

BAY DELTA ADVISORY COUNCIL ASSURANCES WORK GROUP

ASSURANCE ALTERNATIVES DISCUSSION PAPER

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**BAY-DELTA ADVISORY COUNCIL ASSURANCES WORKGROUP
PRELIMINARY ASSURANCE PROPOSALS**

INTRODUCTION

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 plan, they will need to assure that the plan 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 plan cannot be implemented.

This paper describes three alternatives for providing assurances. These alternatives are not recommendations. They merely illustrate different combinations of tools that can be used to assure the implementation of the preferred alternative. These illustrations have been prepared in response to discussions among members of the Bay-Delta Advisory Council (BDAC) Assurances Workgroup and in response to requests for detailed examples of assurance packages.

The assurance alternatives are based on the case study which is in turn based on Program Alternative 3(b). This alternative was selected because it includes new storage and conveyance facilities, which present complex assurance issues. Again, 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 key elements of the first draft assurances alternative are a principles agreement among CALFED agencies and stakeholders, a new management entity for the Ecosystem Restoration Program Plan (ERPP), specific agreements among agencies and stakeholders, state and federal legislation, and physical limits on a new isolated conveyance facility.

The key elements of the second assurances alternative are an implementation plan, the formation of a joint authority by the existing CALFED agencies for the implementation of the ERPP, specific agreements among agencies and stakeholders, state and federal legislation, and physical limits on a new isolated conveyance facility.

The key elements of the third alternative are an implementation plan, the continuation of CALFED for coordinated implementation of the long-term program by existing agencies, specific agreements among agencies and stakeholders, state and federal legislation, and physical limits on a new isolated conveyance facility.

The conceptual model for the assurance alternatives can be seen as a series of layers, with the management structure and agreements on implementation as the foundation, and additional agreements, legislation, and physical limits added as necessary. All three alternatives generally use the same assurance tools, but the manner in which the tools are combined and the emphasis in each alternative is different. In particular, the assurance tools for the water quality, water use efficiency and levee integrity components of the long-term program will be similar in all three alternatives. Although these assurance alternatives are hypothetical, the actual assurance package developed over the course of the next several months will likely contain a number of these elements.

The assurances package is designed to assure that benefits to the ecosystem program will not come at the expense of water supply; that improvements in water supply reliability will be accomplished in ways that complement and enhance ecosystem restoration efforts; and that all program components will proceed together. Thus, determining the sequence in which actions are implemented is an important aspect of any assurance alternative. A strategy for the phased implementation of the program is described in Section IV of this paper.

This paper is organized as follows: Part I describes the first draft assurances alternative for the case study (the Principles Agreement and a new ecosystem management entity); Part II describes the second draft assurances alternative (an implementation plan and the CALFED Joint Authority); and Part III describes the third alternative (an implementation plan, coordination by CALFED and implementation by the existing agencies). Part IV describes phasing.

I. DRAFT ASSURANCES ALTERNATIVE 1

This section describes the first assurances alternative, which includes a Principles Agreement, a new management entity for the ERPP and specific assurances for each component.

A. Principles Agreement

The foundation of this alternative is a principles agreement which would be signed by all CALFED agencies and participating stakeholder groups, on or about the time of the adoption of the final Programmatic Environmental Impact Report/Statement (EIR/EIS). After its formation, the new ecosystem management entity (discussed in more detail below) would also sign this agreement.

The principles agreement will provide the blueprint for the phased implementation of the Program. Implementation of assurances will, in general, require additional tools such as contracts, bonds, regulations and legislation. Some of the issues to be addressed, in the principles agreement are:

1. Support for the preferred alternative for the long-term Bay Delta Program, including agreement on the facilities to be included in the Program, the allocation of water from new storage facilities, and the scope and objectives of the ERPP;
2. The formation, structure, governance, purposes and powers of the new Delta Ecosystem Restoration Authority (DERA). In general, DERA will be responsible for implementation of the ERPP, assuring regulatory stability for water users, and management of environmental water;
3. The formation, structure, governance, purposes and powers of the Oversight Committee. In general, the Oversight Committee will be responsible for overseeing the implementation process and coordinating CALFED agencies' activities;
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 ERPP, including goals and objectives, performance measures, scientific peer review, and a monitoring and reporting program;
7. Support for the measures to deal with federal and state Endangered Species Act (ESA) concerns, e.g., the Bay Delta Programmatic Habitat Conservation Plan (HCP) and 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 the Oversight Committee for dispute resolution, and for responding to circumstances where a Program component cannot be implemented or operated as agreed;
11. Linkage and phasing of components;
12. Proposed state and federal legislation.

