less
6 obscure than others that you've talked to but I'll give
7 it a shot.

8 I think it's fair to say that the CalFed
9 policy group as a whole is reflecting some of the
10 concerns that Lester mentioned on the state side, which
11 is that the agencies are extremely reluctant to
12 quote/unquote endorse a new entity in isolation without
13 a lot more examination of some of the questions we have
14 already talked about this morning; not only what is the
15 relationship between the new entity and some new
16 umbrella or evolution of the umbrella structure, but
17 also the relationship between the vast number of
18 existing environmentally-related programs of those
19 agencies. As an example, Fish and Wildlife Service
20 runs a refuge program, Fish and Game has a number of
21 programs, Regional Boards do a lot of things, Corps of
22 Engineers has a fairly major flood management program
23 that's moving in the direction of the ERP.

24 So I think people -- the policy group are
25 basically saying, don't ask us to say yes or no to an

1 entity today. What we are saying is, let's look at all
2 the potential functions that are needed or the
3 potential needs that we have to implement the CalFed
4 program and then ask the question, what agencies or
5 combinations of agencies or entities are best
6 positioned to do that?

7 Now I'm personally quite confident that when
8 you go through the roster that Hap is throwing out and
9 you're asking the question, well, who is going to be in
10 charge of overseeing spending the 390 million that we
11 expect to get, who is going to manage the grants, who
12 is going to help operate this purchase fund that folks
13 are thinking about creating, it's going to become clear
14 that no single agency -- people are not going to be
15 comfortable with any single agency doing that.

16 So I think -- I think people will come around
17 to the fact that there will have to be at a minimum
18 some evolution of the CalFed program, from both an
19 oversight perspective and an ERP implementation
20 perspective. I think people are just reluctant to jump
21 right into yes, we need to do that, until we've got a
22 better handle on some of these questions.

23 I mean, as an example, when we were
24 negotiating the Bay-Delta accord and shortly
25 thereafter, we all knew that there was going to be a

1 long-term planning process that led to the formation of
2 BDAC and CalFed, but we didn't sit around saying, gee,
3 we need a new entity, yes or no. We basically said,
4 well, we need a long-term planning process, who should
5 do that?

6 Well, not DWR, that's too narrow; not the
7 bureau, not Fish and Wildlife. We need a collective
8 effort. We went out and grabbed Lester and, you know,
9 pulled together a bunch of staff from the agencies and
10 it evolved based on the consensus that we needed that
11 function to be fulfilled and the current structure
12 simply wasn't adequate to do it. And I foresee a
13 similar situation here.

14 So the guidance from the policy group was
15 don't necessarily slow down because there isn't
16 agreement today on the need of a new entity, let's
17 further flush out both the implementation plan for
18 CalFed and also the various institutional approaches
19 that may be necessary to implement that framework and
20 then we can have a decision.

21 So I don't know that we're as far apart as
22 some of the comments have suggested, although it's
23 certainly fair to say that folks are all over the map
24 on this question. But it's easy in the absence of
25 answering all of these questions for people to just

1 have a knee-jerk reaction that says yes or no. But I
2 think once we get to a more sophisticated place when
3 we're looking specifically at the framework that we get
4 to by the end of the year and ask the question who's
5 actually going to implement this stuff, then I think we
6 will be able to make more progress.

7 VICE-CHAIR McPEAK: Patrick, those are very
8 wise comments from someone who last night disclosed he
9 remembers his parents talking about the first John Glen
10 flight when he was a baby. So thanks, thank you.

11 MR. DECKER: Find out who got that Glen flight
12 off the ground and seek counsel from who was in charge,
13 who had the ultimate responsibility and everything
14 flowed from that.

15 VICE-CHAIR McPEAK: That's a very good
16 analogy.

17 MR. WRIGHT: I also heard last night that the
18 Yankees won the World Series in 1962, the last flight
19 that John -- I don't know what significance that has,
20 but --

21 VICE-CHAIR McPEAK: No, I know those of you
22 who are so young have a hard time remembering this
23 recent history, so...

24 I would -- I think Martha and Tom and Bob, we
25 may not have the folks who are -- whose name plates are

1 there joining us today. Will you please move up so
2 that we have more of a sense of cohesion. We don't
3 want you just at the end.

4 Okay. Ready for Mary?

5 You want to make a few comments, okay.

6 MR. SNOW: Actually I'm starting to forget all
7 that stuff.

8 A couple of comments I want to make. One is
9 kind of the big picture in terms of assurances and
10 governance, and may be something that Hap appreciates
11 more than the rest of you or us, but we have not had
12 what I would call kind of consistent leadership on this
13 issue in terms of staff, you know, who is in charge.
14 And we have all pitched in differently. Mary did a
15 wonderful job on this for some time and I tried to
16 contribute, and we had Dave Fullerton staying in his
17 role as -- in charge of implementation activities.

18 What I wanted to indicate, I wanted to
19 introduce Dennis O'Brien. Dennis, can you stand up and
20 identify yourself?

21 Dennis is the lead person on this and will be
22 working on this with Hap on assurances and he is our
23 "go to" person to dump all these ideas on to try to
24 sort out and come up with strategies. We were lucky
25 enough to get Dennis from the California Department of

1 Conservation. Prior to that he was with Parks and Rec,
2 has a background in developing new programs and trying
3 to solve new governance issues that result from those
4 new activities, as well as the legislation that goes
5 with that.

6 So hopefully it's a good luck of timing that
7 Dennis comes to us at the time when we are trying to
8 grapple with this issue, so he is our person on this
9 point.

10 I guess the only thing I'm going to say before
11 Mary gets into this, a couple of real basic
12 observations that have already kind of come up here,
13 one is that we have to resist the temptation of just
14 wanting something new because it sounds good, a new
15 institution. And I always remind myself that all of
16 our old clunky institutions that we don't like today
17 were new one day and somebody created them because they
18 were special and had a new function.

19 So there's nothing magic about a new
20 institution and the key has to be the job description,
21 what is it that we want to have done, and then evaluate
22 the candidates for that job description. I think a lot
23 of us have made a conclusion that we think we may need
24 to create a candidate to fill that job description.

25 And I think it's also evident that entities or

1 people are usually not the ones that propose that they
2 change, so it has to really come from the affected
3 parties and the stakeholders to say, you know, we need
4 something different here.

5 So don't depend, again, on people or
6 institutions being the ones that propose that they be
7 changed or be modified in some fashion. We just need
8 to decide what's right for the Bay-Delta system and
9 propose that and be confident in what it is we propose.

10 With that...

11 VICE-CHAIR McPEAK: Terrific. That's very
12 wise, too. Very wise.

13 MR. SNOW: But I show my age.

14 VICE-CHAIR McPEAK: Stuart.

15 MR. PYLE: Apologies to Mary, hopefully, glad
16 to see you back, Mary.

17 If I could make a statement. You mentioned
18 history and a couple other things, but I think one of
19 the things that hasn't been brought up here is the --
20 in the formation, the difficulty in developing
21 organizational structure, which involves both state and
22 federal established entities and their various
23 regulations, and there is some history on this. You
24 probably know about it, Lester.

25 Some of it is historical, there was in the

1 late 1960s, the formation of the U.S. Water Resources
2 Council of which I was an employee at one time, and --
3 Lester is kind of twitching and smiling -- this council
4 no longer exists. The council was there to coordinate
5 the water project activities of all of the federal
6 agencies. That's a lot of them. And it also
7 established river basin commissions. None of these
8 commissions are no longer in existence.

9 And the purpose of those commissions was to
10 bring the federal agencies and the state and other
11 local agencies together in managing the water
12 resources. New England River Basin Commission,
13 Missouri River Basin Commission, Columbia River Basin
14 Commission, those were all formed, the joint
15 state/federal participation. As I say, they no longer
16 exist. You can think why.

17 There is not -- at that time, the dominant
18 agencies and the federal government are not the
19 dominant agencies of today, that is almost 30 years
20 ago, and there is not a great desire amongst federal
21 agencies to be coordinated.

22 There's a lot of competition for funding.
23 There's -- I said originally there's the difficulty in
24 the legal structure through federal legislation and
25 state legislation to form these, and there's also a

1 great coordinating problem between the budgeting
2 through both the state and the federal organization to
3 keep these organizations going.

4 So, I don't know if you ever thought about
5 this, Lester, but there's people that I'm sure you know
6 that have experience in this and you probably know
7 Helen Ingram.

8 MR. SNOW: Yes.

9 MR. PYLE: She did a very intensive report, I
10 believe, for the Water Resources Commission, the
11 federal commission in the early '70s on this subject.
12 Frank Craig, you know Frank, I think he's at Arizona
13 State, Tucson, and he was the chairman of the River
14 Basin Commission. He knows a lot about the ins, mostly
15 the ins of infighting in the organizational structure.

16 But I just -- what I want to introduce into
17 this discussion is the need for difficult state and
18 federal coordination and state and federal legislation.
19 It's not just something that is decided by a few people
20 on the scene. It has to develop here and it has to
21 feed back into the legislative bodies, both state and
22 federal. And I think we should think about if we go
23 very far, that there should be some way of bringing in
24 that legislative coordination at a really early stage
25 here because I know in talking to some state

1 legislators, some of them are a little edgy about
2 things that go on over here in CalFed and don't have a
3 lot of relationship to what's going on in the
4 legislature.

5 VICE-CHAIR McPEAK: Thank you.

6 Mary, you're on.

7 MS. SCHOONOVER: Thank you.

8 Good morning, it's nice to see you. For those
9 of you that I don't know, and there are a few new
10 faces, my name is Mary Schoonover, and I worked with
11 Hap Dunning, Mike Keaton Dave Fullerton and Stein Buer
12 on assurances for quite sometime, as well as a number
13 of BDAC members and participants in the work group.

14 Unfortunately, Byron, I'm not here to give you
15 the answers today. I actually have a much easier task
16 than that, and that is to introduce the subject of
17 overall governance, remind you a little bit about the
18 work that's already been done, make some suggestions
19 and then pitch it to Sunne and Eugenia and the rest of
20 the BDAC folks for the really tough stuff, the
21 brainstorming where you all come up with all the
22 answers.

23 I did want to take just a minute to remind you
24 that what we are going to be talking about is the
25 CalFed box at the top, the overall governance

1 structure. That discussion doesn't necessarily
2 predetermine who or what entity implements any one of
3 the other individual programs.

4 So, for example, the discussion that the
5 assurances and ecosystem restoration work group had on
6 the appropriate entity to implement the ecosystem
7 restoration plan will continue. The concept is you
8 can't design any one of these if there are new entities
9 in isolation from the overall CalFed governance
10 structure, who's going to take CalFed from the planning
11 stage to the implementation stage, and there's a
12 question of whether the existing entity or the existing
13 structure is appropriate or whether there is something
14 else that's needed.

15 So, what I'm going to be talking about is only
16 the top box, only the CalFed overall governance
17 structure. Now, again, there will be a heck of a lot
18 of details to work out in terms of how that structure
19 relates to the implementation of the individual
20 programs, both the new programs as well as existing
21 efforts that are underway in pretty much each of these
22 areas. So that's where I'm starting.

23 I wanted to remind you a little bit about some
24 of the work that Betsy Ricky and Doug Kinney (phonetic)
25 did from the Natural Resource Law Center on their

1 concepts of implementing entities.

2 The Natural Resource Law Center had both some
3 general guidelines and then some specific examples that
4 they came up with, some design key issues. We will
5 start with their general guidelines.

6 These were developed from looking at water
7 management entities throughout the United States,
8 primarily in the western U.S. But the guidelines that
9 Betsy and Doug came up with were that we needed to, in
10 this effort, foster a regional perspective. It was
11 important to use a problemshed orientation which is
12 consistent with the CalFed Bay-Delta program's approach
13 to dealing with the problems in the Delta, but in order
14 to solve them, to go wherever you need to go to solve
15 them, so a problemshed approach.

16 Use a process orientation as opposed to having
17 in mind the particular outcome that you have -- that
18 you want to see when you're dealing with diverse
19 interests. It's important to identify the process and
20 make certain that people are all comfortable with the
21 process that you've articulated to try to resolve
22 disputes or deal with the issues.

23 Consider the political viability, let the
24 function dictate the structure, which I think is what
25 Lester was trying to indicate. Don't simply identify

1 the structure that is appropriate, but determine what
2 the needs are, what functions it needs to serve and
3 that will help determine what the structure ought to
4 be.

5 Consider broad trends in federalism and
6 intergovernmental relations, and in the Ricky/Kinney
7 report there's a fairly lengthy section on that. I
8 won't spend a whole lot of time.

9 And finally, their last kind of list of
10 guidance to us was to not burden administrative bodies
11 with fundamental policy decisions. If you have a body,
12 say, for example, the levee implementing entity,
13 whatever that entity may be, that is to administer a
14 program. It is to implement fund -- or spend funds and
15 implement the actions that are identified in that
16 program. Perhaps that's not the appropriate place to
17 discuss fundamental policies issues; that the kind of
18 entity that you create in order to spend money,
19 implement a program, may be very different than the
20 kind of entity you create in order to deal with overall
21 policy issues.

22 So secondly, recognize the importance of
23 conflict resolution, especially in an area like we're
24 dealing with, no one is going to be completely
25 satisfied. New issues, both political as well as

1 practical and scientific are going to continue to be
2 recognized and the entity needs to be able to deal with
3 conflict. So conflict resolution is essential.

4 Design mechanisms for accountability so there
5 really is a way of knowing whether or not the job is
6 being done and how well the job is being done, and then
7 promote flexibility and creativity which is probably
8 much easier to say than it actually is to accomplish.
9 But again, when you're dealing with a complex ecosystem
10 on which a number of the differing factions when the
11 state's economy and environment are dependent, you have
12 to have some amount of flexibility in order to deal
13 with new issues that arise, and some creativity in
14 order to deal with those problems to overcome political
15 boundaries and to deal with what will be probably a
16 more complicated system in the future.

17 Now the seven design issues, key issues that
18 Betsy and Doug identified I understand have been used
19 or are being used in some of the urban/ag discussions
20 on new entities. And those are fairly straightforward.

21 First, look at the scope of substantive,
22 spatial and temporal; identify the function; look at
23 membership and participation. Who needs to be
24 represented? Who needs to participate? What do their
25 roles need to be? What are the operational attributes?

1 What is this entity to be empowered to do? What are
2 the authorities? What kinds of tools does it have in
3 order to carry out its functions? What's its legal
4 structure?

5 As Lester and others in the CalFed program are
6 kind of tired of hearing me say, CalFed doesn't exist.
7 Now that may be an oversimplification, but CalFed is a
8 coordinated or cooperative effort. It is not a new
9 entity. It was not created, not given new authorities.
10 It's existing agencies and departments who are
11 coordinating in a common effort to try to come to a
12 resolution.

13 So the legal structure of whatever new CalFed
14 entity exists is going to have to be fairly clearly
15 articulated and identified, especially when you're
16 dealing with both an entity that may have attributes
17 that are both state and federal in nature. Again,
18 that's on the edge of the creativity thing.

19 Finally, the financial resources. Be
20 absolutely clear about what financial resources this
21 entity has, where it gets those financial resources
22 from and what the limitations are on how the entity
23 spends its money.

24 Stein and Mike Keaton and some others have
25 come up with some issues to be addressed in governance,

1 and I'll introduce those and then spend a little
2 time -- then make some suggestions on -- potentially on
3 functions for this overall entity, and I'll get out of
4 way and let Sunne get to work.

5 And that is, is the existing CalFed structure
6 adequate to coordinate implementation? There are a
7 number of points underneath, some of these points were
8 covered in the written materials that were in your
9 package.

10 The planning versus implementation, what we
11 were referring to here is that the original CalFed
12 effort was a planning effort. It was intended to
13 develop a long-term plan to satisfy or solve, resolve
14 the problems in the Bay-Delta. Are the functions that
15 are served by a planning institution fundamentally
16 different from those functions that are needed in order
17 the implement the plan? And can the existing entity
18 make that leap to implementation from planning, or is
19 there some other structure that's necessary?

20 Program administration. Currently, CalFed
21 operates under two different federal -- two different
22 fiscal years, the state fiscal year and the federal
23 fiscal year; two different budgeting processes;
24 multiple personnel policies; contracting procedures.
25 It's a fairly complex beast and I think it's a

1 testament to Linda Marty, Pauline Evans and others that
2 we have actually been able to function under these
3 kinds of rules.

4 Then, thirdly, the decision making. Under the
5 current CalFed structure, each agency retains its own
6 authority to make a decision. So for a decision to be
7 made, each agency has to go through whatever its normal
8 process is to get its decision maker to make a
9 decision, so there aren't votes, unanimous or majority
10 votes and then everybody has to go along with it. It's
11 each agency.

12 So far, the agencies have been able to agree
13 and there has been a consensus decision. It's not a
14 speedy process necessarily, nor is it necessarily how
15 responsive enough to deal with implementation issues.
16 When a policy issue arises, you may have to make a
17 decision immediately. Is the existing structure
18 satisfactory to do deal with that?

19 And finally, the accountability issue. Again,
20 each agency retains its own responsibilities, its
21 own -- carries out its own obligations, and the
22 question of accountability for the CalFed program is
23 not necessarily clearly identified. You know, Fish and
24 Game is responsible up to the edge of Fish and Game's
25 existing responsibilities, same with the Bureau of

1 Reclamation. But accountability for the overall CalFed
2 program doesn't rest with any one entity. In terms of
3 actually things like audits that clearly will come in
4 the future, this could be a bit problematic.

5 The CalFed effort, this coordinated effort has
6 been trying to address and deal with these problems or
7 these issues so they won't become problems, but
8 accountability on a number of fronts is one of the
9 other questions that I would raise for you.

10 Finally, some suggestions to hopefully kick
11 off your discussions on what this overall governance
12 entity needs to look like. And that is, we at the
13 staff level have been trying to identify what we think
14 are some functions that this overall entity needs to be
15 able to serve.

16 First, formulating policy. Some unified
17 group, body, that's able to formulate policy for the
18 overall program implementation.

19 Resolving disputes within the implementation
20 of, for example, two of the individual programs or two
21 actions within a program, there may be disputes;
22 disputes between agencies, disputes between agencies
23 and stakeholders, disputes between all kinds of people
24 and some process for resolving a dispute.

25 A priority setting mechanism. Money is

1 obviously going to be a limiting factor in how much can
2 be accomplished in a single year. Likewise staff, how
3 much staff, how much resource -- how many resources can
4 we actually devote to accomplishing tasks limits the
5 number of tasks you can accomplish in one year. What
6 are the priorities, and how do we assure that all the
7 programs are moving forward together?

