

**BDAC Assurances Workshop  
Meeting Summary  
May 15, 1997**

The BDAC Assurances Workshop was held in Sacramento on May 15, 1997, from 1:00-5:00 p.m. Approximately 40 stakeholder representatives and agency staff attended.

The purpose of the workshop was to brief participants on the status of the implementation strategy for the CALFED Bay-Delta Program, to provide facilitated discussion concerning assurances issues and concerns, and to critique the preliminary assurance alternatives designed for the case study.

**I. Plenary Session.**

Lester A. Snow, Executive Director of the CALFED Bay-Delta Program, opened the workshop with a brief overview of the need for assurances and the status of the alternatives. Lester reminded the participants that it will be critical to maintain equity and balance in the implementation of the Program over the multi-year implementation period. Through the Implementation Strategy, we have to provide stakeholders and agencies with assurances that the Program components and elements will be implemented over time and we must have a process in place in the event of unforeseen contingencies that prevent the implementation of a key component of the Program.

Assurance issues arise in four different contexts or areas: phased implementation of the Program (assurances over time); the implementation entity (assurances regarding institutional issues); component implementation; and stakeholder concerns.

There is some difficulty in talking about assurances without knowing what the preferred alternative for the long-term Bay-Delta Program will be; however, we do have draft alternative descriptions of the four common components and seventeen variations of storage and conveyance improvements with assumptions about operating conditions.

Lester provided a short overview of Phase 2 and the process by which the current list of alternatives will be narrowed down to a set of 6 to 8 alternatives for inclusion in the Draft EIR/EIS, tentatively scheduled for public release in November 1997. Factors to be considered in the narrowing process are preliminary impact analysis, pre-feasibility analysis, modeling studies, implementation issues, Section 404 permit issues, and advice from the public.

At the time the Draft EIR/EIS is released, there will be a draft report which lays out a preliminary or proposed package of assurances, as part of the draft implementation strategy.

Finally, Lester noted that it is important to start thinking about assurances with respect to the fully integrated Program, rather than looking at individual components of the Program. We need to consider how the Program works as a whole and how we can assure the implementation of the Program as a whole.

Mary Scoonover (CALFED Program staff) then described the work of the Assurances Workgroup and the process by which it has developed a list of stakeholder concerns and a set of assurances issues and needs. The Work Group has also looked at the tools which are available to provide assurances and has considered a set of guidelines by which an assurance package may be tested. The Workgroup has also adopted a hypothetical case study to provide a more realistic context for the discussion of assurances. The case study is similar to Alternative Configuration 3(b). Mary noted that these documents are contained in the Workshop packet.

Mary then explained the composition of the five assurance alternatives presented in the workshop packet. Each alternative consists of a management structure and a set of tools, primarily legislation, regulations and various types of agreements.

In Alternative 1, the existing agencies will carry out the long-term Program and implementation will be assured by a set of voluntary agreements and contracts.

In Alternative 2, a joint authority of CALFED agencies will be formed to carry out the ecosystem restoration component, and the primary assurance tools are agreements, contracts and bond or financing conditions.

In Alternative 3, two joint authorities of CALFED agencies will be formed, one to carry out the ecosystem restoration component and the second to operate the isolated facility constructed as part of the CALFED Program. Assurances will be provided by state and federal legislation, agreements and contracts.

In Alternative 4, a new entity will be formed to carry out the ecosystem restoration component. Assurances will be provided by legislation, agreements and contracts, but the primary assurance is the ability of the new entity to be an active participant in the water transfer market.

In Alternative 5, a new entity is formed to carry out the ecosystem restoration component and to operate existing and new Delta export facilities. Assurances are provided by legislation, agreements and contracts, as well as the physical limits of the new facilities.

## **II. Breakout Group Sessions.**

After the review of the five assurance alternatives in the plenary session, the workshop participants moved into three breakout groups for a more detailed discussion and critique of the alternatives. Three general and three specific questions were provided to the workshop participants as a guide to discussion. A summary of the discussion follows.

