

Summary of Ideas
Generated by The Three Way Process
On The
Form of Environmental Guarantees
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BACKGROUND

The term "Three Way Process" refers to a set of meetings between urban, agricultural and environmental water policy leaders during 1991 and 1992. The purpose of the Three Way Process was to develop, by consensus, a solution to the Bay-Delta and Central Valley water conflicts which could be supported by all the stakeholders. The Three Way Process generated many ideas about the process and substance of Bay-Delta planning that have now become widely accepted. For example, the Bay-Delta Accord and the CALFED Program both follow the rough blueprint developed during the Three Way Process.

The stakeholders in the Three Way Process agreed that the environmental community and northern California could never support a solution involving Delta facilities without strong guarantees covering: (1) immediate environmental improvements (especially in flow and export conditions); (2) the future operations of the state and federal projects and (2) the division of the benefits from future water development as between the environment and water users.

The Three Way Process created a committee to examine the form that such guarantees might take. This Guarantees Committee developed a proposal which was widely supported by the Three Way stakeholders. The basic outlines of this proposal are given in the next section. Please note that the work of the Guarantees Committee was never formally endorsed by the Three Way Participants. It would not be correct to assume that any of the Three Way stakeholders support these concepts in their entirety.

THE THREE WAY GUARANTEES

The Three Way Guarantees relied upon (1) new and improved environmental standards; (2) institutional innovations to assure that ecosystem considerations would be integrated into operations and planning on a routine basis; and (3) legislative (state and federal) and contractual assurances that the standards would be met and the institutional innovations preserved over time. The centerpiece was an environmental water authority (EWA) which would acquire the environmental water and interact with other agencies over operations and planning. The actual guarantees that the system would not break down over time would result from (1) state and federal legislation creating the EWA; (2) the governance of the EWA (northern dominated); and (3) a series of contracts between the EWA, the state and federal governments, and private parties. By creating a situation in which the promised environmental benefits could be enforced in the courts, even if the original state and federal legislation were modified, the likelihood of failure was greatly reduced.

More detail is given below.

1. Creation of a new environmental water authority (EWA). The EWA was to plan, manage, exercise operational control over and hold rights to water for the purpose of protecting and restoring the environmental resources of the Bay-Delta and Central Valley systems. The EWA would be a technically competent, quasi-governmental corporation, created by state and federal statute and governed by a board of directors drawn from the public and private sectors, and dominated by Northern California and environmental interests.

Discussion. The dominance of the Board of Directors by northern California interests was designed to reassure environmental interests that the EWA could not be "captured" by export interests. Since the EWA would be quasi-governmental, its funding would be insulated from the legislature.

2. Contractual arrangements regarding operational control of water for the environment. The EWA was to enter into a contract with the state and federal governments and private parties which included the following elements:
 - a. Minimum standards for Bay-Delta water quality and flows. These standards would be set at levels which provided significant improvements over then existing conditions. A number of options were presented on how this water could be generated.
 - b. Limits on water exports, calibrated by month and year type.
 - c. Terms governing the sharing of operational control over storage and releases as between the EWA and the state and federal projects.
 - d. Terms governing the manner in which the benefits of future water facilities, water transfer arrangements, and other changes in the water management system would be shared between the water projects and the EWA.

The EWA, as envisioned, would not have affected the environmental liabilities of other water users. Thus, water users would still have the ultimate responsibility for meeting environmental requirements, should EWA efforts prove inadequate.

Discussion. The presence of private parties (e.g., environmental groups) in these contracts was designed to provide assurances stronger than regulations, legislation, or even a state constitutional amendment that the projects would be operated as promised. If a signatory violated the contracts, the private parties could enforce them in court. The contracts could not be modified by Congress or the legislature. The proposed contracts go much deeper than simply guaranteeing specified patterns of operation, however. They would integrate the EWA into operations and planning on a routine basis. The Delta would no longer be operated by the state and federal projects alone, but by the projects and the EWA based upon agreed rules. The discretion granted to the Operations Group in SWRCB decision 95-6 is a similar attempt to integrate environmental considerations into the operations of the projects. Similarly, the environment would be integrated into future planning, such that improvements in water supplies for users would be linked to increasing supplies for the environment. Finally, note that the

original Three Way guarantees assigned all responsibility for meeting future standards to the water users.

3. Incremental Environmental Water/ Funding. The original proposal called for significant improvements in environmental flow conditions before any facilities could be built in the Delta (interim improvements). That water was to be owned or controlled by the EWA. In order to secure that water (whether through purchase, conjunctive use etc.), the EWA would be endowed with a secure funding base. As already mentioned, the EWA would also be granted a share of all future water development to allow for continued improvements.

Discussion. The December 1994 Accord and the 1995 SWRCB WQCP have arguably established the interim improvements called for in the Three Way Process. However, the task of acquiring that water on a long-term basis remains.