

DRAFT IMPLEMENTATION STRATEGY

February 15, 1998

The CALFED Bay-Delta Program is developing a long-term comprehensive plan to restore the ecological health of the Bay-Delta and improve water management for beneficial uses. Once the CALFED agencies select a plan, they will need an implementation strategy that assures the plan will be implemented and operated as agreed. In addition, the CALFED agencies will need a contingency planning process to address situations where an element of the solution cannot be implemented or operated as agreed.

Below is a summary of the implementation strategy for program-wide implementation including finances and financing. Additional work on this strategy will become increasingly important as the agencies and public contemplate selection of a preferred alternative and release of a final environmental impact statement of report at the end of 1998.

ASSURANCES

Assurances are the mechanisms necessary to assure that the long-term Bay-Delta solution will be implemented and operated as agreed. In addition, an assurances package will include a contingency planning process to address circumstances in which an element of the long-term solution cannot be implemented or operated as agreed. This is a status report on the development of the Assurances package and will address the process used to identify the building blocks that will make up any assurances package, remaining issues and a suggested process for completing an assurances proposal for the final programmatic EIS/EIR.

Process

During Phase II of the Program a workgroup, appointed by the Bay Delta Advisory Council (BDAC), identified and discussed a number of issues relating to development of the Assurances package. These discussions occurred at public meetings approximately every six weeks and included BDAC members, CALFED agency representatives and members of the public.

Early in their discussions, the workgroup determined it was necessary to develop a case-study in order to focus their discussions. The workgroup selected an alternative that presented multiple assurances issues. The selection of the case study was in no way an endorsement of any program alternative or approach.

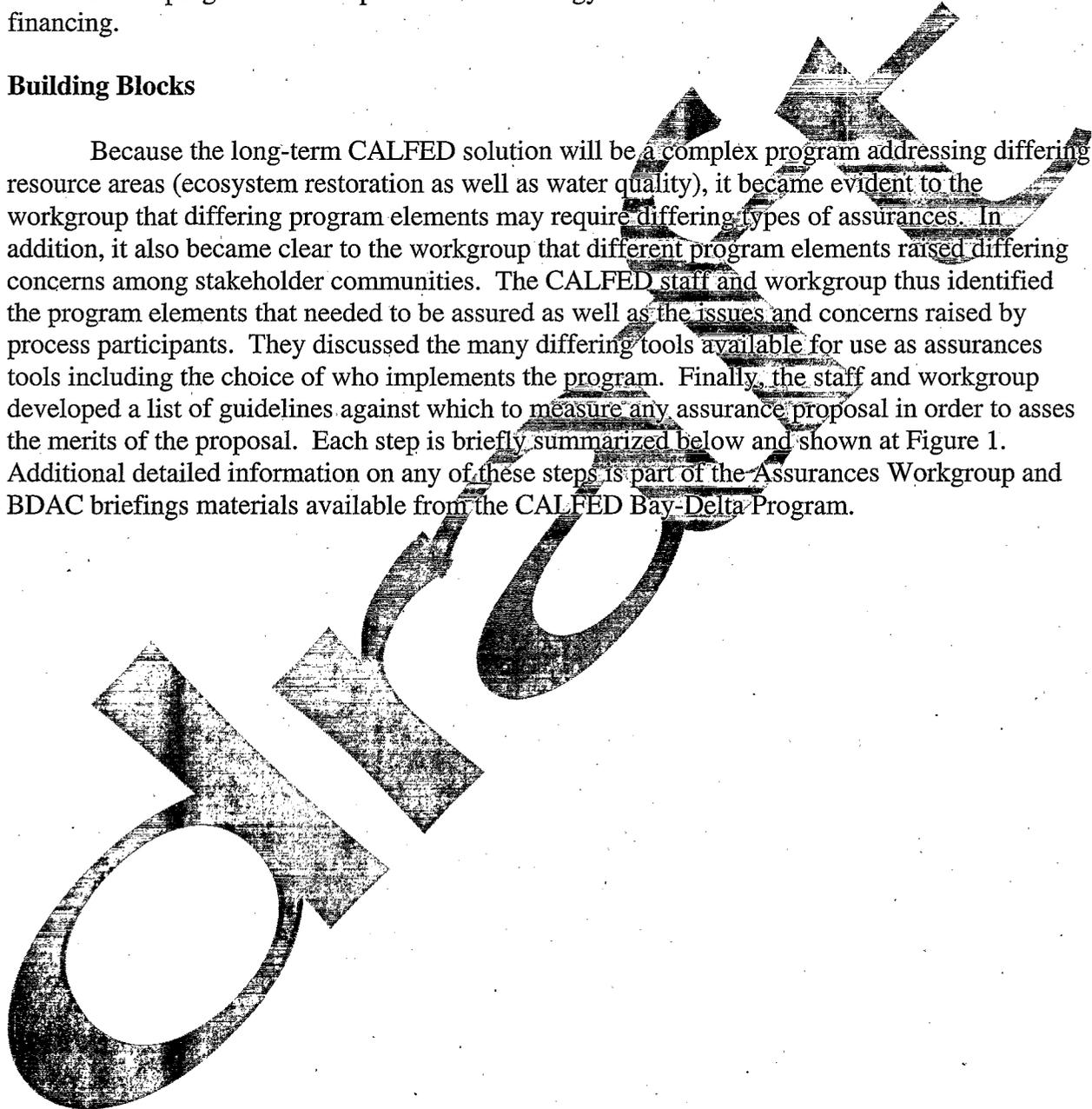
Periodically, CALFED staff or BDAC members presented updates to the full BDAC on the workgroup's efforts. The workgroup process and resulting discussions at BDAC have identified the building blocks necessary to construct a package of assurances. Neither the workgroup nor BDAC have identified a single assurances proposal that addresses every concern, or satisfies every interest group. A significant amount of work remains, therefore, to craft a

