

Organizational Issues Associated with the CALFED Program

The Role of the Natural Resources Law Center in the CALFED Program

Recently, Betsy Rieke and Doug Kenney of the Natural Resources Law Center (NRLC)¹ have become involved in the CALFED Program examining long-term institutional issues. Initially, the NRLC was asked to explore the possibility of designing and establishing a new ecosystem restoration implementation organization, an option termed DERA (Delta-Ecosystem Restoration Authority) in the NRLC's preliminary report.² Among the many issues raised in that report was the idea that should a "DERA" be established, it would need to be designed in a manner that complements the structure and function of any long-term CALFED policy body that may be established. The possible creation of a long-term policy-making body—an option termed the CALFED Oversight Committee in the preliminary report—is, in many respects, the more pressing organizational issue, as the current CALFED arrangement is scheduled to expire in May of 1999. As the significance of this deadline has become more widely recognized, the role of the NRLC has been expanded to simultaneously examine both of these closely related organizational issues.

In order to stay on pace with other CALFED Program efforts, major decisions about future organizational arrangements should be finalized by October, 1998. This does not mean that the new organizations, if any, need to be completely designed by this date, but it does require that the "fundamental" decisions must be made by that time, and a process must be in place to resolve the outstanding issues. As the process to address these long-term organizational issues evolves and moves forward, the NRLC strongly supports the recent commitment of the CALFED Policy Committee to immediately initiate steps to contractually extend the existing CALFED arrangement for a short term. An extension of the current CALFED arrangement is needed to provide an adequate time-frame in order to fully consider the many important and complex issues associated with the possible establishment and phase-in of a long-term CALFED body (i.e., a CALFED Oversight Committee) and/or an ecosystem restoration organization (i.e., a DERA). The NRLC does not anticipate playing a role in crafting this short-term solution, nor does the NRLC plan on becoming involved in other CALFED planning elements except to the extent that they are tied to long-term organizational issues.

In conducting this work, the Center plans to solicit stakeholder input through the Assurances Work Group, BDAC, and other relevant stakeholder organizations. Input from CALFED agencies and personnel will also be aggressively sought, as it is existing agency

¹ Natural Resources Law Center, University of Colorado School of Law, Campus Box 401, Boulder, CO, 80309-0401. Betsy Rieke can be reached at (303) 492-1293 (Elizabeth.Rieke@Colorado.EDU); Doug Kenney can be reached at (303) 492-1296 (Douglas.Kenney@Colorado.EDU).

² Design of a New Regional CALFED Environmental Restoration Implementation Organization: Preliminary Considerations. This report was mailed to everyone on the Assurances Work Group mailing list and to the CALFED agencies in early March. If you did not receive a copy but would like one, additional copies are available from CALFED and the NRLC.

personnel who are likely to be most directly affected by changes in institutional arrangements. Maintaining a highly open and cooperative process is an essential prerequisite to effectively identifying and addressing the concerns of all participants, and to crafting potential innovations with political viability. The NRLC has accepted this challenge with the goal of identifying organizational innovations which satisfy the needs of both stakeholders and existing federal and state agencies, and that are consistent with the program objectives and strategies identified in the overall CALFED Program. Within these broad parameters lie an extremely diverse range of potential actions. It is the role of the NRLC, as an unbiased technical expert from outside the region, to assist interested parties in identifying those options with the greatest potential relevance.

Issues That Deserve Immediate Attention: Fundamental Issue # 1

The NRLC's preliminary report identifies the range of issues that must be addressed in the design of a new regional water-related organization. The report also articulates a general philosophy about how to undertake such efforts. While that report was primarily developed with DERA in mind, the same issues are generally equally applicable to the design of a CALFED Oversight Committee. In part due to the tremendous political difficulties inherent in the creation of new organizations that, in some way, modify the existing bureaucratic landscape, it is normally best to precisely identify existing institutional deficiencies and potential solutions before deciding to create an entirely new organization—a very specific and ambitious type of institutional solution. Often, simpler problem-solving strategies are available, such as modifying procedures within or among existing agencies. Only after it is determined that the creation of a new organization is an option worthy of further consideration should a design exercise be initiated, beginning with the identification of desired organizational functions and concluding with the selection of appropriate structural features. At this point, several parties, particularly in the resource agencies, are not convinced that the establishment of one or more new organizations will emerge as the most appropriate option.

