

# ASSEMBLY STATEMENT

## BAY-DELTA INSTITUTIONAL ISSUES ASSEMBLY

Coordinated by  
The California Assembly Process, and  
The Water Education Foundation

Sacramento, California  
July 24-26, 1996

## ASSEMBLY STATEMENT

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At the close of their discussion, the participants of this Assembly reviewed and adopted as a group the following statement. The statement represents general agreement. However, no one was asked to sign it. Furthermore, it should not be assumed that every participant subscribes to every recommendation.

#### I. INTRODUCTION

A. The Bay-Delta Institutional Issues Assembly was a stakeholder initiated process convened to complement the CALFED Bay-Delta Program. The purpose of the latter is to develop comprehensive long-term solutions to problems in the Bay-Delta Estuary related to ecosystem health, water supply reliability, vulnerability of Delta levees and channels to natural disasters, and water quality. The purpose of the Assembly was to provide a forum for discussing management issues associated with these solutions.

B. The Bay-Delta is a maze of tributaries, sloughs, and islands encompassing approximately 700 squares miles east of San Francisco. It lies at the confluence of California's Sacramento and San Joaquin Rivers. The Bay-Delta includes tens of thousands of acres of wetlands, supports 120 fish species, supplies a portion of the drinking water to 20 million people, and provides irrigation for 200 crops and 45 percent of the nation's fruits and vegetables.

C. Over the past 190 years, the health of the Bay-Delta has declined for a number of reasons. Water quality has been degraded. Water availability for various uses has decreased. Supplies of water have become less reliable. Fish and wildlife populations and habitat have deteriorated. And the Delta's levee system remains vulnerable to natural disasters and subsidence.

D. CALFED was formed as part of an agreement signed in 1994 by California Governor Pete Wilson and U.S. Secretary of Interior Bruce Babbitt. It is a consortium of five state agencies and five federal agencies with management and regulatory responsibilities in the Bay-Delta. The CALFED Bay-Delta Program was established in May 1995. Its objective is to work with all stakeholders including the public to develop a comprehensive and balanced solution addressing all four of the Bay-Delta's resource areas. As part of the CALFED process, solution principles have been adopted as an integral part of the program mission and are intended to be used collectively:

1. Reduce conflicts in the system;
2. Be equitable;
3. Be affordable;
4. Be durable;

5. Be implementable; and
6. Have no significant redirected impacts.

E. The Bay-Delta Institutional Issues Assembly was initiated by stakeholders to discuss how these new programs and facilities might best be planned, implemented, and managed. A concern among some stakeholders is that, after they make investments, the solution might not be carried out as promised. Because the solution will be put in place over a long period of time and will include a number of components, it needs a management framework that both assures implementation and yet remains flexible enough to adapt to new knowledge and unpredictable future circumstances. The management framework must also be able to hold stakeholders together to provide balanced implementation even though some may receive benefits ahead of others.

F. The Bay-Delta Institutional Issues Assembly met in Sacramento, California, on July 24-26, 1996. Approximately 110 individuals attended. The Assembly Planning Committee of 28 members represented a diversity of backgrounds and interests. Likewise, the Assembly participants reflect many interests, including agriculture, agribusiness, irrigation districts, business, construction, the Delta, environmentalists, federal, state and local government, policy organizations, civic groups, urban water agencies, groundwater management entities, and fish and wildlife. The questions developed by the Planning Committee and used at the Assembly addressed many of the participants' concerns about how the Bay-Delta solution will be implemented, goals for implementation, approaches for achieving these goals, funding, and political issues and barriers. These issues are important to address because the Assembly participants included a number of interests that have not been directly involved in the CALFED process to date and who may be important to its success. Following are the Assembly's conclusions and recommendations.

## II. CONCERNS AND GOALS

A. The Assembly participants are in widespread agreement that operational considerations must be addressed in the Bay-Delta solution. Regardless of what combination of physical and programmatic components CALFED selects, concerns exist that the system might not be implemented as planned, might fail because of unforeseen events, or might simply drift away from its initial goals. Those who are being asked to help develop and then buy into the Bay-Delta solution recognize that there are no absolute assurances, but they still want some way of knowing that their interests will be protected over time. However, they also recognize the need for a management framework that is flexible enough to take advantage of new knowledge and to adapt to changing conditions. Participants desire that any changes in goals and principles should be made through formal stakeholder involvement and be based on significant changes such as values, hydrological conditions, or other fundamentals.

