

**BAY-DELTA ADVISORY COUNCIL'S
ASSURANCES WORKGROUP**

PRELIMINARY ASSURANCE PROPOSALS

The CALFED Bay Delta Program is developing a long-term comprehensive plan to restore the ecological health and improve water management for beneficial uses of the Bay-Delta system. Once the CALFED agencies select a long-term solution, they will need to assure that the solution will be implemented and operated as agreed. In addition, the CALFED Agencies will design a process to address a situation where a key component of the solution cannot be implemented.

This paper describes a case study and offers two alternatives for providing assurances. These alternatives are not recommendations. They merely illustrate how different combinations of tools can be used to assure the implementation of the case study. These illustrations have been prepared in response to discussion among members of the Bay Delta Advisory Council (BDAC) Assurances Workgroup and in response to suggestions that more detailed examples of an assurance package would help focus discussions in developing assurances.

The case study is based on Program Alternative 3(b), a dual conveyance option plus new storage. This alternative was selected because it includes new storage and conveyance facilities, which present complex assurance issues. The use of this alternative as a case study does not represent any decision or recommendation by the CALFED agencies concerning selection of a preferred alternative or the outcome of the environmental review process.

The first draft assurances proposal consists of a principles agreement among CALFED agencies and key stakeholders and a new management entity for implementing the Ecosystem Restoration Program Plan (ERPP). The second assurance proposal is based on an implementation plan, and a more formalized relationship among CALFED agencies. Both assurance proposals also include additional interagency agreements, agreements between agencies and stakeholders, new rules and regulations, state and federal legislation, and physical limits on the new isolated conveyance facility.

The tools selected are intended to assure that benefits to the ecosystem program will not come at the expense of water supply, and that improvements in water supply reliability will be accomplished in ways that complement and enhance ecosystem restoration efforts. Both proposals are designed to assure that actions in each resource area will proceed.

Although these assurance proposals are hypothetical, the actual assurance package developed over the course of the next several months will likely contain a number of these elements.

This paper is organized as follows: Part I describes the case study - a hypothetical preferred alternative based on the CALFED Bay-Delta Programs Alternative 3(b); Part II explains the first draft assurance proposal for the case study (the Principles Agreement and a new ecosystem

management entity); Part III explains the second draft assurances proposal (an implementation plan and more formalized CALFED); and Part IV proposes a sequence for implementation.

I. CASE STUDY

The case study is a summary of the actions and programs that might be included in a CALFED Bay-Delta Program alternative. The case study is similar to Alternative 3.b and has been developed over the course of several months of discussions within the Assurances Workgroup. The purpose of the case study is to provide a basis for analysis of assurance alternatives. The draft assurances proposals in Section II are based upon this case study.

Summary of Case Study

The case study includes:

Ecosystem Restoration: (1) a major habitat restoration program in and above the Delta (including specific actions and an adaptive management process); (2) changes in flow and diversion timing patterns (made possible by new storage, efficiency improvements, water purchases, and the construction of multiple export intakes to benefit fisheries); (3) reductions in stressors (e.g., screens for diversions); (4) increased flexibility in the location of diversions (made possible through the construction of multiple export intakes); and (5) improvements in water quality.

Water Supply Reliability: (1) new storage elements managed partly for increased out-of-stream supply; (2) construction of a dual Delta transfer facility to allow more efficient and more frequent movement of water across the Delta; and (3) water efficiency and water transfer elements.

Water Quality: (1) specific actions and programs designed to improve water quality in the tributaries of the Delta; and (2) the construction of a dual transfer facility to improve export water quality.

Levee System Integrity: (1) programs to protect and upgrade existing levees; and (2) a program to upgrade emergency response to levee failure.

Detailed Case Study

1. **Ecosystem Restoration** (Represents all restoration activity, including Central Valley Project Improvement Act (CVPIA) actions incorporated into the CALFED Program)
 - a. Increase land habitat — purchase, easements, or voluntary cooperation with restoration.
 - i. 75,000 to 120,000 acres of freshwater and brackish tidal marsh and shallow water habitat.

- ii. 100 to 200 miles of riparian woodland and shaded riverine habitat.
 - iii. 40,000 to 100,000 tons of gravel replacement annually to enhance spawning.
 - iv. Floodways on the San Joaquin and Cosumnes Rivers.
 - v. Convert leveled lands to tidal marsh/ floodplain.
 - vi. Meander belt on the Sacramento River — acquire 8-12,000 acres.
 - vii. Restore and manage an additional 20,000 to 30,000 acres of seasonal wetland habitat throughout all Delta ecological units.
 - viii. Actively protect and improve existing channel islands in the Delta.
 - ix. Increase habitat associated with levees.
- b. Modify flow patterns — 300,000 to 500,000 acre-feet of increased critical-period flows to restore physical process and ecological functions. Includes:
- i. 10 day March pulse from 20 to 40 kcfs on the Sacramento River.
 - ii. 10 day April-May pulse from 20 kcfs to 40 kcfs on the San Joaquin River.
 - iii. Fall or early winter Delta outflow pulse.
 - iv. Late winter or early spring flow event below Keswick at 5 - 20 kcfs.
 - v. Base Sacramento flows in the fall at 6 - 8 kcfs.
 - vi. 13 kcfs in May on the Sacramento below Sacramento in all but critical years.
 - vii. Positive average net QWEST from February through April
 - viii. 2.4 to 5.2 kcfs minimum Vernalis flow from April 1 to May 15, if Delta smelt are present (in addition to existing April-May pulse).
 - ix. Change Delta channel hydraulics with levee setbacks or channel constrictions.
 - x. Close Delta Cross Channel when opportunities allow.
 - xi. Operate a fully functional barrier at the head of Old River.
 - xii. Numerous flow pattern increases on tributary rivers and creeks.
- c. Reduce stressors
- i. New or improved fish screens at selected diversions (approximately half of existing Bay-Delta system diversions).
 - ii. New fish ladders or removal of barriers that limit access to habitat.
 - iii. Management of water quality that degrades ecosystem health.
 - (1) Reduce inputs of herbicides, pesticides, fumigants, etc. by modifying land management practices and chemical dependency on 50,000 acres of urban and agricultural lands that drain untreated into Delta channels and sloughs.
 - (2) Reduce hydrocarbons, etc., from oil refinery releases.
 - (3) Control contaminant input to the Sacramento River by constructing and operating storm water treatment facilities and implementing industrial BMP for storm water and erosion control.
 - (4) Improve temperature patterns in and above the Delta.
- d. Create a mechanism designed to meet long-term goals and objectives through restoration activities, while allowing discretion as to the means -- adaptive management.
- i. Establish relatively permanent goals and objectives.
 - ii. Establish indicators and initial targets.