8 Allocating resources. Again, who gets to
9 spend the money to implement the levee program? Who is
10 to allocate particular portions of funding for
11 ecosystem restoration? And how does that -- how is
12 that money accounted for?

13 Coordinating and facilitating, all these
14 agencies still have their own responsibilities in the
15 Delta. That's why they're part of CalFed in the first
16 place. So ongoing coordination with both existing
17 programs as well as their new programs and the new
18 CalFed program is absolutely essential, and
19 coordination between implementing differing programs
20 within the CalFed solution area is also important.
21 Sometimes it's a matter of simply facilitating
22 discussions either between agencies or among agencies
23 and stakeholders.

24 And finally, the concept of auditing and
25 adjusting. Someone has to be or some thing, some

1 entity has to be responsible for checking the results
2 of the monitoring, for auditing the expenditures that
3 have been made and determining whether or not things
4 are working. And if things aren't working, how then do
5 you suggest adjusting? What changes do you suggest
6 making?

7 Now, again, these are different changes than,
8 say, for example, at the ecosystem restoration plan
9 level. It's a much broader level. Overall
10 program-wide is it working? Is it not working? And if
11 it's not working, what do we do to make it better.

12 Those are some of our suggestions at staff
13 level of the functions that we see an implementing
14 entity needs to serve. And I would offer them to you
15 just as a means of beginning your discussions.

16 VICE-CHAIR McPEAK: Thank you, Mary. Very
17 good, appreciate that introduction.

18 Eugenia, you're going to actually review the
19 ground rules of brainstorming and remind us the process
20 we want to engage in here, and then I'll try to kick
21 off this discussion.

22 MS. LAYCHAK: Actually the ground rules or
23 guidelines for brainstorming are actually fairly
24 simple. Brainstorming is usually a tool that's used
25 for finding creative options for reaching agreement or

1 solving a problem. It's also a mechanism that can be
2 used for really opening discussion on a topic or an
3 issue, which is what we are doing here today.

4 Actually we started it a little bit yesterday,
5 too, when we were talking about what modifications we
6 would need for water supply reliability, and a number
7 of individuals started raising the issue of who
8 decides, which entities decide, are they local
9 entities, is it the legislature, are they state and
10 federal agencies.

11 But in terms of brainstorming, what's -- two
12 things that are particularly important is that every
13 contribution is worthwhile. This is really a time to
14 be creative, and also to suspend judgment. The
15 evaluation and further discussion will begin actually
16 after our brainstorming session after our break and
17 then continue after today with the work groups,
18 probably with the agencies, possibly with BDAC. But
19 that is something also for BDAC to decide as to what
20 your next steps will be.

21 VICE-CHAIR McPEAK: Thanks, thanks very much,
22 Eugenia.

23 So keep in mind what we are really trying to
24 do is get all the possible ideas out on the table, not
25 so much engage in a debate about certain points. In

1 fact, we don't want to be judgmental at all. Someone's
2 point might trigger a question that you would have that
3 you think needs to be put on the list. That is -- I
4 think I would want to invite those kinds of comments so
5 we get a full inventory. But we are really trying to
6 get out on the table all of the issues and also
7 possible solutions. I think that is an important
8 aspect of inviting your input on this brainstorming.

9 I do want to compliment Roberta and Hap and
10 Patrick and Mary and Lester for, I think, really
11 bringing out the right kind of framework for this
12 discussion with respect to governance and
13 organizational structure. So -- there's always this
14 running joke among managers that when you don't know
15 what to do, you just reorganize. And usually that's
16 really because function has never been brought into
17 focus, and oftentimes there is a propensity when
18 existing institutions don't function, to create yet
19 another one.

20 And too often that gets placed on top of
21 existing institutions or is another layer without
22 correcting the problem that caused folks to say let's
23 have a new entity to begin with, which is what somebody
24 described as the interface. I guess you did, Alex.
25 It's often that the agencies that do exist institutions

1 don't have either the authority or the culture to deal
2 with the breadth and complexity of issues as complex as
3 this.

4 So, I just want you to think about again back
5 to function and what are all of the potential options.
6 Without clear direction and authority to some entity or
7 an entity that is a consortium collection of others,
8 you might have difficulty with implementation. With a
9 separate entity that doesn't have the right interface,
10 what do we do about existing authorities and
11 coordinating with all of them?

12 So that's part of what we want to get out.
13 I'm leaving those questions to you to start responding.

14 Eric, you're wanting to start off.

15 MR. HASSELTINE: Well, it seems to me that
16 when we have a program like CalFed that has a group of
17 separate but highly interrelated programs, that the
18 need first of all to have some sort of over-arching
19 administration responsibility it is very clear. How
20 then the delegation of that responsibility is made back
21 to each of the separate entities or programs is really
22 the issue. And it seems to me that the first step
23 along those lines is to make sure that we in effect
24 have everybody in the tent that needs to be there.

25 And I thought of at least two things when I

1 saw that original chart with CalFed and then the six
2 programs, there are at least two things that jumped out
3 at me that are missing. One being finance and the
4 whole financial administration of this whole program
5 which will be highly interrelated to all of this, and,
6 secondly, water transfers were not clearly in there and
7 that is another area where there clearly has to be some
8 sort of a separate administration, clearing house type
9 of entity.

10 So I hope -- and there maybe others. But
11 those two for sure, and I just felt it would be
12 important that we have everything that we are going to
13 deal with laid out in order to see how things fit
14 together.

15 VICE-CHAIR McPEAK: Robert?

16 MR. MEACHER: Is our situation in California
17 so unique that we couldn't learn from the Chesapeake
18 experience, what's going on in New York and what
19 they've done on the Columbia and perhaps even the
20 Everglades scenario where they dealt with a similar
21 issue as far as a governance structure?

22 I don't know. I haven't studied those
23 processes. I know that we're a little similar to the
24 New York experience that they're going through, maybe
25 not exactly the same. But I was just wondering if we

1 could glean from that to start and build on something,
2 rather than try to create something totally new if it
3 was applicable.

4 VICE-CHAIR McPEAK: Mary is going to respond
5 to your question.

6 MS. SCHOONOVER: We actually in the assurances
7 work group did undertake a study and an analysis of
8 other complex natural resource management issues
9 throughout the U.S. and identified three as having
10 significant lessons that we could learn from. One was
11 the Chesapeake, second was the Everglades, and the
12 third was the Columbia.

13 Now there are disagreements as to how
14 effective any one of those entities -- those efforts
15 have been and our intent was not necessarily to
16 replicate the programs exactly but to see what we could
17 learn both from their mistakes as well as from their
18 successes.

19 We put together a staff report, gosh, close to
20 a year ago now, that identified both the basic
21 structures, how they operate, their similarities, their
22 differences and what lessons we could learn from them.
23 None of them are directly applicable. None of them
24 provide a structure that we could simply pick up and
25 incorporate. But each one of them had lessons that we

1 at a staff level and the assurances work group thought
2 were essential and are part of what's gone into our
3 list of the functions and the ability to deal with
4 uncertainties, for example.

5 They have also helped shape the contingency
6 response process, the process to deal with unforeseen
7 and unexpected circumstances but to allow the program
8 to continue to move forward. I have some extra copies
9 of those reports. If some of you didn't get copies or
10 have misplaced yours, they are very useful. I'd be
11 glad to give you a copy.

12 VICE-CHAIR McPEAK: Bob, from your experience
13 in local government and dealing with watershed
14 management from also an ecosystem concern, were there
15 any of the principles that were put up here that you
16 thought either needed to be modified or were any
17 missing? Do you have anything to add that would help
18 us on the function of governance, the functionality of
19 this whole entity?

20 MR. MEACHER: Not off the top of my head. I
21 do recognize the real problem out there amongst the
22 agencies coordinating. I have since I've been a
23 supervisor for six years, sat representing the same 27
24 counties on the governor's biodiversity council and I
25 deal with the agency heads three or four times a year.

1 And it's just -- it's a real hard process even when the
2 agency heads all agree on something to actually see the
3 project through or the policy through down onto the
4 ground. So, it will be a big undertaking to go
5 through.

6 But other than that -- and the turf, the turf
7 is extremely hard to deal with. And I think I'm going
8 to be -- Martha and I are going to be dealing with that
9 a little bit in our discussions Monday at the watershed
10 work group.

11 VICE-CHAIR McPEAK: We have Tom and Byron and
12 Eze and Ann.

13 MR. DECKER: One of the things I see missing
14 from that list, depending upon where we land is the
15 devising and the execution of the plan, sort of basic
16 management 101. All that stuff you have, all those
17 bullets are right, they drift around to me the real
18 issue, which is who is going to execute the plan that's
19 approved.

20 Now, I also believe that that should only go
21 up there if --

22 VICE-CHAIR McPEAK: Implementation authority.

23 MR. DECKER: That's right, and if -- and this
24 goes back to my late arrival and probable ignorance of
25 the original charter, which is what are we -- what is

1 CalFed responsible for? Are we agents for change or is
2 our job to come -- not ours, but CalFed's job to come
3 up with an alternative plan and deliver it to somebody
4 for action?

5 Now, I'm sure that's very clear if I go back
6 and read what the rules were in the beginning, but it
7 is germane, to me completely germane to how we kind of
8 go through this discussion.

9 If CalFed is an agent for change, then it has
10 to do one thing. If it is a technology or technical
11 oriented thing -- organization that delivers the best
12 possible recommendation it can to somebody else, then
13 it sets itself up a different way, and it does deal
14 with all those issues of who has to go to sleep every
15 night and worry about if they don't get it done within
16 a certain period of time. Having gotten all the
17 testimony, all the input, understanding all the complex
18 interrelationships, who goes to bed at night and
19 worries if they don't get it done, something bad will
20 happen?

21 I mean this is a practical -- and we are
22 nowhere near there, I think, yet. But when you look at
23 that, one of the driving force processes to decide what
24 a governance function is, is to really understand
25 clearly -- and I'm sure everybody else does, and I'm

1 not sure I do because I have to go back and look at
2 it -- precisely what CalFed is supposed to do.

3 Now precision in CalFed, I'm sure, given how
4 it's put together is not an operative word, no matter
5 how hard we try. But it really is going to come down
6 to what is supposed to happen -- what is an ultimate
7 result or an expected result, and that comes down to
8 whether it's a change agent or whether it's a
9 technologically driven or technology driven
10 organization that has to deliver a recommendation to
11 somebody.

12 And finally, one of the fastest ways to get
13 one of these discussions started based on my short
14 experience in life, is to work off staff
15 recommendations because the staff in the real world are
16 the people who understand what goes on here better than
17 the volunteers, and if the staff feels there is a track
18 to go on, we should hear what that is because it will
19 help us get launched.

20 VICE-CHAIR McPEAK: I'm going to attempt to
21 respond to your question and then --

22 MR. DECKER: Maybe the two-paragraph original
23 charter response would help.

24 VICE-CHAIR McPEAK: Would be helpful, right.
25 And we'll -- I'm sure we can find that and give that to

1 you. But I'm going to -- I want to respond and then
2 have you comment, I can come back to you to answer your
3 own question about so what would be then your follow on
4 comments based on what the mission is.

5 The mission of CalFed, which is an agreement
6 among the parties at a state and federal level
7 involving ten agencies, is to recommend a proposal for
8 restoration of the Bay-Delta estuary according to a set
9 of further adopted principles and operational
10 agreements during the period of time in which this
11 mission is being carried out.

12 It's important to recognize when you revisit
13 that original mission that it's CalFed. The agencies
14 aren't charged with, for example, directly they are not
15 charged with managing all of California's water
16 resources or devising a plan to meet the future needs
17 of water demands for California as an example.

18 The solution principles that we were adopted
19 as foundation for the work of CalFed to accomplish it
20 recognized probably the reality that if you have a
21 whole lot of unmet water needs out there, that you have
22 continuing conflicts that are going to have serious
23 consequences for the Bay-Delta estuary.

24 So part of the charge and the mission in
25 devising a recommendation adopting a plan for restoring

1 the Bay-Delta estuary involves what should be the
2 entity, the governance structure to accomplish that
3 recommendation. In that sense, CalFed is neither or
4 only a change agent. I mean it should be change in the
5 sense that we'll come up with a solution that will be
6 different or that will accomplish something that in the
7 absence of the solution wouldn't otherwise happen, so
8 maybe change in that regard. It's also not simply
9 technology or hardware, although that is an aspect of
10 it.

11 MR. DECKER: Science would have been a better
12 word.

13 VICE-CHAIR McPEAK: Science.

14 Mary, do you have any further statement of the
15 CalFed mission?

16 Somebody can find it.

17 Martha? I'm interrupting the cycle. Are you
18 going to help me answer the question?

19 MS. DAVIS: I think taking a look at the
20 mission and then taking a look at where we are is very
21 important because it seems to me one of the lessons
22 learned from this process is that we are not coming up
23 with the answer or even an answer, we're coming up with
24 a complex of proposals that we are suggesting need to
25 be investigated through the first phase, that will help

1 shape recommendations that come out of the stage one.

2 So as we look at the CalFed program, I think
3 that part of dealing with this entity is moving from
4 the concept that there was going to be a package that
5 would be presented that would have an entity attached
6 to it, into probably more realistically where we are,
7 which is shaping a new set of relationships and how
8 these agencies are working together. And recognizing
9 that what we've established here in terms of those
10 working relationships isn't going to go away. I don't
11 think there is such a thing as closing the door and
12 saying, geez, that was nice. Now I'm going to go back
13 to the old way of doing business.

14 And so as you think about this in terms of the
15 governance structure, perhaps it's more of looking at
16 what is working under this current process, the
17 function of the process, and how do we make it work
18 better in terms of answering some of the finance,
19 auditing, maybe breaking out some very specific places
20 where we can experiment with a mini entity that would
21 address, again, at almost an experimental level how do
22 we move forward in testing some of our theories about
23 what needs to be done in the Delta and testing our
24 theories about the level of coordination that's needed
25 among these agencies.

1 So I look at it as less of an absolute and
2 more of this incremental process that we are trying to
3 shape and building on the structure that we have right
4 now.

5 MR. DECKER: That certainly is -- that's kind
6 of the way I see it as well. I kind of asked my
7 questions to get discussion started, but I think
8 getting our arms around sort of where it's flowing, to
9 use a bad term, is probably one of the ways you can get
10 moving in a practical sense on what the discussion is
11 going to be.

12 And we are -- you know, we are not in a
13 situation where we are going to come up with a bunch of
14 science and present something to somebody and we close
15 the door. And to make it tougher, since we are an
16 entity that doesn't exist it makes it even harder to do
17 that, but also easier, probably, easier to follow the
18 route which I think you very accurately describe.

19 So I'm answered, thank you.

20 VICE-CHAIR McPEAK: And Valerie just went and
21 got it. "The mission of the CalFed Bay-Delta program
22 is to develop a long-term comprehensive plan that will
23 restore ecological health and improve water management
24 for beneficial uses of the Bay-Delta system."

25 So --

1 MR. DECKER: And do what with it?

2 VICE-CHAIR McPEAK: Well, that's why we are
3 here. That's why we're here. But I remember the
4 overhead I once used pretty closely, so...

5 Byron, and then Eze and then Ann.

6 MR. BUCK: I think we've got a threshold
7 question which I'd like to see this group really
8 identify and it was really embedded in Lester's
9 presentation and Mary's, and that is can this loose
10 confederation, this virtual entity we've got today
11 that's worked remarkably well for actually doing the
12 planning process that the mission laid out, can that
13 work for program implementation and management?

14 I think what I'm hearing everybody say is, no,
15 and all this implies no, when what the next -- then the
16 next step is, well, what will work? But if we do one
17 thing today, I think we'd want to have that threshold
18 question answered, can we go on as we are today?

19 I don't believe we can. We've got to do
20 something different, something new. It may look a lot
21 like what we've been doing, but be a lot more formal, a
22 lot cleaner lines of authority, delegation,
23 responsibility, financing, so forth. But what we've
24 got today I just don't think can carry us into the next
25 phase.

1 VICE-CHAIR McPEAK: Okay. Bill -- just
2 repeat, Byron, if you could, you answered your own
3 question --

4 MR. BUCK: Right.

5 VICE-CHAIR McPEAK: -- said it's threshold. I
6 would agree and we'll come back and get everybody's
7 sense of it. And if, therefore, what we have isn't
8 sufficient for the future, we need to do something
9 different. You then had some characteristics of what
10 needed to occur. Would you just reiterate those so
11 that they can be recorded?

12 MR. BUCK: Sure. I agree with the functions
13 that are up here, as well, but there's other elements
14 and attributes that have to --

15 VICE-CHAIR McPEAK: Clear authority.

16 MR. BUCK: Clear authority, stable financing,
17 contract authority, I mean CalFed has to be able to
18 contract to make things happen. There's got to be
19 clear implementation responsibility for all the
20 programs. And I could go into how the structure might
21 work, but I think that's off the point for the moment.

22 VICE-CHAIR McPEAK: Clear authority, contract
23 authority -- clear authority for implementation,
24 contract capability rights and implementation
25 responsibility and financing.

1 Eze and Alex.

2 MR. BURTS: I agree with Byron's comments
3 about the ability of this group to implement and I
4 think those are the right functions to add to this
5 list.

6 Mary, in the State of California, we have this
7 ability to create joint powers authorities and I'd like
8 to hear some comment on that, and you might want to
9 weigh in on this because that was the very discussion
10 that took place way back when joint powers was added to
11 the law in the State of California because of this very
12 complex form of government we have in California with
13 state and local and districts and cities and all of
14 these entities with differing roles and
15 responsibilities contracting authorities, fiscal years.
16 None of the three agencies really attempted -- the
17 water resource agencies around the country, really
18 attempted to become joint powers authorities in the
19 true sense. Is this a model that perhaps would work in
20 this case?

21 MS. SCHOONOVER: We have indeed looked at
22 joint powers authorities. Now, joint powers
23 authorities are recognized under state law as a means
24 of allowing entities, state and they explicitly
25 identify federal entities as well as local entities, to

1 join together to exercise commonly or jointly held
2 authorities. It's kind of the lowest common
3 denominator, whatever any one of them -- or whatever
4 powers all of them have, they can jointly exercise.
5 They can set up separate financing or funding. They
6 can set up separate staffing, and then that entity
7 operates somewhat independently but within the existing
8 authorizations.

9 The difficulties that we have had in even
10 discussing this issue is that even though state law
11 recognizes the ability of federal agencies to join in,
12 the federal attorneys in the CalFed process have taken
13 the position that you would be creating a new entity
14 and no one but congress can create a new entity. So
15 they think that a joint powers agreement can't just be
16 executed by the agencies, but would have to get
17 congressional approval, which is a fairly involved
18 process.