Due to the differences between the alternatives, each session approached the questions differently. However, several themes and issues were common to all sessions, including:

- questions on how the Program will be funded;
- questions about how expenditures will be managed;
- the need to change the current management structure;
- the need for more public oversight and non-CALFED agency stakeholder involvement in the decision-making process;
- content of HCPs and other agreements that will help assure water supply reliability and implementation of ecosystem restoration adaptive management; and
- the need to further develop and define the details of the CALFED solution.

**A. Key Items from Discussion on Alternatives 2 and 4**

This group was facilitated by Eugenia Laychak; Mike Heaton was the resource person; Ray McDowell was the note taker.

1. Financing

a. Participants had questions about the application of water user diversion fees. For example, do they apply only to "new water" (water produced by new facilities) or do they also apply to "old water"? Do they apply only to CVP/SWP water supplies, only to exports, or do they apply to all diversions from rivers connected to the Delta?

b. Participants asked about the use of bond instruments. Would restrictive language in bond instruments impede the ability to adaptively manage? Participants thought this would not necessarily occur, and that bonds could be structured to allow adaptive management flexibility. There are also mechanisms such as operational conditions and engineering certificates.

2. Adaptive Management

a. We will need a definition of adaptive management.

b. Assuming we know what adaptive management means, can we assure it through agreements, bonds and institutional arrangements?

c. One participant suggested that if the ecosystem manager has sufficient resources, adaptive management is the process by which it decides how to spend money on ecosystem restoration projects.

### 3. Habitat Conservation Plans

- a. There were many questions about the scope and utility of an HCP. An HCP needs to do three things: assure implementation of ecosystem restoration; assure water supply reliability; provide linkage between adaptive management for ecosystem restoration and indemnity/insurance for water users.
- b. We have little experience in using an HCP to protect aquatic resources (most HCP's are land based). How do the existing ESA standards (Biological Opinions) tie in to an HCP?
- c. Can an HCP really deliver the assurances the water users need for reliability? If not, what other tools do we have? (There were no other suggestions.)

### 4. Assurance Alternatives

- a. Regarding Alternative 4, some participants liked the endowment concept (giving the ecosystem manager a fund of money and water). Others liked the idea of a new entity and the idea that it can participate in the market for land and water and other assets. But a new entity, like any other, will be susceptible to political "corruption."
- b. As to any alternative, Northern California will need assurances through legislation and contracts and possible bond instrument conditions (for protection of water rights, area of origin priorities and from transfers).
- c. Regarding water user assurances for reliability, a conceptual proposal for tiered indemnity was offered: If water users (1) pay money for facilities, and (2) pay money for ecosystem restoration, and (3) support a new ecosystem restoration management entity with an agreed upon set of resources: Then, water users get (1) a first level of protection from future regulatory changes (no more water, no more money) through an HCP, (2) a second level of protection from additional water requirements through application of the "no net loss" rule (if additional water is needed for ecosystem, water users get make up water later in the year), (3) a third level of protection through compensation for additional water required for ecosystem (ecosystem manager must buy the water or the pumping reduction needed), and (4) only at the fourth level, in well defined circumstances, do water users lose water without make up or compensation (regulatory taking is OK).

5. Management Alternatives

a. The participants were asked if the alternatives provide for a reasonable array of management approaches? One participant responded that there are no objective standards by which to determine the best management approach, so it will come down to a political deal - how strongly do environmental interests and water user interests want a new entity; how much resistance will existing agencies put up?

b. There was some discussion about the idea of one centralized agency for the operation of all existing and new facilities and management of the ecosystem restoration program. The disadvantage of this approach is the loss of "diversity" and the loss of focus on environmental restoration.

6. Program Concerns

a. Regarding the levee component, one participant thought there should be a priority system for levee protection and maintenance; the program should put money into levees of highest significance for water supply and water quality.

7. Assurance Concerns

a. One participant asked, that in the light of reoccurring natural disasters in California, is there any assurance will allow the Program to respond in the event of catastrophe/disaster?

b. Several participants agreed that there will be a need for more public oversight of the Program as a way of assuring accountability; we will need a process for public assessment of how well the program is meeting goals and objectives.

c. Recovery mechanisms: We do not have tools for this yet.

d. One participant again stated the need to reinforce protection for water rights and area of origin priorities.

e. One participant suggested that it may not be sufficient to assure the implementation process; some may want assurances of results or outcomes.

