

TESTIMONY OF THE ASSOCIATION OF CALIFORNIA WATER AGENCIES BEFORE THE LITTLE HOOVER COMMISSION

REGARDING REVIEW OF CALFED GOVERNANCE

PRESENTED SEPTEMBER 22, 2005, BY STEVE HALL, EXECUTIVE DIRECTOR

INTRODUCTION

Mr. Chairman and members of the commission my name is Steve Hall. I am the Executive Director of the Association of California Water Agencies (ACWA). Our public agency members collectively provide over 90 percent of the delivered water in the state. Our diverse membership ranges from some of the smallest irrigation districts in California to the water utilities serving our largest cities. No one has more direct stake in the success of CALFED than our members and their ratepayers.

Like others on the panel, I have been involved in these issues for nearly two decades. I was involved in the so-called three-way process that was a precursor to the negotiation of the ACCORD, signed in 1994. I was involved in the framework agreement that followed and ultimately the Record of Decision, which remains the touchstone for the CALFED process. I have served on the Bay-Delta Oversight Council established by then Governor Wilson, the Bay-Delta Advisory Committee when it was still in existence, and now serve on the Bay-Delta Public Advisory Committee (BDPAC), which advises the Bay-Delta Authority (CBDA). I also serve as the Water Supply Subcommittee co-chair of BDPAC.

I remain a believer in the concept of CALFED as one who can testify to its accomplishments and as one who believes reforms are urgently needed if it is to survive and fulfill its promise.

THE PAST

CALFED was born out of crisis. On the heels of a multi-year drought, numerous fish species were declining to dangerously low levels; numerous areas of the state were critically short of water, including some of the state's most productive agricultural areas and some of the state's most important industries. For instance, the State Water Contractors in Kern County received zero water from the State Water Project in 1991 even though they still had to pay for the water they didn't get. Meanwhile, in the Silicon Valley water supplies from the Delta ran dangerously low and water quality was compromised. Reliable supply and quality are essential for the manufacture of silicon chips, the foundation for our technology industries.

The response of regulatory agencies, principally the U.S. Environmental Protection Agency (EPA) and State Water Resources Control Board, to the drought and its effects was to propose stringent new criteria for Delta operations that would have taken an

additional two million acre feet of water from Delta supplies in **dry years**. Water users rose up in mass to protest the proposed water quality regulations and Governor Wilson wisely withdrew the state's proposal. Meanwhile, U.S. EPA ratcheted the stakes up and forced a standoff between the state and federal governments.

Ultimately, a compromise was reached in late 1994 between the state and federal governments on a plan to set less stringent Delta operating criteria and a commitment to partner in a comprehensive planning effort to resolve longstanding conflicts in the Delta. This planning effort was an acknowledgement that Delta issues could not be resolved through regulatory measures or through the courts. The planning effort became known as CALFED.

The most significant point about the formation of CALFED is that it took the leadership of people at the highest levels of state and federal government to overcome the strong gravitational pull that has historically kept the respective state and federal agencies in their own orbits. Each state and federal agency pursued its mission without thought to overlap or conflict with the missions of the other agencies. That was a big contributing factor to the crisis that spawned CALFED, and it had to be overcome in order for CALFED to succeed. As they testified recently, Governor Wilson and Secretary Babbitt saw the need for the agencies to work outside their narrow missions and work collaboratively to resolve multiple problems all at once. Water supply, water quality and ecosystem restoration were all equally important and none could be sacrificed for the sake of the others. They succeeded in this, at least in the short term, because the crisis allowed them to override longstanding policies and practices.

Unfortunately, when the drought ended, the crises abated, and ensuing state and federal administrations allowed partisan differences and agency turf to undermine the collaborative processes that were initially a part of the CALFED Program.

More recently, there has been an improvement in collaboration among state and federal agencies and between the two levels of government. However, in the meantime, the Bay-Delta Authority has been created, adding a new level of complexity. While state agencies are working better with state agencies and federal agencies, none of them are working effectively with the Bay-Delta Authority. The state legislation that created the Authority sought to strengthen the collaborative process, to improve transparency and accountability, and to resolve conflicts before they became crises. It has not succeeded in a meaningful way in any of those areas.