package of assurances prior to completion of Phase II of the CALFED Bay-Delta Program. Without a sound assurances proposal, implementation of any preferred alternative is uncertain.

In addition, the Program is developing implementation plans for each program component. The task for assurances will be to collect these individual implementation plans into a coordinated program-wide implementation strategy that will also include assurances and financing.

Building Blocks

Because the long-term CALFED solution will be a complex program addressing differing resource areas (ecosystem restoration as well as water quality), it became evident to the workgroup that differing program elements may require differing types of assurances. In addition, it also became clear to the workgroup that different program elements raised differing concerns among stakeholder communities. The CALFED staff and workgroup thus identified the program elements that needed to be assured as well as the issues and concerns raised by process participants. They discussed the many differing tools available for use as assurances tools including the choice of who implements the program. Finally, the staff and workgroup developed a list of guidelines against which to measure any assurance proposal in order to assess the merits of the proposal. Each step is briefly summarized below and shown at Figure 1. Additional detailed information on any of these steps is part of the Assurances Workgroup and BDAC briefings materials available from the CALFED Bay-Delta Program.



IMPLEMENTATION: ASSESSING ASSURANCES

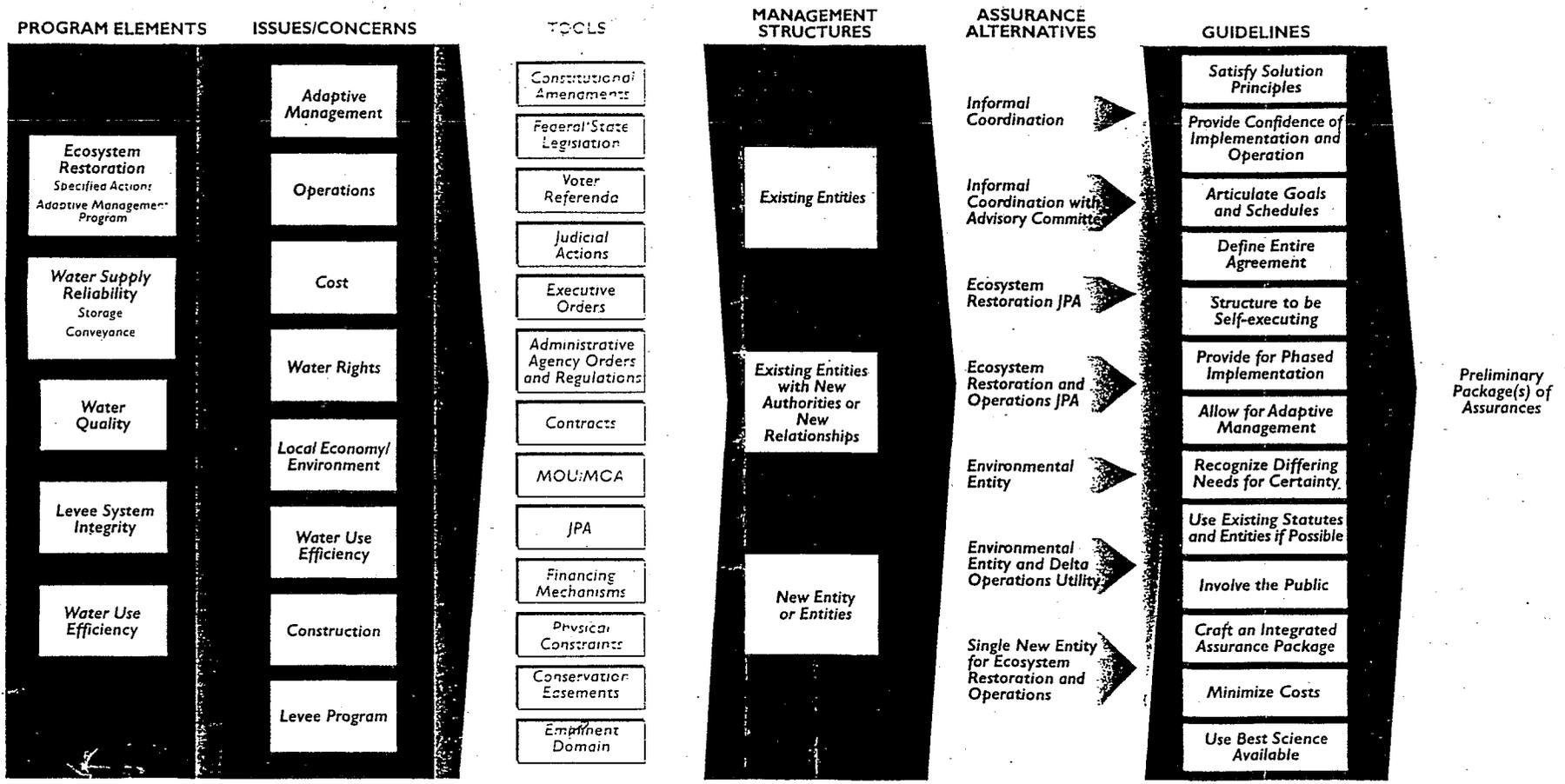


Figure 1

Program Elements

The program elements to be assured are as follows:

- Ecosystem Restoration - including both specified actions or programs, as well as a significant adaptive management program.
- Water Supply Reliability - including both storage and conveyance programs.
- Water Quality.
- Levee and Channel Integrity.
- Water Use Efficiency.

Each provides its own set of assurances challenges. For example, the concerns over appropriate adaptive management for ecosystem restoration may require differing assurance mechanisms than does assurances for constructing additional offstream storage reservoirs. Each program element, therefore, was analyzed both in terms of how to assure it individually, as well as how to assure it as part of implementing the entire long-term solution.

Issues and Concerns.

Many of the program elements present unique issues of concern to CALFED agencies and stakeholder's alike. Some of the issues of concern follow:

Adaptive management - A significant portion of the Ecosystem restoration program element relies on adaptive management to determine specific restoration actions and measure their efficacy. Therefore, assuring effective adaptive management becomes essential to assuring successful implementation of the Ecosystem Restoration Program. The difficulty comes in that adaptive management by definition is flexible. The challenge is to provide adequate and appropriate assurances that an adaptive management system has all of the basic authorities and resources to operate effectively without overly restricting the directions such a program may take.