19 Second, because of the diverse interests of
20 the agencies involved, both state and federal agencies,
21 some are regulatory, some have management
22 responsibilities, some just have interests in the upper
23 watershed, there's a whole host of kind of reasons
24 they're involved, that the lowest common denominator
25 concept, the shared common powers would be fairly

1 limited and would not be adequate necessarily to
2 implement the entire program or to oversee
3 implementation of the entire program.

4 It's not a model that's been dismissed out of
5 hand because under state law, it is a fairly easy
6 entity or effort to coordinate and it's recognized in
7 law, they have worked very effectively elsewhere.

8 So there has been talk about using some kind
9 of state joint powers authority because the federal
10 agencies aren't comfortable entering into it, to
11 actually implement or take the first steps to complete
12 the plan and implement the process so that we can
13 overcome some of the initial difficulties, the multiple
14 fiscal year, the multiple contracting requirements.
15 But that, too, has been held up and there isn't any --
16 I don't think people are optimistic necessarily that
17 that is necessarily what is going to happen in the near
18 future, nor necessarily long term.

19 MR. BURTS: I'm not suggesting using the state
20 joint powers authority to actually create a governance
21 entity but simply using that model, and it may require
22 federal action to do it. But if you took that same
23 concept, the joint powers authority concept, and not
24 tried to do it under state authority but the creation
25 of a new entity, using that same authority, and maybe

1 pull out that regulatory issue so that that one
2 doesn't, you know, really get into you trouble with the
3 federal agencies, especially, and even with state
4 agencies, but to use that concept and create a new
5 joint powers authority state and federal creation.

6 MS. SCHOONOVER: And that is precisely what
7 we've been looking at as a practical alternative for
8 this overall governance structure at a staff level.
9 For example, the Tahoe Regional Planning Agency was
10 created by state compact. Both the States of
11 California and Nevada passed legislation establishing
12 it, and congress passed the identical legislation in
13 order to establish it. The idea is it's managing kind
14 of a complicated resource that is both part in Nevada,
15 part in California, but also has national significance.

16 The Delta has some parallels to that and the
17 concept of actually passing parallel legislation in
18 California and in congress in order to establish
19 clearly the authorities, and you're right, regulatory
20 is probably off on another track. But the authority
21 the implement as well as the financing mechanism and
22 the ability to receive out appropriations directly from
23 either the state or the federal government is
24 absolutely a model that we have been discussing and are
25 investigating, you bet.

1 VICE-CHAIR McPEAK: Some of you might remember
2 when we did the coordinated operations agreement, some
3 of us have been around a long time, including the first
4 Glenn flight, and the COA took 20 years. And part of
5 the difficulty was that while Dave Kennedy was actually
6 able to sign on behalf of the state, it took federal
7 legislation, HR1331, to amend the CVP authorizing
8 legislation to be -- to allow the project to be
9 operated for the purposes of coordinating with the
10 state. Stu sat through several of those as well, so
11 did Laurie, so did Roberta.

12 So we -- you know, we are used to that, and
13 probably I think what you've identified is that
14 whatever that entity may very well need, we can use
15 models but we may need to have the implementing
16 legislation, certainly probably federal given what we
17 have just heard and learned and know, and maybe even
18 state.

19 Okay. Ann.

20 MS. NOTTHOFF: Well, I'll say that that
21 probably does require us to take a very long-term view
22 here because to get this congress to agree with this
23 state legislature would be very interesting, quite a
24 challenge.

25 I want to say that I haven't been a part of

1 the discussion in the groups that came up with this
2 recommendation on this separate entity, and I certainly
3 appreciate the efforts and I think it's actually good
4 news that they were able to come to some consensus of
5 opinion on the ecosystem restoration part there. But
6 I -- and I appreciate that presenting that as the good
7 news part.

8 I think that, though, it does -- and it's
9 important to get agreement where we can get agreement.
10 But I would say that while there's some central
11 principles that we certainly have been advocating here
12 in terms of ecosystem as a whole, for example, the
13 first one is first do no harm to the ecosystem in any
14 kind of solution we come up with here, I think we
15 should also have kind of a basic tenet that we first
16 make no more complicated the -- whatever we do here to
17 try and implement CalFed. I think we should make it no
18 more diffuse in terms of authorities, and I think we
19 should be trying to go for a more focused and a more
20 integrated approach.

21 And so I think that if we had some kind of
22 basic principles there that would help us in analyzing
23 the different alternatives, that would be a good one.

24 Byron, I had a question for you about timing,
25 and you said, well, I think we are at a threshold

1 decision now. Do you mean now or do you mean as we
2 move from planning to implementation, which is not now
3 as I understand it.

4 VICE-CHAIR McPEAK: He meant at 11:15 this
5 morning.

6 MR. BUCK: Really the latter, as we get a
7 preferred alternative, we are going to go into
8 Stage One, that's implementation. That's the threshold
9 we're at. But we're nearing that, theoretically we are
10 going to be successful at that, we ought to be thinking
11 about how we actually do it once we're down on the
12 ground face with the question.

13 MS. NOTTHOFF: I would also just observe that
14 I think we are in a happy position of while even though
15 this seems incredibly complicated, it is in fact less
16 complicated than Tahoe or the Chesapeake Bay because we
17 do not have multiple states involved.

18 VICE-CHAIR McPEAK: Alex, Robert, and then
19 Stu.

20 MR. HILDEBRAND: I think the conversation
21 we've had in the last 15, 20 minutes indicates a
22 general feeling that we do indeed have to resolve what
23 we do about the overall structure before we can decide
24 just how to implement the ERP.

25 But the question then is this business, I

1 don't think there's going to be any clean jump from
2 planning to implementation and there seems to be an
3 implication here that we might be doing that. Even
4 when the decision is ultimately made sometime on this
5 planning phase, it's not going to be the end of
6 planning. Adaptive management means you go right on
7 planning throughout the whole process.

8 So what we do has to be capable of continuing
9 the planning as well as the implementation. That would
10 appear, to me, that the kinds of solution on the
11 overall thing that have just been discussed here might
12 permit the continuing agency to do both, even though it
13 can't now. So I think we have to think in terms of
14 something that can do both, rather than something that
15 does an either or function.

16 VICE-CHAIR McPEAK: So we really are adding --
17 in addition to what's up there, an implementation
18 authority for decisions, continuing planning and
19 adaptive management.

20 Robert.

21 MR. MEACHER: More than a suggestion, probably
22 just a comment. I think that the notion of it being
23 difficult, probably having to get federal legislation,
24 should not persuade us not to go that direction. I
25 cannot see doing it without it. As just from my own

1 experience with the Forest Health Project we did up in
2 the three counties up there called the Quincy Library
3 Group proposal, what went through my mind just now was
4 the reality that if you get into one of these dispute
5 problems with an agency, under the current structure,
6 they can just say no. And if the will of the
7 stakeholders and the will of this process dictates that
8 we do something on a land base, under the current
9 structure, they don't have to do it. They can just
10 say, we're throwing our toys against the wall and we
11 are walking out of here.

12 So it takes an act of congress to pretty much
13 say, we collectively as the stakeholders, and this is
14 where BDAC becomes very potent in this process, I
15 believe, because we are representing the interest of
16 the people of California; that whatever we do is firm,
17 that it has law behind it that you will do this. And
18 that goes back to my agency turf scenario or problem
19 that we could get involved with in the fact, well, you
20 may not like it, but, folks, this is the way we are
21 going to manage the resources in the State of
22 California.

23 So we need to be firm on that in our
24 perspective as we go through the process, that I've
25 seen on the ground where -- with that biodiversity

1 council where you'll have an agency head say, yes, this
2 is great. But one biologist in the project can stop
3 it. So that's -- those are the sort of roadblocks or
4 hurdles you have to get over. And I think we should be
5 prepared to go to congress if necessary.

6 MR. BURTS: This sounds like another one of
7 those Byron Buck fundamental threshold issues. I think
8 this really is very important for effective
9 implementation. We really need to know that there will
10 be the authority. And I think that was one of the
11 functions that ended up on that list, but I think that
12 has to be underscored as one of the ones that I think
13 Byron added in later.

14 VICE-CHAIR McPEAK: And that Ann raised as
15 principles which I thought were very good. More -- no
16 more complicated, hopefully less complicated. No more
17 complicated, hopefully less complicated. More
18 focused -- excuse me, let me just say, I'm trying to
19 summarize here so we can interrelate the comment, and
20 the -- there was a third one, what is it? Integrated.

21 So no more complicated, focused, integrated.

22 MR. MEACHER: Coordinated resource management.

23 VICE-CHAIR McPEAK: Coordinated resource
24 management with the authority to implement that cannot
25 be trumped, blocked or duplicated, undermined by the

1 agencies who today are involved. That's what I'm
2 hearing you say and that, Eze, you're raising as a
3 threshold question, a buck stops here kind of thing
4 that Byron likes to raise.

5 Okay. Let me -- Hap, this is your area of
6 expertise, why don't you comment on it.

7 MR. DUNNING: I wanted some clarification from
8 Ann on what she said about no more complicated, is a
9 new entity more complicated or less complicated?

10 MS. NOTTHOFF: Well, I don't have an opinion
11 on that.

12 MR. DUNNING: That's what we're trying to get.
13 And, you know, as people comment on the structural
14 issue, I would appreciate if people have opinions on
15 the ERP entity issue, hearing those, too. Alex has
16 said some things about it, but I don't know what others
17 think. And frankly, at the work group level we are a
18 little reluctant to go ahead to the design stage on an
19 entity that would manage the ecosystem project without
20 some sense that BDAC is behind it.

21 MS. NOTTHOFF: You know, I'm not about to
22 proposal a no net increase in agencies or something.
23 You create one and then you -- but you got to take one
24 away, too. I can identify a couple that I would
25 nominate to go out of existence, but...

1 I think the point there, Hap, is -- I think
2 that it sounds like a good idea to have the kind of
3 focus approach that you're proposing for the ecosystem
4 restoration program, but I do think you need to look at
5 it in the bigger picture and how that fits into the
6 bigger picture. And I think it very well could be the
7 right way to go for that, but in the absence of the
8 analysis of the broader picture, you know, I think
9 that's what we -- we need to look at that.

10 VICE-CHAIR McPEAK: And that's what -- what I
11 was hearing you say, and the answer to Hap is that
12 overall for implementation it should be no more
13 complicated and the ERP is one piece of overall
14 implementation and we have to see how that would fit
15 in. Is that -- do I understand your response?

16 MS. NOTTHOFF: I think that certainly we are
17 going to -- you know, I will bow to the wisdom of these
18 groups that have looked at this exhaustively and I
19 think that if they think that, in fact, in order to get
20 this ambitious ecosystem restoration program going that
21 we are going to need a focused entity, that -- I will
22 say that's probably right. But then let's look at how
23 we put the other pieces together so that we don't make
24 the whole package more complicated.

25 VICE-CHAIR McPEAK: Mary needs to ask a

1 question, and I've got, Stuart, Byron, Tom, Roberta.

2 Okay, Mary.

3 MS. SELKIRK: I wanted to get back to your
4 question which is that it sounded to me that you were
5 asking for some explicit direction from everyone here
6 this morning. You're looking for some concurrence --

7 MR. DUNNING: We came in hoping there would be
8 some concurrence from BDAC at least on the basic idea
9 of some sort of new entity to manage the ecosystem
10 restoration.

11 MS. SELKIRK: Okay, I just wanted to note that
12 to make sure that you all decide either to do that or
13 not.

14 MR. DUNNING: No, that's what we wanted. And
15 understand we are not ignoring the structure question,
16 we have it as the main topic on our agenda for the next
17 meeting. That's November 12th, noon to 3:00. We've
18 had very little BDAC participation in our work group
19 meetings. We would welcome more BDAC members coming,
20 if that's at all possible if you're interested in this
21 topic.

22 VICE-CHAIR McPEAK: I do understand you're
23 asking for direction on the design of an ecosystem
24 implementation.

25 MR. DUNNING: Whether to go forward. Whether

1 to go forward to a detail design stage. That's what
2 we'd like to know.

3 VICE-CHAIR McPEAK: I do understand that
4 you're asking, and we'll come back and get closure on
5 it. And, you know, we've got Cynthia and Cliff who are
6 also observing the brainstorming who will help on
7 summarizing.

8 I think one of the issues that we will have to
9 resolve, Hap, in answering your question to give the
10 work group direction is the propensity of comments I'm
11 seeing up here about needing to have an overall
12 approach for governance in order to see how the pieces
13 fit in. So, at least that's what I'm observing.

14 Stuart.

15 Thank you all for being so patient.

16 MR. PYLE: I was going to comment -- I'm going
17 ask a question after this, but I wanted to comment on
18 Bob's remarks about going to congress and I think, yes,
19 we know you'll have to go to congress and I think we
20 should do it.

21 I think we also have to recognize that there's
22 a lot of good ground work laid already in the
23 appropriations that congress has been coming forth with
24 to support the California Bay-Delta ecosystem
25 restoration. So I think that it would be good to

1 follow up on that and not let that cool off very much.

2 There's another statement that federal
3 officials have been telling people in the California
4 water business for years and years. It's again
5 history, the first man who told us this so emphatically
6 was a guy named Gil Stam (phonetic), and that was you
7 people in California better get your act together
8 before you come back to Washington and ask us to do
9 something for you.

10 So, I think that means that we have to have
11 the decision at the -- at kind of the local level and
12 carry it in through the state legislature before you
13 expect to go very far with congress; that you won't get
14 off the ground until the state legislature is really
15 going on this.

16 So that was just my comment statement.

17 But the question that I wanted to ask, and I
18 think Mary may have some insight, I'm sure this has
19 been discussed about Hap's question about the formation
20 of the ERP management entity as related to the overall
21 CalFed management entity. Mary, is that seen as a
22 subset, is the ERP a subset, a sub-agency of the
23 overall agency or would it be, again, independent?

24 MS. SCHOONOVER: Well, if you're asking if
25 there is a CalFed agency position, the answer is no.

1 If you're asking if there's a staff belief, the answer
2 is --

3 MR. PYLE: I guess I mean, what are the ideas
4 on that, the pros and cons?

5 MS. SCHOONOVER: The idea is that any one of
6 the individual programs presents unique challenges.
7 Ecosystem restoration, for example, requires people
8 with certain areas of expertise to be able to implement
9 it.

10 Now that expertise may be somewhat different
11 from the expertise needed to implement the water
12 quality program. So, the implementing entities for
13 each one of those programs may be some existing entity,
14 may be some new entity, but probably would be distinct,
15 separate and distinct entities.

16 The idea of the overall governance structure
17 and the part that I've been trying to address today and
18 that we've all been struggling with is that there needs
19 to be someone to pull all these individual little
20 pieces together. The -- but, clearly the concept would
21 be that the on-the-ground implementers, the person or
22 entities implementing the ecosystem restoration program
23 would have clear responsibilities, clear authority and
24 clear direction of a plan to implement. Certain steps,
25 though, certain things would be elevated to the overall

1 governance structure.

2 For example, if there was a disagreement about
3 a key element or component, then there would be
4 conflict resolution that might be kicked up to the
5 CalFed entity.

6 Also, there would have to be some regular
7 reporting requirements so that the overall CalFed
8 governance entity knew what was happening with each one
9 of the individual programs to assure that there truly
10 was overall, you know, common implementation; that
11 there was equitable implementation occurring.

12 So the idea is that they would be separate in
13 that they would each have their own individual
14 functions, but that they would be related very closely
15 because if there is an entity that is going to be
16 accountable for the others, that entity has to have
17 some authority or some responsibility for those other
18 entities. Whether it's financial, whether it's the
19 CalFed entity through whom all the money flows, whether
20 it's something else is, I think, at this point,
21 definitely an open question.

22 I think you can define their basic structures
23 or identify their basic structures separately, but
24 pretty soon then you have to identify the overlapping
25 areas and the ways in which the governance structure

1 would oversee the ERP.

2 MR. PYLE: So you could proceed totally on the
3 ERP entity without relationship to the -- I mean, it's
4 related, but you could proceed as trying to do it
5 legally while the CalFed entity is still being mulled
6 over and decisions made in that regard.

7 MS. SCHOONOVER: My personal belief is you can
8 only get so far because at a certain point you have to
9 know how the ecosystem system restoration entity fits
10 into the rest of the program. I don't think you
11 probably could get to the point -- and again, it's my
12 opinion only -- where you could introduce legislation,
13 for example, for the ecosystem restoration entity
14 without having some discussion, some concept, some
15 process for how you assure its implementation in the
16 context of the rest program.

17 So you can --

18 MR. PYLE: More likely to be one big package
19 than a series of packages?

20 MS. SCHOONOVER: Or some reference to other
21 pieces that will be coming or that are coming and some
22 limitations. You know, we go to hear the rest of this
23 is to be taken care of by this other entity that's yet
24 to be finalized or to be introduced as legislation or
25 is currently pending in congress.

1 There are a number of ways to go about it, but
2 I think there is a certain critical point at which
3 you've got to have some knowledge of how the pieces fit
4 together or you may end up with entities that then you
5 have to go back and change, you have to change their
6 authorizing legislation if you haven't done them in
7 some kind of comprehensive fashion.

8 VICE-CHAIR McPEAK: Stuart, based on what you
9 just heard from Mary and your experience with all of
10 this, what else do you want to add to the list of
11 either functions or characteristics or issues to be
12 addressed in the governance structure?

13 MR. PYLE: I'll tell you later.

14 VICE-CHAIR McPEAK: You understand the
15 direction I'm now going is -- okay, yeah, get those
16 brains engaged to get me some solutions out here on the
17 table.

18 It's Byron, and then Tom and Roberta. And
19 Annie, did you have your hand up?

20 MS. NOTTHOFF: Yeah.

21 MR. BUCK: In response to Hap's question on
22 the ecosystem entity today and what we'd want to give
23 guidance to, I think it's pretty clear we need a unit
24 of some sort, some responsibility to implement the
25 ecosystem restoration program. But I completely agree

1 with Mary and I think what I hear most everybody else
2 saying, it's got to be done in the context of the
3 overall management structures, how do we manage the six
4 programs we've got in an overall structure and move
5 forward.

6 MR. BURTS: Does that say that maybe they have
7 done enough work for now because they've developed
8 Lester's job description, and until we move further on
9 the overall governance then maybe they sort of slow
10 down? Is that what you're saying?

11 MR. BUCK: I wouldn't want to dissuade them
12 from continuing to work, but clearly we can't actually
13 formally decide that until we've got the overall
14 framework and structure well understood and have good
15 strong support for that.

