

GOVERNANCE OPTIONS FOR THE STATE WATER PROJECT

Testimony to the Little Hoover Commission

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Sarah Bates, Center for Natural Resources and Environmental Policy, University of Montana

Introduction

This testimony summarizes the initial findings of research currently underway to assess governance options for the California State Water Project (SWP). The analysis suggests a set of criteria to evaluate a range of alternative governance options, based on case studies of other special-purpose public entities.

This research is conducted through my position as a senior associate with the Center for Natural Resources and Environmental Policy at the University of Montana, where I focus on water and land use law and policy, as well as governance institutions for public resources. The opinions and conclusions expressed here and in my oral testimony are my own, and are preliminary in nature.

The research has included conversations with key agency officials, water users, environmental interests, and scholars, as well as extensive analysis of public documents, professional literature, and other materials concerning governance structures for public resources. This report, which will be released this fall, is intended as a starting point for the detailed deliberations that necessarily accompany consideration of major institutional change. In other words, the report will provide a foundation with some indicators for possible directions, not a blueprint for specific reforms.

Implementing any variation or combination of the options outlined in this report will not solve conflicts over interpretation and enforcement of legal mandates, public funding shortfalls, or allocation of resources between urban and rural populations. Nonetheless, an improved governance structure will make those outcomes more likely by empowering the people who need to be part of the solution to be in a position where that is possible.

It is equally true in institutional reform as in architecture that “form follows function.” As stated in a report evaluating policy options for the Metropolitan Water District of Southern California, “it is premature to select a governance structure for an organization before its mission and functions have been determined.”¹ Accordingly, my report’s presentation of governance options assumes that decisions

¹ Dixon, Lloyd, Jim Dewar, Ellen Pint, Robert Reichardt & Ed Edelman, *Building a New Vision for the Metropolitan Water District of Southern California: Options for Key Policy Decisions* (Rand Corporation, DRU-1931-MWD, 1998).

about institutional change will necessarily begin with a robust deliberation about the mission and essential functions of the SWP, and how those mesh with the broader public responsibilities of the DWR.

Scope of Study

It is important to make clear at the outset what the SWP governance options report is *not*: (1) It is not a blueprint for combining the SWP with the federal Central Valley Project; and (2) it is not an analysis of the governance options currently under way for the Sacramento-San Joaquin Delta.

Recurring proposals to integrate federal and state operations make a great deal of sense. Combined operations are already a partial reality through the terms of the Coordinated Operation Agreement and the joint operations of facilities such as the San Luis Unit. Many have called for the transfer of federal title to the State of California to effect a more fully integrated water management system.

The governance options described in the report would accommodate but are not dependent on a change in the Central Valley Project's ownership. Some of the highlighted examples include federal facilities that have been transferred to special purpose public entities such as water conservancy districts. As one observer noted in his examination of proposed Bureau of Reclamation water facility title transfers, "The extent to which [broad public] interests can be protected does not necessarily depend on the federal government holding title, but more on clearly defining what these interests are and developing governance arrangements to protect them."²

For its part, the Bay Delta Conservation Plan anticipates a new governance structure in order to implement the detailed strategies aimed at recovering endangered and sensitive species in the Delta in a way that also provides protection and restoration of water supplies. Discussions are now underway about the exact form and responsibilities of the new governance body, which will involve the operator of the SWP.

Governance Models

The SWP is a publicly owned and operated enterprise serving a large sector of the state's population with an essential service through a complex set of contractual arrangements with other entities, both private and public.

This functional description fits many special purpose public entities, which have proliferated since the middle of the nineteenth century. Yet its location within the DWR presents some obstacles that prevent the SWP from operating with the same advantages of these entities. My report includes a detailed analysis of the range of

² Simon, Benjamin M. "Devolution of Bureau of Reclamation Constructed Water Facilities," *J. Amer. Water Resources Assoc.* 38(5):1187-1194 (Oct. 2002).

alternatives that might be available to provide governance of a separate water delivery entity, considering a variety of models operating elsewhere.

