

CALFED Program Oversight and Management Issues and Options

Introduction

At the Bay Delta Advisory Council (BDAC) meeting on October 30, there was an extensive discussion of program oversight and management issues. Two questions were presented to BDAC for consideration. First, BDAC was asked to consider the recommendation from the Assurances and Ecosystem Restoration Work Groups that a new legal entity should be formed to implement the Ecosystem Restoration Program (ERP). Second, BDAC was asked to consider the broader issues of program oversight, such as what kinds of functions and authorities will be required by the oversight entity (whether it is CALFED or something else).

In summary, BDAC concluded that it could not commit to the necessity of a new entity for ERP management, without considering it in the context of program oversight generally. While there was general support among BDAC members for the concept of a new ERP management entity, most members also had the view that this specific question cannot be definitively answered until there has been more work done on the program oversight questions. The Assurance Work Group was directed to take up both of these questions and to come back to BDAC with additional information and recommendations at the December and/or subsequent meeting. The Ecosystem Restoration Work Group and other work groups were also charged to begin consideration of implementation issues for the specific program elements within their purview and to think about how specific implementation of specific elements and actions will be integrated with each other and through a broad program oversight structure.

This paper is intended to further the discussion begun at the BDAC meeting on oversight issues.

As the CALFED program moves toward implementation, Program oversight and management issues need to be addressed in order to assure that implementation occurs in a timely and effective manner. Many stakeholder groups have promoted the concept of creating a new entity for the management and governance of the Ecosystem Restoration Program (ERP). However, there is general agreement that before that specific question can be fully addressed, it is necessary to address the broader program oversight and management issues.

The discussion and analysis of oversight issues can be framed by three basic questions:

1. Are there problems associated with using the current institutional structure, i.e., CALFED, as the program oversight entity? If so, what are they?
2. What are the functional requirements for program implementation,? What does the oversight entity need to be able to do? What authorities will be needed?
3. Having identified the functions of the oversight entity, what are the options for responding to the identified problems with the existing structure and for performance of the required functions?

Oversight and management issues with the current structure

As currently structured CALFED provides a forum for interagency coordination and decision making, mechanisms for formal and informal stakeholder advice to the decision makers, and support staff to generate the necessary research and documentation required to move the collaborative environmental planning process forward. However, experience with the existing structure suggests that there are problems which need to be addressed in order to assure that the CALFED Program is successfully implemented.

In addition, many believe that program implementation would be significantly enhanced by vesting broad program oversight and implementation functions in a single entity which would be accountable for overall program governance and execution.

Some of these problems associated with the current CALFED structure include:

Planning versus Implementation: CALFED was created specifically to create a long-term plan. However, plan implementation poses significant new challenges which the current arrangement was not designed to deal with. These involve potentially much larger cash flows, addressing demanding implementation schedules, interacting with affected stakeholders, local entities, and regulatory issues in new ways, and potentially greater legal liabilities.

Program Administration: CALFED does not exist as a legal entity; it has no independent power to receive appropriations, hire and retain staff, establish a location for housing the program, issue contracts, and other basic administrative functions. This will affect its long-term ability to attract and retain highly qualified staff, develop a coherent program, and carry out its duties in an efficient manner. Very substantial staff efforts are currently required to address the complex challenges of dealing with multiple budgets, personnel procedures, and resource requirements.

Decision Making Protocol: CALFED has not established a clear decision-making protocol. While it is generally agreed that participating agencies will not give up any independent decision making authorities to a CALFED governance entity, this leaves a broad range of program policy and implementation issues on the table for resolution as the Program moves forward. It is likely to become increasingly important to resolve issues in a clear and unambiguous way through a consensus process, majority rule, or other option.