- iii. Monitor implementation using indicators.
 - iv. Evaluate monitoring results.
 - v. Implement in phases. Based upon monitoring results, refine targets and implementation methods.
- e. Specific programs
- i. Cooperative program to reduce upstream diversions during periods when juvenile salmon are present in significant numbers.
 - ii. Management of undesirable introduced species that interfere with native or economically important species.
 - (1) Invasive plant eradication programs.
 - (2) Fund inspection staff for ballast regulation.
 - iii. Develop cooperative program to remedy heavy metal pollution from Iron Mountain Mine to meet Basin Plan standards and implement reliable and proven remedies that ensure continued treatment and control of heavy metal waste prior to discharge to the Sacramento River.
 - iv. Boat wake erosion. Establish and enforce no wake zones and no motorized boating zones in various sensitive areas.
 - v. Reduce illegal harvest of anadromous fish and waterfowl by funding for enforcement agencies and providing rewards for arrest and conviction of poachers.
 - vi. Manage legal harvest by shifting some harvest to hatchery stocks or reducing harvest of wild stocks until natural populations recover.
 - vii. Mark all hatchery salmon and steelhead to allow selective harvest.
 - viii. Encourage regulatory agencies to change fishing regulations to further reduce legal harvest (at least in the short term).
 - ix. Augment salmon production with hatchery smolts during short term rebuilding phase, if other measures are inadequate to provide recovery of populations.
 - x. Implement upstream land use plans that:
 - (1) establish, restore and maintain riparian habitats and create buffer zones between the creek and developments or other land use such as livestock grazing.
 - (2) reduce upstream siltation.
 - (3) improve fencing, grazing, grading, and road building practices.
2. **Water Quality.** Includes requirements and programs from other agencies, e.g., the Regional Water Quality Control Board.
- a. Reduce toxic effects of cadmium, copper, and zinc loadings to the Delta and its tributaries by source control or treatment of mine drainage at inactive and abandoned mine sites.
 - b. Reduce toxic effects of mercury loadings to the Delta and its tributaries by source control and/or treatment of mine drainage at inactive and abandoned mine sites.

- c. Reduce toxic effects of copper, zinc and cadmium loadings to the Delta and its tributaries from urban and industrial runoff through enforcement of existing source control regulations and incentives.
- d. Reduce toxicity from the pesticides chlorpyrifos and diazinon in the Delta and tributaries through source control of urban and industrial runoff.
- e. Reduce the toxic effects of nutrient loadings and consequently, oxygen depletion in the Delta and its tributaries through source control of urban and industrial runoff.
- f. Reduce the impacts of sediment loading, and subsequent turbidity to the ecosystem of the Delta and its tributaries and to urban drinking water sources in the Delta, through source control of urban and industrial runoff.
- g. Reduce the impact of domestic wastes and hence pathogens to Delta urban drinking water supplies and recreational water uses, from boat discharges within the Delta and Delta tributaries.
- h. Reduce the toxic impacts of selenium loadings to the Delta through source control and treatment of industrial discharges.
- i. Reduce salinity impacts to Delta urban and agricultural source water quality through source control and treatment of agricultural surface and sub-surface drainage in the San Joaquin River watershed.
- j. Reduce salinity for agricultural source water in the South Delta through improved outflow patterns and water circulation in the Delta.
- k. Reduce the toxic effects of carbofuran, chlorpyrifos, and diazinon in the Delta and its tributaries through source control of agricultural drainage and Delta island drainage.
- l. Reduce the toxic effects of ammonia entering the Delta and its tributaries through source control of agricultural surface drainage.
- m. Reduce the toxic effects of ammonia entering the Delta and its tributaries from waste water treatment plant discharges and through improved treatment.
- n. Improve drinking water quality (including reduction in formation of disinfection byproducts) through treatment to reduce concentrations of total organic carbon, pathogens, turbidity, and bromides.
- o. Identify and implement action to address potential toxicity to water and sediment within the Delta and its tributaries.
 - i. Toxicity testing/ evaluation.
 - ii. Coordinate with other monitoring programs.

- p. Reduce the concentration of salinity entering the Delta and its tributaries during low flow periods.
 - i. Dilution water.
 - ii. Incentives for reservoir re-operation.
 - iii. Seasonal recharge.

3. Water Use Efficiency

- a. Standardized rules for water transfers.
 - i. Define transferable water.
 - ii. Mitigate local third party, groundwater and environmental impacts.
 - iii. Streamline approval process.
 - iv. Carriage water and reservoir refill rules
- b. Water Reclamation
 - i. Feasibility plans by water agencies.
 - ii. Certification of feasibility plans by DWR.
 - iii. Provide technical and planning assistance.
 - iv. Funding assistance to assure that lack of financing ability does not impede implementation of cost-effective measures.
- c. Urban Water Conservation
 - i. Implement BMPs at levels established by the California Urban Water Conservation Council (CUWCC).
 - ii. Provide technical and planning assistance.
 - iii. Funding assistance to assure that lack of financing ability does not impede implementation of cost-effective measures.
 - iv. Reporting.
 - v. Certification and enforcement.
- d. Agricultural Water Efficiency
 - i. Local water agencies implement Efficient Water Management Practices (EWMPs) at levels established by the agricultural efficiency council.
 - ii. Provide technical and planning assistance.
 - iii. Funding assistance to assure that lack of financing ability does not impede implementation of cost-effective measures.
 - iv. Incentives to agriculture to align agricultural management with CALFED objectives.
- e. Refuge Efficiency.
 - i. Identify BMPs for refuges.
 - ii. Water management planning process.

4. **Levee Integrity**

- a. PL-99 Funding Program. Provide funding to local agencies for improvements to the PL-99 standard.
- b. Implement special levee stabilization projects according to priorities based on island importance relative to water quality, ag production, life and personal property, recreation, cultural resources, ecosystem, local and statewide infrastructure, and impacts to adjacent islands.
- c. Control and reverse effects of subsidence through shallow flooding of between 30 - 60,000 acres of central and western Delta farmland.
- d. Establish and implement emergency response program.
- e. Incorporate seismic risk retrofit elements into levee stabilization program.
- f. Incorporate flood conveyance alternatives to safely pass inflow into the Delta from the Cosumnes, Sacramento, San Joaquin rivers and other Delta tributaries. Includes levee modifications, setback levees, and conversion of islands to bypass systems.
- g. Establish and implement long-term maintenance and subsidence management plan
- h. Seepage flood remediation program (mitigation for isolated system).

