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CALFED BAY-DELTA PROGRAM

Office Memorandum

Date: July 1, 1998

To: BDAC Assurances Work Group

From: Sue Lurie

Subject: Contingency Response Process

The Contingency Response Process will be a discrete element of the implementation plan for CALFED. It is to be used when key elements of the solution cannot be implemented or operated as agreed.

Goals of a Contingency Response Process

- To provide an accountable process that promotes appropriate actions by Program administrators or participants when contingencies, or unpreventable circumstances, affect Program functions.
- To avoid disrupting Program implementation any more than necessary: the Program should not have to come to a halt while minor problems are resolved. By the same token, minor problems should not be allowed to become more serious because they are not dealt with.
- To increase the potential for effective, efficient solutions to contingencies. The process should be designed so that resolution of problems caused by unpreventable circumstances is speedy and minimizes staff time and financial resources.
- To promote Program durability by avoiding or minimizing imbalances among interests when unpreventable circumstances occur. Having a process that acknowledges and deals with the need to rebalance benefits and costs when necessary should provide incentives to various interests to promote stability across all elements of the Program through the response process. For instance, if a water supply reservoir cannot be built, the Program response could be to rebalance the solution so that all interests proportionately absorb the loss. This would provide incentives for all interests to remain committed to achieving objectives in each element of the package.

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Purpose of this memo

The purpose of this memo is to set forth some preliminary criteria for Program triggers, responses, and responsibilities in the response process.

Work Group Objectives

- To solicit comments on proposed criteria.
- To generate ideas and options to further develop the response process.

Review of the May 29, 1998 Discussion

Refined contingency categories were presented at the May 29 meeting. At that time, potential Program responses appropriate to the different levels of contingencies were outlined in the memo accompanying the presentation.

There appeared to be general acceptance of the number of contingency categories and their characteristics. Expressed concerns included how contingency levels would be determined and by whom, and how the process could be structured to prevent arbitrary use to modify Program implementation or operations.

How Contingency Levels Will be Determined

There was a comment that what might be a minor contingency to one geographic area or to one interest might be perceived as significant by another. To reiterate the response at the meeting, contingency levels will be determined from a Program administration standpoint based on the effects of unpreventable circumstances on Program implementation or operations, not on effects to various interests per se. The Contingency Response Process is for the purpose of resolving problems within the Program when any of its components cannot be implemented or operated as agreed.

Problems with Program implementation or operation will implicitly affect participants. This underscores the need for an agreed-to process to restore Program functions for those who would be adversely affected by the inability of the Program to carry out the agreed upon solution.

How/When the Process will be Employed (Triggering Mechanisms)

Concern was expressed that the process could be used to manipulate Program actions or objectives without the existence of triggers or thresholds to be met before it would be utilized. Some of the common program elements will have some form of internalized, or built-in, contingency response mechanisms. When those mechanisms fail to resolve problems, the Program Contingency Response Process will be triggered. This assumes that some likely

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contingencies are anticipated by the Program and methods to deal with them are made an intrinsic part of implementation or operation guidelines.

An example of 'internalized' mechanisms to deal with a contingency would be explicit sanctions built into the Program for the refusal of any water user to pay agreed-to water diversion fees into the ERP. Such an action could impede the ecosystem restoration program from reaching its objectives. By crafting an implementation plan that included contractual agreements and tied benefits to payments, the contingency could be dealt with two ways: A water user who suddenly refused to carry through with a prior commitment would lose its 'no surprises' protection, and it could be subject to legal recourse. Only if these internalized mechanisms failed to produce a viable resolution would the Program Contingency Response Process be utilized.

Other Program elements such as the Conservation Strategy will have internalized mechanisms to resolve problems. The 'no surprises' policy covering listed species is an example. Where mechanisms internal to a common program element exist to deal with contingencies, those will take precedence.

In certain cases, such internalized contingency responses may fail to resolve problems. In other instances, no internalized responses may exist to deal with contingencies. A situation where no built-in mechanisms exist would be one in which, at the end of Stage I, one or more common programs did not achieve stated objectives or did not complete agreed-to actions. Since the solution requires that each stage be completed before the next one is begun, the Program would likely be stopped and face potential collapse unless it had an agreed-to process to negotiate how to bring lagging elements up to needed performance levels and/or how much other elements of the program might be allowed to proceed while problem areas were being dealt with. Where internalized mechanisms fail to produce needed results or where no such mechanisms exist, the Contingency Response Process will be the Program method of resolving problems affecting implementation or operations.