B. Formation of the CALFED Oversight Committee

1. Structure - The Oversight Committee will be a joint federal-state policy 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, and the Director of Fish and Game as state members. The committee will also include the Executive Director of DERA. The Oversight Committee will be formed by state and federal legislation, with protocols and operating rules set out in an interagency memorandum of agreement.
2. Stakeholder Participation - A federally chartered advisory committee of representative stakeholder policy managers will provide advice to the Oversight Committee on program implementation, priorities of actions or funding, phasing and responses to unforeseen circumstances.
3. The function of the Oversight Committee will be to oversee implementation of the long term CALFED plan. It will not have direct management or operations functions. Oversight includes the following roles:
 - o To determine when implementation milestones have been reached so that the Program can move on to the next phase.
 - o To develop responses to unforeseen circumstances.
 - o To modify ERPP implementation objectives, if needed.¹
4. Dispute resolution - In the event a dispute arises among the various federal and state agencies charged with implementing the program (e.g., the scope of adaptive management, the limits of the "no surprises" protection provided by the HCP, 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 the Oversight Committee. The Oversight Committee will have delegated authority to resolve interagency disputes arising out of implementation of the Program.
5. The Oversight Committee and the stakeholders advisory committee will be charged with submitting periodic reports to Congress, the State Legislature and the public, documenting the progress of the Program. These reports may be used in determining

¹ Staff assumes that the ecosystem manager (the Executive Director of DERA in this alternative) would have the authority to modify ERPP targets based on the experience and information developed through adaptive management. If it became apparent over time that the implementation objectives should be modified, that level of change would be subject to review by the stakeholder advisory committee and approval by the Oversight Committee. Presumably, the ERPP goals and visions remain constant over the life of the program.

milestones, making required findings, or in triggering the release of funds designated for specific elements of the Program.

C. Ecosystem Restoration Component

1. Management - The major feature of assurances for the implementation of the 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.

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 (one agricultural representative, one other), and one Board member from the counties of origin.²

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

In addition to the primary mission of implementing the ERPP, DERA will have a monitoring and research function and an operations function of managing its water resources.

DERA will establish an independent scientific review process to assess its data collection and analysis. A stakeholder advisory committee will consult with DERA regarding its water resource operations and other aspects of DERA's responsibilities. DERA will consult with local agencies and interest groups on projects of specific interest to local areas. Finally, as noted above, the DERA Board will include stakeholder representation.

² This particular composition of the Board of Directors is one possibility. If the final assurances package includes a new entity for ERPP implementation, the precise composition of the Board will be one of many issues which will have to be resolved. The composition of the Board will be influenced by the need of the agencies and stakeholders to assess and balance their risks associated with the ERPP. Distribution of seats among participants will also be an issue. Appointments can be allocated by interest group or by geography, for example. The appointment powers can be distributed among elected or appointed political officials in different ways as well.

DERA will have the powers necessary to accomplish its mission, but it 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 regulatory authority, but 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.³

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 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 DERA. DERA will prepare an annual budget and establish funding priorities for ecosystem restoration actions and projects.

Responsibility for implementing the fish and wildlife portions of the CVPIA will be assigned to DERA through new federal legislation. The 800,000 acre feet of CVPIA b(2) water will be converted into a contractual entitlement or a water right assigned to DERA. Some non-CVP flow requirements will be converted into contractual entitlements or water rights assigned to DERA. (For example, flows currently required under the Endangered Species Act (ESA) will be managed by DERA.)

³ 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.

