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Agenda Item No. 12
November 5, 1999

To: Delta Protection Commission

From: Margit Aramburu, Executive Director

Subject: CALFED Governance Proposal
(For Possible Commission Action)

Background:

CALFED is a unique entity, created through a written agreement between federal and State agencies. The agreement has a sunset date, and directs the agencies involved to participate in the planning process designed to address problems with the State and federal water programs in California.

CALFED has been working to develop a new long term Governance structure, including creation of a new entity to carry out the program developed over the last several years and described in the Programmatic Draft Environmental Document. CALFED's Governance Work Group has been meeting to discuss the possible forms a new entity could take, and the tasks that should be assigned to this new entity.

Current Governance Proposal:

A new proposal is currently being reviewed by the Governance Work Group, was discussed at the October Bay-Delta Advisory Council (BDAC) meeting, and at the November 17 Policy Group meeting.

The new proposal was prepared by California Environmental Trust (CET), a non-profit group. CET has proposed that a new state-federal agency be created to implement the CALFED program. Since State (and federal) legislation would be required to create the new agency, legislative hearings would be held in early 2000. The CET "straw proposal" will be discussed at the November and December BDAC and Policy Group meetings.

Issues of Concern to the Delta Protection Commission:

As outlined in the attached "straw proposal", a new agency would be created with six federal agency seats, six State agency seats, and six "public" seats. One of the six "public" seats will represent "the Delta" (see page 2, paragraph 3.1).

The Commission should discuss the "straw proposal" and, if appropriate, direct staff to prepare a comment letter to CALFED, which addresses the following issues:

- The "Delta" seat should be a Delta Protection Commission seat to ensure cohesiveness between the Commission's mission and program, and those of CALFED.

- There should be at least one person or seat on the proposed new agency with an interest or responsibility for recreation issues.

- The Delta Protection Commission should have a role and/or relationship with the new CALFED agency; that role should include reviewing CALFED or CALFED-funded projects in the Delta which would affect land use, including acquisitions, changes of land use, retirement of recreational facilities, construction of new facilities, construction of new levees, etc.

Staff Recommendation:

The Commission should review the attached "straw proposal" and direct staff to prepare appropriate comments to forward to CALFED Policy Group.

Attachment 1

STRAW PROPOSAL FOR CALFED LONG-TERM GOVERNANCE

1. CALFED Commission. A new CALFED Bay-Delta Commission (Commission) would be created by legislation to oversee the implementation of the CALFED Bay-Delta Program as specified in the Final EIS/R and implementing documents. The Commission would also manage and coordinate each of the CALFED program areas--ecosystem, levees, water quality, water use efficiency, watershed management, water transfers, storage , conveyance, and comprehensive monitoring, assessment, and research. The Commission would legislatively establish a partnership between the State of California and the Federal government which is critical to the success of the CALFED Program. Both State and Federal governments would provide a commitment to the full implementation of the CALFED Program.

2. Legislation to Establish Commission. State and Federal legislation would be needed to create the new Commission. Initially it is expected that the Commission would be established as a state entity with a strong Federal role. Although it is likely that State legislation would be finalized sooner than the companion Federal legislation, language would need to be included in both bills that planned for staged participation. For example, language would need to authorize the Commission to be established as soon as feasible and not wait for the companion legislation. Language would also need to authorize participation on the Commission by Federal or State agencies while the companion legislation is finalized.

Federal involvement may or may not require establishing a new Federal entity as a companion to the State entity, but Federal legislation would need to provide for commitments such as, (1) full Federal agency participation on the Commission, (2) support for long-term funding for the Commission, and (3) cooperation and coordination between Federal agencies and the Commission.

4. Commission Organization. The Commission would appoint an executive director to be responsible, under the Commission's direction, for managing the CALFED Bay-Delta Program. The executive director would be responsible for hiring and directing the Commission staff.

NOTE: To provide for future flexibility in management of the Commission the organizational structure of the Commission should not be specified in law. However, the initial Commission organization, personnel classifications and status (i.e. state or federal employee), and budget would need to be proposed for FY 2001 in anticipation of legislation being approved in FY 2000. Agencies and stakeholders will be involved in developing the FY 2001 Commission organization.