Contingency Responses and Who Will Make Decisions About When to Use the Process

Who manages the process and is accountable for resolution and who participates in creating alternatives needs to be considered.

The following chart, from the May 29, 1998 Assurances Work Group memo, is presented for review:

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Emergency	Sudden, unexpected occurrences that pose imminent loss or damage to life, health, safety, property or essential public services and/or Requires immediate suspension of Program operations	<ul style="list-style-type: none">• Immediate notification of appropriate emergency management organizations• Delegated responsibility with Program to coordinate with emergency mgt. organizations
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- **Minor Contingency Responses**

For minor contingencies, it's recommended that it be the Program policy to delegate decision making to the lowest possible Program level. For instance, if a contractor responsible for a restoration project did not perform as agreed to, it would be the responsibility and authority of the Program project manager to remedy the situation. All contracts would likely contain remedies for non-performance, and it would be unnecessary to refer such a problem to any oversight committee unless the project was so significant in scope that it alone could prevent the ecosystem restoration program from achieving its objectives.

Under circumstances where the outcomes of non-performance have negligible effects on the overall Program or on the affected common program element, it should be the policy that other common program element managers and overall Program administrators be informed of the problem and the resolution. Maintaining good communication ensures that if, for whatever reason, a series of minor contingencies in one program could become a problem for different programs, other managers could evaluate the situation and make recommendations to reduce potential problems. If for any reason a minor contingency became significant and could not be resolved through internalized mechanisms, the common element program manager should be required to refer the problem to an oversight committee, discussed below, for application of the Program Contingency Response Process.

- **Significant Contingency Responses**

For significant contingencies which will prevent common program elements from achieving objectives, which may affect multiple common elements because of linkages in the programs, and/or which have the potential to immediately or eventually affect Programmatic implementation or operation, the response process should be more inclusive and more formal than for minor contingencies. If the contingency is significant to only one common program element, the manager of the program should be responsible for notifying other program managers of the problem and working with them as appropriate to resolve the problem. Written notice of the problem should also be provided to affected parties so that there is adequate communication about contingency effects on the Program and efforts to resolve them.

It should be the policy of the Program to automatically employ the Contingency Response Process and to convene an oversight committee to develop alternatives and make

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decisions when a significant contingency affects more than one common element. This will reduce the potential for conflicts or unintended consequences which can result from one common program element manager taking unilateral action to resolve a contingency that affects more than his or her program element. It may be desirable to have whatever Program oversight entity is developed and implemented be responsible for overseeing the Contingency Response Process. Another option is to build guidelines for selecting a special contingency oversight committee into the Process. Since significant contingencies may have considerable effects on stakeholders, there should be thought given to whether stakeholders' interests can be served by participation in the process or whether representatives of such interests should be members of the decision making body. There will likely be advantages and disadvantages to either arrangement. Tradeoffs should be identified and discussed.

- **Catastrophic Contingency Response**

The same oversight entity or contingency committee should be convened when contingencies have catastrophic effects on the Program: implementation or operations are immediately halted and/or changes in implementation and operations policies will be required in order for the Program to continue. An example would be adoption of new water quality standards several years into the program that make it impossible to operate water supply facilities as agreed. Under such circumstances, it is recommended that the oversight entity or committee take on the role of guiding a larger process. Instead of being the body which develops alternatives, it would preside over a formal process that includes immediate public notice, a series of public hearings, direct stakeholder involvement in alternatives development and negotiation of the new terms of implementation and operations, and written findings of the public process before any modification of the Program is agreed to.

- **Emergency Contingency Response**

Emergency contingencies will be dealt with differently than other contingencies. Sudden, unexpected occurrences such as floods, earthquakes or wildfires that pose imminent loss or damage to life, health, safety, property or essential public services will trigger response processes by emergency management organizations outside the Program. Emergencies may require immediate suspension of Program operations. Under such circumstances, a specific position or a team comprising several designated positions in the Program should be identified in the Contingency Response Process. The person or team would be responsible for coordinating communications and any necessary Program actions between the appropriate external emergency management organizations and Program managers. The Contingency Response Process will likely have to be utilized once emergency conditions abate or are stabilized. Outcomes from emergency contingencies might require temporary or permanent changes in Program operations depending on the severity and magnitude of the event. Depending on the Program effects of post-emergency conditions, the process for either significant or catastrophic contingencies may be required.