5. **Conveyance -- Dual conveyance facility. 5,000 cfs capacity for isolated portion**

- a. Screened intake.
- b. Operations.
 - i. SWRCB standards similar to existing standards with following changes:
 - (1) Standards are written so as to incorporate real time hydrological conditions -- i.e., a shift away from existing year type classifications (the X2 standard is an example of how this can be done), but will generate approximately the same average flow and diversion levels as current standards
 - (2) Some mechanism is put in place to allow future modifications of flow and diversions patterns, if warranted. The exact mechanism and associated assurances will be part of the implementation plan.
 - (3) Standards allow for greater real-time flexibility in operations.
 - (4) Diversions into the isolated facility are included within the export/inflow ratio calculation.
 - (5) Minimum pumping in the south Delta is 0 cfs from April - June and 1 kcfs during other months.
 - ii. Through Delta portion.
 - (1) Screened intake on Sacramento River.
 - (2) Operational rules as with isolated portion.
 - iii. Coordinated operations of the two facilities.
 - (1) South Delta pumping increases as required to meet south Delta salinity standards.
 - (2) Given, that isolated facility diversions will be curtailed occasionally for biological reasons for because insufficient water is available, the facility will be kept as full as possible at all times.
 - (3) Water diverted through the isolated facility will be channeled to urban areas

as much as possible. For example, the water will be managed so as to minimize blending with water diverted from the Delta.

6. Storage

Facilities/ Filling and discharge assumptions.

- i. 3 million af surface storage upstream of the Delta on Sacramento River tributaries. 5,000 cfs maximum filling and discharge capacity.
 - ii. 500 thousand af surface storage upstream of the Delta on San Joaquin tributaries. 5,000 cfs maximum filling and discharge capacity. Operations based upon "fill first, pump later".
 - iii. 2 million af surface storage off-aqueduct (South of Delta). 3,500 cfs maximum filling and discharge capacity.
 - iv. 200 thousand af in-Delta storage. 5 thousand cfs maximum filling and discharge capacity.
 - v. 500 thousand af groundwater storage in the Sacramento Valley. 500 cfs maximum filling and discharge capacity.
 - vi. 500 thousand af groundwater storage in the San Joaquin Valley. 500 cfs maximum filling and discharge capacity.
- a. Control over storage -- 1/3 urban, 1/3 agricultural, 1/3 environmental.
 - b. General operational philosophy.
 - i. Fill during periods of high flow.
 - ii. Discharge during periods when released water has high value for the environment and/or water users -- e.g., the spring, dry years.
 - c. Coordinated operations -- priorities for filling and discharge.
 - i. Tributary groundwater storage facilities. First priority for filling, last priority for discharge (only during dry and critical years).
 - ii. Aqueduct groundwater storage. Second priority for filling and fourth priority for discharge.
 - iii. Aqueduct surface storage. Third priority for filling, third priority for discharge.
 - iv. Tributary surface storage. Fourth priority for filling, second priority for discharge.
 - v. Delta storage, fifth priority for filling, first priority for discharge.
 - d. Constraints on diversions.
 - i. Diversions constrained by need to meet instream flow requirements and environmental flow rights.
 - ii. No diversions into new Sacramento tributary storage until a 60 kcfs mean daily flow event has occurred at Chico Landing.
 - iii. Diversions to Delta island storage considered an export for purposes of compliance.

7. Funding

- a. Detailed allocation of funding sources. All of the following elements used:
 - i. Diversion fees.
 - ii. General obligation bonds for ecosystem restoration.

- iii. Revenue bonds for facilities.
- iv. Federal appropriations.
- v. Existing funding sources.

b. Cost allocation based on principle that costs follow benefits.

II. DRAFT ASSURANCES PROPOSAL 1

This section describes the first assurances proposal, which consists of a Principles Agreement and a new entity to implement the ecosystem restoration measures.

A. Principles agreement - The foundation of the assurances package is a broad agreement on principles which would be signed by all CALFED agencies and participating stakeholder groups, similar to the December 1994 Bay Delta Accord. This principles agreement will be signed near the time that the final EIR/EIS is certified. After its formation, a new ecosystem management entity (described below) will also sign this agreement.

This agreement will provide the blueprint for the phased implementation of the Program and will address a number of key issues. Most of the issues identified in the Principles Agreement will require a more specific document that details the commitment and assurance for each. Some of the issues addressed or referenced in the principles agreement will include:

1. Support for the preferred alternative for the long term Bay Delta Program, including agreement on the facilities to be included in the Program and the allocation of water from new storage facilities;
2. The formation, structure, governance, purposes and powers of the new Delta Ecosystem Management Authority (DERA). In general, DERA will be responsible for implementation of the ERPP, assuring regulatory stability for water users, and real time operation of environmental water.
3. The formation, structure, governance, purposes and powers of the Program Implementation Review committee (PIRC). In general, PIRC will be responsible for oversight of the implementation process and for dealing with agency disputes and unforeseen contingencies.
4. The process for revisions to the Water Quality Control Plan (WQCP), Environmental Protection Agency (EPA) approval of the revised WQCP, amendments to the Biological Opinions (BO's) for Winter Run Salmon and Delta Smelt, changes to the Central Valley Project (CVP) and State Water Project (SWP) water rights, and other necessary permits, including a process for expedited permitting where appropriate;
5. Operating rules and criteria for the new CALFED Bay Delta Program storage and conveyance facilities and any necessary changes to the operating rules and criteria for existing CVP and SWP facilities;

6. Fundamental principles of adaptive management for the ecosystem restoration component, including the goals and objectives and performance measures for the ecosystem restoration component;

7. Support for the Bay Delta Programmatic Habitat Conservation Plan (HCP)/Natural Communities Conservation Plan (NCCP);

8. The scope of regulatory certainty to be provided to participating water users and to the environment;

9. Funding, including revenue sources and cost allocations;

10. The process to be used by PIRC for dispute resolution, response to contingencies and failures of conditions; and a severability agreement, i.e., agreement on what happens if part of the Program cannot go forward;

11. Linkage, phasing and sequencing of components;

12. Monitoring and reporting, particularly as it applies to the principles of adaptive management;

13. A description of any other tools required for assurances;

14. Proposed state legislation;

15. Proposed federal legislation.

B. Formation of CALFED Program Implementation Review Committee (PIRC)

1. Structure - PIRC will be a joint federal-state policy oversight committee, with the California Resources Secretary and Secretary of the Interior as co-chairs, and the Regional Director of the USBR, the Region IX EPA Director and the Regional Director of USFWS as federal members, and the Director of Water Resources, the CAL-EPA Secretary, the Director of Fish and Game as state members. The committee will also include the Executive Director of DERA. PIRC will be formed by state and federal legislation, with protocols and operating rules set out in an interagency memorandum of agreement. Actions by PIRC will require unanimity among committee members.