Additionally, DERA will have a contractual entitlement to a specified amount of storage, pumping, and conveyance capacity through CVP and SWP facilities. 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. DERA will manage these rights to promote AFRP goals and to implement the ERPP.

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 already available in the export service area, or by purchasing a reduction in demand in the export service areas (i.e, making funds available for the purchase of replacement water).

After its formation DERA will assume the obligations of, and become the permit holder under, the Bay-Delta Programmatic HCP/NCCP. Through the HCP/NCCP and a set of agreements with DWR and USBR and the project contractors, and with other water users or water rights holders on the Sacramento-San Joaquin system, DERA will assume responsibility for providing any water needed for environmental or water quality purposes in the Delta, above the regulatory baseline. In consideration of this indemnity, non-project water users will provide additional financial support to DERA in the form of water user fees (See Section I.C.7. below).

DERA will act as lead agency for CEQA/NEPA compliance and will hold the 404 permit and other permits necessary to implement the ERPP.

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 Program status reports to Congress, the Legislature, the CALFED Oversight Committee, and the public.

To summarize, DERA will perform the following functions:

- o Implement ERPP through Adaptive Management. The Adaptive Management process will include phased implementation, monitoring and research, independent scientific review, stakeholder involvement, and prioritization of funding.
 - o Manage environmental water. DERA will control some conveyance and storage capacity and manage its water supply.
 - o Indemnify water users. DERA will use its resources, if necessary, to insulate water users from new regulatory constraints up to some agreed limit.
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 on line, 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 recommendations by the CALFED agencies and participating stakeholders on revisions to the WQCP, and 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 require changes in the permits and licenses of the CVP and SWP. The Principles Agreement will include or incorporate by reference an agreement that will describe the process for making such changes and for any necessary changes to the Coordinated Operating Agreement (COA).
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 description of how those changes will be determined.
5. Revisions to waste discharge regulations - DERA will have the authority to 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 (WDR's). The Principles Agreement will include or refer to an agreement which will describe the process by which recommendations for changes to those regulations will be submitted to the regional and State Boards. (See Section I.F for discussion of other water quality assurance tools.)
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, how the bonds will be repaid, what projects will be funded, and the timing and phasing of issuance.
7. Water user fees - The Principles Agreement will include an agreement on how funding for ERPP implementation and water user indemnity will be provided by water user fees, how the fees will be collected and by whom, the timing of collection, and the duration of such fees. This will include an agreement on how current

payments by water users for environmental mitigation or enhancement programs will be credited.

Two types of 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. The first set of water user fees will be used for bond repayment and annual operating expenses of the ERPP. The collection of these fees would be conditioned on reaching agreed upon milestones for completion of new facilities.

The second set of fees will be levied on 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/NCCP. These fees will be phased in and will increase when new facilities come on line. The money provided by this second set of water user fees will be used to create a reserve or insurance fund for the purchase of supplemental water or for other actions necessary to provide the "no surprises" protection of the HCP/NCCP.

8. State and federal appropriations to provide funding - The Principles Agreement will include an agreement and proposed legislation on the amount of nonreimbursable federal and state general funds to be sought for the ERPP and what such funds will be used for. Generally, such appropriated funds will be used as an endowment of the ERPP, i.e., for initial 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 appropriations 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. Funding instruments and related 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 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 come on line, more money is released for ecosystem restoration.

Similarly, the Principles Agreement will propose legislation and include an agreement that 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. In other words, the permitting, construction and operation of facilities will be dependant on findings or agreement that the ERPP is making adequate progress towards its implementation objectives.

10. Phasing and linkage - The Principles Agreement will describe the timing of Program 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 IV for additional discussion of 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 that SWRCB and other operational requirements will be adhered to will be secured in a number of ways:
 - o Language in the bonds used to fund facilities will specify the operating rules for the facilities. Variances from these operational rules will require the consent of the Oversight Committee and SWRCB.
 - o DERA will be given a priority for any use of capacity in the isolated system above 5,000 cfs (if the facility is constructed to a capacity greater than 5000 cfs).
 - 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 standards in the future, water users will compensate DERA with water and/or money. This "reciprocal indemnity" will be incorporated into the HCP/NCCP.
13. State legislation - State legislation will authorize the formation of DERA, describe its governance and management structure, authorize appointment of Board members by the Governor (jointly with the Secretary of Interior), and define its powers and purposes.