THE PRESENT (HOW WELL IS CALFED GOVERNANCE WORKING)

The three core functions of the CALFED governance apparatus are to provide: (1) coordination, (2) oversight, and (3) policy direction.

Coordination

At the outset, CALFED needed strong leadership from the top levels of government to change the way state and federal agencies did business within their narrow mission areas. Over the years since CALFED's inception, coordination has become somewhat accepted throughout the implementing agencies. Operating agencies and regulatory agencies routinely and regularly consult over decisions regarding Delta operations. Information gathering is coordinated and much of the overlap and redundancy have been eliminated. More information is shared than has ever been shared before by the participating agencies. However, there are no formal mechanisms in place to ensure that coordination will continue in future administrations. Institutionalizing coordination should be one of the goals of any attempts to reform CALFED governance. Specific reform measures should include the following:

1. The program needs to be refocused back to its mission of resolving conflicts in the Delta. In an attempt to show progress while avoiding political disagreements, the CBDA staff have promoted a diverse array of activities that have little to do with reducing conflicts in the Delta and have resulted in huge expenditures of money without moving the program forward.
2. CBDA staff should have a clear mandate to facilitate coordination among state and federal agencies, not to direct the activities of implementing agencies. The goal of the coordination function should be to adaptively manage to changing conditions and to efficiently move decisions to the appropriate level for final resolution. That should be the clear directive to the staff of CBDA and to the implementing agencies.
3. Participating state and federal agencies should work to develop crosscut budgets so that the annual budgets of the participating federal agencies compliment each other and avoid duplication.
4. There should be a lead individual from both the state and federal administrations of sufficient stature to make decisions and speak for their respective administrations. These two leads should act as counterparts and should be held responsible for effectively coordinating the implementing agencies. It will be essential for these people to meet regularly with the most senior people within the respective implementing agencies assigned to the CALFED Program.

Oversight

Oversight is a particularly critical government function for complex, multi-agency efforts such as CALFED. Some argue that it is not possible for the implementing agencies to participate in both coordination and oversight. However, it is not realistic to expect the Bay-Delta Authority to exercise "directive" oversight that is independent of the implementing agencies. State and federal agencies will never cede oversight authority to

an independent body outside of their respective administrations. Ultimately, the implementing agencies must be held accountable for the outcomes of the program. Shifting oversight makes it too easy for those agencies to shift responsibility to the overseeing body.

Oversight of the ongoing activities of the implementing agencies can and should be conducted by a governing body that includes high-level representatives of those implementing agencies. These should not be the same individuals who are responsible for the day-to-day activities being carried out by the implementing agencies for CALFED.

The primary purposes of oversight for the CALFED process is to make CALFED accountable, transparent and assure that policy decisions are based on sound science and the public record.

Accountability should be focused on assuring that the public dollars invested produce tangible benefits equal to or greater than the costs. This should be done through tracking of expenditures and prioritizing projects that maximize public value.

Finally, the oversight function should assure that there is a robust science program in place and that policy decisions are based on the data collected and transmitted from the science program.

Accordingly, ACWA has the following recommendations with respect to oversight:

1. Oversight of the existing CALFED Program should include representatives of the implementing agencies but should also include public members to provide an independent voice. Oversight of the portion of CALFED dealing with future Delta planning is addressed later in this testimony.
2. A lead scientist should be retained at the earliest possible date and should be given a clear mandate to work with the Bay-Delta Authority Director and the implementing agencies to develop a science program designed to answer specific high priority questions that will be used by policymakers.
3. There must be a tracking system established that tracks public investments from local, state and federal sources and which establishes measurements of progress and the major program elements. This measurement cannot be based simply on dollars spent or projects completed, but must be based on agreed upon desired outcomes.
4. Where appropriate, CALFED meetings should be noticed and open to the public. In all cases, significant decisions must be based upon a well-established public record. Stakeholder input should be considered and where decisions are made

that are contrary to significant stakeholder groups, the reasons for departure should be cited and supported by the record.