Operations - How a water conveyance or storage facility is operated can mean the difference between a facility providing benefits to many beneficial uses and one providing no benefits, or benefits to one user group at the expense of another. Once the Program identifies appropriate operating criteria, assuring those criteria

will in fact govern the operation of the facility is a challenge. Fear of misoperation is of paramount concern for many stakeholders.

Cost - One of the concerns over whether or not the long-term solution can be implemented and operated as agreed is assuring adequate funds are available.

Water rights - How and whether the long-term solution will affect existing and future water rights creates concern on the part of some stakeholders.

Local economies and environments - Many stakeholders are concerned with how a long-term solution might affect local economies and environments. If, for example, local land uses change because of restoration efforts, what will the affect on the local economy be? Likewise, if a long-term solution increases water transfers, what will the affect on local environments be?

Water use efficiency - Some have expressed concerns that as much as is possible be done to increase the efficient use of water. Assuring such a high level of water use efficiency is a concern to some stakeholders and agencies.

Construction - Because of the programmatic environmental review, most construction associated with a long-term solution will probably require additional site-specific environmental review and permitting. The uncertainty of these future processes causes concern among stakeholders that assuring future construction is difficult.

Levee program - Levee stabilization and improvements require a significant investment of money. Many are concerned that support for such a program may vary depending upon the level to which water users rely on water from the delta common pool.

Tools.

The staff and workgroup developed a list of tools and generic descriptions of them. Although some tools provide greater certainty, they may also be more difficult to establish initially, or may cost significantly more than another tool. Selection of specific tools, therefore, will be an assessment of risk and willingness to pay to minimize that risk. In general, the staff and workgroup identified the following tools:

Constitutional Amendments. Federal or state. Article X §2 of the California Constitution, for example, calls for the reasonable and beneficial use of all water. Constitutional amendments are difficult to obtain and difficult to modify once obtained.

Statutes. Federal or state. Examples of statutes that govern management of a resource include the state and federal endangered species laws, state and federal water quality statutes (Porter-Cologne Act and the federal Clean Water Act), state and local land use statutes and the federal Central Valley Project Improvement Act. Statutes may be modified by act of Congress for federal statutes and by the Legislature for state statutes.

State voter referenda. Voter referenda can be used for a variety of purposes, but the most common are to enact particular legislation (such as Proposition 13 which enacted constitutional and statutory limits on local financing and property taxation) or to approve particular bond measures (such as the series of California Parks and Wildlife bond measures or the bond measure funding Bay-Delta ecosystem measures (Proposition 204). Modification of voter referenda is normally more difficult than modifying statutes, and at a minimum requires action by the Legislature.

Regulations. Federal or state. Adopted by administrative agencies to guide implementation of their duties and obligations. An example is the California Environmental Quality Act (CEQA) guidelines. Regulations are proposed by federal or state agencies and subject to public review and comment prior to adoption. Regulations may be modified by administrative agencies.

Judicial actions. Federal or state court judgments, orders, validations, consent decrees. Can be modified only by future judicial decrees or statutory changes passed by Congress or the Legislature. Examples: the Racanelli decision on the 1978 Water Quality Control Plan and the California Supreme Court opinion in the National Audubon case, particularly the application of the "public trust" doctrine.

Executive orders. The President and Governor both may issue executive orders. The Governor issued an executive order to form the Water Policy Council, for example. Executive orders may be modified by action of the President or Governor.

Administrative agency orders. Examples are water right permits or permit amendments. Administrative agency orders are applications of statutes and regulations to a particular individual or group. They can be modified by subsequent order, but generally require notice and a hearing before the agency may do so.

Contracts. Legal agreements between two or more individuals or entities. Generally, no one party may unilaterally modify the terms or conditions of a contract. Enforcement may be specified in the terms of the contract and remedy for breach is available through the courts.