16 On Ann's point about kind of fundamental
17 principles, I think a fundamental principle we're
18 trying to do here is to clarify the responsibility and
19 authority for program implementation. It's got to be
20 clearer afterwards, rather than less so.

21 Patrick's comments earlier on the agency's
22 kind of feeling towards this, I mean the word on the
23 street is they don't really like to talk about it at
24 all, but I thought his comments were very encouraging.
25 And I would think -- I mean here in here, everybody

1 seems to think we've got to do grapple with this, we've
2 got to have an entity that's got clear authorities and
3 responsibilities. It's really time for the agencies to
4 say, build us a mousetrap, bring us something that's
5 better because we don't really think what we've got
6 today can do what we want to do in the future when we
7 get into program implementation.

8 Just a couple of additional kind of detail
9 comments on how we might build on the current umbrella
10 structure. I think since we have got many, many
11 existing authorities and responsibilities under
12 legislation for all the agencies that are involved now,
13 clearly they still have to be intimately involved in
14 whatever we do. And I think the policy group as a
15 format works pretty good to make sure that you can get
16 coordination with existing programs and make sure
17 you're not working at counter-purposes.

18 What I think we would need to do in this new
19 entity, though, is free up those people from having to
20 go through their internal management structures. Let
21 them act as independent board members, recognizing
22 their agency's responsibilities but recognizing their
23 prime responsibility when they sit in that seat in the
24 policy group is to move the CalFed program forward.

25 VICE-CHAIR McPEAK: So your suggestion is that

1 you at least capitalize, human capitalize an entity
2 with people that are involved in the current agencies.
3 That's what I heard you saying.

4 MR. BUCK: Yes, yes.

5 VICE-CHAIR McPEAK: As a structural suggestion
6 to be taken into account, and that they get freed up
7 from the secondary review or second-guessing from their
8 own agency.

9 MR. BUCK: Correct. After you've established
10 clearly what the overall entity's responsibilities and
11 authorities are, that they need to be able to act
12 independently and move forward.

13 Then also, there needs to be some form of
14 stakeholder involvement in this. What exactly that
15 encompasses, I don't know. Maybe it's a BDAC type
16 oversight comment forum to check up on the program
17 every two months to see where it's going and get input
18 to make sure those folks don't get isolated from the
19 bigger picture in the stakeholder needs. But
20 fundamentally I think we need to move on from where we
21 are today.

22 VICE-CHAIR McPEAK: Good.

23 I've got Tom, Roberta, Ann, Patrick, and I'm
24 going to come back to Eze for your sort of overview of
25 some of the things you've been asking, and then Martha.

1 Tom.

2 MR. DECKER: In response to the question, when
3 I came and heard your vote, your joint presentation I
4 was very impressed. I'm sure a tremendous amount of
5 intellectual capital has gone into it. And I said to
6 myself, my God, here we have a thing, let's answer this
7 question, let's get it rolling and we can, you know,
8 practice execution.

9 Unfortunately, I think the greatest the
10 contribution you made was to trigger the discussion
11 about management of the total enterprise, which I
12 believe has to flow down into the lower boxes in the
13 organization chart. And while I would just hate to
14 stifle additional progress, one suggestion might be to
15 assign the real deep discussion of what we are talking
16 right now to Hap's committee. I mean, they've got
17 experience already and have come up with a
18 recommendation on governance. So maybe we can get --
19 maybe we can expand what they do and get some input
20 from them.

21 And my final thing, I've got experience with a
22 couple of joint powers agreements which has not been
23 good, so I think it's a great -- it's probably a great
24 intellectual idea, but let's be careful as we go
25 through it.

1 VICE-CHAIR McPEAK: Remember that
2 organizational --

3 MR. DECKER: A little P.S. to my discussion of
4 the good work done over here today.

5 VICE-CHAIR McPEAK: An organizational
6 structure is never a substitute for great management
7 and executive leadership, so...

8 MR. DECKER: Second that motion.

9 VICE-CHAIR McPEAK: Yeah.

10 Okay, Roberta.

11 MS. BORGONOVO: I wanted to mention a couple
12 of things. First of all, there is another three-way
13 letter that was signed by Gary Bobker, Jason Peltier
14 and Greg Gartrell (phonetic) about the model that was
15 set up in the -- for the strategic plan for the
16 ecosystem work group and hoping that that could be
17 adapted in some of the other programs like water supply
18 reliability, water use efficiency and water quality.
19 But I think that it goes back to the issue that has
20 been brought up here before.

21 In the ecosystem work group, it's reflected in
22 the minutes we definitely talked about the issue that I
23 believe Alex brought up. This is a continuing
24 operation. The whole idea of having some sort of
25 interim way in which you would, for example, administer

1 the ecosystem work group was talked about. I mean, do
2 you -- there were some suggestions in there, is it --
3 do you confine it geographically? Do you confine it by
4 the first stage of actions? There are a whole lot of
5 suggestions there. But I think that I absolutely agree
6 with Tom, the assurances work group would like to
7 continue this discussion of overall governance and it's
8 my understanding from Hap that that is exactly what
9 they will take up in November.

10 So they have been working on these two
11 different levels, this overall governance structure and
12 the ERP ecosystem restoration program, and I myself see
13 no reason why the work does not go on concurrently.
14 There has been a lot of thinking that's gone on, but
15 there are all these questions raised that have to be
16 answered.

17 VICE-CHAIR McPEAK: I'm going to get Hap to
18 respond.

19 Just for a moment, Roberta, I want to clarify
20 something I thought I heard I think that's also
21 important, and that was the thrust of the letter signed
22 by the three. I guess Greg is now signing where Byron
23 used to. The continuous scientific review, peer review
24 process, is that --

25 MS. BORGONOVO: They were -- they're the

1 chairs of the ecosystem restoration program and they
2 have been dealing with the money that's allocated, and
3 they have also been part of the group that goes back to
4 Washington to try to convince the federal government
5 that CalFed is in effect administering the monies
6 appropriately.

7 So I think that what has come out of all that
8 work is that the idea of having a framework for
9 decision making and the responsibilities, that's very
10 important. It's important for the overall CalFed
11 structure, but it's also important for all of these
12 different elements that were up there on Mary's graph.

13 VICE-CHAIR McPEAK: Hap.

14 MR. DUNNING: This is slightly off our topic,
15 but --

16 VICE-CHAIR McPEAK: Well, I only recognize you
17 because you're the chair and you're supposed to be on
18 topic, you know, so don't preface, you know, by saying
19 this is off topic. Now I'm curious.

20 MR. DUNNING: Some people might think this is
21 on the topic.

22 Jason has a letter in the packet which I was
23 reminded of by Roberta's comment in which he notes the
24 advantages of having the kind of integration or
25 cross-over you get when two work groups do meet

1 together.

2 VICE-CHAIR McPEAK: Right.

3 MR. DUNNING: And I'm just saying there may be
4 other areas in the CalFed program where it's right for
5 that kind of action.

6 VICE-CHAIR McPEAK: That was appropriate.

7 Thank you.

8 MR. DUNNING: Thanks.

9 VICE-CHAIR McPEAK: Ann.

10 MS. NOTTHOFF: I'd like to pick up on
11 something Martha and Tom said, and that is that both
12 the -- one of, I think, the good purposes of this
13 recommendation is it kicked off a broader discussion,
14 but I think it also pointed out that there are some
15 details that we would like to know more about, and that
16 in the spirit of kind of moving along at an incremental
17 way, I think it makes a lot of sense to get more
18 details flushed out and do the program design on the
19 ERP that you're talking about and move forward with
20 that, and at the same time looking -- you know, having
21 a very careful eye to the rest of program.

22 I mean, I would not want to slow down at this
23 point in moving that. But let's hear more in the next
24 presentation about how the ERP entity would fit in with
25 the broader context.

1 MR. DUNNING: Can I respond to that, Sunne?

2 VICE-CHAIR McPEAK: Yes.

3 MR. DUNNING: And this is directly on the
4 topic.

5 VICE-CHAIR McPEAK: Yes.

6 MR. DUNNING: I think -- I'm glad to hear
7 several people have concurred we should go ahead, but I
8 think we clearly have the message that we don't do this
9 in isolation. We have to be moving ahead at the same
10 time on the overall structure, and again, that is the
11 topic for our next meeting.

12 VICE-CHAIR McPEAK: And we had Byron suggest
13 as we started through this, this brainstorming, that we
14 needed to come back to the threshold question about are
15 we going to be satisfied with essentially the
16 arrangement, the institutional arrangements that have
17 served us to this point or do we need something
18 different. It's either the same or something
19 different. And then if it's something different, then
20 you start down that path in terms of the functions.

21 The other threshold being, answering Hap's
22 question, and what I'm -- what I -- what I'm sensing
23 may be emerging here is a dynamic, and if I'm wrong,
24 great, but that we might get into somewhat of a
25 division of the house in the symbolism of are we

1 committed to a new ecosystem management entity and do
2 we go forward with that.

3 And at the same time, as you've just so aptly
4 put it, everyone wants to make sure that it's in the
5 spirit of everything moving forward together, getting
6 healthy together; that we don't make decisions, final
7 decisions, and get into another symbolic battle here
8 over the design of an entity that's supposed to be part
9 of an overall effort.

10 And I'm just sensing comments sort of dividing
11 into camps here and I wanted to say, think about that
12 before we make a final decision when we -- after we get
13 the debriefing from Cliff and Cynthia of how we will
14 proceed in order to get as much consensus and spirit of
15 cooperation as possible.

16 Do the two co-chairs want to respond right now
17 to that comment I made?

18 Roberta.

19 MS. BORGONOVO: I think what we hoped
20 certainly is that there has to be brainstorming on the
21 governance -- overall governance issue, but we would
22 hope that there would be some brainstorming also on the
23 ERP. I think that the value of this is to have an idea
24 out there and then to take the suggestions from BDAC
25 and take it back to the work groups.

1 So one of the things that I was going to talk
2 to you over the break is perhaps that is something that
3 Cynthia and Cliff can do; perhaps they can lay out some
4 of the issues that they saw as important, and they can
5 have response from that. It can be after the summary
6 for the overall governance, but we didn't want that to
7 get lost. I think Hap agrees with that.

8 MR. DUNNING: I would endorse that as a way of
9 proceeding. And, you know, Cynthia and Cliff may have
10 comments on the overall structure question, but I'm
11 sure they will have a lot to say on the ERP management
12 entity specifically, and if after their presentation
13 you would allow some time for the BDAC members just to
14 focus on that.

15 There have been some comments on joint powers
16 agreements, pro and con and so forth, but I think
17 there's a lot more that people may want to say about
18 that specific matter.

19 VICE-CHAIR McPEAK: Okay.

20 Ann, we were all responding to your comments.

21 MS. NOTTHOFF: Well, just to say that I hope
22 that the sense you're getting is wrong because I think
23 that --

24 VICE-CHAIR McPEAK: I like to be wrong.

25 MS. NOTTHOFF: I think that -- I would assume

1 that one of the things you did when you looked in the
2 assurances and the governance is, okay, what are the
3 things that CalFed needs to be doing, what structures
4 do we have in place now that can accomplish some of
5 them and where are the gaps. And you found that the
6 gap is a focused ecosystem oriented entity and that, in
7 fact, we do have a lot of structures in place in the
8 various agencies and departments that could manage some
9 of these other components of the program with the
10 proper reorganization and focus.

11 So I think that's why we're getting this one
12 suggestion right now, as opposed to the others and not
13 that there's -- the other components of the program are
14 any less important, but that in fact we have some
15 existing structures that could deal with those, and
16 it's more -- maybe more of a reorganization than an
17 entity. I mean that's certainly --

18 VICE-CHAIR McPEAK: It could be a
19 reorganization.

20 Patrick, Eze, Martha, Alex.

21 MR. WRIGHT: Yeah, I guess I was just going to
22 basically make the same point that Ann just did, that
23 rather than looking at it as do we need BDAC
24 endorsement for a new entity, surely we need to move on
25 to examine what institutional structures are best

1 suited to facilitate the transition from a planning
2 process to an implementation process.

3 That's hard to say no to. I mean, it forces
4 you to look at then both the ERP and the rest of the
5 program to say, we are into a new phase now, what
6 structures make sense both for the ecosystem program,
7 for BDAC itself, for CalFed, for the whole range of
8 issues that we have to deal with.

9 There has been a lot of talk over the last
10 couple of weeks in preparing for this meeting about the
11 role of BDAC and how it should shift its focus as we
12 are moving away from a planning phase and into an
13 implementation phase.

14 So I would encourage the group to -- yes, the
15 ERP implementation is vitally important, but we have
16 also got to look at the rest of the CalFed program to
17 try to figure out how it should also evolve to try to
18 meet the new phase that we're going into.

19 The second point that I would make is I think
20 there's a -- people may be overestimating the potential
21 for new institutional structures to solve all of our
22 coordination issues. I mean, we go through this all
23 the time with internal reorganizations at EPA or
24 anywhere else, and I think people need a reminder also
25 that a new structure is not going to be a substitute

1 for leadership.

2 I mean, what made the accord work and Club Fed
3 work and all that was, I mean, Betsy Ricky coming in
4 reaching out to fairly low level folks at the time at
5 the other federal agencies and just saying, "We need to
6 do this regardless of whether or not there's a
7 structure or not."

8 I don't want us to be in a position where
9 unless we get this new entity, we are not going to get
10 the coordination. Folks need to demand that
11 coordination with or without a new entity so that we
12 are not in the position of unless we go to congress,
13 we're just going to take, you know, several years of
14 debate; that we are not going to get a greater level of
15 coordination than we have now.

16 I would urge the group to even look at
17 specific examples of where you want coordination to
18 better happen, whether or not it's better integration
19 of the CVPIA restoration fund with the rest of the
20 funding, whether it's the State Board's non-point
21 source and watershed programs, for folks to demand that
22 those programs be better integrated, and demand
23 leadership to make them better integrated rather than
24 waiting and assuming that that can only happen if we
25 create some complex new entity that's going to force

1 it.

2 So I think you need to do both. You need to
3 look at what institutional structures are best suited
4 to that task, but also to challenge the agencies to
5 make sure that coordination happens regardless of what
6 structure is created.

7 VICE-CHAIR McPEAK: Patrick, how do you do
8 that? I'm not -- in asking that question, I'm not
9 challenging your imperative. I'm asking you to start
10 answering the question, and in doing so, let us -- I
11 want you to assume in answering part of the question,
12 that at some point there is likely to be a new entity
13 charged with all these responsibilities.

14 And even with the principles you've heard all
15 around the table and the assignment of clear authority
16 that isn't abrogated by prefer agencies that might have
17 had some piece of that responsibility, I would assume
18 that your imperative of continuing cooperation would
19 still stand.

20 What is the mechanism to accomplish what
21 you've just talked about? Now going forward to the
22 time when there might be a new entity and then
23 following on assuming the new entity gets the total
24 responsibility, but you still have interface with other
25 agencies. Tell us the implementing mechanisms that we

1 need to have.

2 MR. WRIGHT: I don't know there's any simple
3 answer to that other than there is a -- you know, we've
4 got ten agencies in Club Fed and we've got to figure
5 out a way to bring FERC (phonetic) into that. We've
6 got half a dozen state agencies. One of the things
7 that came up just in the last couple of weeks with
8 Byron and others in the water quality discussions is we
9 need to figure out a way to bring in DHS in.

10 I don't think there is any one formula, other
11 than to have folks work on the specific areas of
12 coordination that need to happen to make the various
13 program components work. So one example might be we
14 got to figure out a way to make sure the levee program
15 in the Delta is integrated with the ecosystem program.
16 Pull together the right people to make sure that
17 happens. You can do that without a new institutional
18 structure or you can start doing that before one is
19 created.

20 The same is true on water quality, figuring
21 out a way to bring the right people, the right agencies
22 together to do that. But it's got to happen across the
23 board, I don't know that there's any one structure
24 that's going to do all that.

25 So I don't know, I don't have an easy answer,

1 other than new organizational entities can help
2 facilitate that, but it also just depends on the
3 stakeholders knowing the right people that need to come
4 together that currently aren't talking to each other.

5 VICE-CHAIR McPEAK: What I heard -- what I
6 heard you say, what I distilled out of what you've just
7 shared with us as principles is first recognizing that
8 it is likely that even in a new entity that has
9 implementation authority, it will not also be -- have
10 regulatory authority or there's likely to continue to
11 be regulatory agencies. So then the interface is not
12 between and amongst so much implementing agencies,
13 although that will continue, I think, it would be in
14 terms of the regulatory interface. From implementation
15 to regulatory, it needs to be taken into account.

16 How do you charge agencies with a mission,
17 looking at the need to perhaps not only have new
18 authorizing legislation to establish such an entity but
19 directives in legislation to continue and existing
20 agencies to cooperate, literally statutory directive.

21 Next, I heard work groups establishing the
22 culture of collaboration in terms of work groups.

23 I heard a last thing and it's just escaping
24 me. I thought it was brilliant at the time that you
25 said it, but --

1 MR. WRIGHT: I guess my simple answer is you
2 need some of all of the above.

3 VICE-CHAIR McPEAK: That's right. That's what
4 I'm -- I'm not giving them as options, I'm putting
5 them -- I'm trying to put them down in terms of
6 thinking about them.

7 Okay. Eze, I have a question for you that I
8 want you to think about or answer. I'm hearing a lot
9 of discussion about a new entity. That entity could be
10 totally a staffed organization. It could also be a
11 staffed organization with a governance board. The
12 governance board or a board could be advisory, it could
13 be more established authority in terms of governance.

14 Do you have any comments from all your
15 experience?

16 MR. BURTS: It's very hard to work with a
17 governing board. A very large governing board on
18 projects like this, do not work very well.

19 VICE-CHAIR McPEAK: You guys don't have any
20 members sitting there, huh?

21 MR. BURTS: And so that would be one caution
22 that sort of jumps out and I'd like to think about that
23 structure a little more.

24 I think what we have here is an assignment, if
25 I understand this correctly, when Tom first suggested

1 that maybe the group go back and come back with some
2 work on overall governance, is that -- I just need to
3 understand for myself, is that -- that's what you plan
4 to do.

5 And Patrick's comments kind of helped flesh
6 out, you know, what the specific assignments are so we
7 can expect to hear back some comments on overall
8 governance and the structure and some guidelines to
9 other work groups, programmatic work groups, about the
10 functions and principles that they should take into
11 account.

12 And Alex's earlier comments about some
13 concerns about how these things fit together will be
14 factors to consider because I agree with those
15 comments; that those are the things that we really need
16 to be concerned about, thus the reason for this
17 assignment.

18 And they will come back to us, is that --

19 VICE-CHAIR McPEAK: I think you're
20 beginning -- you are very aptly summarizing the
21 emerging consensus on sort of this discussion in terms
22 of answering Hap's question.

