

Statement to Little Hoover Commission on California Bay-Delta Authority

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Introduction

It is a pleasure to have this opportunity to speak to this commission because I believe that you have a real chance to strengthen the underpinnings of California Bay-Delta Authority. Taking into account the enormous difficulties of its task, and the unforeseen problems encountered in the course of implementing its charge, it is my belief that the Bay-Delta Authority has done a good job. The commission can serve the public interest in its report if it will do the following: acknowledge the enormous complexity of the charge including addressing problems that took a generation to develop; recognize the great advance the CALFED accord and CBDA have made toward better mutual understanding and confidence among the previously warring parties; emphasize the critical role the Bay-Delta Authority plays in insuring that good science takes its appropriate place in guiding adaptive management. Above all, I think that the Little Hoover Commission's Report needs to help restore public confidence that, even though unanticipated problems are bound to occur, the operations of CBDA are fair, balanced, open, and are informed by good science.

I have asked the staff to make available to you a chapter a graduate student and I prepared for an academic book in-press at Yale. While the book chapter is cluttered with academic theory, it also contains evidence I painstakingly gathered about the formation of CALFED and CBDA. My argument was developed from interviews with a number of public officials including former Assistant Secretary of Interior Betsy Reike. The chapter focuses particularly on the Environmental Water Account, one of the new policy tools that are an advance over previous water agency practices.

Wicked Water Problems

Water resources problems in California, particularly those related to the California Bay Delta, represent a case of confounding complexity, or what may truly be classified as a "wicked" problem. Such problems are characterized by overlapping and conflicting natural, physically engineered, and legal, economic and social systems, each constantly in flux. Since many uncertainties exist in each system, uncertainties expand exponentially when systems interact as they do in this case. Further, there is lack of consensus on values therefore multiple values must be pursued simultaneously. Complexity is exacerbated by institutional fragmentation and specialization, where water policy is compartmentalized into many agencies, each with limited scope. Making progress on one agency's mission often involves negative impacts on other agencies. Unpleasant surprises, such as damaging floods, droughts, and losses of environmental assets, are characteristic of "wicked" problems, and make them politically unrewarding to elected leaders.

¹ I am grateful to my graduate student, Barbara Bradley, who provided guidance in the preparation of this testimony on the basis of her research on this subject.

Under such conditions it is unreasonable, and probably damaging, to expect progress in a linear fashion toward specified and unchangeable goals on a tight timetable. To think that clear lines of authority and accountability will lead to quick solutions is to wish away the nature of wicked problems that themselves make imposing such governance designs so difficult. There is no magic governmental solution to regional water problems, and to my knowledge, every similar institutional arrangement that tries to comprehensively manage whole river basins has as many or more difficulties as does CALFED/CBDA.

Inclusive management and networked governance are the practices that many contemporary experts in managing complex problems recommend. Briefly stated, such management involves continual discourse and discussion so that multiple perspectives are brought to bear on problems. Inclusive management involves continuous learning processes where managers and stakeholders come to understand the limits of what is possible given the context of diverse opinions, and to recognize opportunities for improvement presented by science as well as experience. Institutions such as CBDA that are charged with inclusive management, have institutional ties to many agencies at many government levels, provide open arenas for discussion, and carve out a strong role for science and adaptive management.

There has been a good deal of concern that the Bay-Delta Authority may duplicate the authority of line agencies. As I understand the thinking behind the design, the new institution was essential in creating an alternative venue in which the various interests could come together on what they believed as fair and objective territory. The operating agencies were viewed as tied to particular interests and untrustworthy when it came to considering alternatives that were not beneficial to agency missions and interests. At the time it was established, it was viewed as essential to separate planning and science from agencies whose scopes were too narrow and perspectives too entrenched. This role needs to be emphasized in the Commission Report. Privileging any particular perspective (federal, state, agricultural, environmental or urban) will result in alienating other perspectives. A good many people who work for the CBDA are on loan from other agencies. While this may lead to too few core staff, and some divided loyalty, it seems to me also to be a way to encourage respect for diverse perspectives among loaned and borrowed staff. It would be unfortunate to lose some of these governing advantages, in name of strict lines of authority and accountability.