Memoranda of understanding/agreement. MOU/MOAs are interagency agreements with varying levels of specificity. Many are general agreements to cooperate that may be terminated at will by any party. Others are more specific and bind the agencies to a particular financial or programmatic commitment. The CALFED Agencies' MOU describing the roles and responsibilities of each agency with respect to preparation of the Bay-Delta Programmatic EIR/EIS is an example.

Joint powers agreements. State law authorizes public agencies (including federal, state and local agencies) to enter into agreements in which they "jointly exercise any power common to the contracting parties." Federal legislation would be needed to authorize a federal agency to participate in a joint powers agreement with a state agency.

Financing mechanisms. Various processes are available for generating capital and operating revenues. Water user fees are one example.

Bond measures. Provisions in the authorizing legislation or in the bond instruments could be used to establish Program requirements, schedules or related commitments.

Market incentives. Market forces can be used to encourage or discourage specific behaviors. For example, a water transfer market can create an incentive to use water more efficiently so that the unused portion can be sold.

Physical constraints. Constructing a conveyance facility to carry a specified amount of water is one example of a physical solution to an assurance problem.

Parallel implementation. Implementing elements of differing components in parallel processes might provide an assurance that one component is not completed before another is begun.

Public oversight/public involvement process. Public involvement, public advisory processes and dispute resolution mechanisms will be part of the assurance program.

New institutions. Created to implement, manage or fund any of the Program components. For example, an environmental water authority may be created by federal and state statute to ensure adequate supplies of water for environmental purposes in the future.

Multiple species protection plans. A recent tool evolving out of the federal and state endangered species programs is the multiple species protection plan. These plans, which are usually called Habitat Conservation Plans (HCPs) under federal

law, and Natural Community Conservation Plans (NCCP) under California law, generally preserve portion of a particular habitat for one or more species, and at the same time provide some certainty or stability for the public and private land owners by limiting future regulatory actions in the same area.

Programmatic permitting. Regulatory assurances could be provided in some circumstances but a programmatic permitting process for the CALFED Program, which would incorporate certain agreements regarding the actions to be required in the event of future regulatory constraints.

Guidelines.

The staff and workgroup identified a number of guidelines against which any assurance proposal should be measured. Those guidelines include the following:

- Satisfy the solution principles (implementable, durable, affordable, equitable, reduce conflicts, no significant redirected impacts).
- Provide high confidence that identified actions will be taken and that identified programs will operate as agreed. The Program cannot guarantee performance. Ecosystem function and population targets cannot be guaranteed within a finite water budget. Likewise, water supply reliability levels cannot be guaranteed given the possibility of future climate change. Also, the assurance package should not be used to compensate for perceived problems in the solution itself.
- Ensure that the solution contain clearly articulated performance criteria and proposed schedules for attaining Program goals.
- Specify that the written description of the long-term solution constitutes the entire agreement. Parties unstated assumptions about the implementation of particular components should not be binding.
- Structure the solution to be self-executing. The CALFED solution, once implemented, should be minimally dependent upon discretionary actions by actors outside the solution framework.
- Include recovery mechanisms. The solution should contain internal mechanisms capable of responding to surprises and disappointments.
- Provide for implementation of the entire Program, even if that implementation occurs in stages or phases.

- Allow for adaptive management, wherever the current state of knowledge is inadequate to made definitive choices now.
- Allow for variations in the need for certainty on discrete program components. Some parts of the Program may need to be "set in stone," while others may be require a more flexible approach. The assurances, therefore, may vary in nature, scope and extent among program components.
- Work within existing statutes, regulations and institutions where feasible.
- Involve the public in decision-making. In order to maximize the likelihood of continued public support, the solution should contain mechanisms for soliciting, influencing and responding to public opinions.
- Craft an integrated package of assurances that work well together. Although assurances may differ by program component, they must function smoothly together. This effort in intended to assure implementation of the entire program.
- Minimize costs. The proposed assurance package should be structured so as to provide the necessary assurances at the lowest possible cost.