State legislation will also link permitting, construction and operation of new facilities to funding and implementation of the ERPP, 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 equitable increments.

14. Federal legislation - Federal legislation will authorize the formation of DERA, describe its governance and management structure, authorize the appointment of Board members (jointly with the Governor), and 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 and the AFRP to DERA. Federal appropriations will be sought for some of the initial capital funding of the ERPP.

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 provide 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. Permits for new facilities will be linked to milestones or completion of high priority levee rehabilitation projects. Facilities permits may also be linked to milestones in other components (ERPP, water quality, water use efficiency).
4. Construction scheduling and phasing - The Principles Agreement will include a schedule for construction of new facilities and describe the linkage between construction of new facilities and implementation of ERPP. Continued funding of ERPP through water user fees will be tied to construction and operation of new facilities.
5. Operating rules for existing facilities - The Principles Agreement will include interim CVP and SWP operations criteria, and an agreement on how the operations criteria will be modified as ERPP and new facilities come on line.

6. Operating rules for new facilities - The Principles Agreement will include operating rules for the new facilities (or an agreement on how these will be developed), including the allocation of capacity between environmental and consumptive uses.
7. ESA Concerns - There are three areas of concern: Federal ESA Section 10 issues; Federal ESA Section 7 issues; and State ESA issues.
 - a. Section 10 issues - The Principles Agreement will incorporate 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:
 - (1) The Bay Delta HCP would cover all species identified as affected by the implementation of the long term Bay-Delta Program and for which there is adequate biological information to make the necessary determinations.
 - (2) The HCP would include a description of the Program activities covered by the HCP, including any required mitigation actions.
 - (3) It would include a summary of Program phasing and monitoring requirements.
 - (4) The term of the HCP would be related to the time frame for the ecosystem restoration program; perhaps in the range of 20 to 30 years.
 - (5) An incidental take permit would be issued for all covered species.
 - (6) The Bay Delta HCP would include a description of what constitutes extraordinary circumstances or the process for making that determination.
 - (7) The Bay Delta HCP would include provisions which would provide that if the HCP were being adequately implemented, the permit holder would receive some degree of regulatory certainty, through the Department of Interior's "no surprises" policy.
 - (8) Project operator and water user costs would be quantified, fixed and certain. The HCP might also include a formula for cost increases, if necessary.
 - b. Federal agency actions will be subject to Section 7 consultation requirements.
 - c. The NCCP will address California ESA issues.

8. Indemnity/insurance for water users - The Principles Agreement will link 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 limited indemnity for water users and for the environmental water supplies.

If additional water (above the agreed upon baseline amount) is required by regulatory agencies for ecosystem restoration, 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 periodically report the results to the Oversight Committee and the public.
10. Dispute resolution - The Principles Agreement will provide that disputes which may arise among agencies and/or stakeholders regarding facilities operations will be resolved by the current Operations Group and that unresolved issues will be elevated to the Oversight Committee.
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 operations criteria.
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 through CVP and SWP facilities.

15. Rules for conjunctive use programs - The Principles Agreement will include provisions on the conjunctive use and management of Central Valley groundwater and proposed rules for groundwater based transfers.
16. Bonds to provide funding - The Principles Agreement will describe the revenue bond funding for 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 dedicated to ecosystem restoration and environmental purposes.
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 provide water supply reliability assurances, with a provision that all necessary permits for construction and operation of new facilities will be granted so long as the proposed facilities and their operation are 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.
21. 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.
22. 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. 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 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 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. Funds will be allocated for levee improvements after review and approval by DWR, the ecosystem restoration manager, and the reclamation district.
5. Reclamation districts and landowners may be required to make the following agreements before money will be released to individual islands for levee improvements:
 - o Transfer of habitat easements for necessary habitat
 - o Transfer of development rights
 - o Agreements on levee maintenance techniques
 - o Agreements to implement subsidence management measures
 - o Agreements to enter into discharge management programs (see "Water Quality")
6. The ecosystem restoration manager and the ESA regulatory agencies will provide "safe harbor" agreements for Delta landowners and Reclamation Districts who agree to operate and maintain levees in accordance with ERPP.
7. Program phasing will ensure that specified critical levee improvements (e.g., on the key western islands) will be completed before the construction of the isolated facility.
8. An interagency emergency response program will be created and administered by DWR. The program will assure that resources are available to respond to major flooding or seismic events in the Delta on a timely basis. Funding for the program will be provided by state and federal appropriations, or water user fees.

