



Memorandum

Date: February 10, 1998

To: BDAC Assurances Workgroup Members

From: Sue Lurie
Executive Fellow to CALFED Bay-Delta Program

Subject: Proposed Process for Developing Contingency Plan

The purpose of this memo is to provide Assurances Workgroup members preliminary ideas about the need to develop a contingency plan for CALFED and a way we might approach it.

After members have had some time to consider the approach and the questions which follow, a suggested schedule is:

April 21, 1998 meeting: General discussion of the concept and either consensus on the existing framework with suggestions for refinement or proposal for alternative approaches.

May 29, 1998 meeting: Breakout groups to develop a list of general contingency categories consistent with this proposed matrix or with an appropriate alternative approach.

July 7, 1998 meeting: Either general discussion or breakout groups to determine best hypothetical program responses. Discussion and decisions should be based on the understanding that the outcome will probably need to be adapted to function with whatever CALFED administrative entity is developed.

Need as Demonstrated by Other Program Experiences

The Draft Assurances Research report on other complex resource programs revealed that all have had shocks to the system. Each provides an example of a contingency type which might occur in the CALFED program:

CALFED Agencies

California

- The Resources Agency
- Department of Fish and Game
- Department of Water Resources
- California Environmental Protection Agency
- State Water Resources Control Board

Federal

- Environmental Protection Agency
- Department of the Interior
- Fish and Wildlife Service
- Bureau of Reclamation
- U.S. Army Corps of Engineers

- Department of Agriculture
- Natural Resources Conservation Service
- Department of Commerce
- National Marine Fisheries Service

1. For the Chesapeake Bay Program, one of the latest and most pressing issues has been the 1997 summer *Pfisteria* outbreak. Although there have been no recent outbreaks, the condition is assumed to be temperature related. It is unlikely that any will occur in winter weather; however, when summer returns, it also assumed there will be additional incidents. Policy changes regarding phosphorus loading in Bay tributaries will have to be made in a time frame that will likely cause significant economic impacts to those whose agricultural land use practices contribute substantially to the condition.
2. The Columbia River Gorge Commission, funded by the legislatures of Washington and Oregon, has had its budget cut significantly. The Commission has made up most of the cuts through federal grants, but these are not permanent funding replacement sources. Private foundations generally do not make grants to governmental institutions. The question remains how long the current situation will continue and what sorts of administrative changes will be needed to adapt to the situation.
3. The South Florida Water Management District is trying to comply with Endangered Species Act requirements by withholding water from Cape Sable seaside sparrow habitat during nesting season. The birds, at extreme low population levels, have colonized the habitat because of prevailing water management strategies elsewhere. Although management has created dry conditions part of the year, at other times the area is used for excess water for flood control. Withholding water to prevent flooding the newly established habitat area during nesting season will cause flooding in Miccosukee tribal land housing areas unless other water management procedures are implemented. It has been decided that some gaps will be made in other parts of the water distribution system, but that most excess water will have to be shunted out of the area to estuaries, flooding them and disturbing balances in those environments. This approach may cause negative consequences to estuarine resources and, as a result, generate other ecosystem restoration issues which might not have otherwise occurred.

The above contingencies are all unforeseen circumstances that represent problems for administration, policy, and program operation. For Chesapeake Bay, the policy makers have the authority and responsibility to determine how the Program will respond, but one outcome could be lawsuits. For the Columbia River Gorge Commission, a worst-case scenario could be that their program cannot operate effectively unless decision makers at another level who control funding are persuaded to restore the budget. For the South Florida Water Management District, decision makers have the authority and obligation to protect the sparrow, but operations designed to mitigate problems on tribal lands require alterations to water management structures and practices that may create dilemmas elsewhere.

A Suggested Process for CALFED

CALFED is proposing to develop a contingency plan to ensure that problems such as those cited do not hamper or cripple the program. The contingency plan should be a process that can respond to different categories of contingencies in a manner that increases the potential for appropriate outcomes consistent with CALFED solution principles. It may help to define a contingency plan for CALFED in terms of what it is *not*. It is not strictly a dispute resolution

process, although there will likely be elements of dispute resolution as part of it. It is not a process for trying to define any and all problems that may arise and designing a management plan for each. As the above examples demonstrate, there is no way to anticipate all possible events.

There is the potential that work now on determining a contingency process could provide insight on what institutional models are desirable. Once CALFED determines what type of administrative structure it will adopt, the process can be adapted to suit institutional requirements.

Development of the process could take place in three phases:

Phase I - Defining Contingency Types

The above examples indicate there are different categories of contingencies that can affect programs at different levels and on different scales. A good contingency plan process would be one that is both comprehensive and adaptable to the type and scale of a problem. Below is a proposed set of categories that could be used to define the scope and depth of a process. It can be expanded or limited as needed. There should be an opportunity for the workgroup to brainstorm on possible contingencies to see if the preliminary categories capture all types, such as substantive/operational/project, catastrophic/financial/divisional and so forth.

Programmatic	Affects the activities of the entire program from the top down
Divisional	Affects separate program components, such as water quality only
Project	Affects a specific project within a program component
Administrative	Affects implementation and management of policies and efforts
Policy	Affects principles and direction of actions or projects
Financial	Affects planning and operations due to monetary constraints
Operational	Affects on-the-ground actions to carry out policies
Minor	Low capacity to affect operations or achievement of objectives but should be dealt with to eliminate potential of becoming substantive; may be isolated to one program element
Substantive	Significant capacity to affect operations or achievement of objectives; affects, or has capacity to affect, other program elements
Catastrophic	Certain capacity to terminate, either temporarily or permanently, operations or achievement of objectives

Should there be a fourth set of characteristics such as immediate, mid-term, and long term?

Phase II - Determining Program Responses

Once an inclusive framework of contingency types is established, there should be determination of the level of program response for each type. For instance, would a minor/financial/operational contingency be dealt with by the project operator? The program element oversight committee or general program oversight committee (depending on ultimate program structure)?

Should there be provisions for triggering mechanisms for all contingencies, or only certain categories? If only certain categories, does this have the potential to affect consistency of program responsiveness?

Does CALFED want all problems to be resolved at the lowest possible level, or does it want them to go directly to upper levels of administration? Or a quasi-independent oversight entity? Why would one approach be better than another under all circumstances, or should there be a general approach with guidelines for exceptions?

Once this series of questions has been answered, a process for appropriate resolution of contingencies can be designed.

Phase III - Determining the Resolution Process

CALFED may determine a one-size fits all process will work, or it may find from the first two phases that different processes are better suited to different types of problems. There may be the determination that contingencies should be uniformly dealt with at the lowest possible level, but that failure to resolve problems would move it to a higher, more formal level for resolution. What would be the process for each level? Who would be involved? Discussions should include questions about whether there should be sanctions for inability to resolve contingencies under certain circumstances.

Beyond this point, it would be desirable to refine the plan to include process criteria or benchmarks to help keep movement on track and to be able to appraise adequacy of the process as it occurs. There should also be clear provisions for terminating or winding down the process and incorporating results into the rest of the program as appropriate.