Issues

Program staff have identified a number of significant assurance concerns relevant to the alternatives being analyzed in this EIS/EIR. A brief summary of some of these concerns follows:

Implementing entity for ecosystem restoration entity program. Many stakeholders are concerned that the existing diffused approach to ecosystem management and restoration with responsibilities resting in state, federal, local and private entities is inadequate to assure implementation of the ERP as envisioned. Program staff, therefore, is examining a variety of implementing entities including joint powers authorities or new entities.

Any implementing entity would have the powers and resources necessary to implement the ERP. In addition, the decision of how and by whom new actions in the remainder of the program will be implemented is also pending. Program-wide coordination throughout the implementation phase is essential to successfully implementing the entire program. A decision on an ecosystem entity cannot be made without considering the remainder of the program.

Ongoing stakeholder involvement. Many stakeholders are also concerned with the nature and scope of their involvement in the implementation phase of the Program. The almost unanimous opinion expressed at BDAC Assurance Workgroup meetings is that stakeholders would like to weigh in on decisions and advise agencies in a meaningful and timely manner throughout implementation. For some stakeholders this concept is

expressed in stakeholder representation on the governing board of whatever entity implements the ERP.

Coordinated implementation. The agencies and stakeholders are concerned that any decision regarding who implements the ERP must also consider how the remainder of the program is implemented. Because of the nature of the Program and the resource, it is impossible to implement program elements independently. Decisions on management entities must be reached at the same time in order to assure coordinated implementation.

Endangered species assurances. Many stakeholders are concerned with the nature and extent of assurances given to the recovery of endangered species and the assurances given to water users for protection from future regulatory restrictions on their activities. The overall concepts of "no surprises" is an important assurance for both the ecosystem and the water users. Program staff and stakeholders are examining California and federal endangered species laws to craft mutually acceptable assurances for the Bay-Delta ecosystem, as well as the water users.

Assuring an isolated conveyance facility. Many stakeholders are concerned that construction and operation of an isolated conveyance facility will unacceptably alter the "common pool" conditions which currently provide export water users with an incentive to protect the delta levees and channels and maintain specified water quality standards throughout the delta. The stakeholders fear that if water could be exported without first passing through the delta that the delta itself could be harmed and that the incentives to continue to protect the delta will be smaller for those now receiving water from a conveyance facility isolated from the delta.

Although some stakeholders believe a small isolated conveyance facility presents overwhelming problems, many more believe that an isolated conveyance facility presents greater problems as it provides greater capacity to move more water around instead of through the delta. Stakeholders worry that no assurance mechanisms can adequately prevent the future misuse of a large isolated facility.

Each of these descriptions is but a snapshot of a much larger and complex discussion that is continuing in the BDAC Assurances Workgroup and elsewhere. Although it would be easier developing assurances after a preferred alternative has been selected, the above discussion should provide some insight into the importance of discussing assurance concerns while alternatives are being evaluated.

Completing an Assurances Package

Assurances Proposal

The Program is working to develop a package of assurances for the common programs. In addition, the Program is exploring options for assuring the variable

program components. The Program will continue working with BDAC and the BDAC Assurances Workgroup to identify areas of agreement in a proposed assurance package. For areas of disagreement, the Program is identifying options that represent differing approaches for assuring a particular portion of the program. As a part of this effort, the Program is also developing a contingency planning process.

Contingency Plan

It is impossible to protect the implementation of the long-term solution from every eventuality. The Program is developing a contingency planning process to address circumstances where a significant program element cannot be implemented or operated as agreed. The Program is developing an approach to create the contingency planning process.

The contingency plan should be a process that is comprehensible but adaptable. This will allow it to 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 since there is no way to anticipate all possible events.

The current development proposal is for a plan which accounts for categories of contingencies such as programmatic, sub-program, or project levels; administrative, policy, financial or operational types; and minor, substantive or catastrophic effects in all possible combinations of levels, types, and effects. It would include differing levels of program responses to each category and protocols for resolving contingencies in the various categories.