B. In general, five elements are seen as essential to addressing these concerns about how the Bay-Delta solution will be operated:

1. Stakeholders must be in agreement on the starting point of the program. If some believe that they are owed something based on past commitments whereas others do not share this belief, conflict will inevitably arise.
2. The solution must be clearly understood, so no confusion can arise later about whether or not the course remains true.
3. Elements of the Bay-Delta solution must move forward according to the agreed upon plan, so that no one is left out as others benefit.
4. Stakeholders and the public must be involved in developing the management system and in ongoing decision-making.
5. The management system must operate flexibly within a fixed framework of principles. Goals and principles should remain steady to serve as a guide for flexible programs.

C. There are many concerns about how the Bay-Delta solution will be implemented. The Assembly participants were asked to review a list of potential concerns drafted by the Assembly Planning Committee. The participants revised the list and then added a number of items to it. The revised list of concerns is:

1. Decision-Making:

- a. Decision-making regarding the Delta, depending upon institutional arrangements, might come under the control of one particular region or interest.
- b. Costs might become too high.
- c. Costs might not be allocated fairly, nor in a manner commensurate with benefits.
- d. Those who receive benefits early might withdraw their support during later stages of implementation.
- e. Those who pay early might not receive later what they paid for.
- f. Water rights, source watersheds, and the public trust might not be adequately protected.
- g. The physical system to move water through or around the Delta in the Bay-Delta solution might drive the system's operation.
- h. The decision-making process might move too slowly. If this happens, support could wither.
- i. It may be difficult to build public confidence in the solution.
- j. It may be difficult to measure the success of the Bay-Delta solution. Scientific research may be subject to varying interpretations. Also, the aims of the solution are multifaceted.
- k. Regulatory agencies may limit ecosystem improvements and adaptive management.

2. Water supply concerns:

- a. Those who invest in the system might not receive water as expected.
- b. New species might be put on the endangered list, requiring the system to be shut down or modified in its operation to the detriment of certain stakeholders.
- c. Additional water may not become available or may not come as soon as expected.

- d. The preferred system may be approved, and then not receive permits.
  - e. The system might redirect too much water from areas of origin to areas of growing demand, gradually undermining the economic and environmental health of the former.
  - f. Reservoir operations for water supply may be inconsistent with operations for flood control.
  - g. Agriculture may become a source of supply for other uses.
3. Ecosystem concerns:
- a. If money and/or water become scarce, environmental protections might be weakened or ignored.
  - b. Decision-making regarding the Delta, regardless of institutional arrangements, might be controlled by a single interest or region at the expense of the environment.
  - c. Environmental projects might be delayed.
  - d. Actions that seem prudent now may have negative environmental impacts later.
  - e. Environmental actions are not taken until the damage is done.
  - f. Biological uncertainty may delay restoration decisions.
4. Water quality concerns:
- a. The system might divert so much water from the Delta watershed that the remaining Delta water quality might be too poor for irrigation and for municipal and industrial uses and for ecosystem restoration.
  - b. Promised drinking water quality for urban export agencies might not be delivered.
  - c. Issues such as source control, groundwater protection, conjunctive use, wastewater recycling and treatment, and agricultural drainage are critical and should not be left out of necessary long-term assurances.
  - d. Water quality issues relating to waste water recycling, ground water conjunctive use, and waste water treatment might be overlooked.
  - e. Changing regulations may cause stranded assets.
5. Natural disaster / levee maintenance concerns:
- a. Support for maintaining the levees might vanish.
  - b. Support for reclaiming flooded islands might vanish. Delta islands may not be reclaimed as promised.
  - c. A clear plan might not be developed for potential disasters
6. Water use efficiency concerns:
- a. Best Management Practices (BMPs) for urban conservation may not be implemented in some areas to the expected levels.
  - b. Efficient Water Management Practices (EWMPs) for agricultural conservation may not be implemented in some areas to the expected levels.
  - c. BMPs for recycling may not be implemented in some areas to the expected levels.

