

## ***CALFED Program Oversight and Management***

### **Introduction**

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, before that specific question can be fully addressed, it is necessary to address the broader program management issues.<sup>1</sup> This memo is intended to highlight some of the broader issues of CALFED oversight and management, including

- Problems associated with the current institutional framework,
- Current and anticipated future needs,
- Potential functions, powers, and tools of new entities, and
- Organizational alternatives.

### **Oversight and Management Issues**

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 no particular order some of these problems 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

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<sup>1</sup>Many of these program oversight and management issues are discussed in three papers, dated Feb 3, March 16 and April 13, 1998, submitted to CALFED by the Natural Resources Law Center.

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 formal 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 decisions 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.

It is likely that a future CALFED entity will need to carry out the following functions in order to successfully direct Program implementation:

- Policy formulation;
- Dispute resolution;
- Prioritizing actions;
- Assigning responsibilities for implementation of actions;
- Allocating resources to participating agencies-- funding, staff, contracts;
- Coordinating actions and fostering communication at all levels;
- Auditing/assuring implementation plan compliance, and taking corrective action, including responding to contingencies.

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

In order to carry out these functions and address some of the concerns associated with the current, temporary arrangement, a permanent 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.

## Alternatives

Over the past two years, four basic models or alternatives for general program oversight, management and governance have been discussed.

**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 Entity for Program Implementation and Facilities Operations** - A new public agency or a joint powers authority would be created to implement the long term program **and** to operate any facilities constructed as part of the CALFED program. This alternative is similar to No. 2, but with the additional function of owning and operating any new storage or conveyance facilities constructed as part of the long term program. This entity would function both as the environmental trustee for purposes of ecosystem restoration and would also control the operations of new upstream storage facilities and isolated Delta transfer facility.

**4. New Entity with Stakeholder Decision Making Role** - The fourth model is to create a new legal entity, such as a new public agency or commission, where stakeholder representatives assume formal decision-making roles as board members or trustees. This would require both federal and state legislation.

## **Proposed Alternative**

CALFED staff proposes that Model 2 be given priority for further evaluation. It has the advantage of retaining the basic CALFED structure which has demonstrated a reasonable degree of functionality. It has the further advantage of formalizing CALFED and giving it a legal existence which many believe is essential to long term program implementation and which would address the basic weaknesses of Model No. 1.

Specifically, the Policy Group should consider the formation of a CALFED Joint Powers Authority. The legal entity can be created under state law as a California joint powers authority. Federal legislation will be necessary to authorize and direct membership and participation by federal agencies. This entity would not have any regulatory authority. Agencies would not cede or delegate any existing regulatory authority. Some program authority, for example, certain CVPIA programs, could be transferred to the CALFED JPA. In addition, in order to execute its responsibilities the JPA would likely need adopt some planning authorities currently held by existing agencies.

All current member agencies of CALFED could be members agencies of the Joint Powers Authority. However, in order to further enhance functionality, the entity should be a governed by an appointed Board of Directors consisting of a specified number of federal and state agency representatives. For example, the formation documents could provide that the Board would consist of five state agency representatives appointed by the Governor or his designee (e.g., Secretary for Resources) and five federal agency representatives appointed by the President or his designee (e.g. Secretary of the Interior).

The Board would hold regular scheduled public meetings and would operate in accordance with the law governing public agencies in California (e.g., Bagley-Keene Act, Public Records Act, conflict of interest rules, etc.). On matters requiring a formal decision by the Board, each Board member (not

each member agency) would have one vote and unless required otherwise by statute, decisions would require a majority vote of a quorum of state representatives and a similar majority vote of a quorum of federal agencies. Thus an affirmative action would require 3 state and 3 federal affirmative votes.

The Board would hire an Executive Director to operate the program on a day-to-day basis. The Executive Director would manage a relatively small staff (probably less than 50 people) of professional and support people to manage projects, budgets and generally oversee program implementation and coordinate with other agencies.

### **Stakeholder Participation**

Irrespective of the form of CALFED's oversight of program, stakeholders have asked for the opportunity to provide timely, meaningful input to the planning and implementation process. The proposal, therefore, includes the creation of an advisory committee to review, analyze and recommend to the implementing entity its positions concerning significant policy decisions to be made by CALFED. A citizens advisory committee whose members are jointly appointed by the Secretary of the Interior and the California Resources Secretary could provide advice to the CALFED agencies throughout Phase 3 implementation. Other citizens committees may also be established to fulfill specific roles or work on specific elements or actions during Phase 3 implementation.