Some Institutional Options for CALFED Program Implementation

A discussion paper produced for the CALFED Program by the
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EXECUTIVE SUMMARY: Purpose and Content of the Report

Approximately 6 months ago, the Center was asked to help identify key issues and options that required attention in the design of a new ecosystem restoration implementation entity for the CALFED Program. These subjects were addressed in the 2/3/98 report entitled *Design of a New CALFED Environmental Restoration Implementation Organization: Preliminary Considerations.* While working on that assignment, it became clear that is was impractical to consider the design of a new ecosystem restoration implementation entity separately from the related issue of the future, if any, of a continued or revised long-term CALFED policy-level body. Additionally, as later articulated in the Center memo entitled *Organizational Issues Associated with the CALFED Program*, the Center began to receive feedback that strongly suggested that many parties wished to explore institutional options for program implementation other than the creation of a new entity (or entities). These observations have convinced the Center that while the option of creating one or more entities is certainly not "off the table," the political viability of the new entity approach, especially the creation of an ecosystem restoration body, is questionable. Thus, the new entity option needs to be evaluated in the context of a wider range of possible implementation strategies. While a detailed review of this range of options is beyond the scope of this report, several thoughts and descriptions are provided in the following pages to better illuminate the choices and strategies that may merit further investigation. (Case study descriptions of three regional efforts have already been provided in the 2/2/98 report of CALFED Executive Fellow Sue Lurie.) This work should be given a high priority, as few stakeholders are comfortable with attempting program implementation through existing institutional arrangements, and the transition of CALFED from a planning to action-oriented endeavor is likely to exacerbate the deficiencies of current arrangements.

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Options for CALFED Program Implementation: The Merits of Casting a Wider Net

Simultaneously addressing a host of resource management concerns over a large, multijurisdictional region is a formidable challenge in integration. The chief obstacle to be overcome is those factors that promote institutional fragmentation—i.e., those legal and administrative features of the intergovernmental environment that discourage coordinated and consistent resource management by the many involved governments and other stakeholders. In the CALFED situation, there is a strong desire among many stakeholders to address these problems during the program implementation phase through the enactment of one or more new organizations, an innovation with the potential to bring a clear and consistent long-term focus to regional environmental restoration and overall resource management. The political viability of this general proposal, however, is highly questionable, as agency resistance to a dramatic bureaucratic restructuring is significant. This observation suggests that it is worthwhile to also consider other reform options that can potentially provide the desired degree of interagency and programmatic coordination—and include a greater role for stakeholders—while leaving the existing administrative structure largely intact. This general approach can potentially yield the same benefits in integration as can the creation of a new implementation entity (or entities), but do so in a less disruptive and more politically viable manner.

CALFED itself is one example of this type of reform in which existing agencies have made a commitment to work together in new ways, but have not relinquished or otherwise drastically reallocated authorities or responsibilities. The progress to date on the development of a comprehensive resource restoration and management plan provides evidence of the power of this arrangement. However, weaknesses in the existing arrangement are also evident, especially those constraints that limit the ability of CALFED to hire staff, receive funding in its own name, and enter into some contractual relationships. In moving from the planning phase to an implementation phase, these deficiencies will become increasingly problematic and may likely be joined by new administrative concerns pertaining to the effective regional coordination of budgeting, permitting and public participation processes, compliance document preparation, research and monitoring, and related functions that, ideally, should be pursued in an integrated fashion. This strongly suggests that any attempt to implement the EERP and other CALFED Program elements under an unmodified institutional structure would not likely produce the quality

of results expected by stakeholders.[1] It is time, therefore, to consider if the limitations of the existing arrangement can be addressed through reforms that lie between the extremes of a fundamental bureaucratic restructuring (i.e., the new implementation entity option) and a reliance on the status quo. This is an extremely broad continuum within which many options and actions should be considered. Options worthy of adoption are those that address existing and anticipated administrative weaknesses, provide a clear and enhanced role for stakeholders, promise long-term program stability, address concerns of political and technical viability, and provide workable mechanisms and incentives for improved regional coordination.