- d. Specific conservation measures might be mandated, and local agencies might lose control over implementation. Conversely, without specific mandates, local agencies may be unable to implement conservation measures because of lack of public support.
- e. Areas throughout the state may be told how much water to save, and yet not all areas are alike.
- f. If an area conserves or implements conjunctive use or recycling programs, the additional water might be used to reduce demand on Delta supplies rather than remain available for use locally by the conserving area.
- g. There is also concern that water saved by conservation might not be used to benefit the environment.
- h. Best management practices may be implemented, but the underlying patterns of land and water use might not be considered.
- i. The lack of growth management policy may adversely affect the success of the long-term Delta solution.
- j. Water for environmental purposes might not be used efficiently.

C. The Assembly participants also reviewed a list of goals for the management framework or set of assurances to govern the comprehensive Bay-Delta solution. The participants agreed that the management framework must be guided by the CALFED solution principles. The list, after revision and extension by the participants, is as follows:

- 1. Performance and benefits must be assured.
  - a. The programs must be operated as promised. This includes any commitment to water quantity, water quality, water supply reliability, agricultural drainage, groundwater protection, conjunctive use, water efficiencies, recycling, etc. There should be no "deal creep" beyond parameters set at the outset.
  - b. Facility and restoration permits must be issued.
  - c. Without consensus of stakeholders, changes in population patterns or political philosophy must not be allowed to cause a change in the principles.
  - d. The revenue stream for all improvements must be secure.
  - e. The environmental program must be implemented as planned. The environmental goals should remain fixed, but the implementation should be kept flexible.
  - f. Water rights of upstream communities and flood protection within the Delta should be maintained.
  - g. Secondary effects of water transfers or other policy changes should not cause significant damage to rural communities and other third parties.
  - h. During a long term drought, both environmental and economic needs should be safeguarded.
  - i. Negative impacts on water diverters as a result of changes in environmental regulations should be avoided or minimized.
  - k. Flexible performance measures must be established to judge performance. These must be specific enough so that assurances can be devised.

2. There should be management efficiency in all sectors
  - a. While minimizing impacts to third parties, existing institutional barriers to efficient water use should be removed, e.g., barriers to water reclamation, ground water banking, and water transfers.
  - b. Program managers should consider cost-benefit approaches. A full analysis is needed of public expenditures in the Bay-Delta system, so that limited financial resources can be directed where they will provide the greatest benefit.
  - c. Program managers must be able to respond efficiently to changes in biological knowledge, precipitation patterns, sea level, species mix, etc.
  - d. The system or program managers must be able to resolve and manage conflicting legislative mandates, individual resource agency objectives, and stakeholder conflicts.
  
3. The costs and benefits of Delta improvements must be spread equitably.
  - a. Mechanisms should be established to require those who utilize Bay-Delta resources to equitably participate in the protection or restoration of the environment providing those resources.
  - b. There should be clear and equitable linkages between payments and benefits.
  - c. All beneficiaries should contribute to the solution.
  - d. Some participants believe water should be kept affordable. Others believe water prices should reflect all societal costs and environmental externalities. These positions are not necessarily mutually exclusive.
  - e. Future risk and uncertainty should be equitably distributed.
  
4. Flexibility.
  - a. The management framework should be able to accommodate:
    - future changes in biological understandings about preferred ecosystem restoration approaches;
    - future demographic/economic/fiscal/ precipitation patterns;
    - future changes in understanding about seismic risks in the Delta;
    - disruptive events, such as long term drought, multiple levee failures, species introductions, and sea level rise; and
    - changing social preferences.
  - b. Managers must avoid costly and irreversible components that are of questionable effectiveness.
  - c. The system needs to provide opportunities for water transfers and conjunctive use.
  
5. Stakeholders including the public must be involved
  - a. Stakeholders must be part of the planning and implementation of the management system.
  - b. Tools must be developed to inform the public and build enduring support for the Bay-Delta solution.

### III. TOOLS AND ASSURANCES

A. Assembly participants identified a much larger range of tools and assurance mechanisms than had been anticipated by the Assembly Planning Committee. The committee had developed a list of 8 general approaches and 12 specific approaches. The assembly participants developed a list of an additional 29 tools. The implication is that developing a management framework may be much more complicated than initially anticipated.