2. Stakeholder Participation - An advisory committee of representative stakeholder policy managers will provide advice and input to PIRC on questions related to program implementation such as priorities of actions or funding, phasing and sequence issues, responses to failures of conditions, etc.

3. The function of PIRC will be to oversee implementation of the CALFED solution. It will not be a central manager, but may occasionally be activated in order to bring program implementation back on course. Oversight includes:

- o To acknowledge milestones, i.e., to determine when implementation milestones have been reached so that implementation can move on to the next phase.
- o To develop program responses to unforeseen contingencies.
- o To modify ERPP objectives, if needed.

4. Dispute resolution - In the event a dispute arises among the various federal and state agencies charged with implementation of the program (e.g., the scope of adaptive management, the authority of the ERPP manager to carry out an action or implement any aspect of the ERPP, conflicts with project operations which cannot be resolved by the Operations Group), such disputes will be referred to PIRC. PIRC will have delegated authority to resolve interagency disputes arising out of implementation of the Program.

C. Ecosystem Restoration Component

1. Management - The major feature of assurances for the implementation of the Ecosystem Restoration Program Plan (ERPP) will be a new management entity, the Delta Ecosystem Restoration Authority (DERA). DERA will be a new public agency created by state and federal legislation.

In general, DERA will perform the following functions:

- o Implement ERPP through Adaptive Management. The Adaptive Management process will include phased implementation, monitoring and research, peer review, stakeholder involvement, and prioritization of funding.
- o Manage environmental water. DERA will control water, conveyance and storage. Each year, DERA will deploy that water in order to promote ERPP goals.
- o Indemnify water users. DERA will use its monetary and other resources to insulate water users from the impacts of new water regulations up to some agreed limit.

Specifically, DERA will be governed by a 15 person Board of Directors, jointly appointed by the Secretary of the Interior and the Secretary for Resources. Four Board members will represent the CALFED agencies (two federal, two state); two members will represent the agricultural water agencies of the state (one from San Joaquin, one from Sacramento Valley); two members will represent urban water agencies (one from Southern California, one from Bay Area); there will be four members from environmental organizations (one from Southern California, one from the Bay Area, one from Sacramento Valley, one at large), two Board members from the legal Delta, and one Board member from the counties of origin.

The Board will appoint an Executive Director, who will be authorized to hire a staff adequate to carry out the program. The staff will include biologists, engineers and other specialists with technical skills and practical experience.

The DERA staff will be tasked with specific functions. In addition to the primary mission of implementing ERPP elements and actions, DERA will have a monitoring and research function (possibly the current Interagency Ecological Program (IEP) will be merged into DERA and DERA may contract out additional research work.) DERA will also have an operations functions, to manage its water resources.

Additionally, there will be stakeholder involvement with DERA at several levels. For example, an external peer review process will be established to review data collection and analysis. A stakeholder advisory committee will consult with DERA regarding its water resource operations. DERA project managers will confer and consult with local agencies and interest groups on projects of specific interest to local areas. Finally, as noted above, the DERA Board will be heavily weighted with stakeholder representation.

DERA will rely heavily on market transactions to achieve the program goals and objectives. It will be authorized to acquire land, water, water rights and other property, by lease or purchase. It will have the authority to provide financial incentives to local water agencies for changes in water management practices or for local restoration projects.

DERA will not have any direct regulatory authority, but it will have a limited power of eminent domain for the acquisition of land. It will only be allowed to exercise the power of eminent domain with the consent of the relevant local land use planning agency.¹

DERA will be authorized to participate in the regulatory processes of other agencies, such as the Regional Water Quality Control Boards, the State Water Resources Control Board (SWRCB) or the Federal Energy Regulatory Commission (FERC), in the same manner as any other resource management agency. However, it will not have the authority to require the

¹ The power of condemnation ensures that DERA will be able to function effectively in the market. Without the ability to condemn property interests of private or public landowners, an intransigent owner could prevent the implementation of a critical part of the program, by demanding higher than fair market value for the property interest in question. The power of condemnation provides DERA the ability to use existing and standard legal procedures to determine the fair market value of property and to compel an owner to accept fair market value as compensation. On the other hand, the inclusion of eminent domain authority will be controversial. The argument against eminent domain is that the agency would thereby be able to ignore the views of local communities and landowners in pursuit of habitat restoration. The current proposal represents a middle ground which would force DERA to work with local interests, while still precluding the possibility that individual landowners could block widely supported projects.

imposition of conditions or requirements on permits or licenses issued by state or federal regulatory bodies.

Other powers of DERA will include the power to contract with private parties and other public agencies, to receive funding from public and private sources, to spend money on authorized projects, to sue and be sued, to lobby at the state and federal level on issues related to Delta ecosystem management, and to communicate with the public. The scope of these powers will be defined in the enabling legislation.

All state and federal Delta ecosystem restoration funds, including at least a portion of the Central Valley Project Improvement Act (CVPIA) Restoration Fund, will be appropriated to or channeled through DERA. DERA will prepare an annual budget and establish funding priorities for ecosystem restoration actions and projects.

Responsibility for implementation of the fish and wildlife portions of the CVPIA will be assigned to DERA through new federal legislation. USBR re-operation requirements and the 800,000 acre feet of CVPIA b(2) water will be converted into contractual rights. In essence, DERA will have specified rights to deliveries, storage, pumping, and conveyance of CVP water. It will manage these rights to promote the Anadromous Fish Restoration Plan (AFRP) goals and to implement the ERPP.

By contracts with USBR and DWR, DERA will be entitled to one third of any new storage capacity constructed under the CALFED program and will have specified rights to use the isolated conveyance facility and the export aqueducts.