F. Water Quality

1. The Principles Agreement will include agreements on the use of new facilities to meet water quality objectives, timelines for compliance, proposed revisions to the WQCP, funding for water quality programs, etc. The general approach to achieving the water quality objectives of the Program is a tiered or layered approach. The first layer is financial incentive or assistance programs administered by the SWRCB. If, after an agreed upon period of time, water quality objectives are not being met, the approach will shift to reliance on regulations, with penalties and sanctions for non-compliance. The third layer is reliance on legal actions to compel compliance.

2. Protection of Delta salinity levels for environmental, agricultural, and urban uses will be provided in the same way that environmental flows are provided, as described in earlier sections. The SWRCB will set new salinity standards which will be incorporated into permit requirements for the state and federal projects, and upstream water users. These standards will be incorporated into the Bay Delta HCP/NCCP. Violations of these salinity requirements would lead to a loss of the "no surprises" protection. Language in the bonds used to fund new facilities would prohibit use of the facilities whenever salinity requirements are being violated. DERA would indemnify water users against the increased water costs of more stringent future salinity standards. Water users would indemnify DERA against future relaxations in salinity standards.
3. In the first phase of water quality component implementation, the SWRCB and the Regional Boards would be required by state and federal legislation to meet various water quality standards, according to a specific timeline, through non regulatory means. Implementation will be based on incentive and assistance programs designed to encourage voluntary compliance with water quality standards. The standards would be written to reduce discharges of various pollutants that degrade water quality. Such discharges include heavy metals, pesticides, selenium, salts, and organics. State and federal funding would be provided up front to the SWRCB and the Regional Boards for this purpose.
4. The ERPP manager may supplement SWRCB and Regional Board funding for these incentive based programs.
5. If, after an agreed upon period of time, the water quality standards have not been met through the voluntary programs, the SWRCB and Regional Boards will implement the standards through regulatory programs and sanctions, such as:
 - a. Tradeable discharge permits;
 - b. Best management practices;
 - c. Waste discharge permits;
 - d. "No surprises" assurance for a discharger would be conditional on compliance with SWRCB requirements; discharger in violation of SWRCB/Regional Board requirements would not be allowed access to CALFED facilities or state water bank;
 - e. Levee rehabilitation and maintenance funding for an in Delta discharger would be conditional on compliance with SWRCB drainage discharge requirements.
6. Legislation will be proposed to authorize citizen suits for direct legal action against polluters or to compel SWRCB and Regional Board compliance with these water quality objectives, if the standards are not met within an agreed upon period of time.

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

G. Water Use Efficiency

1. The Principles Agreement will include a statement of commitment to water management and conservation efforts.
2. The general approach of the CALFED Program is that water use efficiency programs and measures will be implemented by water agencies and by individual water users on a voluntary basis. The CALFED Program will provide incentives and assistance programs managed by DWR and USBR. These programs will be designed to increase the value of conserved water to agriculture and expand the scope of measures which will satisfy the test of cost-effectiveness. If, after an agreed upon time, the objectives or performance measures for the Water Use Efficiency component have not been met, the approach will shift to regulatory requirements, with penalties and sanctions for noncompliance.
3. Urban water agencies will implement Best Management Practices for conservation and for water reclamation. Agricultural water agencies will implement Efficient Water Management Practices. Refuge managers will also implement efficiency practices. In each case, the level of implementation can be no less than what is cost effective for the implementing agency.
4. Urban and agricultural efficiency will be measured through a certification program. The California Urban Water Conservation Council (CUWCC) will certify only those urban water agencies which meet specified requirements. The Agricultural Water Management Council (AWMC) will certify only those agricultural water agencies which meet specified requirements. Another, as yet undefined, council will certify districts using water reclamation criteria. A method to measure refuge efficiency has yet to be developed.
5. If, after an agreed upon period of time, agencies have not been certified, regulatory approaches and sanctions will be triggered. For example:
 - o Local agencies which do not have certified plans lose eligibility for financial incentive or technical assistance programs.
 - o Facilities construction bond language will prohibit the use of new facilities to convey either project or purchased water for any urban or agricultural agency purchaser which is not certified as efficient.
 - o The SWRCB would 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.