Institutional Demands of Coordinated Program Implementation: Consistency and Assurances

A wide variety of strategies exist to coordinate the actions of different layers of governmental and nongovernmental actors involved with the management of a shared natural resource. Common preliminary steps, including the creation of a "shared vision" for the resource and the subsequent development of a comprehensive management plan, are activities well underway or completed as part of the CALFED planning process. In the implementation phase, two of the primary concerns involve the related concepts of *consistency* and *assurances* provisions, components of the larger issue of coordination. A consistency provision is an arrangement designed to block actions that are inconsistent with a given regional resource management strategy; an assurances provision is a strategy to ensure the completion of specified actions. Ensuring that future management actions in the Bay-Delta region conform to the CALFED planning documents is a difficult task, especially given that the program is based on an adaptive management strategy which acknowledges the necessity of periodic changes in program policy and direction based on the continued acquisition of new knowledge. Achieving the goals of consistency and assurances in this environment will likely require a variety of institutional reforms primarily focusing on the issues of who is involved in decision-making, how decisions are made (in terms of processes and forums), and what authorities and resources are available to take (or prohibit) needed action. Whether designing a new implementation entity or pursuing more incremental reforms to existing arrangements, these are particularly salient issue areas that demand careful attention.

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[1] Note that the CALFED Policy Committee has recently taken steps to extend the existing CALFED arrangement for a few years in order to create a more reasonable time frame within which to devise and establish any new needed institutional arrangements.

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Some of the parties likely to merit a long-term role in programmatic decision-making include federal agencies, state agencies, stakeholders, the scientific community, local governments, and perhaps even various ad hoc associations, such as watershed groups. A tremendously wide variety of organizational options are potentially available, from the establishment of authoritative new entities to the use of "quasi-organizations" such as regional task forces, and executive- and management-level coordination teams. The EOP Foundation[2] (1997), for example, has recently identified several potential alternatives for improving the regional coordination of federal agencies involved in water resource management, including:

- designation of a "lead department" in each region to provide the needed federal interagency coordination;
- establishment of a new advisory body, such as the recent Western Water Policy Review Advisory Commission, to guide and oversee federal coordination[3];
- establishment of interagency teams led by representatives of each agency [similar to CALFED] with the lead periodically rotating among participating departments; or,
- utilization of compact commissions based on the interstate nuclear waste compact model.[4]

A statutory basis is often needed to modify the location or exercise of decision-making authorities, and will almost certainly be a necessity in the CALFED situation. While this can complicate reform efforts, it does not necessarily reduce the spectrum of possible innovations. Several different types of administrative models and strategies are currently in use in the natural resources realm, with those offering novel relationships between federal agencies, state agencies, and stakeholders drawing the most scholarly attention. Several of these models and strategies are potentially relevant to the search for consistency and assurances provisions.

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[2] The EOP Foundation is consulting firm based in Washington, D.C.

[3] In many respects, this proposal is similar to the establishment of the Water Resources Council as part of the Water Resources Planning Act of 1965. Until its termination in the early 1980s, the WRC provided resource managers and other concerned parties with oversight and advice on the many technical and institutional issues associated with regional resource management.

[4] Section 4(2)(A) of the Low-Level Radioactive Waste Policy Act of 1980 provides a framework for the establishment of regional compacts and agencies. Under this framework, state commissioners comprise the primary decision-making body, while the federal government assumes most enforcement responsibilities.

Providing Consistency in Regional Resource Management Programs

The concept of consistency and coordinated regional program administration is most often explored in the context of intergovernmental relations, and more specifically, in the balancing of administrative powers between the federal and state governments (Babcock, 1996). Two interesting models derive from the federal Clean Water Act. The first is the provision that allows states to apply for federal approval to assume administration of NPDES permitting, an arrangement that retains ultimate decision-making authority at the federal level, but otherwise allows state agencies to be the primary implementation bodies. The second model is provided by the act's National Estuary Program (NEP) (established in the 1987 amendments based on experience in the Great Lakes and Chesapeake Bay regions), which encourages a much broader decision-making role for the states, usually in conjunction with local governments and stakeholders. Using federal resources and EPA supervision, states are funded under the NEP to jointly develop regional management plans that, once approved by the states and federal government, establish an integrated plan of resource management with which all relevant agencies are "expected" to comply.[4]

This notion of consistency takes on a slightly different and more formal nature in the Coastal Zone Management Act (CZMA) of 1972, in which federal resources are provided to aid states in the development of management programs (Beatley, Brower and Schwab, 1994).[5] As long as states adopt programs consistent with general federal guidelines, then these programs become binding on all resource management agencies—including federal agencies. Somewhat similar federal/state consistency arrangements are offered by a few of the better known interstate water organizations, including the Delaware River Basin Commission and the Northwest Power Planning Council.[6] The draft report of the Western Water Policy Review Advisory Commission proposed a mechanism for extending this concept to the local level by urging new federal-state river basin commissions to fund from a basin account the implementation of local watershed plans

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[4] Each NEP program is governed by a Management Conference made up of EPA and state agency officials, and served by a science and technical advisory committee, a local governments committee, a citizens' advisory committee, and a financial planning committee.