After its formation DERA will assume the obligations of, and become the permit holder under, the Bay Delta Programmatic Habitat Conservation Plan (HCP)/Natural Communities Conservation Plan (NCCP). Through separate agreements with DWR and USBR and the project contractors, and with other water user or water rights holders who choose to participate, DERA will assume responsibility for providing any water needed for environmental or water quality purposes in the Delta. In consideration of this indemnity, participating non project water users will provide additional financial support to DERA in the form of water user fees (See Paragraph B.7 below).

DERA will be authorized to purchase and schedule enhanced flows in addition to all regulatory requirements, by acquisition of supplemental water through transfers or by reducing export pumping rates below permitted levels by purchase of replacement water or demand reduction in the export service areas.

DERA will act as lead agency for CEQA/NEPA compliance and will hold the 404 permit and other permits necessary to implement the ERPP, whether programmatic or site specific.

Some non-CVP flow requirements which are currently required by regulation will be converted into contractual entitlements or water rights assigned to DERA. For example, export

reductions currently required under the Endangered Species Act (ESA) will come under the control of DERA.

DERA will conduct or coordinate necessary monitoring, data collection and analysis to measure performance of the program, or will direct such efforts through the Interagency Ecological Program (IEP), and will issue periodic reports to Congress, the Legislature, the CALFED oversight committee (See Paragraph B.14) and the public on the status of the program.

2. Revisions to the May 1995 Bay Delta Water Quality Control Plan (WQCP)— Environmental water quality and outflow requirements will be set by a revised WQCP adopted by the State Water Resources Control Board (SWRCB). The WQCP will include or incorporate by reference revised operational rules for the existing facilities which will control until new facilities are operational, at which time a new set of operational rules will apply to both new and existing CVP and SWP facilities.

The Principles Agreement will include or incorporate by reference specific recommendations by the CALFED agencies and participating stakeholders on revisions to the WQCP, and on the process by which these recommendations will be submitted to the SWRCB. These recommendations will reflect the changes in water quality and outflow requirements in the Delta as a result of implementation of ERPP and the increased operational flexibility provided by an isolated conveyance facility.

3. Revisions to CVP and SWP water rights - Implementation of the ERPP and construction and operation of new facilities will eventually require some changes in the permits and licenses of the CVP and SWP. The Principles Agreement will include or incorporate by reference a specific agreement that will describe the process by which those changes will be determined and how any necessary changes to the Coordinated Operating Agreement (COA) (between DWR and USBR) will be made.

4. Revisions to other water rights - Implementation of the ERPP and construction and operation of new facilities will result in changes to the WQCP. This in turn may require that other permits and licenses for water diversions be amended. The Principles Agreement will include a process for determining those changes.

5. Revisions to waste discharge regulations - DERA may provide financial incentives for reduction of waste water discharges in waters tributary to the Delta and to broker market transactions in transferable discharge credits. This will require changes in the state water quality regulations on Waste Discharge Requirements (WDRs). The Principles Agreement will include or refer to a specific agreement which will describe the process by which recommendations for changes to those regulations will be submitted to the regional and State Boards.

6. Bonds to provide funding - The Principles Agreement will include agreements on the amount of funding for the ERPP to be provided by bonds, the type of bonds to be used, how the bonds will be approved and issued, how the bonds will be repaid, what projects will be funded by these bonds, and the timing for the bond issuance.

7. Water user fees - The Principles Agreement will include a specific agreement on the amount of funding for ERPP to be provided by water user fees, how the fees will be collected and by whom, what projects will be funded by the water user fees; and the timing and duration of the collection of such fees. This will include an agreement on how current payments by water users for environmental mitigation or enhancement programs will be credited.

Mandatory water user fees (adjusted for credits) will be imposed on all water users meeting agreed upon criteria. These fees will be levied and collected by the State Board pursuant to their water rights authority and will be used to repay bonds issued for ERPP operations. In addition, water user fees will be paid by those water users who benefit from (a) the CALFED program, including use of or access to new facilities; and (b) the "no surprises" indemnity provided by the HCP. These water user fees will be phased in and will increase when new facilities come on line.

The universal water user fees will be used for bond repayment and annual operating expenses of the ERPP. Other water user fees imposed and collected by DERA will be used to create a reserve fund for the purchase of supplemental water or to take other actions necessary to provide the "no surprises" protection of the HCP.

8. State and federal appropriations to provide funding - The Principles Agreement will include an agreement and proposed legislation on the amount of federal and state (non-reimbursable) funds which will be sought for the ERPP and their purpose. Generally, appropriated funds will be used as an endowment of the ERPP, i.e., for "up front" capital funding for projects such as land and water rights acquisition or purchase of water transfer options. This agreement will also describe what happens if such funding cannot be obtained through the appropriation process.

9. Funding linkage - Long term operational funding for the ERPP will be linked to the completion of the storage and conveyance facilities and future regulatory stability. The funding instruments, legislation and agreements will provide that if facilities cannot be built or operated as agreed, water user fees and bond funding for restoration funding will be reduced or ended. In other words, continued funding for ecosystem restoration, whether by bonds, water user fees, or other sources, will be dependent on construction and operation of new facilities. However, fees sufficient to repay outstanding bonds will be guaranteed.

State or federal legislation will also be used to further link implementation of the ecosystem restoration component with construction of water supply facilities. For example, in Proposition 204, a substantial portion of the ecosystem restoration money is held in abeyance until there is a final EIR/EIS describing a preferred alternative. In the longer term, legislation might provide that ecosystem restoration funds are phased in, corresponding to the level of progress made in permitting and constructing facilities. As facilities progress and eventually become operational, more money is released for ecosystem restoration.

Similarly, construction of facilities will be tied to the progress of the ecosystem restoration program, as measured by expenditure of funds, acquisition of habitat or some other objective criteria.

10. Phasing, linkage and sequencing - The Principles Agreement will describe the timing of Phase III ERPP projects in relation to the construction and operation of new facilities. It will describe the linkage between the funding and implementation of Phase III ERPP projects and the construction and operation of new facilities. (See Section II.A.I. for additional discussion of sequencing and phasing.)

11. Physical limits on new facilities - The physical size of the isolated conveyance facility will provide additional assurances for water quality and outflow conditions in the Delta. An isolated facility of 5000 cfs will be insufficient to meet export demands most of the time and will ensure that export water will continue to move through, rather than around, the Delta, thereby maintaining the Delta as a "common pool".