B. Out of this long list of possible tools, four types of tools were most popular:

1. Specific assurances. Significant support exists for securing specific assurances in some form. They could be secured through state and federal legislation and public/public or public/private contracts. There was less support for state constitutional changes, and little support for new regulations, executive orders, or administrative agency orders.
2. An organizational strategy. Significant support exists for establishing some sort of centralized agency structure to be responsible for planning, financing, managing, implementing and improving regulatory coordination of all or part of the Bay-Delta solution. Some people see this entity as a successor to CALFED, which would be similar to the CALFED model. Others are less specific and just mentioned the need for this entity. The degree of centralization is subject to debate as is whether the entity should handle only environmental issues or have other responsibilities. There was little support for joint ownership of facilities by stakeholders, joint powers agreements, and other organizational approaches.
3. Multi-species conservation planning. As a general approach, this was very popular. This was viewed as a flexible tool that sets goals but allows program changes over time.
4. Incentive and disincentive approaches. Assembly participants offered cautious support for water markets, financial and other incentives for desired behavior, and an environmental conservancy with guaranteed funding. There is some desire that the latter have legal authority and associated accountability for managing Bay-Delta restoration programs.

C. Some of the other tools generated and discussed by the Assembly participants included: voter referenda; changes in California water law; restructuring water supply contracts; multi-party negotiations with legislative, local community and other public input; storage credits; a Bay-Delta Bill of Rights; a water rights settlement agreement; pricing policies; extraction fees; a more reasonable regulatory framework; and a means by which predetermined parts of the agreement could be revisited in a timely manner. All of these and other suggestions had some support and should not be ruled out. In general, participants believe that more thought should be given to the assurances issue, and that it is too early to embrace a short list of tools.

D. In addition to evaluating various tools in general, the Assembly participants discussed which tools might be most effective in achieving some of the specific goals they have for the Bay-Delta management system.

1. Assuring performance. Establish long term funding, continue a consensus building process to make adaptive decisions, establish contracts with clear goals, establish a baseline and maintain regulatory standards, and establish environmental right to flows.
2. Dealing with water supply concerns. Establish export limits consistent with hydrologic and ecosystem conditions, conduct multi-species conservation planning, use water transfers, use a coordinated agency and stakeholder process for Delta project operating decisions, and develop contract language stipulating that if there is no water then there is no payment.
3. Maintaining or enhancing water quality. Develop multi-party water quality contracts and funding, create and fund programs to purchase peat Delta islands from willing sellers, establish penalties for contractual breaches, and require problems to be solved in an expeditious manner.
4. Protecting upstream water rights. Consider legislative changes and contracts between public agencies and/or private entities to protect upstream water rights.
5. Keeping a deal a deal. Assembly participants called for measures to avoid or minimize impacts of compliance with current or future Endangered Species Act requirements.

#### IV. APPROACHES

A. The Assembly Participants were asked to consider some different approaches to specific issues. These included ecosystem restoration and enhancement programs, water markets, an environmental trustee, and a two-tiered system of assurances.

B. Ecosystem restoration or enhancement programs. The centralized model for implementing restoration programs may offer some advantages. It provides a common vision, better phased implementation, better planning and research, clear accountability to users, and economies of scale. However, a single agency approach has a number of potential weaknesses. Budgets may be siphoned from other agencies, other agencies may begin to shirk responsibility, and the centralized organization may prove unable to carry out all of its many functions. Consequently, many Assembly participants favor a hybrid model like CALFED, where a centralized planning and research agency is coupled with decentralized implementation and coordination of funding. Another hybrid model would be establishment of an entity with a broadly based board of directors to implement the Bay-Delta solution and perhaps take on further responsibilities. Decentralized implementation would require a larger number of assurances. Also, responsibility for monitoring should be separated from management of operations to avoid a conflict of interests.

C. Water markets. One of the central issues in the Bay-Delta will be how to meet competing needs for available water supplies, especially during droughts. Water markets should be part of the CALFED management system. Participants believe that some careful increases in the use of water markets and market tools could be positive, but only if regulations are in place to ensure:

1. Clear limits on reallocations.
2. Willing buyers and sellers.

3. Recognition and protection of water rights.
4. Clear and objective criteria, definitions, and a process for approval of transfers.
5. Mitigation of significant third party impacts.

D. An environmental trustee. One concern about water markets is that environmental considerations might be excluded from the market or other processes. A possible solution to this weakness would be to establish an environmental trustee and allow it to enter the market for water to meet compliance standards, or to acquire and manage other blocks of water or land. Some Assembly participants are attracted to the idea of an environmental trustee, but they are unsure about what limitations it should have and where it should be housed. One view is that it might be placed in the centralized planning and coordination agency discussed above. Another view is that it should be a separate, chartered corporation. Many other options are also possible, such as a separate corporation with appointments to the board of directors being made by stakeholder organizations.