[5] Both the CZMA and NEP provide federal funds for planning, but only the CZMA also provides federal implementation funds. The lack of federal implementation funds has significantly limited the effectiveness of many efforts under the NEP.

[6] Both organizations produce plans which are, in most cases, binding on all federal, state, and local resource management agencies. Even though these are primarily state-led organizations, the constitutionality of these arrangements has been affirmed.

unless found to be inconsistent with the commission's river basin plan (WWPRAC, 1997). Locally, the Delta Protection Commission offers yet another spin on the consistency issue by blocking those zoning and land-use decisions of local governments that are inconsistent with the Commission's master plan or state authorizing legislation.[7]

In various ways, each of these arrangements function by designating a specific entity, process, and/or governmental level to assume decision-making responsibilities for a regional resource management effort—often delegating implementation responsibility to a different entity or governmental level. They then provide formal provisions (or incentives) to ensure that the larger community of interests honor these decisions, often codified in a management plan. These arrangements typically accomplish this without radically changing the activities assigned to on-the-ground resource managers and, to the extent that the affected agencies are involved in the decision-making mechanisms, without significantly diminishing existing agency authorities. In some cases, new entities are established, while in others, significant organizational reforms are not featured. In each case, however, regional coordination is enhanced by bringing greater consistency to resource management.

Assuring the Completion of Selected Actions

The special challenge of assurances is not simply to block inconsistent actions, but to promote and ensure that certain actions are, in fact, taken. Again, several strategies can be utilized to pursue this goal, often prominently featuring incentives and rewards. For example, many proponents of "reinventing government" argue for a greater use of performance standards and performance-based reward systems within agencies (NPR, 1996; Osborne and Gaebler, 1992). By linking agency budgets, promotions, and other rewards to the accomplishment of standards defined in the regional management plan, powerful incentives for full program implementation can be provided. Another strategy is to provide for phased implementation, creating a consistent, long-term base of support for the entire program. Many additional strategies are designed to incrementally cultivate a tradition of interagency cooperation in regional resource management through the voluntary integration of operating procedures—including joint research, document preparation and public participation activities—and through the development of new interagency linkages using temporary personnel exchanges (IEMTF, 1995). Many

[7] The main role of the Commission is to try to discourage the conversion of agricultural lands in the five-county Delta region to "inappropriate" uses, including many residential, recreational, and commercial activities. General information on the Commission is available on-line at http://www.delta.ca.gov.

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strategies of this nature do not require new or revised laws or the expenditure of additional resources, but may require that agencies abandon longstanding practices and become less risk-aversive.

Perhaps the best long-term strategy for ensuring interagency support for a common management program, however, is to modify agency budgets to correspond to the contours of the regional management effort. Agency budgeting practices, after all, are historically one of the greatest institutional hurdles to integrated resource management. Budgeting practices are traditionally organized around agencies, programs, and activities (often tied to specific line items), administrative regions, and the diverse interests of various congressional substantive and appropriations committees; whereas, the needs of "ecosystem-based" and "adaptive" management call for highly integrated, goal-oriented, and flexible budgets. Since budgets have the practical effect of controlling activity—encouraging some actions while prohibiting others—the expenditures and, thus, the activities of all agencies involved in a common restoration effort should be tightly integrated.[8]

Overcoming the institutional fragmentation associated with budgeting practices is something that can be addressed incrementally from within agencies and between agencies (IEFMT, 1995). Internally, most, if not all, federal natural resource agencies have been aggressively pursuing incremental changes in budgeting processes to try to promote more integrated, ecosystem-based management. Major strategies include reorganizing internally to reflect physically relevant geographic scales (e.g., watersheds, ecosystems, problemsheds), and reducing or consolidating narrowly defined budget line items in favor of more generally defined and flexible line items. In many cases, these efforts are hindered by legal requirements that limit agency discretion over the substance, timing, and redirection of appropriated funds, and by political forces hesitant to relinquish the program stability and agency control provided by current, inflexible budgetary practices.[9]

The integration of budgets at the interagency scale can be even more challenging, especially when the agencies involved have highly different mandates and constituencies, are

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[8] One of the EOP Foundation's alternatives for improved multi-jurisdictional resource management is the appointment of the Office of Management and Budget (OMB) to be in charge of regional interagency coordination.

