

**Draft**  
**BAY-DELTA ADVISORY COUNCIL**  
**MEETING SUMMARY**  
**October 30, 1998**  
**Holiday Inn, Sacramento**

**Chair's Report**

Vice Chair McPeak resumed the meeting at 8:40 am. and reviewed the agenda for the morning.

**CALFED Governance: Functions/Duties/Principles**

Ms. Borgonovo (Ecosystem Restoration Work Group chair) provided a summary of the joint Assurances and Ecosystem Restoration Work Group meeting of October 6, 1998. A written summary of the meeting is in the meeting packet. She also reviewed the Core Team recommendations in the ERP strategic plan that call for a new entity to manage the Ecosystem Restoration Program. It was suggested that each BDAC member receive a copy of the strategic plan.

Mr. Dunning (Assurances Work Group chair) and Ms. Borgonovo explained that ERP management issues were a concern of both work groups and the purpose of the joint meeting was to reach concurrence on the functions and duties needed to manage the ERP program. The groups reached this concurrence and the work group chairs recommended that BDAC join in on the concurrence. It was pointed out a new ecosystem entity will raise the stakeholder confidence level that ERP actions will actually be implemented.

**Discussion**

- Mr. Hildebrand, Mr. Meacher, Mr. Pyle and Mr. Wright further discussed ERP management issues. Concern was expressed that a new entity may have too much power and that concurring was difficult without knowing or agreeing to the overall CALFED governing functions and structure. Agencies are also reluctant to endorse a new ERP entity in the absence of discussion on the overall CALFED functions and structure. BDAC was reminded that there have been several joint state/federal commission set up to deal with water issues and none are in existence today, due to difficulties related to state/federal agency coordination.

Rather than try to immediately reach concurrence on the ERP entity issue, Vice Chair McPeak suggested that BDAC engage in discussion on the overall CALFED entity. To frame the discussion Lester Snow provided brief introductory remarks, Mary Scoonover, Deputy Attorney General, presented background presentation on overall CALFED governance and Eugenia Laychak, CALFED consultant, provided guidelines for the scheduled brainstorming session.

Lester Snow introduced Dennis O'Bryant, as the lead CALFED staff person on assurances issues. He also reminded BDAC that in deciding on how CALFED will be governed in the future, the job description for the decision-making entity should be decided first followed by decisions on the best structure and membership of the entity.

Ms. Scoonover reviewed guidelines suggested by the Natural Resources Law Center, including 1) foster a regional perspective, 2) utilize a problemshd orientation, 3) use a process orientation,

4) let function dictate form, 5) consider political viability, 6) consider broad trends in federalism and intergovernmental relations, 7) do not burden administrative bodies with fundamental policy issues, 8) recognize the importance of conflict resolution, 9) design a mechanism for accountability, and 10) promote flexibility and creativity. There are seven key design issues, including the scope of the entity, its functions, membership, operational attributes, authorities, legal structure and financial resources. Ms. Scoonover then reviewed the problems/issues and proposed list of functions that appeared in the meeting packet.

Eugenia Laychak completed the background presentation with a brief explanation of guidelines for conducting the following brainstorming session. The purpose of the brainstorming session was to open discussion on overall CALFED governance by generating creative options for addressing the governance issues. Evaluation of the options and development of recommendations will occur at subsequent meetings.

#### **Brainstorming Session on CALFED Governing Entity Functions and Structure**

The BDAC members who were present brainstormed on the CALFED and ERP governance issues, functions needed to govern the program, and structural possibilities. BDAC reached concurrence that a new ERP entity should be considered, in conjunction with making recommendations and decisions on the overall CALFED governing functions and structure.

BDAC was joined by Cliff Schulz (representing the agriculture/urban water caucus), Cynthia Koehler (Save San Francisco Bay), Dennis O'Connor (California Research Bureau), and Michael Umbrella (native American) during the brainstorming. Interspersed in the discussion, BDAC provided direction to the ERWG and Assurances work group chairs and concluded that the two work groups would define the ERP governing structure, in the context of an overall CALFED structure, and recommend an interim structure to accommodate the transition from planning to implementation. The following comments were made:

#### **Key Governance Issues**

***CALFED should drive the issue and take the lead in developing the strategy for governance.*** Others, including BDAC, should work off the staff recommendations. The CALFED Policy Group should provide the resources to explore the issues raised during the brainstorming session and the Program should be an unbiased reporter on discussions. Eventually it need to make trade-off decisions to balance the different interests.

***Effective coordination is vital for a successful program.*** What are the best approaches for managing coordination between agencies, between the different branches of government, between CALFED programs, between planning and implementation actions, between policy development and implementation, and between stakeholders and agencies? Many suggestions, some of them conflicting, were provided for overall CALFED and ERP management and governance.

***Interim procedures will be needed to effectively transition from a planning to an implementing organization.*** The transition from planning to implementation may not be clear because an adaptive management approach will require ongoing planning. The institutional structure and functions will need clear definition. They should reflect a clear separation of policy development and implementation functions.

