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A Legislative Approach for A CALFED Structure Draft November 9, 1999

Basic Concept:

This proposal is in the form of a conceptual outline of a bill to establish a structure for CALFED in a comprehensive way. The bill should deal with daily management, roles of existing agencies, relationship between current mandates and related new mandates coming out of the CALFED ROD, flow of public funds, oversight and public accountability. It is assumed that parallel state and federal legislation will be required.

Proposal: CALFED 2000 Federal Legislation

TITLE I: The CALFED Oversight Entity

Sec. 1. Establishment. There is created the CALFED Commission. The Commission will be a federal and state entity with public members.

Sec. 2. Purpose. The Commission's primary purpose is to oversee implementation of the 4 CALFED objectives and ensure rough parity of progress in these areas. The Commission will not have direct management responsibility for the CALFED Programs, but will have staff serving as liaisons to the Management Entities with primary Program responsibility (See Title II.)

When necessary, the Commission will serve as the ultimate dispute resolution forum although disputes should be resolved primarily at the Management level. In addition, the Commission will serve as the primary forum for public accountability for the CALFED Program. Although each Program will incorporate public involvement at the Management level as well.

Sec. 3. Experts. As necessary, the Commission may convene and rely upon the advice of independent technical experts regarding the progress of the various Programs in achieving the performance standards. The Commission will not have authority to second guess the scientific determinations of the Management Entities which will also be based on science panels.

Sec. 4. Composition. The Commission will be made up of the current Policy Group members and some number of citizen members representing various constituencies, including a tribal representative.

Sec. 5. Funding. The Commission will receive direct allocations of funds from Congress [and the State] to cover its internal staff [and expert panel] expenses. Funding for the CALFED Program will not run through the Commission.

Sec. 6. Review and Approval Authority. As set forth in Title IV, the Commission will have authority to review, and approve or disapprove the [annual] programs and plans prepared by the Management Entities.

TITLE II: Responsibility for CALFED Program Implementation and Relationships Between Management Entities

Sec. 1. Management Entities. Each of the 4 CALFED objective areas (water supply reliability, water quality, restoration, levees) will be assigned to specific existing, or new, public entities. In some cases, this assignment may be shared among two agencies. [This will be set forth with specificity in the ROD and codified in the bill.] These Management Entities are directed to achieve the Performance Standards in each of these Program Areas.

Sec. 1(a)-(xx) Modify existing statutes to accommodate these new/expanded mandates for existing agencies.

Sec. 2. Purpose and Tasks. The Management Entities will have primary responsibility for planning, prioritizing and budgeting for their Program Area and will be the locus of adaptive management over time.

Sec. 1(a)-(xx). Establish new authorities/tools as necessary for existing agencies to accomplish these new/expanded mandates.

Sec. 3. Science Panel. Each Management Entity will convene a panel of independent scientists to inform their programs and planning.

Sec. 4. Public Review. Each Management Entity will convene a FACA Committee to ensure appropriate citizen involvement at the Management level.

Sec. 5 Inter-Agency Coordination. The Management Entities are directed to closely coordinate their planning, prioritizing and budgeting activities among themselves. They are directed to establish a Management Group that meets on a regular basis for this purpose. Final plans and budgets for each Program Area must be reviewed by each of the Managers for the other Program Areas for possible conflicts and early resolution.

Sec. 5(a). Formalization of Ops Group. Management Entities to have co-equal responsibility for Ops Group.

Sec. 5(b). Authority to Establish Other Lateral Management Entity Groups (Including a Dispute Resolution Mechanism) As Needed.

Sec. 6 Funding and Budgeting. Funding for CALFED Management and

Implementation, from whatever sources, would flow directly to the Management Entities. These Entities must prepare budgets for their Program Area for review by the other Management Entities and the Commission. For existing agencies with other non-CALFED items in their budgets that relate in some way to the CALFED program or its objectives, these must be cross cut budgets disclosing not only funding for "direct" CALFED implementation, but all other programs related to CALFED. (See Title IV.)

TITLE III: The Ecosystem Restoration Entity

Sec. 1. Establishment. There is created an Ecosystem Restoration Entity to serve as the Management Entity for the CALFED Ecosystem Restoration Program (ERP). The ERP Entity will be a federal/state partnership. There will be no citizen members. (See Sec. 6 below.)

Sec. 2. Purpose and Tasks. The ERP's primary purpose is to achieve the performance standards set forth in the ERP/Strategic Plan. It will be non-regulatory entity. It will serve as the locus of the scientific effort for the long-term adaptive management approach for restoration, including management of the Environmental Water Account (should this be established). It will also be the holder of any environmental water rights (if established by the State legislature). The planning, budgeting and prioritizing for the ERP will occur here.

Sec. 3. Composition. The ERP Entity will be served by a 7 member Board of Trustees, 3 state (CDFG, SWRCB, BCDC), 3 federal (FWS, NMFS, EPA) and 1 unaffiliated scientist.

Sec. 4. Staffing. The ERP Entity will be run by a Chief Scientist.

Sec. 5. Science Review Board. Like the other Management Entities, The ERP Entity is directed to establish independent science review boards to fulfill 2 functions: (1) aid in the development of program priorities and (2) periodically review projects and other decisions to ensure quality control.

Sec. 6. Public Review. The ERP Entity will convene a FACA Committee.

Sec. 7 Funding. The ERP Entity will be provided a base level of funding via a (for example) 1/2% dedication from the Federal Land and Water Conservation Fund for a 10-year period. [Placeholder for similar state funding stream.] The ERP Entity would be eligible as well for direct federal and state appropriations. The purpose of the base level is to ensure continuity and to avoid politicization of the scientific process to the maximum degree possible.

Sec. 7(a) No User Fees. For as long as the ERP Entity receives the base

federal [and state] funding set forth above, no fees may be leveled on agricultural or urban water users for the purposes of funding ERP Implementation.

TITLE IV: Relationship Between Oversight Structure and Management Entities

Sec. 1. Program Development. Primary mandate for achieving program performance standards will lie with the Management Entities but the Commission staff should serve 3 primary roles identifying: (1) when any Program Area appears to be significantly off track in terms of achieving its objectives; (2) major imbalances in program implementation or failures of the assurances/linkages package set forth in the ROD; or (3) major policy issues for the Commission staff (e.g., need to alter or update the 2000 ROD in some way). Commission will not have authority to second guess Management Entities on technical or scientific grounds.

Sec. 2. Review Authority re ERP Commission will have authority to review and approve or disapprove ERP Program Plan (but not individual funding or project decisions) annually but only on the basis of a set of narrowly defined conditions, e.g.:

- A. The ERP Entity failed to obtain the required Scientific Review of its Plan by the independent Science Board.
- B. The ERP Entity failed to go through the prescribed channels to resolve a dispute with another Management Entity.

Disagreement with a specific action item or project would not be a legal basis for a veto decision by the Commission.

Sec. 3. Review Authority re Other Management Entities.

Sec. 3(a). Direct CALFED Program Functions. Commission will have authority to review and approve or disapprove the other Program Area Plans along the lines set forth above for the ERP Entity. With regard to existing agencies, this authority will apply only to those aspects of their planning and budgeting directly related to CALFED Implementation.

Sec. 3(b). CALFED-Related Program Functions. Commission will have authority to review, but not approve or disapprove, budgets and programs of existing agencies that are related to CALFED implementation but do not constitute direct CALFED implementation. However, the Commission may employ this information in its analysis of how well, or how poorly, the Program Areas are proceeding and in its determination of whether there is overall parity in implementation.