- o Agencies which are not certified will lose any “no surprises” assurances in the HCP until they are certified.
6. No agency would be granted “no surprises” protection under the HCP unless it assented to necessary contract amendments to allow the above sanctions to be applied at the individual agency level.
 7. These sanctions would apply to top tier urban wholesalers (e.g., MWD, Santa Clara) when more than 10% of the water delivered by the wholesalers is delivered in areas not certified. First tier wholesalers would be allowed to escape from a numeric certification requirement if they were willing to make a long-term programmatic commitment to efficiency at certain specified levels. They would then be subject to sanctions if they did not uphold their programmatic commitments.
 8. These sanctions would apply to top tier agricultural wholesalers (e.g., Kern) when more than 10% of the water delivered by the wholesalers is delivered in areas not certified. First tier wholesalers would be allowed to escape from a numeric certification requirement if they were willing to make a long-term programmatic commitment to efficiency at certain specified levels. They would then be subject to sanctions if they did not uphold their programmatic commitments.

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, revenue bonds, state and federal appropriations, and water user fees.

II. DRAFT ASSURANCES ALTERNATIVE 2

The distinguishing features of this alternative are a comprehensive implementation plan that identifies the assurance tools, the sequence of implementation and the responsible entities; and the formation of a CALFED joint powers authority as the management entity for implementation of the ERPP, with a mechanism for stakeholder input through an advisory body, similar to BDAC.

A. Implementation Plan

1. The Implementation Plan will be included in the Final Programmatic EIR/EIS. The Implementation Plan functions in much the same way as the Principles Agreement described in Alternative 1. It will describe the actions necessary to implement each program component and will provide assurances that the program will be implemented and operated as agreed. In addition, the plan will include a process to address unforeseen circumstances that might make implementation of a specific element or action impossible.
2. The Implementation Plan will include:
 - a. The financing plan.
 - b. The Programmatic Bay-Delta HCP and the agreement for federal agency consultation. The HCP and related agreement will address the actions and entities covered, the avoidance and minimization strategy, the recovery plan, the "no surprises" policy, the definition of "extraordinary circumstances", monitoring and reporting obligations, and an enforceable implementation agreement clearly articulating the rights and responsibilities of each participant in the HCP. Consultation for federal agencies will be coordinated by separate agreement if they cannot be covered by the HCP.
 - c. A description of the state and federal legislation needed for the creation of the Joint Authority, program funding, operational limitations on new facilities and linkages to ERPP, and any additional authorizations necessary to carry out the program.
 - d. The structure, governance and authority of the joint powers authority, the CALFED Ecosystem Restoration Authority.
 - e. The purpose, structure, scope of authority and representation of a citizens' advisory committee on program implementation.
 - f. A description of the assurance tools required for each program component. For example, if the adaptive management process for the ERPP 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.

- g. A process and schedule for finalizing pieces of the implementation plan that may not be complete by the time of the Final Programmatic EIR/EIS.
- h. A contingency plan which describes a process to be followed in the event of unforeseen circumstances which prevent key components from being implemented or operated as agreed.
- I. A sequence of events for implementation and a description of what will be done in each phase.