***Determine if the current loose confederation of agencies will work for the future.*** Problems with the current situation included difficulty in coordinating implementation actions and agency responsibilities. Agency "turf" issues often get in the way. Good leadership is needed, as well, to help solve the coordination problems. In addition, legislative and stakeholder concerns regarding accountability should be addressed.

Revisit the CALFED mission and determine where we are, in terms of agency relationships; look at what is working and determine how we improve the situation. Developing the governing structure should be a process of building on the existing structure. Consider whether there should be a net increase or decrease in the number of agencies.

***Legislative Considerations.*** Concurrence on governance will need state legislative approval first before approval is sought from Congress. Do not consider Congressional approval as an insurmountable obstacle. The entity and/or CALFED agencies will need legislation to provide legal authorities, frame the policy to follow, give maximum flexibility to the structure, and ensure there are no conflicts with agency regulatory powers.

**Proposed Functions and Related Issues:**

***Clarify CALFED future responsibilities.*** Will CALFED be an agent for change, will it have a technical orientation, or will it be an administrative/implementation entity? It was suggested that one entity have overall responsibility for the CALFED program and administration.

***Consider expanding the list of functions in the meeting packet to:***

- delegating responsibilities to other organizations and agencies that will be implementing parts of the program,
- Overseeing coordination between the implementing agencies/responsibilities and regulatory agencies/responsibilities,
- overseeing coordination between the ERP, itself, and other parts of the Program, such as the levee program,
- integrating governance of all programs,
- ensuring decisions are adhered to,
- conducting financial tasks,
- administering water transfers,
- addressing native American concerns,
- having clear authorities, including contracting authority,

- having clear implementation responsibilities,
- having stable financing,
- conducting staged decision-making and overseeing adaptive management,
- doing coordinated resource management.

***Structural Options and Considerations:***

General Considerations:

- Make the size of the entity/governing board manageable. A large governing board does not work well on addressing complex issues.
- Decision-making should occur in a public forum.
- The new structure should be no more complicated or diffuse than the existing structure. It should have more focus and take a more integrated approach.
- New agencies to include in CALFED "family to encourage appropriate coordination:
  - Federal Energy Regulatory Commission (its actions on relicensing of hydroelectric power plans will affect decisions on timing and quality of water flows),
  - Department of Health Services (to address water quality issues) .

Potential models:

- Joint Powers Authority (JPA). Considerations: Congressional approval is necessary. Getting that approval may require omitting some necessary authorities. Clear rules will be needed to ensure the appropriate level of accountability.
- Bi-state compact. Considerations: Assess different compacts, such as the Chesapeake Bay configuration. A CALFED compact would be less complicated than the Tahoe Regional Planning Authority or the Chesapeake Bay model since only one state is involved.
- Current structure. Considerations: Make the agency representatives on the Policy Group independent board members. Incorporate stakeholder involvement and determine whether the BDAC format is appropriate.

***ERP Management Considerations***

- Problems with current ERP management structure:
  - No existing agency can fulfill all of the necessary functions.
  - It is difficult for the existing agencies to implement the Category III program. Future implementation will be more complex.
  - Determine if there is a credible argument for implementing the ERP by the fifteen CALFED agencies.
- Considerations for a new entity:
  - Incorporate science in the decision-making.
  - Limit politics in the science-based decisions. Make the entity as non-partisan as possible.
  - Do not assign entity board appointments to political bodies.

- Unified support will be needed to create a new entity.
- More details are needed on how the ERP will fit in with the overall Program and structure. For example, how extensive should oversight of the ERP be? Who will the entity be accountable to?
- An ERP entity should coordinate with the Levee Program. The levees program may need new functions, but it probably does not need a new structure or management entity.
- Do not allow the ERP to supplant the State Water Resources Control Board and other agency authorities. The ERP authorities should be clearly stated.
- Decisions should be made now on ERP management to allow time for negotiating the entity's powers and authorities.
- Decisions on who the decision-makers will be should not be made until the role of stakeholders and other assurances issues are addressed.
- Management entity models:
  - A quasi-public, federally chartered corporation, similar to the Public Broadcasting System, as a model for the ERP management structure.
  - Exxon Valdez oil spill impact and response assessment process.
- Consider the following authorities, powers, and responsibilities for a new ERP entity:
  - Contracts/Grants Management.
  - Project development.
  - Water and Land rights holder.
  - Ability to sue and be sued.
  - Be a check on water management operations.
  - Provide a feedback loop to the overall CALFED entity.
  - Accountable to Congress and Legislature.
  - Provide input/advice to regulators and water project developers, during NEPA/CEQA and Clean Water Act section 404 processes.

Before the conclusion of the meeting, Mr. Meacher, Vice Chair McPeak, Ms. Selkirk and Ms. Scoonover discussed some BDAC procedural issues. More lead time is necessary for receiving and reviewing meeting packets. Meetings between individual BDAC members and elected and federal officials will not violate Federal Advisory Committee Act and the Bagley-Keene Open Meeting Act.

The meeting adjourned at 12:15 pm.