23 Okay. I've got Martha and Alex so far on the
24 list, and what I want to do is finish up the round of
25 comments here and then we will take a break and then

1 come back.

2 So Martha, Alex, Robert. Anybody else?

3 Martha.

4 MS. DAVIS: I agree with so many of the
5 comments that have been made here, particularly by
6 Alex, by Tom and Annie and Eze.

7 I guess I should answer the threshold question
8 that I do support the need for this entity and I think
9 that it's really important to grapple with these bigger
10 pictures of where we are going with these programs.
11 But I also tend to be a pragmatist in the sense of
12 focusing in on where we are today, what do we need
13 today.

14 VICE-CHAIR McPEAK: Good.

15 MS. DAVIS: I don't think that you can
16 separate out the planning and the implementation
17 functions. There may be a brave new world out there
18 ultimately that we enter in the implementation phase.
19 But I really agree with Alex that what we've got in
20 front of us is a mixture of the two.

21 We are not done with our planning and, in
22 fact, a lot of what we are talking about in the
23 Stage One is a lot more planning so that we can inform
24 a decision-making process that is adaptive, that is
25 based on the best information we can put in front of

1 you.

2 And so as you look at this, I think that we
3 are seeing that there are certain programs that are
4 moving forward. Ecosystem restoration program is one
5 of the strongest ones that we've got right now. It's
6 not complete, but it's certainly further along than
7 many of the other programs and it has an implementation
8 component in front of it right now. And we have an
9 obligation back to the federal government, back to the
10 state government to make sure that we have a structure
11 in place that will help us deliver on the initial
12 projects that we have all agreed need to be funded.

13 That takes us right back into some of the
14 issues that have been discussed by Hap and his group
15 about what kind of entity is going to sort out some of
16 the authority structures, funding structures, how do we
17 know that we have accountability in implementing? How
18 do we know that we have all the agencies on board to
19 make sure that they are performing their function?

20 Those are not academic questions about what we
21 are going to do ten years from now. This is what we
22 are going to do tomorrow. And I think that trying to
23 stay focused on whether it's testing a JPA structure or
24 testing some of these other structures, I don't think
25 that we necessarily are tying our hands or getting it

1 too complicated in terms of solving the overall
2 problem, but we do have in front of us some ways in
3 which we can restructure the current effort and test
4 how we're going to do this.

5 VICE-CHAIR McPEAK: Give us those ways, start
6 listing the ways you would -- you would recommend that
7 we restructure or improve the structure.

8 MS. DAVIS: It isn't so much one of -- I mean,
9 I've gotten something in front of me that Cynthia
10 Koehler has handed out and it's consistent with some of
11 the information that was talked about by Hap and
12 others. I mean, whether we need a contracts grants
13 manager? How do we integrate the water operations?
14 Who is going to be at the table in figuring out how we
15 have all the pieces coming together on that front? Who
16 is going to be the planner/developer of these projects?
17 Do we need a water rights holder; that within the
18 ecosystem program they have talked about having water
19 rights in place for the benefits of the ecosystem. You
20 have to have a structure for that.

21 It just strikes me that some of the issues as
22 you go back and forth between the immediate and the
23 bigger picture, that we have some immediate things that
24 we need to do. And it seemed to me that part of what
25 this ecosystem entity, if you don't make it too big and

1 too grand and too permanent, it gives you the capacity
2 to start moving forward with some of the real time,
3 real world structures that we need that we can test
4 some of these concepts and then in another year say,
5 did this work?

6 Maybe that's too loosey-goosey. I don't know
7 the answer, I am relying a great deal on the good work
8 of this particular work group, but it's just somewhere
9 in here -- we are not just talking about these things,
10 we are starting to do these things and it's within that
11 context of doing that I think will best be able to work
12 out what is the right structure. And it may be a
13 structure that would start in one direction and then
14 we're going to modify it in a year. I think we should
15 have that flexibility.

16 VICE-CHAIR McPEAK: I heard among those
17 things, not too big, not too grand, not too permanent,
18 and that suggests this notion of time defined, sunset,
19 et cetera, that should be raised, you know, should be
20 put on the table.

21 Alex, and then Bob.

22 MR. HILDEBRAND: I'm just trying to suggest as
23 Hap put forward with looking at both the ERP governance
24 and the overall system, that you can do a little bottom
25 up thinking of in order to make the ERP governance

1 acceptable, you could think about how would it
2 interface with the other boxes --

3 VICE-CHAIR McPEAK: That's right.

4 MR. HILDEBRAND: -- and what level and type of
5 oversight do you believe it should have in order to --
6 from whatever we come up with for the overall thing.
7 And something like water rights, how does that
8 interface with other water rights?

9 VICE-CHAIR McPEAK: Right, there are
10 actually -- there are existing entities in those boxes
11 right now. There are -- I mean, the water use
12 efficiency one is a good example of the water
13 conservation councils, two of them. So we've got
14 entities in these boxes right now that have to be
15 worked in and that would be, you know, a specific
16 question or assigned -- part of the assignment, I
17 think, Hap, that are the issues that you just heard
18 Martha raise about what we immediately have to do,
19 existing things, entities that are there, what
20 responsibilities, opportunity for implementation, how
21 that all gets integrated.

22 Robert, and then Roberta has the last comment
23 before we take a break.

24 MR. MEACHER: Just a quick response to Patrick
25 Wright. I agree with his comments 100 percent, though,

1 I said earlier, Patrick, we struggled in our management
2 of our forest up there. We had the leadership, we had
3 the stakeholders, we had the consensus, but then you
4 had the regulatory agency just saying no. And so
5 that -- that is a -- so if you have -- it's a healthy
6 discussion. You can have the leadership to say do it,
7 but literally you have to go to congress with a
8 regulatory agency that's federal to do that. So I
9 think we'll have a healthy discussion on that.

10 And I agree 100 percent, Martha and I in the
11 watershed work group have said that FERC needs to be a
12 part of this process because about 95 percent of the
13 hydroelectric facilities in the state are up for
14 relicensing in the next five years, and if you're
15 trying to work with flows, you better work with FERC.
16 So they need to be part of this dialogue. We have
17 urged that through our work group.

18 VICE-CHAIR McPEAK: Work with flows, work with
19 FERC.

20 Very good, that's been quite helpful.

21 Roberta.

22 MS. BORGONOVO: I just wanted to say that I'm
23 assuming that the ecosystem work group will continue to
24 work at the governance issue within its own group and
25 also the opportunities for the work groups again to

1 take on these joint issues. I think that is very
2 important.

3 VICE-CHAIR McPEAK: Terrific.

4 This has been a very productive exchange. I
5 would suggest that we take a break until five after
6 eleven. When we come back, we are going to start with
7 Cynthia and Cliff to summarize what they observed and
8 also they are going to share some thoughts.

9 Then I want to get a further debriefing, that
10 is brainstorming from you on thoughts about the
11 structure of an ERP entity, the finalization of what I
12 think we really have as consensus that Eze summarized
13 and got a confirmation from Hap on anyway, and then
14 what is really revisit and make sure that I'm
15 understanding the emerging consensus out of here that
16 we are pretty much concluding we do need to have some
17 new structures. What those exactly are, we're not
18 sure, and we think maybe governance group, assurances
19 group better go off and come back with some more for
20 us.

21 Okay. Take a break, back at five after
22 eleven.

23 (Recess)

24 VICE-CHAIR McPEAK: All right, Ladies and
25 Gentlemen, we are back reconvened. And we are going to

1 start with Cliff doing a summary of our brainstorming,
2 but also sharing some additional ideas for us to get
3 further detailed comments and concepts out on the
4 table.

5 Cliff, thank you.

6 MR. SCHULZ: Thank you. I couldn't find
7 Cynthia so I guess I'll go first.

8 For those of you who don't know me, I am Cliff
9 Schulz. I'm an attorney here in Sacramento, and I've
10 worked on Bay-Delta matters for about 30 years,
11 primarily for the Kern County Water Agency and the
12 State Water Contractors.

13 Right now, probably I spend most of my time in
14 the ag/urban process and am the chairman, chairperson,
15 of the Assurances Technical Team of ag/urban which is
16 responsible also for trying to develop implementation
17 plans and the structure for implementation of the
18 CalFed program.

19 As I talk today, I'm never going to be quite
20 sure when I'm talking what ag/urban's policy is and
21 when I am guessing what I believe it is going to be in
22 the future. But the one thing I guess I can say is
23 that ag/urban has taken a formal policy position
24 supporting the creation of a new ecosystem entity.

25 They have -- we have talked about it, but I

1 can't say that I have a firm policy direction with
2 respect to what I'm going to talk about on the overall
3 structure and the umbrella entity, but I have a fairly
4 good feeling that it's not going to be very far off
5 from where they ultimately come in their policy
6 decision. If I am, I'll hear from them.

7 VICE-CHAIR McPEAK: We are always in the same
8 position you are. We all come here not knowing whether
9 or not it's truly exactly what our constituency --

10 MR. SCHULZ: Exactly.

11 In ag/urban we have been working on the
12 entities issue for several years, probably two years
13 now. And certain truths became self-evident through
14 that process and others are much more murky.

15 The truths that became self-evident are as
16 follows: One, we need legislation at both the state
17 and federal levels in order to make this thing work.
18 And after getting over the shock of the thought of
19 having to go to congress, then we decided that that was
20 good because it gives us maximum flexibility to
21 structure this appropriately and with the right powers
22 and the right limitations on its powers.

23 And what Mary Schoonover said is correct, you
24 know, joint powers agencies probably doesn't give us
25 enough authority. But since we have to go to congress,

1 we can call it a JPA, we can call it a compact, we can
2 call it a commission, we can call it anything we darn
3 well please, because congress and the state
4 legislature, as long as they pass the same bill, will
5 tell us what we can do and who can participate.

6 So from that standpoint, I think we can -- we
7 are lucky and we can write a little bit -- we can be
8 creative in what we need to do.

9 The other three things that became
10 self-evident is that we need an umbrella organization,
11 we need a new ecosystem entity, and we are not going to
12 change the regulatory laws governing the Bay-Delta area
13 so that we're talking about entities that will have
14 to -- which we view as carrying out a program that will
15 make it unnecessary to implement the regulatory laws,
16 but we are not going to ask these entities to possess
17 regulatory authority.

18 The -- every organization diagram that we have
19 drawn has an umbrella organization over it.

20 Mary, is Mary here? I was going to ask if
21 that structure diagram could be put back up. It was
22 just -- she stole it? Oh, okay. All right, we will do
23 without it then.

24 But we have always had a CalFed agency over
25 the top of all of the other common programs and water

1 supply, water quality, et cetera, programs. We have
2 viewed -- and, again, now this is at the staff level --
3 that there is a separation between the functions of
4 that umbrella organization and the functions of the
5 entities that will actually implement. So we do see
6 that umbrella organization being one that has more
7 planning and policy and dispute resolution functions
8 rather than day-to-day implementation responsibility.

9 Quite frankly, we are not sure right now and
10 the only one that we have thought of that needs a new
11 entity is ecosystem. We have haven't felt that things
12 like the levee program, the water quality program,
13 things of that require the creation of a new entity.
14 Let's contrast the levee program with the ecosystem
15 program, perhaps you can see why this is so.

16 There is a relatively well defined program
17 between the Corps of Engineers, the Department of Water
18 Resources, and the local reclamation district on how
19 flood protection is handled. We don't see any reason
20 simply because there may be more money coming through
21 the CalFed process to modify that implementation
22 structure.

23 However, that levee program is going to have a
24 new dimension to it; that is, that it is going to have
25 to be much more cognizant of what the ecosystem

1 restoration program is doing because it would be silly
2 to go out and construct some new levee protection and
3 then have the ecosystem program show up a year later
4 with a request that we do a levee setback for ecosystem
5 purposes for that same levee. So, for financial and
6 for other reasons, there is going to have to be
7 coordination between those two, and that's where we
8 start seeing the CalFed umbrella entity coming into
9 play.

10 Now, I said it also became self-evident to us
11 that the ecosystem restoration program did need a new
12 entity, and we believe it is to simplify the process.
13 So we are trying to make it more simple.

14 But when we looked at the CVPIA restoration
15 money, Prop 204 money, possibly a new state bond issue
16 money, the four pumps program, all of the -- the
17 federal appropriations, and the differing authorities
18 under which each of those appropriations are made, and
19 the fact that we are talking about a one and a half to
20 two billion dollar program that is going to be going at
21 maybe 100 million a year for 15 to 20 years, it seemed
22 almost impossible for us to conceive of a manner in
23 which this didn't have to be somehow coalesced into a
24 new agency that had one -- that had the accountability
25 and responsibility for what CalFed is trying to carry

1 out.

2 Again, it became very difficult for us also to
3 figure out how adaptive management would be carried out
4 if you had all of these different programs in a whole
5 bunch of different agencies and you're trying to bring
6 the adaptive management procedure together.

7 So we do believe that the ecosystem entity is
8 an absolute necessity to make this thing walk. But
9 again, we have never visualized that outside of an
10 umbrella CalFed agency that had this oversight and
11 dispute resolution policy authority.

12 So as we came to this group today and as we
13 have been working in the assurances work group, what we
14 were looking for was conceptual commitment by this --
15 by BDAC to a new ecosystem entity within a total
16 structure of CalFed, because it is really hard to get
17 down to the nuts and bolts of drafting up the powers
18 authority and the formation documents that are in an
19 ecosystem system entity which -- without knowing that
20 we have basic policy support for going in that
21 direction. It just makes it hard to focus on it.

22 Mary said something earlier today that I want
23 to emphasize. She -- somebody asked whether she
24 thought we could form the ecosystem restoration entity
25 without forming the CalFed oversight entity at the same

1 time. And she said, "I think we can only go so far."

2 I have to agree with her totally on that. I
3 think it would be unwise and almost silly of us to try
4 to form the ecosystem entity until -- at the same time
5 we are trying to understand the functions and duties of
6 the oversight entity, the umbrella agency. Because
7 there will become a time when you'll be forced to face
8 issues like where does the ecosystem entity's authority
9 and power stop and the umbrella agency start, and you
10 just can't do those in isolation. It's going to be an
11 iterative process and there's going to be quite a few
12 debates.

13 And let me use adaptive management as one of
14 the areas where this debate could come in. There is
15 adaptive management decisions to change the program,
16 the way it's going. Is that a policy function or is it
17 an implementation function?

18 I have a very strong view on that, and I want
19 to tell you that this is my own right now, I believe
20 that's an implementation function and not a policy
21 matter. But there are gradations on that.

22 I -- my goal, quite frankly, is to protect the
23 ecosystem program and the adaptive management program
24 from politics as much as possible and make those
25 scientific based decisions. So I want to keep that

1 down in the ecosystem restoration program as much as
2 possible.

3 But there are times and there will be maybe a
4 time when an adaptive management decision is so
5 fundamental that it's going to pop up to the CalFed
6 oversight committee for review and policy approval. I
7 don't know exactly where that is yet and I think we
8 will find that out as we start drafting the documents
9 to form these two entities.

10 Somebody else asked whether or not we needed
11 to do this now or whether this is something we needed
12 to do as we move forward and got towards the time when
13 the ROD is coming up. I think from a conceptual policy
14 standpoint this group needs to decide now, whether
15 there should be a new ecosystem entity within a total
16 structure of the program. Because it is going to take
17 us a year or 18 months, whatever, to sit down after
18 that and figure out what the powers, duties,
19 authorities, et cetera -- it's going to be a
20 negotiation process to actually put the documentation
21 together so that we are ready to go to congress.

22 If we wait until the end of '99 to decide that
23 we want an ecosystem entity as a conceptual policy
24 matter and then have to start drafting the documents to
25 prepare it, we won't be before congress or the state

1 legislature for another year to year and a half, and I
2 don't think we have that luxury.

3 What I would like, and I almost -- I think
4 this is what Hap is looking for, too, is some signal
5 from BDAC that within this total structure, that it is
6 apparent that an ecosystem system entity is a necessary
7 part of the total package and let us go out and now try
8 to have our next meeting on the overall structure, but
9 start working on the documents to form this entity so
10 we can see how it fits in with the total structure and
11 be coming back to BDAC with progress reports and with
12 problems that we might have, and things like that. But
13 we are looking for some sort of signal that we should
14 move forward in doing the real hard work of putting to
15 paper how this thing will work.

16 And I don't think that that's contrary to what
17 Patrick was saying when I first walked in this morning,
18 because the devil is always going to be in the details
19 and a conceptual approval of that kind of thing, the
20 final approval is going to come when you see the papers
21 that we have put together and where we have broken
22 apart the authorities. And when we come back with
23 that, I suspect we will not only be dealing with the
24 ecosystem restoration entity, but we will tell you how
25 we think the water quality program and how the

1 watershed program and those things are going to work
2 also. We have to put this in the context of the total
3 package, but are looking for a strong signal at a
4 conceptual level that BDAC believes that an ecosystem
5 entity is a necessary part of the total program.

6 VICE-CHAIR McPEAK: Cliff, the -- we are
7 trying to clarify what document you are referencing
8 that we should be looking at.

9 MR. SCHULZ: What document?

10 VICE-CHAIR McPEAK: Yes. You said -- when
11 you -- you're saying when you put it together, we would
12 be --

13 MR. SCHULZ: In other words --

14 VICE-CHAIR McPEAK: I see, it's not a document
15 that we should have right now in front of us.

16 MR. SCHULZ: No, the documents that you have
17 right now are the ones that lay out -- there are
18 reports on functions, there are various papers that
19 have been written on the entity. But the next step for
20 us, if we have conceptual agreement that this is the
21 direction to move, is to start preparing the documents
22 upon which you will make the ultimate decision once you
23 see the details.

24 VICE-CHAIR McPEAK: Okay.

25 Any questions of Cliff?

1 Cliff, are we going -- Cynthia is going to
2 follow you right now. Are either of you going to give
3 us some more specifics about the options of the
4 structure, governance structure of some entity?
5 What -- let me tell you my bias.

6 MR. SCHULZ: You mean who is going to be the
7 board of directors type of questions?

8 VICE-CHAIR McPEAK: Well, no. Is there going
9 to be a board of directors? If so, how big? What kind
10 of entities? I never want to start an attorney doing
11 anything on drafting documents until I have been
12 exactly, you know, clear as to what I want to get back.

13 So, I'm sorry, I'm sort of looking at this in
14 a little different light when you say go get -- let you
15 start writing papers or drawing up documents.