B. CALFED Ecosystem Restoration Authority

- 1. The CALFED agencies will form a joint authority, the CALFED Ecosystem Restoration Authority (CERA), to implement the ERPP. The joint powers agreement will describe the structure, authority and governance of CERA. The CALFED agencies will not transfer any regulatory authority, but will provide CERA 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. The federal agencies may not be able to operate under the state joint powers authorization and specific federal authorization may be required.
- 2. CERA will appoint an Executive Director to manage the day to day implementation of the ERPP. Specific implementation actions may be assigned to individual federal or state agencies, or contracted out to local or private entities.
- 3. A federally chartered citizens' advisory committee will be set up to provide comments, stakeholder coordination and oversight of CERA's implementation of the ERPP and to provide input to the CALFED agencies.
- 4. Other ecosystem assurances will be substantially as described in Alternative 1.

C. Water Supply Reliability

- 1. The CALFED resource management agencies will enter into an agreement with DWR and USBR to formalize the manner in which they will coordinate operations of the CVP and SWP and to describe how CALFED Program actions will be integrated with CVP and SWP operations. The agreement will specify the time and manner for public participation before final decisions on water management are made. The COA will be amended to reflect operational changes required by the long term CALFED Bay-Delta Program.

2. Other water supply reliability assurances will be substantially the same as described in Alternative 1.

D. Other Program Components

Water quality, water use efficiency, levee integrity and funding assurances will be similar to Alternative 1.

III. DRAFT ASSURANCES ALTERNATIVE 3

The distinguishing features of this alternative are a comprehensive implementation plan that identifies the assurance tools, the sequence of implementation and the responsible entities; general program oversight is provided by the existing CALFED structure, with a mechanism for stakeholder input through an advisory body, similar to BDAC.

A. Implementation Plan

1. The Implementation Plan will be included in the Final Programmatic EIR/EIS. It functions in much the same way as the Principles Agreement described in Alternative No. 1. It will describe the actions necessary to implement each program component and will provide assurances that the program will be implemented and operated as agreed. In addition, the plan will include a process to address unforeseen circumstances that might make implementation of a specific element or action impossible. The existing CALFED structure will act as an oversight and dispute resolution mechanism.
2. The Implementation Plan will also include:
 - a. The financing plan.
 - b. The assignment of specific ERPP elements or actions to the implementing agency.
 - c. The Programmatic Bay-Delta HCP and the agreement for federal agency consultation. The HCP and related agreement will address the actions and entities covered, the avoidance and minimization strategy, the recovery plan, the "no surprises" policy, the definition of "extraordinary circumstances", monitoring and reporting obligations, and an enforceable implementation agreement clearly articulating the rights and responsibilities of each participant in the HCP. Consultation for federal agencies will be coordinated by separate agreement if they cannot be covered by the HCP.

- d. A description of the state and federal legislation needed for program funding, operational limitations on new facilities and linkages to ERPP, and any additional authorizations necessary to carry out the program.
- e. The purpose, structure, scope of authority and representation of a citizens' advisory committee on program implementation.
- f. A description of the assurance tools required for each program component. For example, if the adaptive management process for the ERPP 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.
- g. A process and schedule for finalizing pieces of the implementation plan that may not be completed by the time of the Final Programmatic EIR/EIS.
- h. A contingency plan which describes a process to be followed in the event of unforeseen circumstances which prevent key components from being implemented or operated as agreed.
- I. A sequence of events for implementation and a description of what will be done in each phase.

B. Ecosystem Restoration

- 1. The implementation plan describes which ERPP projects and actions will be implemented by which agencies and how each will be funded.
- 2. Other ecosystem restoration assurances will be substantially as described in Alternative 1.

C. Water Supply Reliability

- 1. The CALFED resource management agencies will enter into an agreement with DWR and USBR to formalize the manner in which they will coordinate operations of the CVP and SWP and to describe how CALFED Program actions will be integrated with CVP and SWP operations. The agreement will specify the time and manner for public participation before final decisions on water management are made. The COA will be amended to reflect changes required by the long term CALFED Bay-Delta Program.

2. Other water supply reliability assurances will be substantially the same as in Alternative 1.

D. Other Program Components

Assurances for water quality, water use efficiency, levee integrity and funding will be similar to Alternative 1.