E. A two-tiered assurance system. Another challenge for the Bay-Delta solution will be maintaining commitment from all stakeholders as the solution is implemented, particularly if, as is likely, some stakeholders receive benefits earlier than others. One approach suggested to help lock in the agreement among stakeholders would be a two-tiered system of assurances. The first tier would be a multi-party contract among state and federal operation and regulatory agencies with at least one private party (for example, an environmental organization) to insulate the contract against state legislative tampering. The second tier would be federal legislation incorporating the specific provisions of the multi-party contract. The Assembly participants are divided over this idea. Some believe that it is the only viable way to provide the assurances that stakeholders want on certain issues. Others are concerned that it might not be possible to achieve agreement on the contract and associated legislation, and that it might invite too much federal involvement in state and local decision-making.

## V. IMPLEMENTATION

A. Physical and programmatic initiatives in the Delta will require additional funds. Assembly participants raised several possibilities for securing these revenues. These options are not mutually exclusive.

1. Legislative approach. One strategy would be to seek support for new revenues from the State Legislature. Affected parties could undertake a lobbying effort with state politicians. This process should begin with a consensus-based, non-partisan approach with extensive efforts to keep legislators informed and briefed. A good example is Proposition 204.
2. Electoral approach. Many participants believe that a strong, broadly-based constituency must emerge if a continued flow of funds is to be assured. They recommend launching a campaign to gain general public acceptance of the Bay Delta solution. The campaign should be based on the system's benefit to all Californians and demonstrate how specific payments will be associated with specific benefits. Consensus among stakeholders is critical to electoral success.

3. Leveraging approach. Another option would be to use various revenue sources to support one another. For example, federal funds could be used to match Proposition 204 funds.

B. If a new agency or successor to CALFED is created, control of funds should lie primarily in its hands with stakeholder involvement. The use of these additional funds should be guided by a set of principles. This entity should create a management strategy for Proposition 204 to protect the funding source.

C. A variety of funding sources was suggested. It was generally agreed that there should be a self-renewing stream of revenues with a blending of various revenue sources.

Funding sources that should be considered include:

1. Water revenue bonds (water agencies would meet contract obligations through revenue bonds);
2. Federal funds;
3. Water sales tax, a value added tax on the sale of water;
4. General obligation bonds;
5. Sales tax;
6. General fund allocation by legislature;
7. License, navigation, and recreation fees;
8. Local ground water pumping fees;
9. Statewide water utility tax;
10. State authorized large bond issue; and
11. User fee for water extraction in Bay-Delta watershed.

E. Potential barriers to developing a satisfactory management structure for the Bay-Delta solution include:

1. Territorial and/or turf wars;
2. Public concerns about accountability and progress;
3. Lack of knowledge and participation in water issues by the business community;
4. Existing agency independence;
5. Lack of trust;
6. Narrow focus of regulatory agencies;
7. Public apathy in a situation that requires a broad base of public support;
8. State and federal agency jurisdictional differences and overlaps; and
9. Historically adversarial relationships among interests regarding water management.

F. An established political strategy for overcoming many of these inter-agency political barriers exists in the CALFED model. Another model is the California Transportation Commission, an example of an entity with representation from the various regions and interests. Assembly participants believe it is vital to maintain a vibrant consensus building process to strengthen existing and garner additional support for the Bay-Delta solution.

G. This Assembly arrived at many points of agreement on how the Bay-Delta solution should be managed. They concluded that it is absolutely essential to successful

implementation for to public understand the CALFED solution and its basic implementation effort. Participants recommend flexibility within clearly defined limits. They favor a management system that provides for centralized planning, research, funding, and coordination, although there is disagreement as to whether implementation should be centralized or decentralized. They are open to the cautious expansion of regulated water markets and to the possible introduction of an environmental trustee.

H. Nevertheless, many questions remain. The Assembly participants want to move forward at a measured pace. They recommend:

1. Research on approaches and institutions used in other states.
2. Further consideration of the role of private water companies, wastewater utilities, flood control districts, and land use agencies in the solution.
3. Submission of the Assembly Statement to CALFED and to the BDAC Assurances Workgroup.
4. Reconvening this Assembly in the future as needed as an extension or supplement to the CALFED planning process.