

## Ecosystem Restoration Program DRAFT Governance Options

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### 1. Existing governance structure-

#### Characteristics

Rely on least two existing agencies (one state and one federal) and possibly more to carry out ERP implementation.

Federal funding would continue to be allocated to a federal agency distribution and state funding to a state entity. However, new authorities could be provided through legislation to consolidate funding sources to some extent.

#### Advantages

- Timing. Easier and less complicated to implement than other options; can be in place before the Record or Decision (ROD) if desired
- Existing knowledge and relationships in place between and among agencies.
- Familiar structure.

#### Disadvantages

- Accountability. More difficult because responsibility would be shared among agencies.
- ERP focus. Would require existing agencies to incorporate a very large complex program; could reduce the attention and focus needed to effectively implement the program; no single agency with ERP as primary mission; could create conflicts with existing duties and programs.
- Coordination and consolidation. Less ability to coordinate and consolidate ecosystem restoration programs, funding, and priority setting; potential for conflict with existing agency duties, budget priorities, programs, etc.
- Responsibilities/authorities. Depending on which agency assumes some or all of the ERP implementation--certain authorities may be missing and require legislation.
- Stakeholder and Agency involvement. Stakeholders would have less ability to participate in the decision making process as a board member and would continue in their advisory role.

## 2. Federal Public Corporation or Trust

Related Models. National Fish and Wildlife Foundation, Public Broadcasting Corporation, Amtrak, Tennessee Valley Authority, Presidio Trust.

### Characteristics

- Federally chartered Public Corporation or a Federally chartered Trust. Both require federal legislation
- Staff are researching the trust model but it appears the advantages and disadvantages may be similar to a public corporation.

### Advantages

- Functions. Congress can draft a charter to incorporate primary functions and authorities.
- ERP focus. ERP would be the sole focus of the entity.
- Stakeholder and agency involvement. Can select representatives from state federal or private entities for its board.
- Pro-active, responsive. Can include in its charter--flexible procedures, efficient contracting processes, and other authorities to allow for additional efficiencies.
- Accountability. Charter can include reporting requirements to the overall CALFED entity, Congress and Legislature to provide adequate accountability.
- Coordination and consolidation of programs and funding. Can receive direct federal appropriations. To the extent Congress and federal agencies support transfer of other programs to the corporation, consolidation of programs can occur.

### Disadvantages

- Political feasibility. Potential political resistance to using a model that is not the traditional line agency model.
- Coordination and consolidation of funding and programs. Can not receive direct state appropriations. As a quasi-governmental entity, it may have less influence over other state and federal agencies.
- Timing. Longer period is needed to become established (possibly 2-4 years?). CALFED federal agencies have not shown an interest in promoting federal legislation to establish a new entity at this time. Lack of federal agency support may reduce likelihood of legislation passing in near future.

### Outstanding Questions

- Need to do research on federal trust. A trust model may have more flexible arrangement for receiving state appropriations.

### 3. Private Non Profit Organization (501c3)

Related Models. Many private nonprofit organizations have been formed but few with the program purpose and the scope of the CALFED ERP.

#### Characteristics

- A private nonprofit organization with federal, state and private representation. Requires federal legislation to authorize federal agency representatives to serve as voting members.

#### Advantages

- Functions. Bylaws can be drafted to incorporate many of the functions and authorities.
- ERP focus. ERP would be the sole focus of the entity.
- Stakeholder and agency involvement. Private and state representatives can be on the governing board.
- Pro-active, responsive. Can include in its bylaws--flexible procedures, efficient contracting processes and other authorities to allow for additional efficiencies.
- Attract private funding sources-- Because donors can make tax deductible donations, this option is more likely to attract private funding sources
- Accountability. Bylaws can include reporting requirements to the overall CALFED entity, Congress and Legislature to provide adequate accountability.
- Timing. Although requires federal legislation, the legislation may be adopted/passed sooner than other options that are requesting authorization of a new entity.

#### Disadvantages

- Coordination and consolidation of programs and funding. Can not receive direct state appropriations. May be able to receive direct federal appropriations if authorized by federal legislation. Other state and federal programs unlikely to be transferred to a non-governmental entity. As private entity, it would be limited in its ability to affect other state and federal agency actions.
- Stakeholder and agency involvement. Requires federal legislation for federal agency representatives to be on the governing board.
- Confidentiality. As a private entity, conversations between state and federal agencies and the nonprofit would be subject to Federal Advisory Council Act (FACA).

#### 4. New State /Federal Joint Government Entity

Related Models. Tahoe Regional Planning Agency.

##### Characteristics

- Congress and state legislature would need to pass legislation to establish a new state and federal joint entity. Federal, state and private representatives would be on the board. (See questions below)

##### Advantages

- Functions. Can draft broad scope for authorizing legislation to include all desired functions and principles.
- ERP focus. ERP would be the primary focus of new entity.
- Stakeholder and Agency Involvement. Can have state, federal and private representatives on a governing board. Appointment process for members is less flexible than with public corporation
- Pro-active, Responsive. Can acquire authorities from state and federal laws. Can assume state or federal authorities as appropriate.
- Coordination and consolidation. Can receive direct appropriations from state and federal sources. As a governmental entity, there is more ability to influence actions of the other state and federal agencies. Consolidation of programs more likely than other joint options.

##### Disadvantages

- Political feasibility. May be less feasible since there is no precise model for a joint state/federal entity with similar functions and responsibilities.
- Stakeholder and agency involvement. Appointments would most likely be made by public officials probably in the California legislature or Congress which limits the stakeholder involvement in the appointment process.
- Coordination/Consolidation. To the extent the state and federal agencies and Congress and Legislature support transfer of other programs to the new joint entity, consolidation of programs can occur.
- Timing. Longer period to become established (possibly 2-4 years?). Federal agencies have not shown an interest in promoting federal legislation to establish a new entity at this time. Lack of federal agency support may reduce likelihood of legislation passing in near future.

##### Outstanding Questions

- Legal questions need to be answered regarding whether there is an improper delegation of authority by the federal government in this model. Does a joint fed/state entity result in the federal government delegating its authority to an entity not under complete federal control? If existing federal programs are shifted to a joint entity would this be an improper delegation of authority? What existing programs will state and federal agencies support being consolidated into a new public corporation?

## 5. State Entity with Federal Involvement

Related Models. Santa Monica Mountains Conservancy

### Characteristics

- State legislation would be introduced to establish new conservancy within the Resources Agency. Federal legislation needed for federal agency representation on the board as voting member.

### Advantages

- Functions . Can perform the primary functions and responsibilities.
- ERP focus . ERP would be the primary focus.
- Stakeholder and agency involvement. Can have state and private voting members on governing board. Federal representation requires federal legislation.
- Pro-active /Responsive. Flexible procedures can be included in authorizing legislation, but it may still be less flexible than a private organization.
- Political feasibility. Because there are similar models of state conservancies, and less unknowns, there may be less resistance to a new conservancy.
- Timing. Although requires federal legislation, the legislation may be adopted/passed sooner than other options that are requesting authorization of a new federal entity.
- Coordination and consolidation. As a governmental entity, may have more influence over other state and federal agencies than other non-governmental options.

### Disadvantages

- Stakeholder and Agency Involvement. Would not be able to have voting federal representation without federal legislation. Appointments would most likely be made by public officials in the Legislature or Congress which limits the stakeholder involvement in the appointment process.
- Coordination and Consolidation. Cannot receive direct federal appropriations unless authorized by federal legislation. Consolidation of federal programs less likely.
- Pro-active/Responsive. May be less pro-active and flexible than private and public corporation models.