16 MR. SCHULZ: One thing that I've always -- on
17 the Betsy Ricky paper, when I read it and when I took a
18 look at the items that she said had to be addressed, I
19 took governance, the makeup of the board of directors
20 or if there is a board of directors, and I put it at
21 the bottom rather than third the way she had it because
22 I don't think you can make that decision in a vacuum.

23 I think you're going to make the decision as
24 to what the board of directors or if there is a board
25 of directors, what it's going to look like when you put

1 it together with the CalFed oversight and when you put
2 it together with certain other aspects of the total
3 CalFed program.

4 Cynthia and I have had this discussion on a
5 number of occasions, but the more water user
6 protections that come out of total CalFed program, the
7 less need water users have to have a major voice on
8 that entity. The less assurances we have on our water
9 supply, the more they are going to ask for a stronger
10 voice in the operation of that entity.

11 So it's not an easy question, and one that
12 both Cynthia and I have said that we want to work our
13 way into that by development of the total assurances
14 package and of what the ultimate functions turn out to
15 be of the entity. And, unfortunately, that's where I
16 still am, and so I'm very hesitant to give you the
17 answer which you were probably hoping to get.

18 VICE-CHAIR McPEAK: And I actually -- I
19 understand what you've said back. I -- I'll just
20 listen to what Cynthia has to say and we'll have a
21 discussion.

22 Alex, you have a question of Cliff; is that
23 right?

24 One question from Alex and then we'll go to
25 Cynthia.

1 MR. HILDEBRAND: The -- we had some discussion
2 yesterday, I don't know whether you were here
3 yesterday --

4 MR. SCHULZ: No I was not.

5 MR. HILDEBRAND: -- about the concept that we
6 ought to be able to look at the range of potential
7 demand reduction by better efficiency and look at the
8 range of likely water needs for various purposes, and
9 see if there's a gap between those two even in the most
10 optimistic situation. And if so, we are going to need
11 to develop some new water yield.

12 But we have to think in terms of yield rather
13 than in terms of whether you have one kind of a dam or
14 another because you're going to have some interplay
15 probably with capturing flood flows on nonstream and
16 diverting it to other kinds of storage and that kind of
17 thing.

18 Now, those decisions on how to do that, once
19 you decide that you need a certain amount of yield, are
20 going to be decisions that involve a great deal of
21 concern about environmental matters, concern about the
22 cost benefit involved, the multiple use you might get
23 out of the yield and so forth.

24 Now, how do you envision that this ERP
25 governance outfit would interplay with whatever kind of

1 a structure is going to examine that complex situation?

2 MR. SCHULZ: Okay. Let me start with this:

3 In terms of wastewater reclamation, urban and
4 agricultural water conservation, groundwater storage,
5 and all of those types of activities, other than
6 reservoir construction which have goals attached to
7 them as to what you're going to achieve and accomplish,
8 it's ag/urban's views that those goals need to be
9 established at the time the final EIR/EIS comes out and
10 the time the record of decision is issued so that
11 there's -- so that we don't have to revisit those as an
12 implementation issue.

13 The -- how the ERP fits into that is a little
14 bit more of a difficult question. Obviously, if there
15 are mitigation requirements that come out of the
16 construction or the carrying out of any of those types
17 of projects, and in particular I guess a groundwater
18 storage or a wastewater reclamation program, then maybe
19 the ERP organization would have some part in that.

20 Further, if you -- let's assume that it's
21 determined that a reservoir, and offstream reservoir is
22 required for that program, then you're going to need
23 site specific 404, site specific CEQA and NEPA papers,
24 and possibly site specific mitigation. In which case
25 once again, there could be a role for the ERP

1 organization in that process.

2 So, but the key thing for us is to tie down at
3 the outset what those conservation and reclamation
4 requirements or goals, or whatever you want to call
5 them, are going to be so we don't have to debate that
6 later.

7 MR. HILDEBRAND: I don't think you quite
8 answered my question.

9 VICE-CHAIR McPEAK: Puts him in this category
10 of the rest of us.

11 MR. HILDEBRAND: Pardon me?

12 VICE-CHAIR McPEAK: Which puts Cliff in the
13 category of the rest of us.

14 MR. HILDEBRAND: Okay. I'm postulating that
15 after you've done the efficiency things, all that you
16 know how to do, you still have a need for more water
17 yield. I'm talking in terms of yield rather than
18 storage. There's various ways in which you can go
19 about getting that yield, but they all involve
20 capturing flood flows and holding them for use at other
21 times and perhaps in other places.

22 Then the question is, what is the least
23 environmental impacting and best in terms of efficiency
24 way of accomplishing that by some sophisticated actions
25 which won't just be one kind of storage or just

1 another, some of it may be changing the operation of
2 dams we already have. So it's a rather complex
3 orchestrated thing, and I don't think that you're just
4 going to go to some dam builders to find out how to do
5 it.

6 It's something that's going to have to engage
7 all of the considerations of people who need water
8 supply and how it interrelates with multiple use of
9 water and what the environmental consequences are, and
10 it seems to me not something that breaks itself down
11 into one of these boxes.

12 MR. SCHULZ: I would note here again that I
13 pointed out that we are not going to be changing the
14 regulatory structures. You're still going to need a
15 404 permit from the Corps and with ultimate approval by
16 EPA. So the ecosystem restoration entity would not
17 have the authority to decide which of those was the
18 least environmentally damaging practical alternative;
19 that the determination is still going to be made by the
20 same regulators as it was before.

21 I can see the ecosystem restoration entity
22 having a role in giving input and advice to the
23 builders and to the regulators as to what they think in
24 that respect. But again, it is not any proposal that
25 we have made to switch the 404 program over to this

1 organization.

2 VICE-CHAIR McPEAK: May I -- may I suggest
3 that we get to Cynthia, and then we will further engage
4 in this. But what I think, Alex, I've heard you
5 identify that's a very fundamental part of design of
6 overall governance, there's a lot of things that you've
7 just said, but the relationship between projects and
8 project decisions, project operations once constructed
9 and the ecosystem when -- I don't think any of us are
10 envisioning that the entity that you're proposing is
11 going to have authority to operate projects.

12 MR. SCHULZ: It could have the authority to
13 own water rights, I agree with what somebody said about
14 that earlier, and they could be therefore a participant
15 in the project. They could decide to spend their money
16 on becoming a participant in a water supply project and
17 then the water would be used for the environment.

18 VICE-CHAIR McPEAK: Correct. That I've
19 understood, and that, I think, has been fairly clear,
20 that you could hold water rights, you could contract,
21 you could purchase, you could do a lot of different
22 things. That's what you're proposing.

23 MR. SCHULZ: Absolutely.

24 VICE-CHAIR McPEAK: Operating projects is a
25 totally different animal certainly today and the

1 relationship between release, time of release and the
2 ERPP or the ERP now, are fairly significant as viewed
3 by some people looking at the science. So that's a
4 question that's being -- that I think is really
5 fundamental.

6 MR. SCHULZ: If we get flexible operational
7 standards, then I would expect the ERP to have a role
8 in determining when perhaps we would cut back on
9 pumping and when the makeup would occur and things of
10 that kind.

11 VICE-CHAIR McPEAK: Okay. Thank you.
12 Cynthia.

13 MS. KOEHLER: Hello. Thanks for asking me to
14 talk with you about this today. I get to be here on
15 the happy occasion of being able to talk with you about
16 something that the environmental community has a lot of
17 agreement with our colleagues in ag and urban,
18 something we don't come here to talk to you about very
19 often. So I consider that good news.

20 I want to start, though, with the one thing
21 where I may have put things a little differently than
22 Cliff to answer Sunne's question. I actually don't
23 think we are ready to run to the drafting stage. I
24 think we still have a lot of conceptualizing to do.
25 And where we very much agree is that this should be an

1 organization that's built from the bottom up. We
2 should be figuring out what its jobs are, what
3 authorities it needs, what it needs to do and build
4 from there to figure out so what should it look like at
5 the top.

6 So to continue my way of starting at the end
7 here, again just to answer your question, Sunne, a lot
8 of us have tossed around various models. The one that
9 I like the best is a public corporation, and I like
10 that because it has characteristics that we don't have
11 in a lot of the existing agencies.

12 It can function much more flexibly in terms of
13 holding rights, moving money, contracting. It's also
14 less threatening. It's got no regulatory authorities,
15 and it has the -- the other attribute is that it can
16 have money appropriated to it from both state and
17 federal governments and it can have a mixed board. It
18 can have federal, state and private interests serving
19 on a board.

20 I don't want to spend a lot more time on that,
21 but that's just a very short answer to your question,
22 the one possible way to do this through a mechanism
23 that's somewhat different than what we have today.

24 Having started there, I want to go back to the
25 beginning and answer some of the fundamental questions,

1 which is, you know, why -- how did we wind up here?
2 Why are we here before you saying, well, let's think
3 about something that's totally new?

4 It's a big hassle, it's politically difficult,
5 nobody -- you know, this is probably the hardest the
6 way to go, so why are we bringing this to you? Why are
7 we saying let's go this politically untenable route and
8 try to push through all these very unwilling agencies,
9 this very new and radical idea.

10 Speaking from the perspective of Save the Bay
11 and some of the other environmental organizations that
12 have worked on this, we started with a fairly basic
13 question, the most basic one for us, which is: How do
14 we ensure that this ecosystem restoration program is
15 successful? How do we ensure that these performance
16 standards are met, are achieved, in some sort of
17 reasonable time frame? And we started listing the
18 things that some, any institutional -- you know,
19 whoever has institutional implementing authority for
20 this, would have to be able to do.

21 And I've actually prepared, I think Martha
22 mentioned, a very rough, very short little briefing
23 paper that I'll make available to those of you who
24 don't have it. It's not very profound so don't look
25 for any religion in it, but I did try to list there

1 some of the basic on the ground functions that we think
2 whatever entity is charged, whether it's an existing
3 one or a new one, whatever entity is charged with
4 making the restoration program happen will have to --
5 will have to be able to carry out.

6 The first is we need this -- the first job,
7 the fundamental job of this entity, again, old one or
8 new one, is to achieve the ecosystem restoration
9 performance standards. That means it has to be able to
10 plan and develop and manage. It has to be -- have the
11 kinds of functions that -- the closest example that I
12 was able to come up with is the Coastal Conservancy.
13 That's an agency that basically goes out and makes
14 projects happen. They do restoration. I won't say
15 that's the perfect -- that's not the only model, but
16 there's a piece of the way -- of the Coastal
17 Conservancy that makes a lot of sense. We are going to
18 need an agency that can do that kind of thing.

19 The second, and this has come up before, it
20 needs to be able to hold rights. Very few existing
21 agencies can hold rights to land. Some can, some
22 can't. But we need an agency that's facile and able to
23 deal with real estate, able to contract, and this very
24 important new right that we've been talking about,
25 which is being able to hold water, hold water rights

1 the way that other water users hold water rights. Some
2 entity -- whatever entity has to be able to do that.

3 It's also got to be able to -- I think Martha
4 mentioned this earlier, the whole universe of contracts
5 and grants and loans and being able to manage that kind
6 of money and put those kinds of grants together and
7 then be able to manage them, that's a whole other area
8 of expertise.

9 Fourth, we think it needs to serve as -- I've
10 put it very inelegantly here -- a check on water
11 project operations. By that I mean it needs to have a
12 role on whatever is going to serve the role that the
13 current operations group is providing. We are assuming
14 that in the future there will be something that looks
15 or smells a lot like that, and whatever entity is
16 charged with implementing the ecosystem restoration
17 program has got to be able to function in that form.
18 So it's got to have expertise about project operations
19 and it's got to be the environmental programs advocate
20 in whatever that future forum looks like.

21 And finally, it obviously needs to provide the
22 critical feedback loop to the CalFed superstructure, or
23 whatever that looks like, that you have been talking
24 about so much today. It also needs to be able to
25 relate very intimately to the individual agencies that

1 will have their -- will have continuing regulatory
2 authority over the program.

3 It will need to be able to work with the Fish
4 and Wildlife Service, with the California Department of
5 Fish and Game, with the State Board, with the Bureau.
6 It's going to need to have the capacity to talk to and
7 work with all of those groups.

8 Well, then we went through the kind of
9 analysis that Ann described earlier. Well, once you've
10 figured out, in gross terms, what you need your
11 implementing agency to do, well, let's look and see if
12 we've got that capacity here.

13 That's the analysis that we did. And we
14 walked through and looked at the existing agencies, and
15 frankly, there isn't one that combines all of these
16 abilities today in a coherent way.

17 Well, that brings us to what about the current
18 CalFed structure? Why not just use that?

19 The problem with that is that then you're
20 taking a program that is enormous, I mean we are
21 talking about -- I mean, maybe Lester can update me on
22 this, but several billion dollars over a long period of
23 time, we're talking 30 to 50 years. And we are talking
24 about fragmenting that implementation over, at a
25 minimum, a dozen agencies, and that's before you get to

1 the local level.

2 So, you know, once we looked at that, we
3 realized, well, that's going to be a problem. It's
4 going to be a problem to take a program that is already
5 enormously challenging, that already has substantial
6 political obstacles in its way, and then further put
7 it -- you know, make its chances that much less by
8 fragmenting its implementation among this huge number
9 of state and federal agencies.

10 And then what finally sealed the deal for us,
11 is we looked at how well CalFed is coping with this
12 today. And I want to be quick to say that given I
13 think a very difficult situation, CalFed is coping
14 pretty well. You know, I give Cindy Darling and the
15 other folks doing the restoration coordination program
16 a lot of credit. They've gotten a lot of money out the
17 door.

18 But it's been very difficult. CalFed has no
19 legal life. It can't -- it doesn't really -- it's
20 really not able to perform any of the functions here,
21 and that has made implementation of a much smaller
22 piece of this program. Remember, we are still mostly
23 in a planning stage, so the implementation that we have
24 been doing has been relatively small compared to what
25 we're anticipating. And it's been hard, and I think

1 the folks who can testify to that are the folks who
2 have been doing it. And I think we laid out some of
3 that in the letter that Cliff and I submitted jointly.

4 And that led us sort of -- maybe it wasn't as
5 self-evident to us, but it led us to the conclusion
6 that the hardest option of all, the one that's going to
7 be the most politically difficult, the one that will
8 encounter the most resistance, is still the best. And
9 that is rather than trying to squeeze a square peg into
10 a round hole, we should just be designing an
11 institution that can do this.

12 The reality is the program we are talking
13 about here is simply unlike anything that has been
14 attempted here in this kind of a region with these
15 kinds of problems in California or nationally, and
16 there just isn't the kinds of authorities, the kinds of
17 tools, the kinds of abilities in the existing
18 structures to make this work.

19 And if we are serious about achieving these
20 performance standards, if we are serious about having
21 this restoration program actually come into being and
22 accomplish something, then it -- then we've got to get
23 serious about how we are going to implement it.

24 And we have asked this question to some of the
25 agency folks that have resisted this, and -- and I

1 guess I should back up and say I am not unsympathetic
2 to the resistance. If I were -- well, let's just say I
3 am not unsympathetic.

4 Obviously, there's a concern as we mentioned
5 in the letter that Cliff and I wrote that this is a
6 stakeholder ploy, we are just trying to take control.
7 And then there is concern about existing authorities.

8 Those are completely legitimate concerns. And
9 I think I'm going to go out on a limb here and say I
10 speak for all of the stakeholders who are supporting
11 this when I say, those are not the intentions here.
12 The stakeholders are not trying to take over and I
13 think there is across-the-board recognition that we
14 want to respect and support the existing regulatory
15 authority of the agencies that are involved in this
16 process.

17 Really what we are trying to do is come up
18 with the most pragmatic, most effective way to achieve
19 the goals of the ecosystem program. That's really all
20 that's going on here. And I think it's fair to say
21 there's nothing more nefarious about it than that.

22 But that is -- but I guess my question that
23 I've raised several times at the agencies is, well,
24 then give me an alternative, you know, because I don't
25 want to go this difficult route. I don't want to spend

1 the time and the political capital trying to push this
2 through, you know, the federal and state governments
3 because it will undoubtedly require parallel
4 legislation. I don't have any questions about that in
5 my mind. It will very difficult and it cannot happen
6 without the support of this group, of the other
7 stakeholders that aren't in this group, and ultimately
8 the agencies themselves.

9 But quite honestly, I don't get any answers
10 from those agencies. They just tell me, well, you
11 know, we can work it out.

12 Well, this just isn't another restoration
13 project that we can just muddle through. The effort
14 here has got to be sustained, it's got to be focused,
15 and it's got to be fairly intense. And I have not yet
16 heard from anybody, although I remain open, a credible
17 case to be made for how this program can possibly be
18 successful if implementation is fragmented over a dozen
19 or more agencies.

20 That's really how we wound up at this
21 recommendation, which I, you know, recognize is
22 probably the hardest one. But that is how we wound up
23 there.

24 As to next steps, I really think the next
25 steps are to continue -- well, I think a first next

1 step that would be useful, given the resistance in some
2 of the agencies, and I guess Patrick talked about that
3 earlier, it would be useful to get at least an initial
4 vote of confidence that this is an idea worth pursuing
5 from BDAC. And I think before we start drafting
6 incorporation papers, we should really be getting down
7 and doing some pretty hard work thinking about exactly
8 what this entity should do and what it shouldn't do;
9 what authorities it needs and what authorities it
10 probably doesn't need.

11 And once we've got agreement on a conceptual
12 list of that nature, you know, I think we should come
13 back to you and talk about it some more.

14 Anyway, that's my presentation for today.

15 VICE-CHAIR McPEAK: Thank you, Cynthia.

16 Let's see if there are questions to Cynthia
17 and to Cliff.

18 I want to see if I understood correctly the
19 concept of a public corporation. Are we talking about
20 a public benefitted corporation established under IRS
21 code --

22 MS. KOEHLER: No.

23 VICE-CHAIR McPEAK: Or are we talking about a
24 public corporation authorized federal and state?

25 MS. KOEHLER: Precisely. Yeah, I'm not

1 talking about a nonprofit under the -- not at all. I'm
2 talking about a -- public corporations are quasi-public
3 entities. They are -- on the federal side, and I
4 frankly know more about them on the federal side, there
5 is a federal charter they are authorized by
6 congressional -- you know, by federal statute. But
7 they are only quasi-public. They have boards of
8 directors that are appointed in various ways.

9 I guess the one that perhaps most people know
10 about would be PBS, I believe is a public corporation.
11 And TVA, TVA is a public corporation. So there are --
12 you know, there's a handful of them. There are models
13 and precedents.

14 VICE-CHAIR McPEAK: Okay. And it explicitly
15 would not have, in my understanding, this many of the
16 authorities that current agencies have.