IV. PHASING

Because the long term Bay-Delta solution will require a number of legislative, regulatory, contractual and institutional changes, as well as funding and permitting, implementation will be an extremely complex problem. It will be impossible to implement all program components simultaneously. Some actions -- ecosystem restoration projects, levee improvements, water quality measures -- could be implemented with minimal lead time while others will require many years, e.g., Delta facilities and storage, even after they have been approved. Therefore, it seems logical to implement the Bay-Delta solution in phases.

If the program is implemented in phases, the order in which actions are taken becomes very important. The challenge is to allow actions that can be taken immediately to occur, while assuring that each interest group has a continued stake in the successful implementation of the entire program.

Phasing should have the following characteristics:

- o Each phase should be completed before the next phase can begin. A designated entity or individual will certify that the necessary milestone has been reached and the necessary findings made.
- 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 in the early stages of the program to reduce the risk that outside actors could affect the process at a later date.

Phase 1 Present to Completion of Final Programmatic EIR/EIS

- o Final EIR/EIS adopted by CALFED.
- o Final negotiations and signature of the Principles Agreement by all CALFED agencies and a "critical mass" of urban, agricultural, and environmental interests (for Alt. 1); or approval of the Implementation Plan (for Alts. 2 and 3).
- o Initial set of ecosystem actions begins, using existing authorities and existing funding. Interim arrangements to continue until new ecosystem manager is functional.
- o Agreement on interim CVP and SWP operations.

- Agreement on funding and water user fees.
- Agreement on dispute resolution and contingency process.
- Outlines of State and Federal legislation to be introduced.
- Prepare outline of each CALFED agencies' decision-making documents.

Phase 2 Transition from Decision to Implementation

- Sign and execute the Programmatic HCP/NCCP implementation agreement.
- Complete a programmatic 404 permit.
- Introduce State and Federal legislation.
- Authorizations to create or modify management entities (DERA or CERA).
- Modifications to CVPIA if necessary.
- Modification to state water quality, water transfer, and water conservation statutes if necessary.
- Authorization for state GO bonds to fund ERPP.
- Seek Federal authorization and appropriations for a portion of ERPP, water use efficiency, water quality, levee programs and water supply facilities..
- Establish forum for discussions with stakeholder during transition.
- Draft contracts and agreements to govern implementation. This includes:
 - Joint powers authorities MOUs or other agreements among CALFED agencies.
 - Contracts between agencies and stakeholders.

Phase 3 Near Term Implementation

- Election to authorize state GO bonds for ERPP, water use efficiency, water quality and levee programs.
- Establish a process for issuing revenue bonds for state share of new facilities:
- Complete site specific analysis and permitting for new facilities.
- Enhance water transfer legislation (i.e., measures to rationalize markets while improving protection for local areas).
- Establish stakeholder participation process (for example Federally chartered advisory committee).
- Finalize process to address circumstances which prevent key components from being implemented or operated as agreed.
- Begin initial levee upgrade program using state, federal, and local funds.
- SWRCB develops and implements new interim WQCP and water rights decision. Standards remain largely unchanged, except that (1) Vernalis flow measures are modified to match adaptive management proposal; (2) Unlimited joint point of diversion is granted to state and federal projects.
- Begin implementation of water quality and water use efficiency components.
- Begin ERPP monitoring and reporting programs.
- Begin implementing the HCP/NCCP.

Phase 4 Long-term Implementation

- o Transfer ecosystem restoration responsibilities and funding to new entity.
- o Complete South Delta improvements.
- o Reach levee upgrade milestones.
- o Begin water user fees for ERPP operations, with sunset in years if facilities not collectively completed.
- o Apply regulatory programs for water quality and water use efficiency if targets are not being met.
- o Construct facilities if ecosystem restoration plan and HCP/NCCP are being implemented as scheduled.
- o SWRCB develops long-term WQCP and water rights decision, including:
 - o New flow and export requirements;
 - o Assignment to ecosystem manager of some flows currently required by SWRCB;
- o Once ecosystem goals achieved or after specified number of years, water diversion fees are reduced to level required for (1) routine maintenance of ecosystem program and HCP/NCCP.
- o If all program components are being implemented substantially as agreed, all funding is released for program components; otherwise contingency/failure of conditions process is triggered.