Phasing Plan

Regardless of which program alternative or assurance package is selected, the CALFED Bay-Delta Program must determine how to implement the program over several years. Because the Program likely will require a number of funding, legislative, regulatory, contractual and institutional changes, implementation will be a complex process. Additionally, the size of the Program and the nature of the Program components make it impossible to implement the entire program simultaneously. The Program, therefore, must be implemented in phases.

The challenge in implementing a program in phases is to allow actions that are ready to be taken immediately to go forward, while assuring that each interest group has a stake in the successful implementation of the entire program over the implementation

period. A phased implementation strategy, therefore, should have the following characteristics:

- each phase should be completed before the next phase can begin;
- each interest group should have strong inducements to support the completion of each and every phase; and
- program elements which are outside of the control of the CALFED agencies should be implemented as early as possible to reduce the risk that outside actors may affect implementation.

To begin this effort, the Program is beginning with a four phase approach as follows:

Phase I - activities occurring between the present and certification of the final Programmatic EIS/EIR. This phase begins now and continues through certification of a final environmental document.

A. Draft individual implementation plans for each program component including:

1. a description of the program element;
2. a summary of the goals, objectives and targets the element is seeking to achieve;
3. a detailed description of the actions to be taken and the tools and strategies to be used. This section will include a description of the order in which actions should be taken and their relative priorities;
4. a discussion of how and when success is to be measured;
5. and any other information necessary to assure timely and effective implementation.

B. Draft implementation document (plan or agreement) and circulate for agency and public review and comment. The document will be a compilation of all the actions necessary to assure program-wide implementation. The document should be as detailed as is possible in the time allotted.

C. Describe how the Program is to be managed in the near term. If new entities or authority is needed to implement the ERPP, some interim manager should be selected. This interim manager would oversee implementing the ERPP until a new entity or authority is operational. It will be necessary to spell out this entities'

responsibilities, authority, financing, and how it relates to the other CALFED agencies.

Phase II - transitional phase during which the Program moves from planning to implementation. This phase is projected to occur from about January 1999 - December 1999. As soon as possible following certification of the Programmatic EIS/EIR, the following would begin:

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

1. creating or modifying entities, their authority or relationships;
2. seeking federal authorization and appropriations;
3. securing state approval to sell general obligation bonds; and
4. modifying existing legislation regarding water transfers, coordinating CVPIA restoration fund expenditures, etc.

B. Draft contracts and agreements to govern implementation. This would include:

1. joint powers authorities, MOUs, MOAs, or other forms of agreement among the CALFED agencies,; and
2. contracts between agencies and stakeholders.

C. Sign and execute a conservation strategy to address federal and state endangered species.

D. Establish a forum for discussions with members of the public throughout this phase.

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

Phase III - near-term implementation. January 2000 - December 2001.

A. Establish a stakeholder advisory committee.

B. Begin implementing the levee stabilization program and emergency plan.

- C. Complete site-specific analysis and seek permit authority for any new facilities or operations.
- D. Begin implementing ERP with existing entities until new or reformulated entity is operational.
- E. Implement ecosystem restoration monitoring plans.
- F. Begin implementing water use efficiency and water quality programs.

Phase IV - long-term implementation. Will occur roughly from January 2002 - December 2030.

- A. Transfer implementation responsibilities and funding to new or modified ecosystem restoration entity.
- B. Transfer conservation strategy (ESA) responsibilities and funding to new or modified ecosystem restoration entity.
- C. Construct new facilities and implement new operational rules and criteria.
- D. Execute modified coordinated operations agreement governing new and existing facilities and operations.
- E. If all program components are being implemented substantially as agreed, all funding would be available to complete all program components.
- F. If all program components are not being implemented substantially as agreed, the process to address these circumstances would be triggered.

Clearly, the issue of assurances, particularly phasing, is paramount to achieving an acceptable long-term Bay-Delta solution. A great deal of additional work and refinement is necessary to craft a completed package of assurances. Assurances and related implementation strategy issues will be receiving more attention through the conclusion of CALFED's Phase II process.

FINANCING

[TO BE INCLUDED AT A LATER TIME]