17 MS. KOEHLER: Right, it wouldn't have any. I
18 think -- and on this point I think Cliff and I are in
19 complete agreement, it shouldn't have any regulatory
20 authority. By that I mean, you know, permitting
21 authority. It's not going to issue MPDS permits, it's
22 not going to issue clean air permits, it's not going to
23 issue ESTA permits.

24 VICE-CHAIR McPEAK: Richard, and then Roberta.

25 MR. IZMIRIAN: I'm interested in that thing

1 that Cliff brought up regarding decision making being
2 either policy or implementation and how that gets
3 defined which is which. I notice on the governance
4 functions, policy formulation was up there. I don't
5 know if that means policy -- just formulating the
6 policy to be approved elsewhere or does this mean it
7 has to go to the legislature. A couple of times we
8 have had legislators come in here and say remember us,
9 we matter.

10 So I've been struggling with this whole idea
11 most of the morning, about how we decide whether
12 something can be actually administered by and
13 implemented by an agency or where we can get some
14 policy decisions made.

15 Can you help me with that?

16 MS. KOEHLER: Yeah, but I'm not sure I'll be
17 that helpful. I think there are policy decisions to be
18 made at all levels. I agree with the point I think
19 Cliff made a little while ago when he said really this
20 entity, whether it's a new one or an old one, should
21 have the ability to do the adaptive management program.

22 I mean, it really goes back to the first
23 function I mentioned. It needs to be -- it needs to be
24 the place where responsibility for doing the program is
25 vested. And that means it's got to be decided what are

1 the priorities for implementing the program? How do we
2 spend our money? How do we monitor it and what do
3 these monitoring results mean?

4 Now, I will add here that we had a lot of
5 discussion in the joint group and elsewhere about,
6 well, we should also have some outside peer review of
7 monitoring. And I agree with all that and that should
8 be done and that should be separate.

9 But the entity -- you know, the implementing
10 entity had got to have some ability to manage its
11 program, you know, to do the adaptive management that
12 needs to be done to move it along.

13 Having said that, you know, it certainly needs
14 to, you know, somehow -- again, depending on how you
15 put the CalFed superstructure in place, it certainly
16 needs to relate back to that structure and relate to
17 the other programs. But I don't think it will be able
18 to do its job if it's being second-guessed by a
19 politically constructed body.

20 I should say, I agree with Cliff, too, that to
21 the extent we can, we should make the ecosystem
22 restoration entity a nonpartisan, nonpolitical entity.
23 It should really just have a limited mandate, which is
24 to make the performance standards happen.

25 Having said that, you know, everything is

1 somewhat political. There is no way to completely keep
2 that out of the process. But I guess in my thinking
3 about it, I have always thought that the CalFed
4 superstructure would be a more politically oriented
5 body and hopefully will be able to design the ecosystem
6 entity to be as insulated as feasible, you know, from
7 political onslaughts; although I think that will be one
8 of the more difficult things in designing that
9 institution.

10 Is that answering your question?

11 MR. IZMIRIAN: Yes, I think that last
12 statement, I was wondering how you could actually
13 design that in. That's going to be a trick.

14 MS. KOEHLER: Well, it will be difficult. I
15 mean, I don't know if you want me to get into that kind
16 of detail here. There are a lot of different ways to
17 do it.

18 One way to not do it is to make its body
19 politically appointed or to limit or to -- or otherwise
20 to spread out the political appointees to -- basically
21 to assign seats. You know, just say there have to be
22 so many of these kind of seats and so many of that kind
23 of seats. I mean, there are ways to design it, but it
24 will be a very hard thing to do.

25 The other thing is you could make the

1 governing board of that body less important and just
2 vest most of the authority in a very strong executive
3 director.

4 In Alaska, the folks that administer the large
5 Exxon Valdez Trust Fund, they have a chief scientist.
6 They don't even have an executive director. They just
7 say, okay, we've got a chief scientist and he's going
8 to decide -- he/she I suppose, is going to decide, you
9 know, pretty much how we are going to run our program,
10 and that seems to have worked out well.

11 Anyway, so there are models out there.

12 VICE-CHAIR McPEAK: I have several people
13 lined up. Roberta, Alex, Bob and Tom.

14 How -- is there federal law -- the enabling
15 law for public corporations, does it define the
16 governance of such a corporation or --

17 MS. KOEHLER: No. I mean, basically, that
18 would be in the charter. What you would do is you --
19 what you would do is once you -- again, building from
20 the ground up you'd figure out what you want your
21 organization to do, what kinds of authorities you'd
22 want it to have, and you'd start putting together a
23 charter under the federal guidelines; which I haven't
24 looked at in a while. But the federal guidelines, as I
25 recall, are not substantive. They really just talk

1 about, you know, what you need to do to be a federal
2 corporation. They are like the state corporate
3 guidelines, I believe.

4 VICE-CHAIR McPEAK: Roberta.

5 Thank you, Cynthia.

6 MS. BORGONOVO: I just didn't want to do the
7 summarizing job, but it did sound to both Hap and me
8 that we have concurrence at least to pursue in concept
9 acknowledging the need to address first the overall
10 CalFed structure and the many comments here today, and
11 we both think that if Cynthia and Cliff could begin to
12 address some of the very specific details, that would
13 be very helpful.

14 MR. DUNNING: And work together.

15 MS. KOEHLER: You are assigning Cliff and I to
16 work together, is that what I just heard?

17 MR. DUNNING: You have been working together,
18 and certainly as work groups here as we would encourage
19 the two of you in collaboration with your many
20 colleagues to continue to work closely together on some
21 of these important questions like, you know, public
22 corporation or some other approach.

23 VICE-CHAIR McPEAK: Alex.

24 MR. HILDEBRAND: Cynthia, do you envision that
25 this entity would have the condemnation rights to

1 condemn either land or water rights?

2 MS. KOEHLER: Well, now that's a very
3 sensitive question, Alex, and I personally don't
4 envision that at the outset for the primary reason that
5 it is far too politically -- I just think it would be a
6 killer, personally. So I would -- that would not be my
7 recommendation.

8 I agree with something Cliff said earlier
9 which is that this whole program, the restoration
10 program, the water supply program, they are all going
11 to be subject to adaptive management to some degree,
12 and I think that's going to be true of this entity as
13 well, assuming we get something up and running. It's
14 going to kind of, you know, merge and shift and grow
15 over time.

16 It may be that once people become more
17 comfortable with it and see that it's functioning as a
18 grown-up agency, they may decide that it would be
19 useful for it to have that authority down the road. I
20 certainly do not, I recommend actually strongly against
21 that as an initial matter.

22 MR. HILDEBRAND: Thank you.

23 VICE-CHAIR McPEAK: Bob? Bob Raab.

24 MR. RAAB: Cynthia, my biggest concern about
25 the whole success of the ERP is that it may not be

1 effectively implemented because there may be major
2 efforts to bend or break the ERP a la the CVPIA. And I
3 feel that there needs to be an entity that has the
4 power, and maybe it has to be statutory power, to
5 enforce the ERP.

6 And I'm not so sure that a water right,
7 although I can see the real possibility of that being
8 successful, but I'm not convinced at this point that it
9 actually will be enough to see to it that the ERP is
10 successfully enforced.

11 MR. KOEHLER: Well, I think you raise an
12 extremely important point and that's -- it goes to what
13 I was saying earlier when I indicated that I don't
14 think we are ready yet to start drafting articles of
15 incorporation because I think we do still need to talk
16 about what authorities should this entity or any other
17 implementing -- you know, implementing agent have.

18 And I agree with you, I think it needs to have
19 a fairly strong authority to make its program real. In
20 other -- I mean, in the assurances work group, the
21 Environmental Water Caucus has proposed that there
22 needs to be some remedy, you know, there needs -- there
23 may need to be some kind of access to courts if various
24 parts of the program don't go forward in an equitable
25 manner.

1 But that would be -- that hasn't received a
2 lot of play yet, but I think that's the kind of thing
3 that needs to be discussed. And I'm guessing that
4 Cliff doesn't completely agree with me about this. But
5 that's the kind of thing that we need to work out, you
6 know, what level of authority is appropriate, who
7 should have enforcement authority, who shouldn't.

8 VICE-CHAIR McPEAK: Cliff.

9 MR. SCHULZ: Yeah, I just wanted to address
10 the word "enforced" because I don't view the ecosystem
11 that you enforce a program. The ecosystem, it is a
12 program. It is a funded program to be carried out. We
13 want to absolutely make sure that it's carried out.

14 But let me distinguish between a situation
15 where there is a violation by the state or federal
16 projects of operating requirements. That doesn't mean
17 that the ecosystem restoration program has not been --
18 that's the -- that enforcement would occur histori --
19 just like it has historically, it would go to the State
20 Water Resources Control Board.

21 Maybe the ecosystem restoration program could
22 be the complaining party, but they are not going to
23 become the -- they are not going to be substituted for
24 the State Water Resources Control Board or Regional
25 Board on discharges or the Department of Health

1 Services on drinking water standards or things of that
2 kind of action. That is still going to be handled by
3 the existing regulatory bodies.

4 MS. KOEHLER: I think that's right, but if I
5 can add one more point, Bob. I think it's fair to say
6 that if the ecosystem entity has -- is given certain
7 authorities, for example, if it is able to hold water
8 rights, then those are rights that it is able to
9 enforce against those who would in the unlikely event
10 attempt to infringe on those rights. That's one kind
11 of authority that it could have.

12 VICE-CHAIR McPEAK: Bob?

13 MR. RAAB: When Cliff mentioned the State
14 Water Resources Control Board, it further reenforced my
15 direction of my thinking that there needs to be some
16 statutory power within the ERP because the history of
17 dealing with the State Water Resources Board has not
18 been a felicitous one for many of us.

19 VICE-CHAIR McPEAK: Tom.

20 MR. DECKER: I think these presentations are
21 really excellent for one big reason, they sort of put a
22 deal on the table, if I can use a private sector term.

23 One of the problems I see with a public
24 corporation -- I think it really does fit mechanically,
25 the thing is for us, or at least for me, even though I

1 want to support it, it's kind of a tail-wagging-dog
2 situation because -- if I can use another private
3 sector term -- to me, there has to be an ownership flow
4 somehow if we use an entity to answer one of the boxes
5 of the real question, can the Delta be fixed without an
6 entity.

7 And if we go for a public interest
8 corporation, or whatever it's called, one of the issues
9 is who is responsible for the public interest
10 corporation? Because it immediately takes on a life of
11 its own. So if I say, "Gee, I'm not sure I like what
12 this corporation is doing," and I dial up Lester Snow,
13 who we've decided is the CEO of the new entity, and I
14 say, "Lester, we have an out of control situation here.
15 It doesn't -- it's drifting away from our basic" -- I'm
16 just talking like a banker of course -- "it's drifting
17 away and I want discipline imposed on the public
18 interest corporation."

19 So we get back to the fundamental question
20 here about whether there's -- how is management and who
21 is the principal owner sponsor in a public interest
22 corporation that's specifically set up to avoid that
23 problem; is it not?

24 MS. KOEHLER: No. Can I respond to that real
25 quickly?

1 MR. DECKER: Please, yeah.

2 MS. KOEHLER: A public interest corporation is
3 a nonprofit.

4 MR. DECKER: Let's do public corporation.

5 MS. KOEHLER: But a public corporation is set
6 up to have an accountable board of some kind. I mean,
7 as I -- again, I'm a little on a limb here because I
8 haven't looked at these regs in awhile, but it's my
9 recollection that --

10 MR. DECKER: How about shareholders?

11 MS. KOEHLER: Shareholders. I don't
12 believe --

13 MR. DECKER: For example, if I said, "Lester,
14 you are the principal shareholder of that public
15 corporation, and I have input, other people have input,
16 and we think the public corporation should be going in
17 this direction. And since we own it, even though it
18 has interesting directors from all over the place, we
19 will direct that it go that direction."

20 That is not obviously your intent, and the
21 question is -- so it begs back, goes back to the
22 fundamental question of oversight management of
23 something like this, or governance.

24 How would you respond to that?

25 MS. KOEHLER: Well, I guess my response to

1 that is that you have the problem that there aren't
2 shareholders with any public agency.

3 MR. DECKER: I understand that.

4 MS. KOEHLER: You know, so I'm not sure how
5 to --

6 MR. DECKER: See, I'm trying to get -- make
7 the -- get the bridge between what I think is a good
8 thing that you're suggesting, except that what we're
9 going to end up talking about here is who has
10 responsibility.

11 MS. KOEHLER: Right. I think who has
12 responsibility for this is going to be whatever board
13 governs this entity.

14 MR. DECKER: Yeah, I agree with that.

15 MS. KOEHLER: And then I think that there is
16 going to be in addition accountability via the CalFed
17 superstructure. I don't see this thing operating, you
18 know, some sort of rogue agency that can just go off
19 and have no accountability to the CalFed -- whatever
20 the ultimate CalFed management structure looks like.

21 So I actually see that you have here
22 additional layers of accountability than you would in
23 your, you know, standard agency situation.

24 The other thing is -- the other way to answer
25 your question, though, and this goes to my earlier

1 point about how you set up that board, you can -- as I
2 recall, these boards can be set up fairly flexibly.
3 You can either have one person appoint everybody or you
4 could spread out that appointment authority. You know,
5 perhaps we give appointment authority to different
6 sectors. You know, all those options are on the table.

7 And so one way for you to feel more
8 comfortable would be to endorse an option where various
9 sectors had appointment authority and, you know, term
10 limits and all of that. I mean, I think there are ways
11 of setting up the board so that they're accountable.

12 MR. DECKER: I'm not sure I feel
13 uncomfortable, but I would -- when you brought up the
14 Coastal Commission, I'm trying to figure out who they
15 reported to.

16 MS. KOEHLER: The Conservancy. The Coastal
17 Conservancy reports to the governor.

18 MR. DECKER: So there was oversight management
19 that would agree with the strategy of the Coastal
20 Commission on what they did.

21 MS. KOEHLER: Coastal Conservancy. Yeah, in
22 fact, I think you could talk to some of the folks at
23 the Conservancy and they'd feel that there was plenty
24 of oversight, perhaps a little too much.

25 MR. DECKER: The reason I'm asking this

1 question of you because is I believe it is very germane
2 to the question that this group should be really
3 debating which is the top box there.

4 MS. KOEHLER: Okay, sure.

5 MR. DECKER: Thank you very much.

6 MR. SCHULZ: I don't think there is any
7 inconsistency with having a public corporation and
8 having oversight of that public corporation by this
9 CalFed umbrella organization. That's simply a matter
10 of making sure that that's stated in the formation
11 documents for that entity.

12 So, again, there would not be shareholders in
13 this circumstance so, it's still works, I think in
14 terms of getting the necessary oversight and dispute
15 resolution procedures.

16 MR. DECKER: Thank you.

17 VICE-CHAIR McPEAK: Sometimes some of us think
18 in terms of shareholder, I think, if I'm understanding
19 Tom, I certainly think this way, that the metaphor from
20 the private sector actually has some great implications
21 for the public sector, and I totally stipulate to the
22 fact they are not the same, but the kind of
23 accountability and responsiveness and explicit mission
24 for outcomes are the characteristics that we like to
25 borrow from business to apply to accomplishing public

1 purposes.

2 The notion of accountability, just to raise an
3 issue that has been discussed, I think in a generic
4 sense here, whether or not it's the governance board of
5 such an entity that is being discussed for the
6 ecosystem restoration or the overall CalFed program,
7 implementation of the overall CalFed program goes to
8 what Bob raised.

9 I often hear people want to insulate a process
10 from politics but I don't know that that is actually
11 very possible, nor is it maybe desirable. I would like
12 to have a lot better politics, period, and politicians
13 and a whole lot of things, but back in, (inaudible) you
14 know, almost an inescapable equation and quite honestly
15 we have suffered from the lack of engagement. And then
16 when they are not engaged, they tend to get ticked off.
17 And the lack of a continuity of commitment at both
18 levels of government and between the administration to
19 the legislative branches is a challenge I think we need
20 to think about for governance structure.

21 I think that the question of how there is some
22 kind of commitment and embracing by the state and
23 federal government to an overall solution and the
24 governance and long-term implementation of that has to
25 be well thought -- well thought through, that you don't

1 end up with a long period of time without the
2 consultation that should go back and forth, and then
3 surprise, everybody is surprised.

4 So the shareholder notion of accountability,
5 which in the public sector the shareholders are
6 everyone which is assumed in a democracy. It's that
7 metaphor that we are really trying to think about or I
8 would like to suggest we think about and have a lot
9 more discussion in the governance work group to think
10 this one through.

11 Cynthia.

12 MS. KOEHLER: Can I have a few minutes? I
13 think you're exactly right, Sunne, on those points. I
14 want to clarify two quick things.

15 When I suggested that we'd like this entity to
16 be somewhat insulated to the extent feasible from
17 politics, it wasn't that we should be leaving out the
18 legislators, it was that we don't want scientific
19 decisions about how to move forward with this program
20 being co-opted. We have seen that, that there are
21 perceptions that there have been a fair bit of that
22 with other restoration programs.

23 The idea is this should be a program that's
24 focused on getting restoration to happen and meeting
25 performance standards, and politics shouldn't be moving

1 it.

2 However, your point that we should be
3 basically getting with state and federal legislators to
4 have ownership of this couldn't be more right. And
5 again, this brings me back to why designing a new
6 entity gives you many more options because you can, for
7 example -- I mean, the best way to do that it seems to
8 me is to give them ownership of a few of these seats
9 and say, you, state legislature, get, I don't know, one
10 or two seats. You, federal legislature, get one or two
11 seats. That way they have their own people there and
12 they have their own reporting and they have -- there
13 are ways of building that in, I think.

14 VICE-CHAIR McPEAK: In trying to bring
15 closure -- thank you to Cynthia and Cliff.

16 In trying to bring closure to this item on the
17 agenda. I think we just need to reconfirm what I think
18 emerged out of the brainstorming this morning and also
19 the discussion we just had. And I would -- I would
20 summarize my observations as follows:

21 That on the threshold question of governance
22 that is very, very basic, is the current arrangement
23 among the agencies that has brought the planning
24 forward the best to do the implementation. I'm hearing
25 emerge a pretty solid consensus, no, we need something

1 else, we don't know exactly what that is, and clearly,
2 the characteristics have been presented by staff and/or
3 the principles perhaps to be used in considering that
4 governance structure, and then it's been very
5 significantly enhanced and enriched by all of your
6 input.