5. Commission Duties and Authorities. The Commission would be the primary agency responsible for achieving the CALFED Program objectives and targets identified in the CALFED Final EIS/R and implementing documents. The Commission would be responsible for managing and coordinating the CALFED programs (i.e. ecosystem, levees, water quality, watershed management, water transfers, water use efficiency, storage, conveyance and monitoring , assessment and research). The Commission would coordinate and oversee CALFED actions implemented by State and Federal agencies, local agencies and private and non-profit organizations.

NOTE: The Commission would need to have authority for funding in all parts of the program to ensure implementation efforts are meeting CALFED program objectives. Significant additional review is needed for each program area to identify what authorities the Commission would have over new or existing funding and programs.

5.1 In carrying out its responsibilities the Commission would **not** have any authority to (1) levy taxes, (2) regulate land use, or (3) exercise eminent domain.

5.2 Commission Responsibilities. The Commission responsibilities would include:

- Overall program direction, program balance and integration, staged decision-making and adaptive management;
- For each of the CALFED programs-- manage and oversee implementation, identify priorities, propose actions, assess and report on program performance and progress, coordinate the work of implementing agencies and stakeholder interests, and coordinate between CALFED program areas.

retain authority for program implementation, but may be required through new legislation to implement the program consistent with the CALFED program objectives. The Commission responsibility would be to oversee and coordinate the implementation to ensure consistency and integration with the CALFED program.

With regard to the Ecosystem Restoration Program (ERP), the program would be managed by the Commission. The ERP is a major new program and would require significant staffing within the Commission. The Commission would be responsible for ERP priority setting, project selection, and program assessment, but funding for specified actions and programs would be provided to existing agencies and private and nonprofit organizations to implement ERP actions. For example, the Commission would have authority to manage and allocate the $390 million from Proposition 204 that will become available at the time of the conclusion of the environmental review process. In addition, new legislation would have to give the Commission the necessary authorities to fully implement the ERP.

6. Science in CALFED. The Commission would incorporate scientific and technical information and review at several levels in the program, and it would be incorporated within the program and be provided externally to the program.

6.1 Scientific Review Board. The Commission would appoint a Scientific Review Board (SRB), to assure the appropriate use of science in the Commission's decisions. Although the SRB would be directed to make independent assessments and offer recommendations based on its best judgment including, where necessary, analyses of disagreements among members of the panel; final responsibility for the annual performance assessment report and for all adaptive management decisions would remain with the Commission. Duties would include assisting the Commission in:

- Understanding the quality and usefulness of available technical and scientific information;
- Applying scientific and technical information in the adaptive management decision-making process;
- Evaluating the quality and effectiveness of CMARP (described below); and
- Reviewing the annual performance assessment for the CALFED program.

8. Funding. All staff and administrative expenses incurred and needed by the Commission to carry out its responsibilities would be funded by State and Federal governments equally. *NOTE: Funding may come from user fees as well as general taxpayer revenues, bond funds, and private contributions.*

