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**CALFED Program Oversight and Management
Issues and Options**

Introduction

At the Bay Delta Advisory Council (BDAC) meeting on October 30, 1998, 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. 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 though a broad program oversight structure.

Implementation of the CALFED Program will require some type of management structure to provide coordinated oversight and policy direction. The management and oversight structure of the CALFED Program, as well as the manner in which specific program elements and actions are implemented, are an integral part of the assurances package for the entire Program. It is currently anticipated that a complete assurances package will be completed prior to the adoption of the Record of Decision (ROD) on the final PEIR/EIS.

During 1999, CALFED managers intend to make a decision on the Program management and oversight structure, to assign responsibilities for implementation of specific program elements and actions, including whether a new entity should be created to implement the Ecosystem Restoration Program. Recommendations for legislation will be made if necessary.

Management and Oversight Issues

As the CALFED Program moves toward implementation, Program management and oversight 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 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?

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.

Current Problems

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 or administrative authority 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 as currently configured does not have a formal 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 member agencies, 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 program governance will be vested in CALFED agencies, or shared with stakeholders in a new management entity. The water policy issues CALFED is working to resolve will be 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 as an agency or entity. If implementation of the program is to be successful, it must have the support of voters, 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. 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;

Decision-making authority - the manager must have the authority to decide when the program implementation milestones or performance indicators have been achieved or satisfied (or not), so that the necessary reports and findings can be made and the program can move to the next stage or level of implementation;

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 and coordinate actions - the manager should be able to choose which projects will get funded and the order in which projects will be implemented; also the manager will need to maintain the linkages between programs and actions to that program implementation generally proceeds consistent with the agreements on staged implementation and bundled actions.

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; the manager will also need the authority to take corrective action when necessary if a contractor or implementing agency fails to perform adequately;

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;

Environmental review - the manager will need to be able to satisfy CEQA and NEPA requirements for program and project implementation;

Project ownership, operation and maintenance - In some cases, there may be a need for the CALFED Program manager to assume ownership or operations and maintenance responsibility for a specific project or program after initial implementation.

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. Five 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, in much the same manner as now. 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. Other implementation actions would be assigned by CALFED to the appropriate agency, consistent with their current duties and authorities.

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. This entity would be created under state law and federal legislation would be required to authorize the participation of federal agencies.
4. **New Public Commission with Stakeholder Decision Making Role** - The fourth model is to create a new legal entity, similar to No. 3, but 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.

5. **Public Corporation** - As an alternative to No. 3 or 4 above, the new entity could be in the form of a public corporation, with directors from the public and private sectors.

Program Element and Action Implementation

Once decisions are made, they must be implemented. Some agency or entity will have to carry out the policy and program level decisions and implement at the element, project or action level.

This section is a brief summary of how each CALFED common program might be implemented, based on how the work (or work similar thereto) is currently accomplished.

1. **Levee System Integrity** - The CALFED Program proposes essentially a continuation of existing levee protection programs with more reliable long-term funding and more coordination with other parts of the program, in particular Ecosystem Restoration. Currently, operation and maintenance of levees is usually carried out by local agencies, primarily reclamation or flood control districts. Funding is provided by local landowners with supplemental funding from the levee subventions program administered by DWR. Special project funding for the eight western Delta islands is also provided by DWR. For projects under federal jurisdiction (referred to as "project levees"), the Corps of Engineers provides emergency repair funding and may provide funding to repair or rehabilitate levees to federal standards. Emergency funding for flood damage repairs is also provided by the Federal Emergency Management Agency (FEMA).
2. **Water Quality** - The CALFED Program proposes to conduct a number of water quality studies and to enhance source control efforts to improve receiving water quality. Water quality programs are currently the primary responsibility of the EPA, the State Water Resources Control Board, and the regional water quality control boards. This division of authority will probably not change significantly under the CALFED Program, but there will be greater emphasis on coordination and linkage with ecosystem restoration and water use efficiency programs.
3. **Water Use Efficiency** - The CALFED Program proposes to provide financial and technical support for water use efficiency programs generally carried out by local water supply agencies (ag and urban). Past funding for such programs has been provided through bond measures and is usually administrated by DWR or the State Board.
4. **Watershed Management** - There is no existing counterpart to the proposed CALFED watershed management program. However, there are be some specific watershed programs currently funded and/or coordinated by the Department of Fish and Game, the US Forest Service and State Water Resources Control Board, which may provide a model for implementation for the CALFED program.

5. **Water Transfers** - The CALFED proposal is to develop a water transfer policy framework which will facilitate a more efficient water transfer market. Most water transfers are carried out by agreement among two or more local agencies, with regulatory supervision in some cases by the State Board. Transfers which require the use of state or federal facilities or which may affect project operations require the concurrence of approval of DWR and/or USBR. Additionally, DWR has operated a water bank in drought years and more recently USBR and USFWS have carried out an interim water acquisition program to obtain supplemental fish and water quality flows. The CALFED proposal does not significantly change the current market structure, but would create a water transfer information clearinghouse, probably administered by the State Board or DWR.
6. **Ecosystem Restoration** - Existing restoration projects are carried by numerous federal, state and local agencies as well as private entities and non-profit organizations. The CALFED Program propose a major, comprehensive and coordinated restoration effort which will be funded by federal and state money as well as various user fees. One of the major implementation issues for CALFED is which agency or agencies will manage and govern the ERP.
7. **Storage** - New conjunctive use storage projects will be owned and operated by local agencies. New surface storage facilities may be owned by federal, state or local agencies or some combination of such agencies.
8. **Conveyance** - If the contingency strategy of constructing a new isolated facility is implemented, the facility will probably be owned and operated by DWR and/or USBR.