7 So is that right?

8 Stuart?

9 Okay, most of you said yes. Stuart, are you
10 saying yes, too?

11 MR. PYLE: I'm saying yes to that, but I would
12 like to say something else when I get an opportunity.

13 VICE-CHAIR McPEAK: You're recognized.

14 MR. PYLE: I think they were asking here today
15 whether CalFed actually supports the idea of the
16 formation of an ERP in some form, and I don't think we
17 have to decide on whether it's the public corporation
18 or the governmental form, and I think, you know, as one
19 member I would say they sound like good ideas. I'm
20 familiar with the buildup of the activity through the
21 assurance committee and I think it should be
22 implemented.

23 In terms of what Cliff and Cindy are both
24 talking about, that they should move on to the next
25 stage of deciding what the actual form of the

1 governance should be, and evidently we have more
2 questions than I thought there was to make a decision
3 between this public corporation of some type and the
4 governmental entity that most of us are familiar with.

5 But I would also say that in terms of the
6 funding and the large effort that is now flowing into
7 the ERPP, the restoration program plan, and the
8 implementation of that, you've got hundreds of millions
9 of dollars coming into that program, work is going on,
10 it's being more or less guided by the round table which
11 is kind of an informal structure under CalFed but
12 bringing the other organizations together. But it
13 seems to me that it's time to make some type of an
14 interim commingling together, kind of in the same
15 manner that CalFed is commingled together of an entity
16 that could begin to be an operating model, maybe not a
17 model, maybe a model that will be rejected. But
18 anyway, some type of an interim operating entity
19 representing the ERP process and actually begin to see
20 how it can empirically move along, and maybe approach
21 this thing that we put a lot of emphasis in adaptive
22 management and try it and see if it works.

23 VICE-CHAIR McPEAK: Got it, okay.

24 Tom, then I'm going to pick up some public
25 speakers.

1 MR. DECKER: I think we have done a pretty
2 good job of discussing this. Can the Delta be fixed
3 with or without an entity is still unanswered. I
4 admire and respect the fact that the ecosystem
5 restoration part of this has got something on the
6 table. This is one of the ways you get things started.
7 And I would encourage more work.

8 The only risk we have, and I think that this
9 is a CalFed staff issue, is that you have to decide
10 whether you want to have one of the entities, one of
11 the boxes, and I'm not sure this is bad. In fact, it
12 may be very, very good. You have to decide whether you
13 want one of the boxes basically to drive the process
14 and drive the strategy, or whether you are going to
15 participate to the extent that you influence how the
16 strategy goes.

17 It's sort of one of those chicken and egg, but
18 pretty important chicken and egg type things, given the
19 fact that the -- this tremendous work has been done,
20 you know, we need to build on it. So I would very much
21 support we build on it, but I have that issue that I
22 just bring up as something that has got to get on the
23 CalFed table, faster than it has to get on the BDAC
24 table.

25 VICE-CHAIR McPEAK: Got it.

1 Dennis O'Connor, thank you for waiting,
2 followed by Michael Umbuelo (phonetic).

3 MR. O'CONNOR: Thank you. For the record, I'm
4 Dennis O'Connor, Assistant Director for Environment and
5 Natural Resources for the California Research Bureau.

6 This gets back to the discussion of the
7 brainstorming on the overall structure of the umbrella
8 agency and I just had a few comments.

9 It seems to me that perhaps the most important
10 thing that the umbrella agency has to be as far as a
11 function, is that it has to be the ultimate authority
12 of what is and is not the CalFed program. Because of
13 the adaptive elements and things like that within the
14 CalFed program, there is going to be -- some will want
15 to see the program expand, you'll see an increase in
16 scope, and others will want to see it rain in, and
17 there needs to be some point or some person that we can
18 ask is this part of CalFed or not, and they would be
19 able to respond.

20 Second, this umbrella agency needs to be a
21 political focal point for the legislatures, both the
22 state and federal. When you talk to members and their
23 staff, the one thing that they are always looking for
24 is where is the line item and whose throat can I grab?
25 And the problem with joint authorities, quite frankly,

1 is that you never know whose throat to grab.

2 Third, this agency or this entity is going to
3 have to be the person who makes the staged decision
4 making. We are going to have to have someone who is
5 going to say, we have reached a decision point and this
6 is the decision. We are going to need to coordinate
7 the funded implementation plan. And if funding lags,
8 adjust the plan, or if the program lags, both develop
9 and adjust based on the adaptive management elements
10 that pop up.

11 It's going to need to be a forum for public
12 stakeholder and agency concerns. People get upset
13 about things. There needs to be a forum for people
14 where they will feel like they will get a fair hearing
15 in the implementation of the CalFed program.

16 As part of that, this entity needs to be sort
17 of a fact checking agency. People are going to come up
18 with all sorts of interpretation of the data or
19 generate their own data and try to dissuade the program
20 in one direction or another. There needs to be a
21 singular focal point on saying, well, this is the way
22 that is, folks.

23 Along with that, this entity needs to be
24 unbiased or have no obvious conflicts of interest.
25 That means that they cannot have responsibility for

1 some program or some regulatory action, where if they
2 make a decision on the CalFed plan, that would affect
3 how they might implement regulations or something like
4 that.

5 I sort of took random notes.

6 They need to be a credible reporting agency on
7 the progress of the CalFed program. Everyone's going
8 to have their own interpretation of how good this thing
9 is and there needs to be sort of this -- again, this
10 unbiased reporter.

11 And then finally, I think they need to be able
12 to make the trade-offs that are inevitably going to
13 occur. It's quite likely, it seems to me, that for
14 example, the ecosystem agency will come up with some
15 solution to some problem and the costs are just
16 untenable. There needs to be somebody who can make
17 that call.

18 I think with that I'll close.

19 VICE-CHAIR McPEAK: Thank you, Dennis. And I
20 think those are, again, very good summarizing comments.

21 I would like to, I think, just state for the
22 record, I've sat on a number of JPA boards and while
23 all of Mary's comments are accurate about you cannot
24 assign powers to JPA that are not resident with both or
25 all of the founding agencies, you still can make that

1 very accountable.

2 It was my throat and rear on the line when I
3 was issuing bonds on a JPA board even though the
4 entities who capitalized it and formed it had those
5 authorities as well. You can hire and fire staff as
6 you can with the establishing entities.

7 I think Mary's comments about the fact that no
8 entity that exists or entities exist with existing
9 authorities to assign to a JPA have validity.
10 Oftentimes as Dennis says, however, the people who form
11 JPAs aren't very clear about that kind of assigning of
12 obligation and accountability, and then the funding or
13 capitalizing is sometimes a question. Eze sat on those
14 boards, too.

15 Let's see. We have one more public comment,
16 Michael Umbuelo.

17 Thank you for waiting, Michael.

18 MR. UMBUELO: Thank you.

19 My name is Mike Umbuelo. I'm a representative
20 of the (inaudible) Colony Indians in Northern
21 California in Clearlake.

22 One of the questions that I have is in the
23 structure of this CalFed program that you're building
24 that's so wonderful to help out our environment that we
25 all believe in, I'm wondering that one missing fiber

1 that is missing, the Native Americans of the fairly
2 recognized tribes, how will they be addressed in
3 building this beautiful basket that you're building,
4 how will they interplay with this basket that you're
5 weaving so graciously?

6 VICE-CHAIR McPEAK: Do you have a proposal on
7 how you would like to see the weaving accomplished? I
8 often -- I don't talk usually about a basket but a
9 fabric of society in weaving a fabric, but how -- would
10 you like to make a recommendation to us?

11 MR. UMBUELO: Yes, I would, but I don't have
12 one at this time and I'm sorry that I came up here to
13 ask this question without having a solution to the
14 problem.

15 VICE-CHAIR McPEAK: You know what, Michael,
16 you opted into being a part of this democracy and you
17 have to be treated to the same expectation from me as
18 everybody else. So you're now a part of it and then I
19 want to see you at the next meeting to have a solution,
20 okay?

21 MR. UMBUELO: You will. And you will also
22 have some answers?

23 VICE-CHAIR McPEAK: Yes.

24 MR. UMBUELO: Thank you.

25 VICE-CHAIR McPEAK: Thank you, thank you.

1 That's great. Thank you very much for your patience.

2 Byron.

3 MR. BUCK: A comment kind of following up on
4 Dennis. I think my message is primarily related to
5 Patrick and probably the policy group, that they need
6 to provide the resources Lester's going to need to
7 start bringing these thoughts together to propose some
8 concrete structures to deal with the issues we've got
9 here, and they need to step back a little bit and let
10 that happen and be faithful in the future that we can
11 pull something together that works and includes them.

12 And given Dennis' experience, I would hope to
13 see that he gets tapped into that. He's been busy
14 looking at metropolitan government structure which is a
15 challenge and a half and I would think going through
16 that, there's a couple lessons that would probably
17 apply to this group and this problem as well.

18 VICE-CHAIR McPEAK: Okay. Very good comments
19 in terms of recognizing the need for resources to do
20 this. I thought Lester did all of this pretty
21 magically with this excellent staff, but we'll give you
22 more resources.

23 Bob.

24 MR. MEACHER: Just housekeeping stuff --

25 VICE-CHAIR McPEAK: Let me --

1 MR. MEACHER: -- before we close.

2 VICE-CHAIR McPEAK: Before we close. Okay,
3 let me try to finish closing on the sort of remaining
4 directive that was before us, a question of what should
5 we ask of the work group. And I have heard a consensus
6 that it makes sense for the work group to continue its
7 efforts in trying to define an ERP governance
8 structure. I'm hearing at least two things that I
9 really want to underscore.

10 The first is that I don't think any of us
11 think that should be done in a vacuum without first
12 looking at the overall implementation structure for the
13 CalFed solution. And that is very serious. It's not
14 just an equivocation or some finesse. I would expect
15 that there be a lot of resistance for number of the
16 BDAC members to take any further action or recommending
17 a structure if -- on the ERP if there is not laid out a
18 governance structure for the overall program.

19 The second thing that I think is important is
20 what Stu had to say, and that is that implementation --
21 Martha did as well -- implementation is upon us. I
22 mean, we are going to -- we are now at a stage where we
23 have got certain recommendations that have been running
24 ahead and in progress of implementation, most notably
25 the work on ecosystem restoration, but there will be

1 following on actions, and that Hap and Roberta, the
2 interim next stage evolving governance structure is
3 very important because there's likely to be a time
4 between now a solution and when the kind of entity that
5 people are talking about could be authorized and
6 established.

7 So you've got, I think, concurrence and
8 support along with our gratitude for the work you've
9 done so far to move ahead on trying to define the ERP.
10 I think Cliff and Cynthia were compelling in terms of
11 why there is some uniqueness to the focus that you're
12 asking that we give in thought to governing this aspect
13 of implementation. But you've heard really clearly not
14 do that without thinking about the overall governance
15 and the transition.

16 MS. BORGONOVO: I want to thank everyone for
17 their discussion. It's been very helpful.

18 MR. DUNNING: It's been very rich and we'll
19 take all these ideas back and work on them and expect
20 to report back in the not too distant future on how we
21 are doing.

22 VICE-CHAIR McPEAK: Good. I think that you've
23 done a great piece of work and I'll look forward to
24 getting the follow-on product.

25 Supervisor Meacher.

1 MR. MEACHER: I need advice from you and
2 Lester on this one because it's an ongoing problem for
3 me, and that is -- and I'm sure it was an anomaly this
4 time because I've talked to some BDAC members, but
5 getting the agenda a few days before the meeting. This
6 time I got it Tuesday night. And, for example, Martha
7 and I are co-chairing a meeting on Monday, she hasn't
8 even received an agenda of what she's chairing yet.

9 So I don't know if this is the sort of thing
10 that I bring up at this level or do we just write a
11 letter to you guys, but somehow I guess we need it in
12 an -- some sort of administrative record that we are
13 having a problem dealing with that.

14 MR. SNOW: That's fine having an
15 administrative record. It seems like it we ought to
16 sit down and figure out exactly why you in particular
17 are getting agendas so late.

18 MR. MEACHER: It came Federal Express but it
19 came Tuesday evening.

20 MS. SELKIRK: It was sent Friday morning.
21 Supposed to be overnight mail. You didn't get it until
22 Tuesday night?

23 MR. MEACHER: The one in Federal Express or
24 whatever you are using.

25 MS. SELKIRK: I don't have an explanation for

1 that, but let me respond to that, that I know that this
2 has been problematic getting agendas. Some of it has
3 to do with the fact that some of the written material
4 isn't generated until very shortly before the meeting.
5 But if there -- I don't understand why if it was mailed
6 on Friday at noon that you didn't see it until Tuesday
7 night. That is simply not acceptable. Let me know if
8 you have those kinds of problems.

9 MR. MEACHER: In general, sometimes our agenda
10 packets are so thick and we get them four or five days
11 ahead of time and still I have to say it's hard for me
12 and staff to go and digest to make this meeting more
13 meaningful to CalFed. If we don't really have the time
14 to go through this thing, it doesn't do us much good to
15 sit around and talk about something that we have only
16 had a cursory chance to look at.

17 The other direction or comment I had was I've
18 noticed the letter from several of the members of
19 congress regarding -- and I think this pertains to
20 Lester's opening comments about Bruce Babbitt coming out
21 here and we're going to be trying to move this thing
22 along, my organization is concerned -- and maybe Mary
23 Schoonover if she's still here can help me with this.
24 I remember very strict direction when I was placed on
25 BDAC not to discuss these things and pull three or four

1 of us stakeholders together and try to influence the
2 CalFed process.

3 And what we are concerned with, from the
4 source counties, is this is one of our last best and
5 maybe final opportunities to coordinate our watersheds
6 and elevated to a level to the whole state and its
7 management and its importance; and with these
8 discussions coming up, and the fact that there could be
9 some federal oversight, probably very likely federal
10 oversight hearings early next year, I need some
11 direction as far as this being probably a FACA
12 committee as to what sort of conversations work and
13 don't work and when.

14 I don't want those congressmen -- because we
15 do have political foes out there, people that may not
16 want to fund this thing, to use that to blow this thing
17 up. And I mention that in my survey, but I don't know
18 if a lot of folks are familiar with that and how that
19 could come up in our face. I'm sure, Lester, you are
20 familiar with that FACA.

21 I guess I'm just once again saying it for the
22 record in case I'm ever asked, did you meet with any
23 agencies to discuss a deal, I want to be able to say
24 no, and that we make sure that these conversations
25 don't -- that they are not prejudicial to the BDAC

1 charter.

2 MR. SNOW: Mary, do you want to start?

3 MS. SCHOONOVER: There are a couple of things.
4 One, your participation on BDAC should in no way affect
5 your ability to do your job or represent your
6 constituency or meet with whomever you wish to meet
7 with in order to further this effort.

8 Most of you were selected for BDAC because you
9 have some area of expertise or you represent a
10 constituency who has been involved in Delta issues and
11 will continue to be involved in Delta issues. So BDAC
12 is not intended to be the only way that this gets
13 played out. So you all are free to continue to
14 participate the way you always have.

15 The limitations are, both the state Open
16 Meeting law, which is the Bagley Keen Act (phonetic)
17 that applies to this body, and the Federal Advisory
18 Committee Act. We have the benefits of satisfying both
19 of them because you are jointly appointed by a state
20 and federal agency.

21 The concern from the state law is that
22 subcommittee meetings need to be publicly noticed, so
23 that's one area that we've been on work groups, for
24 example, particularly careful to assure that we meet
25 the open meeting requirements.

1 Federal Advisory Committee Act has some
2 slightly differing requirements, but basically neither
3 FACA nor the Bagley Keen Act prevent elected officials
4 or members of congress from meeting with any citizen,
5 any individual he or she chooses to do. They are
6 intended to assure that you not set up kind of an
7 entity that looks like an advisory committee and acts
8 like an advisory committee, but that is closed to
9 public participation.

10 So that's the intent and that's what we are
11 trying to do in this effort, is to make sure that there
12 aren't any kind of unofficial entities being chartered
13 or established that somehow are outside of the public
14 purview.

15 Does this mean that every conversation that
16 occurs with respect to the Delta will occur in the
17 public? No, individually you are in no way prevented
18 from doing so, meeting with your member of congress or
19 whomever is the appropriate person.

20 We will be setting up future meetings, I mean
21 depending on how regularly other meetings are going to
22 go on outside of the scope of this. If the CalFed
23 Bay-Delta program is responsible for them, then I'll
24 certainly be there to assure that we have satisfied
25 both the Advisory Committee Act as well as the Open

1 Meeting Act.

2 At this point, we have not identified any
3 problems, and I'm confident we can accomplish the tasks
4 we need to without running afoul of either of those
5 statutes because I would hate to see this process
6 brought to a screeching halt because we missed some
7 procedural hurdle. So that's truly my task.

8 MR. MEACHER: Okay, thanks.

9 VICE-CHAIR McPEAK: Thank you, Supervisor
10 Meacher. I said that, Meacher. You can screw up my
11 name, too.

12 Are there any other housekeeping items or
13 questions?

14 Okay. Then I do want to thank all of you for
15 hanging in there for two days, and Eze and Tom for
16 making it here for today. We are scheduled to next
17 meet on Wednesday, December 9th and Thursday,
18 December 10th, here in Sacramento.

19 Alex?

20 MR. HILDEBRAND: I want to say, I wasn't clear
21 on the answer I got yesterday about whether the
22 preferred alternative is going to be announced before
23 we meet again and discuss that alternative.

24 MR. SNOW: No. The preferred alternative will
25 not be announced. We will have -- I think what we are

1 working on now for the CalFed agencies is an attempt to
2 redraft the Phase 2 report to try to nail some of these
3 different issues. But the schedule is to announce a
4 draft preferred alternative after the next BDAC
5 meeting.

6 MR. HILDEBRAND: Will we discuss a
7 contemplated preferred alternative at the next meeting?

8 MR. SNOW: Absolutely.

9 VICE-CHAIR McPEAK: Is the contemplated
10 announcement on or around December 15th?

11 MR. SNOW: On or around December 15th.

12 VICE-CHAIR McPEAK: Any further comments,
13 questions?

14 Then, again, thank you all members of BDAC and
15 members of the audience for being with us. We are
16 hereby adjourned.

17 (The meeting adjourned at 12:35 p.m.)
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1 REPORTER'S CERTIFICATE

2
3 I certify that the foregoing proceedings
4 in the within-entitled cause were reported at the time
5 and place therein named; that said proceedings were
6 reported by me, a duly Certified Shorthand Reporter
7 of the State of California, and were thereafter
8 transcribed into typewriting.

9 I further certify that I am not of counsel or
10 attorney for either or any of the parties to said cause
11 of action, nor in any way interested in the outcome of
12 the cause named in said cause of action.

13 IN WITNESS WHEREOF, I have hereunto set my
14 hand this 5th day of November, 1998.

15
16
17 
18 THOMAS J. LANGE
19 Certified Shorthand Reporter
20 State of California
21 Certificate No. 4689
22
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