Decision Making Responsibility and Input: CALFED currently receives input through a wide variety of pathways, including the Bay Delta Advisory Council and its work groups. There is a need to review and potentially modify the input process to address stakeholder concerns regarding overall program governance. The fundamental issue is whether overall program governance control will be in the hands of CALFED agencies alone, or whether the control be shared with stakeholders. It is clear from experience to date that the water policy issues CALFED is working to resolve are also addressed in the legislative process, with a great deal of both formal and informal interaction between the two. The extent to which this relationship is formalized and the impact on CALFED's decision making process needs to be considered and addressed.

Budget and Funding Coordination: CALFED funding is channeled through several different federal and state agencies. Funds for CALFED programs and projects are provided by federal appropriations, state bonds and local agencies. Budget and spending authority is decentralized. Significant efforts at interagency coordination have made this approach functional during the planning phase, but as complex programs and projects are implemented, a more efficient method of financial management may be necessary.

Public and political accountability: From the perspective of the public generally, it is difficult to assign specific responsibility or accountability for the success or failure of the CALFED program. For most of the public, "CALFED" has no recognizable identity. If implementation of the program is to be successful, it will be in large part a function of the support of voters and taxpayers and elected representatives. This support may be easier to obtain and hold if members of the public and their representatives can identify the CALFED program with a recognizable agency or entity, rather than a shapeless mass of anonymous bureaucrats. For legislators in particular, it may be necessary to provide a focal point for legislative attention (budgets, oversight hearings) that is currently lacking in the informal CALFED arrangement.

Task orientation: Each CALFED agency has a mission and a set of legal duties and obligations. In some cases, this mission may be only tangentially related to the CALFED program. In other cases, there may be substantial overlap. But in no case is the implementation of the CALFED program coterminous with a single agency's mission or scope of authority. While this may not be essential for the success of the program, in the long run, it may be a significant advantage if somewhere in the federal and state agency constellation, there is an entity charged with the specific mission of implementing this program, rather than having program implementation be an ancillary function to other primary missions.

Implementation Principles

In the discussion papers prepared for CALFED by Betsy Rieke and Doug Kinney of the Natural Resources Law Center, several implementation principles were suggested for consideration when looking at oversight structure options. These are summarized below:

1. Implementation should be based on a regional perspective.
2. Implementation should be based on a problemshed orientation.
3. Implementation should be based on a process orientation.
4. Political viability must be considered.
5. Function should drive structure, i.e, identify needs, then form.
6. Consider broad trends in federalism.
7. Do not burden administrative entities with fundamental policy problems.
8. Integrate conflict resolution methods.
9. Allow for flexibility and creativity.

Design Issues

The Rieke papers also identified a set of design issues to consider when looking at implementation oversight options. Each of these issues raised a set of specific questions which will have to be discussed by the stakeholders and the agencies.

1. Scope (substantive, spatial, temporal)
2. Functions (tasks)
3. Membership/participation
4. Operational attributes
5. Authorities (legal powers)
6. Legal structure (form)
7. Financial resources

Implementation Functions

Based on the discussions so far within the Assurances Work Group and at BDAC, a set of functions which a program manager or management entity should be able to perform can be described. Agreement on the necessary or desirable functions will facilitate the discussion on the form of the oversight structure. Following is a preliminary list of functions which many believe the CALFED oversight entity (whatever its legal form) should be able to perform in order to successfully direct Program implementation:

Policy formulation - the manager should be able to develop policies which reflect the program goals and objectives, and which are consistent with the adaptive management approach to resolving resource problems;

Efficient decision-making - the manager should be able to act quickly and effectively in making decisions about program and project implementation, including the ability to act even in the absence of consensus among all CALFED agencies;

Budget management - the manager should be able to develop a program budget, set budget priorities and allocate limited funds to priority projects, in a timely and efficient manner;

Dispute resolution - the manager should be able to resolve disputes among implementing agencies or project managers on funding priorities, operational conflicts, or similar problems;

Prioritize actions - the manager should be able to choose which projects will get funded and the order in which projects will be implemented;

Contingency response - the manager should be able to act decisively and quickly in the event of unanticipated events which threaten to disrupt program implementation;

Assign responsibilities for implementation of actions - the manager should have the authority to delegate or assign projects to implementing agencies;

Allocate resources to participating agencies - the manager should have the authority to allocate funds, assign staff, and execute contracts necessary for program implementation;

Coordinate actions and foster communication at all levels - the manager should be able to coordinate implementation of complex projects involving multiple agencies and

stakeholder groups and provide a forum for inter-agency and stakeholder communications regarding program implementation;

Audit and assure implementation plan compliance - the manager should be able to take the necessary corrective action to keep the program directed at achieving its goals and objectives.