[9] This resistance can come from many sources. For example, legislators can be hesitant to relinquish control over agencies by appropriating discretionary funds. Beneficiaries of current management regimes can be hesitant to allow agencies the discretion to recraft priorities or to modify programs. Agency personnel comfortable with current agency practices can be hesitant to incur the risks associated with a climate of internal change or innovation.

overseen by different congressional committees, utilize different administrative regions and accounting conventions, and lack a history of joint interagency cooperation. An additional consideration is the 1-1/2 to 2 year time lag between budgeting and appropriations, and the difficulty in securing long-term budget commitments. These factors can be highly problematic when applied to a multi-agency, long-term restoration effort, especially if an unforeseen budgetary shortfall impacting one agency or activity threatens the integrity or schedule of the overall program.[10] Nonetheless, several high-profile ecosystem restoration efforts, including CALFED as well as the efforts in the Everglades and Columbia basins, have utilized various forms of crosscut budgets for several years (EOP Foundation, 1997). This provides a useful foundation upon which further innovations in the CALFED Program can potentially be built. For example, establishment of a regionally-focused process or entity empowered to devise coordinated budgets, to receive federal and state appropriations, and to distribute implementation funding through contractual arrangements to existing implementing agencies, is a CALFED administrative option worthy of serious consideration, especially if meaningful stakeholder involvement is ensured.

The Next Step

Devising strategies and institutional arrangements for CALFED program implementation is an exceedingly difficult task. This is at least partially unavoidable, given the high level of technical complexity and political sensitivity that is involved in reconsidering administrative arrangements. Progress made to date is considerable, and should be a source of pride and inspiration to all program participants. However, if CALFED stakeholders and agencies can agree on the merits of broadening the scope of potential institutional innovations for program implementation currently under consideration, and if all parties will recognize that a package of incremental modifications may produce the same practical benefit as a more dramatic single reform, then the chances for more productive interactions will likely increase.

As an independent third party asked to assist in exploring the stakeholders' proposal to pursue the development of a new implementation entity, the Natural Resources Law Center is in a unique position to make observations about the current work of CALFED participants in this

[10] Programs reliant on adaptive management, for example, are particularly vulnerable to budget cuts for resource monitoring—a common casualty of budget tightening. One way to address this particular issue is provided by the Coastal Wetland Planning, Protection, and Restoration Act, which requires that 5 percent of all project expenditures go to monitoring for 10 years (IEMTF, 1996).

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subject area. The ongoing debate over the creation of an environmental restoration implementation entity has highlighted the possibility of at least three process-related shortcomings in this facet of the CALFED effort. First, stakeholders and agencies are often not communicating directly or effectively with each other. Second, multiple forums and groups have emerged to address issues that, ideally, should be considered in a single, integrated effort. And third, there has been a strong tendency on the part of many participants to either support or denounce particular problem strategies without first exploring in detail the nature of the underlying problems, or the range of possible solutions. Ironically, these are largely problems of communication, integration, and coordination.

It is recommended that the CALFED participants borrow a central lesson from the field of alternative dispute resolution, and refocus initially on problems and concerns more so than on preferred solutions. Part of the challenge in doing this will be to build stronger bridges between the various factions and processes within which these institutional issues are currently being debated. Neither a stakeholder-driven nor agency-driven process is likely to lead to an outcome acceptable to both parties. Once long-term institutional issues and concerns are precisely identified, then a spectrum of potential solution options should be presented and considered. This general strategy is already part of the assurances effort; thus, no radical course correction is being advocated, just incremental adjustments. This approach may again lead many parties to conclude that a new entity is an essential part of an implementation strategy, or it may suggest that a detailed action plan, if tied to an integrated interagency budget and some limited form of joint interagency/stakeholder forum, may be sufficient. In either case, it should better establish a base of common understanding that will prove useful in the solicitation and use of new technical research on implementation options.

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