12. Assurances on operations - Assurances for operational requirements include:

- o Language in the bonds used to fund facilities will specify the operating rules for the facilities. Deviation from these operational rules will only be allowed with the consent of DERA and the SWRCB.
- o DERA will be given a priority for any use of capacity in the isolated system above 5 kcfs.
- o Water users covered by the "no surprises" assurances from DERA will indemnify DERA against any relaxation in flow or diversion standards. That is, if the SWRCB relaxes flow standards in the future, water users will compensate DERA with water and/or money. This element will be incorporated into the HCP agreement.

13. State legislation - State legislation will be proposed to authorize the formation of DERA and describe its governance structure, to authorize appointment of Board members by the Governor (jointly with the Secretary of the Interior), and to define its powers and purposes.

State legislation will also be used to link permitting, construction and operation of new facilities to funding and implementation of the ecosystem restoration, by providing for a series of checkpoints at which findings will be made by the Secretary of the Interior and the Secretary for Resources that both programs (ecosystem restoration and water supply) are moving ahead in more or less equitable increments.

14. Federal legislation - Federal legislation will be proposed to authorize the formation of DERA, to describe its governance and management structure, to authorize the appointment of Board members (jointly with the Governor) and to define its powers and purposes. Federal legislation will also amend the Central Valley Project Improvement Act to assign the management of the 800,000 acre feet of fish and wildlife water, the Restoration Fund to DERA, and the AFRP mandate to DERA.

D. Water Supply Reliability

1. Management of new facilities - The Principles Agreement will provide that new water supply storage and conveyance facilities will be jointly constructed, owned and operated by USBR and DWR. The Principles Agreement will include a number of specific agreements on permitting, funding, and operation of the new facilities, and provide for linkage of facilities construction and operation to ERPP implementation.

2. Funding for new facilities - The Principles Agreement will include a specific agreement that the construction of new facilities will be funded with state and federal appropriations. The portion of the new facilities which is dedicated to the ERPP will be paid for by the general public. That portion of the new facilities which is dedicated to consumptive water supply will be repaid by long term contracts with local water supply agencies, through the existing CVP or SWP contracting process. Contract repayment will include capital, interest, and operations and maintenance costs.

3. Permit processing - The Principles Agreement will include an agreement on the permitting process for the construction and operation of new facilities. This will include agreement on what permits will be required, both programmatic and project specific.

4. Construction scheduling and phasing - The Principles Agreement will include a specific agreement on the schedule for construction of new facilities and the linkage between construction of new facilities and implementation of ERPP. Continued funding of ERPP through water user fees will be tied to facilities construction.

5. Operating rules for existing facilities - The Principles Agreement will include a specific agreement on how the operating rules and criteria for existing CVP and SWP facilities will be modified as ERPP and new facilities become operational.

6. Operating rules for new facilities - The Principles Agreement will include a specific agreement on the operating rules for the new facilities, including the allocation of capacity between environmental uses and consumptive uses.

7. Multi species habitat conservation plan (HCP) - The Principles Agreement will incorporate the signatories' agreement on the Bay Delta Programmatic HCP. After its formation, DERA will assume the obligations of and become the permit holder for the HCP. Some of the key terms and provisions of the HCP are:

a. A description of the species covered - The Bay Delta HCP would cover all species identified as affected by the implementation of the long term Bay-Delta Program.

b. A description of the activities covered by the HCP - This would include all actions of the long term Bay Delta program and any required mitigation actions.

c. A summary of Program phasing and monitoring requirements.

d. The term of the HCP - The term would be related to the time frame for the ecosystem restoration program; perhaps in the range of 20 to 30 years.

e. Incidental take permits - Permits would be issued for all species listed at the time of the HCP and the federal agencies would agree to issue incidental take permits for newly listed species, unless the agencies could demonstrate extraordinary circumstances.

f. Description of what constitutes extraordinary circumstances or the process for making that determination.

g. Description of the "no surprises" protection - The Bay Delta HCP would include provisions which would provide some degree of regulatory certainty and/or relief from liability for the permit holders and for water users and land owners entitled to the benefit of the permit.

h. Costs - Project operator and water user costs would be quantified and fixed. The HCP might also include a formula for cost increases, if necessary.

8. Indemnity/insurance for water users - The Principles Agreement will include a specific agreement on linked assurances for ecosystem restoration and water supply reliability. These will be provided by a set of agreements or contracts, including the Bay Delta HCP, to provide a limited indemnity for water users for the environmental water supplies.

If additional water is mandated by regulatory agencies for ecosystem restoration, above the agreed upon baseline amount, DERA will provide replacement water up to some agreed level, using either existing water supplies under its control (e.g., the b(2) water) or purchased water.

Under extraordinary circumstances, which will be defined and agreed upon (e.g., DERA has expended over x% of its resources on replacement water), the responsibility for compliance with regulations would fall back upon the water users, without additional compensation.

Water users covered by the limited indemnity would similarly indemnify DERA against any relaxation in standards by the SWRCB.

9. Monitoring and reporting - DWR and USBR will coordinate with DERA on monitoring the impact of facilities operations on various conditions in the Delta and will make periodic reports to PIRC and the public on the results.

10. Dispute resolution - The Principles Agreement will include a specific agreement that disputes which may arise among agencies and/or stakeholders regarding facilities operations will be resolved by the current Operations Group as the initial forum with unresolved issues elevated to (PIRC).

11. Revisions to WQCP - The new facilities will be controlled by the revised Water Quality Control Plan (WQCP), which will incorporate a complete set of operational requirements.

12. CVP and SWP water rights - CVP and SWP will apply for water rights permits for the new facilities and existing permits will be revised to reflect the new facilities and the revised WQCP.

13. Revisions to other water rights - The Principles Agreement will describe or incorporate the specific agreement by which water rights holders other than the CVP and SWP will contribute water to meet the requirements of the WQCP.

14. Rules for water transfers - The Principles Agreement will describe the proposed rules and regulations for water transfers to be recommended for adoption by the State Board (and the state legislature, if necessary), including access to and costs of wheeling.

15. Rules for conjunctive use programs - The Principles Agreement will include a section on the conjunctive use and management of Sacramento Valley groundwater and provide proposed rules for groundwater based transfers.

16. Bonds to provide funding - The Principles Agreement will include a section on revenue bond funding of the construction of new facilities, including the amount of bonds, time of issuance, who issues them, and who will repay them.