**B. Key Items from Discussion of Alternatives 2 and 3**

Martha Turner was the facilitator; Dennis O'Connor was the resource person; Michelle Wong was the note taker.

1. Stakeholder Involvement

- a. The strongest theme was that stakeholders must be active participants in the decision making process of Program implementation.
- b. The Program will need a good conflict resolution process which involves stakeholders, not just agencies.
- c. We need to move away from tools and institutions which have not worked in the past and involve stakeholders in decision making processes.

2. Tools

- a. Contracts are not good assurance tools, since the only recourse for noncompliance is a lawsuit. However, contracts do provide some level of insulation from later governmental actions.
- b. How are ecosystem restoration and other environmental benefits from CALFED Program protected from non-participants in CALFED process? There are no tools to protect environmental water from those who choose not to participate in the Program.

3. Financing

- a. One participant suggested that there should be an identification and quantification of benefits in order to determine who should pay Program costs.
- b. The term "user fee" needs to be defined more clearly.
- c. There should be more explanation of the process by which the user fees will be determined and set.

4. Groundwater Assurances

- a. CALFED should clarify how the preferred alternative for the Program will affect groundwater before developing an assurance for groundwater protection.

- b. There needs to be a clear definition of the linkage between groundwater and surface water and water user diversion fees.
- c. One participant suggested that the tools for assurances of groundwater protection are a groundwater basin Joint Powers Authority, AB 3030 plans, and groundwater adjudications.

5. Assurance Concerns

- a. The water system is over committed now; we cannot provide assurances about water supply reliability without addressing this issue. One participant suggested that demand management is an appropriate assurance tools to deal with this problem.
- b. One participant believed that conditioning transfers to adoption of water efficiency BMPs is not an adequate assurance.
- c. There were questions about how to ensure that ecosystem restoration funds will be spent in a cost-effective manner.

6. Other Issues

- a. Environmental interests are concerned about HCPs, "no surprises," and the Endangered Species Act. More detail is needed. Written comments will be provided.
- b. There is concern about the conflict between the need for flexibility in adaptive management and certainty in water supply reliability.
- c. Program documents need more precision in language and specifics in terminology.

7. Guidelines

- a. One participant suggested that regarding Guidelines No. 2, there should be a risk and species population assessment.

**C. Key Items from Discussion of Alternatives 1 and 5**

Mary Ann Dickenson was the facilitator; Cliff Schulz was the resource person; Judy Heath was the note taker.

1. Comments on Alternative 1

- a. Alternative 1 is easy to implement and takes advantage of existing expertise; but has no stakeholder involvement
- b. In Alternative 1, how would CALFED allocate ecosystem funds if they are appropriated to agencies directly?
- c. Generally, Alternative 1 is weak.

2. Comments on Alternative 5

- a. There will be "extreme institutional resistance" to Alternative 5.
- b. Is Alternative 5 doable and practical? How do you split operations? What is the baseline water supply (versus what is new)? Do you need a three-way COA?
- c. Alternative 5 may be too rigid; it lacks flexibility.

3. Comments on Alternatives 1 and 5

- a. With respect to both alternatives, agreements are more important than institutions. In any assurance packages, we will need agreements such as:
  - HCP
  - prelisting agreements
  - mitigation banks
  - adaptive management plan
  - MOUs and interagency agreements
- b. Regarding Stakeholder involvement, Alternative 5 is better; Alternative 1 is not good (comments reflect mistrust of existing institutions)
- c. Both alternatives need some consideration of how local agencies can participate more directly in the solution.
- d. Alternative 5 has too much federal presence, but is still better than Alternative 1 in terms of stakeholder involvement.

**III. Closing Plenary Session**

After the breakout discussion sessions, the participants reconvened for brief concluding remarks by Hap Dunning and Mary Scoonover. Comments from the workshop will be reviewed by the Workgroup and incorporated into the next draft of the discussion paper on assurance alternatives and will be considered in the development of the implementation strategy.