There is a long history of regional water management institutions extending all the way back to the TVA and Title II River Basin Commissions under the Water Resources Planning Act of 1964. Successors of such institutions now exist in many regions including Chesapeake Bay, and the Everglades. It is generally acknowledged that institutions that span river basins that extend beyond political boundaries and require cooperation and representation of many levels of government are both essential and often a disappointment to those who expect too much of them. By design, they are not line agencies with acting authority. Inclusive management takes time, and wicked problems may take decades to tame. Such institutions work best when there is a director with adequate supporting staff whose charge it is to attend to the basin as a whole. I think that is the CBDA Executive Director's and the BDA's charge to take this inclusive viewpoint.

The boards strengthen the democratic functions of the CBDA by allowing multiple perspectives to be voiced on complex issues, keeping the larger population of stakeholders working collaboratively. The science boards provide critical third party review of decisions and practices necessary for accelerating the learning achieved through cycles of continuous experimentation, leading to improvements in water management that benefit all parties.

In CBDA, the role of science and adaptive management in the governance of the Bay/Delta must not be underemphasized. Conflicting interests at the time of the establishment of CALFED could agree only almost nothing except that the science basis for decisions was inadequate and that no one trusted the advocacy science of other agencies and interests. The Bay/Delta Authority, the Lead Scientist, and the Independent Science Board were supposed to oversee the development of better and more widely accepted science in which many researchers in government, the academy, communities, and NGO's actively participated. Science was to be created transparently and closely linked with policy. Real headway has been made through the Bay-Delta Science program in raising respect for science, and committing to adaptive management. Adaptive management should be further infused into CBDA and related agency practices. There is a growing respect for science, but uncertainty about how it should be linked to decision making. The Little Hoover Commission could play a very helpful role in recommending a consistent application of adaptive management across CBDA programs.

As a member of the Independent Science Board, the Water Management Science Board, and formerly, the Environmental Water Account Scientific Review Board, I do think there are governance issues that need to be addressed. CBDA staffing is inadequate to make optimal use of the contributions of the distinguished and expensive scientists. The transfer of outside science advice must take place first-hand, not through consultants, however talented. There are difficulties in contracting for scientific studies, as others closer to that process than I have told you. The open meeting law application hampered the free flow of information among scientists on the Independent Science Board so that work products were very difficult to produce. Operating procedures on the Science Boards need to be formalized. Most important, the link of science to decision making in the California Bay/Delta Authority is critical to the foundational commitment to more knowledge and less interest driven decisions. The CBDA must have sufficient organizational capacity to respond to knowledgeable advice when it is provided.

One area where science and the operations of CBDA have made a positive difference is in environmental water management. New knowledge about ecosystems management has revealed that to save fish, many environmental parameters must be varied in a flexible fashion to respond to species needs in real time management. The ROD included an innovative provision that provided fish managers with funds, the Environmental Water Account, or EWA, to buy water that could be used to mitigate the damages operators previously were inflicting upon fish. Fish managers meet regularly with water project operators to determine when to store move and release environmental waters purchased through EWA. Through the regular meetings about the management of the environmental water, fish managers came to have some sympathy for the constraints under which

operators worked. Similarly, operators came to understand better the multiple aspects of water favorable to fish survival. New networks, new relationships, and new language related to the notion of adaptive management have helped transcend boundaries and overcome conflicts. Over the first five years, real changes in the attitudes and behavior of project operators and fish managers towards each other were observed, and the EWA Science Review Panel found new levels of trust. These are fundamental achievements that had to develop as a basis for advancement. The EWA program combined with the flexibility of adaptive management, an approach where mistakes are allowed as long as institutional learning takes place. The concept of allowing mistakes to take place is important. Mistakes can lead to greater understanding and improved management. Pushing staff or gutting programs for mistakes runs contrary to the goals of adaptive management.

In contemporary, highly networked governance structures involving many public and private parties, I have come to believe that an institution's authority is not so much granted by policy mandates as earned in practice. Headway on wicked problems often involves reframing issues to better reflect scientific understanding, building trust and working relationships among parties, and consensus to work together over the long haul. The CALFED and CBDA have had successes as well as failures. Institutional change is still very much in its formative phase, and it is too early to pass definitive judgment or to radically change the organizational design. Of course, ultimately, The CBDA must produce a track record of providing open and fair venues where real discourse and trust building takes place, and science is credible and relevant to decisions. The Little Hoover Commission can best serve the public interest by helping this governance structure over what is clearly a rough patch, with a renewed sense of confidence in the core ideas of its mission.