Attachment 2

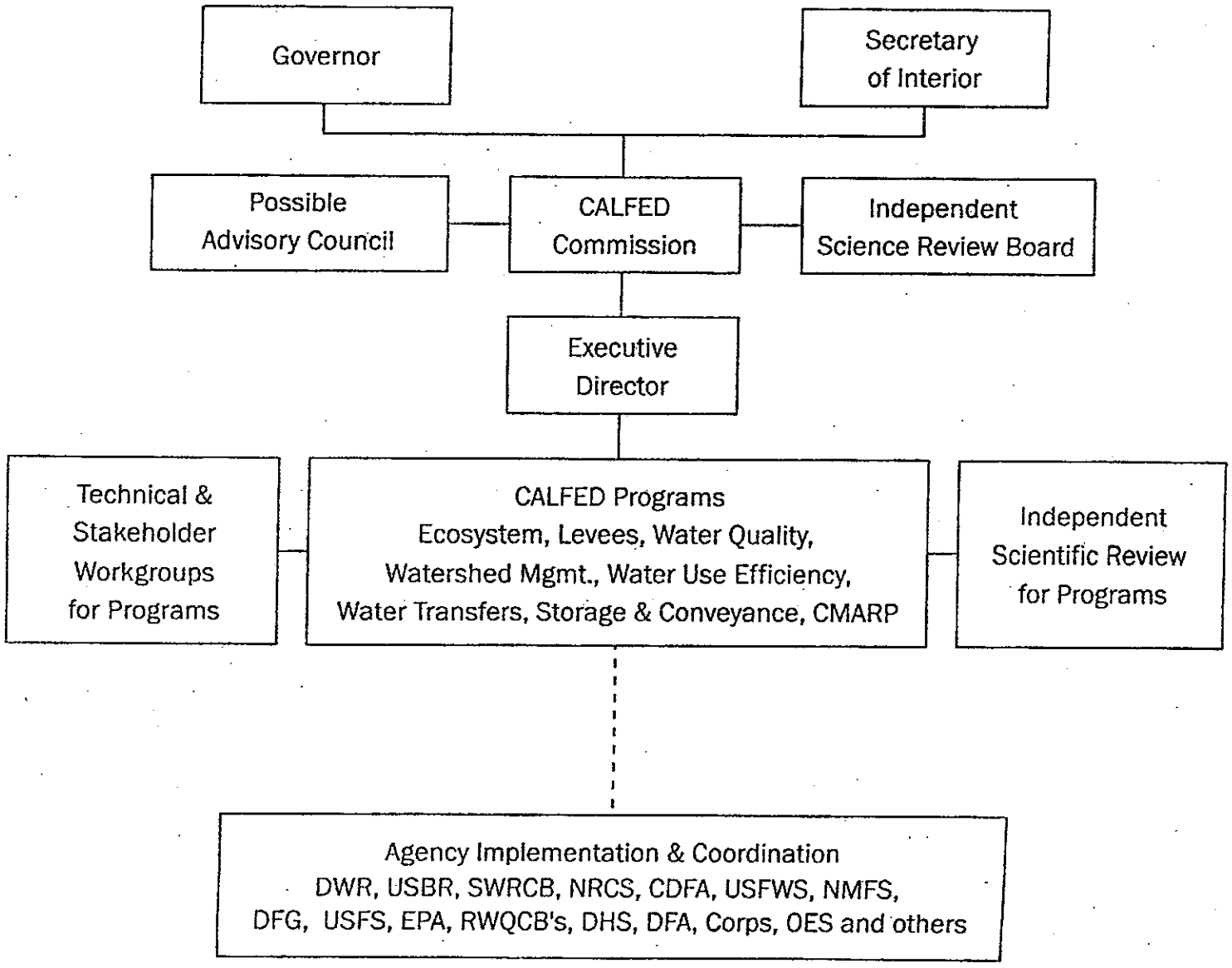
Definitions

Many of the terms we are using have different meanings to different people. To avoid confusion we have developed definitions for the following terms. We have modified the three levels of functions into the four below. Listing the separate functions does not imply a preferred organization or form.

Oversight responsibilities-- Includes providing direction for the overall CALFED program, developing policies and making decisions to achieve CALFED program goals and objectives, making decisions regarding staged decision-making, and providing for balanced implementation among program areas, assessing CALFED performance, deciding budget and program priorities, and resolving conflicts between programs and agencies as needed.

Lead Program Management--Manage and oversee program implementation for the CALFED program areas (levee, water quality, water management, ecosystem), identify priorities and develop budgets for each program area, assess and report on program area performance, coordinate with relevant agencies and other CALFED programs.

Program implementation -- Program implementation involves the day-to-day management of a portion of the CALFED program. Program implementation will in many cases be performed by an existing agency which has existing expertise and authorities in the subject area. (For example, DWR would be responsible for program implementation for the Delta levee subventions, USBR would be responsible for program implementation for projects related to CVP storage investigations such as raising Shasta)

Direct implementation -- Direct implementation is the final stage of implementation where the project constructed or action is performed. In some cases for programs providing local funding through grants, loans, or subventions, direct implementation would be done by the recipient of the funding. For example, Title XVI funding for recycling is provided to local water districts who would be responsible for direct implementation. In other cases state and federal agencies may be responsible for direct implementation. For example, state and federal agencies may be involved in research, monitoring, land acquisition and restoration, and construction in some cases.

Straw Proposal for CALFED Governance