All special purpose public entities serve some general-purpose or enabling government, such as Congress or the state legislature. Some common characteristics of special purpose public entities include:

- The power of the entity is defined by public statute;
- The government wholly owns the entity;
- The entity is legally distinct from the establishing government;
- The entity is free of regulations and procedures applicable to traditional government service organizations;
- The entity may have an ex-officio board member;
- The board members may be politically appointed or elected;
- The board of directors is not compensated;
- The entity has the ability to hire and fire employees;
- The entity has the ability to hire a manager or chief executive officer; and
- The entity has the ability to issue debt and the ability to charge fees for services rendered.³

These entities are known by a bewildering and inconsistently applied array of names: quasi-governmental bodies; public authorities; special districts; and government corporations. Thus, nomenclature alone is insufficient for distinguishing essential characteristics of special purpose entities. Accordingly, the analysis in my report does not classify governance structures by title, but by governance characteristics such as independence of control, board membership, and organizational authority.

Special purpose public entities may take many forms and perform a wide variety of services. Their governance is equally diverse, and there is no single “ideal” model. The key question in choosing among the features is: ***What combination of autonomy and oversight is necessary to achieve the mission of this organization?***

³ Eger III, Robert J., “Casting a Light on Shadow Government: A Typological Approach,” *J. Public Admin. Research & Theory* 16:125-137, 130 (March 2005).

My report will provide an overview of a variety of models of special purpose public entities, which are characterized graphically below based on the degree of governing and financial autonomy. The range of models analyzed may expand or change before the report is completed. I will be prepared to provide more details on the examples included here in my oral testimony before the Little Hoover Commission.

	Limited governing autonomy	Moderate governing autonomy	High governing autonomy
	<i>Board serves in advisory capacity only, and may include ex-officio members from the enabling government; also known as “dependent” governance model</i>	<i>Board is appointed by the enabling government, and may be expected to carry out their policies in management decisions; generally included in “independent” governance model</i>	<i>Board is elected, and is more directly involved in setting policy and overseeing its implementation; also known as “independent” governance model</i>
Limited financial autonomy <i>Revenue generated from fees and user charges only</i>	California Water Authority (no longer active) advising operation of SWP	California Independent System Operator (CAISO), operating state’s wholesale power grid	
Moderate financial autonomy <i>Revenues are from fees and by issuing bonds and/or levying taxes</i>		Tennessee Valley Authority (no taxing authority) Denver Water (no taxing authority) Northern Colorado Water Conservancy District (no bonding authority)	
High financial autonomy <i>Revenues raised from fees, taxes, and bonds</i>		Central Utah Water Conservancy District, operating the Central Utah Project	Central Arizona Water Conservation District, operating the Central Arizona Project

Essential Elements

A governance structure must respond to identified functional concerns. Thus, while the SWP governance options report will not prescribe a particular form for a new entity, it will recommend inclusion of essential elements to address the SWP's water delivery obligations in a public context. The full report will include details about options to incorporate these elements through governance documents, board selection procedures, oversight measures, and other examples.

The essential elements in the final report may expand or change, but are currently drafted to include these:

- The public entity operates under a clear mission statement that seeks to achieve operational efficiency and reliable water supplies while mitigating for environmental impacts and protecting the broad public resource values encompassed by the SWP.
- The enabling legislation spells out the public entity's legal authority and responsibility to meet all environmental mandates currently applicable to the SWP.
- The governing body plays an active role in cooperation with management to articulate and periodically review achievement of specific performance measurements to ensure compliance with articulated goals.
- Decision processes of both the governing body and management are transparent and accessible to members of the public, other interested public agencies, and water contracting organizations.
- Members of the governing body are clearly accountable and responsive to public and stakeholder concerns while committed to upholding the mission of the public entity.
- The DWR's mission of managing water resources statewide and protecting, restoring, and enhancing the natural and human environment is reinforced and supported, despite potential separation of SWP governance.

Conclusion

I appreciate the opportunity to provide this preview of the SWP governance options report. I look forward to a continued dialogue with members of the Little Hoover Commission and the LHC staff as we proceed with our studies.