Stakeholder communication - the manager needs to be able to provide methods and means to receive and incorporate advice and comments from stakeholder groups interested in program implementation.

Legislative coordination - the manager needs to be able to deal effectively with the legislature and Congress on legislation affecting program implementation, and to respond in a timely and effective way to legislative inquiries.

In order to carry out these functions and address some of the concerns associated with the current CALFED structure, a program management entity would need the authority to enter into contracts; directly receive appropriations and other funds without an intermediary agency; take legal action; act as a lead agency for environmental documentation; seek and hold permits; and hire staff.

Oversight and Management Alternatives

Over the past two years, several models or alternatives for general program oversight, management and governance have been discussed. Four of these are presented below as a cross section of the possibilities for further consideration and analysis.

1. Existing CALFED Agencies /Informal Arrangement - In this model, all program implementation is carried out by existing agencies; no new agencies or entities are created. Implementation of specific actions and elements of the long term CALFED Bay Delta Program is distributed among existing federal, state and local agencies. No agency is required to cede or delegate any existing authority. Program coordination continues to be handled on an ad-hoc basis or through informal arrangements such as the Ops Group and the CALFED Management/Policy Groups. Program oversight and management functions, e.g., to ensure that the program as a whole is implemented according to plan and schedule, to resolve inter-agency disputes, and to deal with unforeseeable or unpreventable contingencies, remains located with the existing informal CALFED arrangement.

This level of function could be provided by the extension of the current CALFED policy

group, through an interagency memorandum of agreement or understanding. Stakeholder involvement would be advisory in capacity, through a mechanism similar to the current Bay Delta Advisory Committee (BDAC).

2. Existing CALFED Agencies/ Formalized Arrangement - This model is similar to No. 1 except that a formal arrangement is established among the existing CALFED agencies through a joint powers agreement under state law, with federal legislation authorizing federal agencies to participate in a Joint Powers Authority. In this alternative, the Joint Powers Authority (JPA) would have delegated authority from its parent agencies to implement the program and carry out the necessary oversight functions. DWR and/or USBR would construct, own and operate any new conveyance and storage facilities.

The JPA would be vested with specific legal authority to direct and manage the implementation of the long term program, make decisions about funding and priorities of elements and actions, and assign specific elements or actions to specific agencies for implementation. As a distinct legal entity, it could hire staff, enter into contracts, and receive appropriations or other funds directly.

The JPA would be governed by a Board of Directors, appointed (presumably) by the Governor or Secretary for Resources, and the Secretary of Interior or some other federal designee. The precise composition of the Board, the number of members, the specific agencies to be represented, and the procedures to be used would all have to be worked out by a federal - state agency negotiation. The stakeholder role would be advisory in capacity, based on the BDAC model.

3. New Public Agency for Program Implementation - A new public agency would be created to implement the long term program. This agency would reside within the Resources Agency of the State of California and would be advised by an appointed commission or advisory body (similar to the California Water Commission). This entity would function both as the environmental trustee for purposes of ecosystem restoration and would also be involved in the operations of new upstream storage facilities and isolated Delta transfer facility.

4. New Public Commission with Stakeholder Decision Making Role - The fourth model is to create a new legal entity, in the form of a commission of appointed members, where stakeholder representatives assume formal decision-making roles as members or trustees. The model for this approach is the California Transportation Commission. The Commission would provide general oversight to the Executive Director who would supervise a staff which runs the program on a day to day basis.