17. State and federal appropriations - The Principles Agreement will describe the proposal for federal and state appropriations to fund the construction of that portion of the new CALFED facilities which are agreed to be nonreimbursable by water users.

18. Water user fees for O&M of new facilities - The Principles Agreement will describe the process by which water users will contract for any new water supply provided by CALFED facilities and for use of and access to CALFED facilities, including payment of operations and maintenance costs.

19. Federal legislation will also be proposed to provide water supply reliability assurances, with a provision that all necessary permits for construction and operation of new facilities would be granted so long as the proposed facilities and their operation were consistent with the CALFED Program.

20. Assurances for protection of water rights will be provided by legislation which codifies the conditions under which a source water county can condition or disapprove a transfer.

Water rights and groundwater protection assurances will also be provided by water transfer rules that permit source counties to disapprove or impose conditions (such as restrictions on quantities or timing) on water transfers out of their counties, based upon criteria designed to protect local economies, environmental conditions and groundwater resources without unduly restricting the water market.

Water rights assurances will also be provided by provisions in the facilities construction bonds that preclude use of the isolated system to convey transferred water if the transfer has been disapproved by the source county.

E. Water Quality

1. Generally, water quality elements and actions will be implemented by the SWRCB, the Regional Boards and the Environmental Protection Agency (EPA). In some instances, the ecosystem manager will provide funding for actions which have water quality benefits.

2. The Principles Agreement will include a section on water quality. This will refer to specific agreements on the use of new facilities and water quality objectives.

3. Revisions to the WQCP will provide assurances for protection of water quality for in Delta environmental and agricultural uses.

4. Revisions to waste discharge regulations to provide for transferable discharge (pollution) credits provide additional assurances, through financial incentives, that water quality objectives will be met.

5. CVP and SWP water rights will be revised to reflect revisions to the WQCP.

6. Other water rights meeting agreed upon criteria will be revised to meet the requirements of the WQCP.

7. State legislation will be proposed to provide funds and rules for the land retirement program.

8. State legislation will be proposed to set water quality targets and provide for various regulatory enforcement mechanisms or incentive programs. It will also provide for "citizen suits" in the event of non-compliance with water quality objectives.

9. The physical capacity or size of new conveyance facilities may also provide some assurance that Delta water quality and the Delta as a "common pool" will be protected. For example, a 5,000 cfs isolated facility alternative assures that there will continue to be a need to move water through the Delta for export, since export needs cannot be fully met with an isolated facility of that size.

10. Additional assurances of urban water quality would be provided by contractual arrangements between USBR/DWR and their urban water contractors, providing financial incentives (or penalties) related to the delivery of raw water of a specified target quality.

DWR, USBR and the export contractors would also enter into agreements to assure that Delta export facilities are operated to preferentially channel water from the isolated conveyance facility to urban contractors.

F. Water Use Efficiency

1. Most of the implementation of the Efficient Water Use Component will be at the local agency level. DWR and USBR will provide technical support and financial assistance for locally implemented water conservation and efficiency improvement programs.

2. The Principles Agreement will include a general statement of agreement on water management and conservation efforts.

3. Assurance of compliance with urban and agricultural water conservation and efficiency programs is provided by a certification process administered by the urban and agricultural conservation/ efficiency councils. Local agencies which do not have certified plans are not eligible for benefits from the CALFED Program. This would include access to and use of new facilities, the water transfer market or water bank, or financial incentive and technical assistance programs.

4. Facilities construction bond language will prohibit the use of new facilities to convey either project or purchased water for any urban or agricultural agency which is not certified as efficient.

5. The Principles Agreement will include a proposal that the SWRCB promulgate rules and regulations on water management and water use efficiency as a condition of water rights. These rules would include sanctions or penalties for those water users who are not certified or failed to satisfy implementation criteria.

6. As an additional assurance to the basic approach of voluntary or conditions based compliance, state legislation will be proposed to make water management planning mandatory for all water suppliers which meet certain criteria.

G. Levee Stability

1. Local reclamation districts will continue to maintain the levees within their jurisdictions, with financial and technical support from DWR and the US Army Corps of Engineers (USACE), and emergency assistance from the Federal Emergency Management Agency (FEMA).

2. The Principles Agreement will include a proposal or agreement on the need for funding, by state and federal appropriations or bonds, for initial levee improvements to bring them up to USACE/FEMA standards.

3. DWR will administer and allocate to the Districts funds provided by federal or state appropriations or state bonds, for the initial phase of levee improvements required to bring designated levees up to USACE/FEMA standards.

4. Program phasing and sequencing will ensure the critical levee improvements will be completed before the construction of the isolated facility.

5. DERA will work with DWR and local reclamation districts to establish a process for integrating ERPP actions on levees with the levee maintenance programs.

6. DERA and the ESA regulatory agencies will provide "safe harbor" agreement for Delta landowners and Reclamation Districts who agree to operate and maintain levees in accordance with ERPP.

H. Funding

1. The Principles Agreement will include the basic agreement on allocation of costs and sources of revenues.

2. Funding for implementation of the CALFED solution will require general obligation bonds, state revenue bonds, federal appropriations, and water user fees.

3. The distribution of costs among various participants remains to be worked out, but will be based on a benefit analysis.

III. DRAFT ASSURANCES PROPOSAL 2

The distinguishing characteristics of this proposal are a CALFED implementation plan that identifies the assurance tools, the sequence for implementation and the entities responsible for each, as well as a CALFED joint authority to implement the ecosystem restoration actions and agreements among the CALFED agencies to coordinate operational decisions. There will also be a stakeholder advisory body.

A. Implementation plan.

The implementation plan would be included in the final Programmatic Environmental Impact Report and Statement. It would include the actions necessary to implement each program component and provide assurance that the solution will be implemented and operated as agreed. In addition, the plan will include a process to address unforeseen circumstances that arise making implementation of a key program component impossible.

Specifically, the implementation plan will include the following:

A financing package.

The programmatic HCP/NCCP and federal agency consultation. This will include the actions and entities covered; the avoidance, minimization strategies required; the recovery plans and actions included; the nature of the "no surprises" policy and the definition of

"unforeseen circumstances"; monitoring and reporting obligations; and an enforceable implementation agreement clearly articulating the rights and responsibilities of each participant in the agreement. Although federal agencies cannot be permittees under HCPs, the consultation required for federal agencies will be coordinated with the creation of this HCP.