Thus, the first "fundamental" issue requiring immediate attention is whether or not a DERA and/or a CALFED Oversight Committee is needed or desired. No progress on organization design can be made until this issue is resolved. As a general rule, stakeholders are much more eager than agency personnel to establish new organizations, a trend that appears to be holding true in the CALFED situation. In part, this is due to the understandable concern that agencies have of losing "turf" (i.e., jurisdictions, responsibilities, budgets, personnel) to the new entities. This concern is often based on the misconception that any new organization will be a large, powerful, monolithic entity that will displace existing entities. That rarely is the case. Many organizations, such as CALFED, are simply a joint product of existing agencies, designed to solve a particular institutional problem—in this case, the lack of federal-state interagency coordination in regional water management. It seems quite possible that a future CALFED Oversight Committee could be closely modeled on the existing CALFED model, although existing administrative deficiencies regarding dual federal/state budgeting, personnel, and contracting rules should be addressed as part of any long-term innovation. It is also worthwhile to recognize that a body established to undertake general policy-making roles need not interfere with existing implementation bodies, and may even benefit those bodies by unburdening them of policy disputes

they cannot independently resolve.

Another reason stakeholders tend to be more willing than existing agencies to consider the establishment of new organizations is that stakeholders are usually much more optimistic that this will solve existing resource management problems. Frequently, stakeholders view agencies as a primary source of resource management problems, while agencies see competing mandates and demands (in part, coming from different stakeholder groups), intergovernmental fragmentation and competition, technical and budgetary constraints, and other largely immutable factors as the underlying causal factors. Exploring both viewpoints is essential in order to determine if establishing one or more new organizations will, in fact, address the real problems and needs. In the CALFED situation, some of the problems and needs that appear to be particularly salient include:

- ◆ the strong dissatisfaction among many stakeholders with their current level of involvement in resource management decision-making processes;
- ◆ the past history of ineffective management under existing institutional arrangements, as evidenced by current natural resource problems (including those triggering regulatory responses) and by chronic jurisdictional disputes;
- ◆ the overall CALFED objective of long-term and phased implementation of complicated program elements, particularly the ecosystem restoration component; and,
- ◆ the long-term need to coordinate CALFED program elements with each other and with other water and land-management programs.

One additional consideration that should be featured in the debate over whether to pursue a DERA involves the scope and role of the proposed entity. As currently articulated, DERA is a tool for implementing the ecosystem restoration component of the CALFED Program. Thus, DERA would be a program-specific entity. There is some logic to instead creating an implementation body based on a geographic criterion, namely the Delta region where the most intensive activities will occur under CALFED. An option worth considering as an alternative to DERA is a "comprehensive Delta organization" that coordinates all CALFED Program elements (including ecosystem restoration, water facilities development and management, and flood control) within the Delta itself, leaving all other activities—including those related to ecosystem restoration—in the upper watersheds under the direction of existing agencies or other arrangements, perhaps coordinated through a CALFED Oversight Committee. Countless other variations are possible. Determining which issues, programs, and regions, if any, merit the focused attention of a new organization is a difficult challenge, but is exactly the sort of substantive issue which should be squarely addressed before embarking on the difficult road of organizational design.

The Next Step

Once the NRLC receives sufficient feedback on this issue, the next step in the organizational design process can move forward with more intensity and direction. Initial conversations with stakeholders, for example, suggest that the next issue that will likely demand attention involves the role that stakeholders could play in program oversight and implementation,

an issue—like so many others—that cannot be addressed in detail until it is clear if zero, one or two new organizations are in Bay-Delta’s future. The NRLC realizes that all parties will reserve final judgement on whether or not to support an organization until they see the organizations(s)’s final form. That is entirely reasonable and expected. At this point, it is only necessary to establish initial preferences and to determine which options, if any, will or will not receive serious consideration. The NRLC can and will continue to provide research and recommendations, where appropriate, to aid in this process. Ultimately, however, the prerequisite of political viability ensures that all decisions must emerge from local discussions among and between stakeholders and resource managers.