A list of needed federal and state legislation. This includes legislation for funding, authorizations to carry out programs, operational limitations, and any other legislation necessary to implement the CALFED Bay-Delta Program.

The structure, authority and governance of the CALFED implementation phase entity.

The structure, authority, representation and purpose of a citizens advisory committee to aid in implementation.

A description of assurance tools required for each program component. For example, if the adaptive management program for ecosystem restoration requires specific monitoring and reporting activities, the implementation plan will include those requirements and identify the entities and funds to implement them. All contracts, agreements, regulatory modifications, and any other tools necessary to assure each component will be described in as great a detail as is available at the conclusion of the Programmatic EIR/EIS.

A plan or process and schedule for finalizing pieces of the implementation plan that may not be complete by the time of publication of the final Programmatic EIR/EIS.

A contingency plan which describes a process to be followed in the face of unforeseen circumstances that prevent key components from being implemented or operated as agreed.

A sequence of events for implementation and a description of how each phase will be tied to the overall solution.

B. CALFED Ecosystem Restoration Authority.

The CALFED agencies will establish a joint authority to implement the Ecosystem Restoration Component of the CALFED Program. The structure, authority and governance of the authority will be specified in a joint powers agreement between the CALFED agencies. The CALFED agencies will not transfer regulatory authority, rather, they will provide the Restoration Authority with funding, and any other powers possessed by the agencies necessary to implement the ERPP. State and federal legislation may be necessary to provide authorities not commonly held by the CALFED agencies, but necessary for implementation. Likewise, the federal agencies may not be comfortable operating under the state joint powers authorizations and may insist upon legislation.

The CALFED Ecosystem Restoration Authority will appoint an executive director to oversee the day-to-day implementation of the ERPP. The ED and Restoration Authority will determine which federal, state, local, or private entity is best situated to implement and monitor individual ERPP actions.

In addition, a citizens advisory committee will be appointed to provide comment, coordination and oversight of the Restoration Authority's activities to the CALFED agencies.

C. Water Supply Reliability.

The CALFED Agencies would also enter into agreements that formalize the manner in which they will coordinate operations of the existing state and federal water projects, and how CALFED projects will be folded into this mix. The agreements will specify the time and manner for public participation before final decisions on water management are made. Eventually, a modified Coordinated Operating Agreement (COA) between the Bureau of Reclamation, the Department of Water Resources, and the other CALFED agencies will be executed reflecting the CALFED Bay-Delta Program's actions.

D. Other Program Components.

Water quality, water use efficiency, levee stability, and financing will be similar to Assurance Proposal 1.

IV. PHASING

Regardless of which program alternative or assurance package is selected, the questions regarding which actions to implement first, and how to tie the actions into logical phases must be addressed. Staff, therefore, propose that a phasing plan be developed that would be applicable to whichever program alternative or assurance proposal is eventually selected.

Because the CALFED Bay-Delta long-term solution will require a number of funding, legislative, regulatory, contractual, and institutional changes, implementation will be an extremely complex process. Due to the magnitude of the program, it would be impossible to implement every program component simultaneously. In addition, some actions — ecosystem restoration projects, levee improvements, water quality measures — could be implemented almost immediately, while others (Delta facilities and storage) will require many years to implement. The Bay-Delta Program, therefore, is designed to be implemented in phases.

The challenge in implementing a program in phases is to allow actions that can be taken immediately to occur, while assuring that each interest group has a stake in the successful implementation of the entire program over the whole implementation period.

The implementation strategy should have the following characteristics:

- o Each phase should be completed before the next phase can begin.
- o Each major stakeholder interest should have strong inducements to support the completion of each phase.
- o Program elements which are outside the control of the CALFED agencies should be implemented as early as possible to reduce the risk that outside actors affect the process at a later date.

With these considerations in mind, the following sequence of events and phases are proposed:

Phase I - present to completion of EIR/EIS.

Phase I represents the activities that should occur between the present and the certification of the final Programmatic EIR/EIS and Record of Decision. During Phase I, the implementation plan (Draft Assurances Proposal 2) or principles agreement (Draft Assurances Proposal 1) must be drafted and reviewed to assure broad-based support. This plan or agreement will be a detailed compilation of all the actions necessary to assure implementation over the long-term. The plan/agreement should as detailed as possible in the time allotted.

Phase I must not only include the long-range implementation actions, but also describe how the program is to be managed in the near term. If a new entity is intended to implement the ERPP or other program components, agreement is necessary on who will oversee the implementation of the plan until the new entity is operational, and how the existing entities will operate during and after the transition.

Phase II - transition from decision to implementation.

Phase II represents the transitional phase during which the CALFED program moves from planning to implementation. As soon as possible following certification of the Programmatic EIR/EIS and the Record of Decision, the following will begin:

Introduce state and/or federal legislation necessary to implement the solution. This includes:

creating or modifying entities, their authority or relationships;

seeking federal authorization and appropriations;

state approval to sell general obligation bonds; and

modifying existing legislation regarding water transfers, coordinating CVPIA restoration fund expenditures, etc.

Draft contracts and agreements to govern implementation. this includes:

joint powers authorities, MOUs or other forms of agreements among the CALFED agencies; and

contracts between agencies and stakeholders.

Sign and execute the HCP/NCCP implementation agreement.

Establish forum for discussions with public throughout this transition phase.

Finalize process to address circumstances which prevent key program components from being implemented or operated as agreed.

Phase III - near-term implementation.

Establish stakeholder participation process (advisory committee, etc.).

Begin implementing levee upgrade program.

Complete site-specific analysis and seek permit authority for any new facilities.

Begin implementing ERPP with existing entities until new or reformulated entity is operational. Note that funding for continued ERPP implementation under either Assurance Proposal 1 or 2 will be tied to the implementation of the water supply reliability component.

Implement ecosystem restoration monitoring plans.

Begin implementing water use efficiency and water quality programs.

Phase IV - long-term implementation.

Transfer implementation responsibilities and funding to new or reformulated Ecosystem Restoration entity.

Ecosystem Restoration Entity assumes responsibilities under HCP/NCCP.

New facilities are constructed.

Execute modified coordinated operations agreement governing existing and new facilities.

If all program components are being implemented substantially as agreed, all funding is available to complete implementing levee, water use efficiency, water quality, ecosystem restoration and water supply reliability components.

If all program components are not being implemented substantially as agreed, the process to address these circumstances is triggered.