Policy

Neither the state legislation that created the CBDA nor the federal legislation authorizing CALFED gives the CBDA a policymaking role. In fact, in the drafting of both pieces of legislation the role of CBDA was discussed, and a policymaking role was specifically rejected in both cases.

For both legal and political reasons, no administration will cede the responsibility and authority of policymaking to some other entity. It would therefore be extremely unwise to attempt to grant policymaking authority to the CBDA.

However, there is one very important role that the CBDA can serve, as long as it does so in cooperation and coordination with the implementing agencies. That role is simply to attempt to bring the 25 agencies at the state and federal level together around a united policy toward resolving conflicts in the Delta.

Under any circumstances it is difficult to get different levels of government to work in concert, particularly when it involves so many different agencies with varying and sometimes conflicting missions. Add to that the likelihood that the administrations will sometimes be of different political parties and the job becomes even more difficult. Nevertheless, developing a united policy around a core mission of reducing Delta conflicts is a vital task that must be the primary focus of any governing body for the CALFED process.

ACWA therefore recommends the following with respect to policy:

1. The co-chairs of the CBDA board should be high-ranking officials in the state and federal administrations. For the state it should be the Secretary of Resources or the Director of Water Resources. The Governor should specifically appoint the individual. The federal co-chair should be a high-ranking official in the Department of Interior, named by the Secretary. These individuals must clearly be understood to speak for their administrations and should be held accountable for the success of the program.
2. Final policy decisions must rest with the state and federal administrations and must be joint decisions. Impasses must be resolved before moving forward; mechanisms must be clearly established to move decisions up to the Governor and Secretary if necessary.
3. The CBDA board should be given a prominent advisory role in the decision-making process but should not be given policymaking authority.

THE FUTURE

The existing structure of CALFED can work with proper management and coordination to resolve the problems in the Delta identified in the Record of Decision. However, it is becoming increasingly clear that the Record of Decision failed to anticipate changes in the Delta and its watershed that are now looming very large. The current crisis with pelagic fish in the Delta is an indication that the ecosystem is changing. While it is too early to draw hard and fast conclusions, it appears that the decline in pelagic species may be due to major alteration at the bottom of the food chain upon which these pelagic species depend. If true, the problem will not be solved by mere tinkering with Delta operations. This alteration of the food web occurred over decades and involves myriad introduced species that will not be easy to chase out of this ecosystem. In fact, we may simply have to accept that the ecosystem has fundamentally changed, and we will not return it to its former state.

Additionally, the significance of climate change is growing. The effects of climate change will include a rise in sea level and a pronounced change in the pattern of precipitation in the Sierra Nevada and other tributaries to the Delta watershed. Less snow and more rain will mean more rapid runoff and increases in the severity and frequency of flooding. Add to that the longstanding threat of an earthquake in the Delta, which is underlain with several active earthquake faults, and the picture looks very grim.

Recently, my organization published a report titled, “*No Time to Waste: A Blueprint for California Water.*” That report is attached hereto and made a part of this testimony. In that report are two recommendations dealing with the Delta. The second of those recommendations addresses the long-term sustainability of the Delta. The emerging threats cited above make it clear that a very high level, comprehensive look at the Delta is warranted. While CALFED has been able to assemble a number of the facts regarding the Delta, it is highly questionable that the current CALFED structure can bring together the technical expertise and political will necessary to implement a comprehensive, sustainable future for the Delta. That is why my organization has called upon the Governor to appoint a very high-level commission whose job it would be to assemble the right experts and over a reasonable period of time develop a set of recommendations that, if implemented, would secure the future of the Delta as a resource for the environment and for the economy.

The Little Hoover Commission must consider not just the existing state of the Delta, but its long-term future as it designs a governance system. We respectfully recommend that the Little Hoover Commission seriously consider the formation of this high-level commission in its recommendations to the Governor.

PAYING THE PRICE

The key to both short- and long-term solutions for the Delta is developing a finance plan that is equitable and assembles the necessary financial resources to implement the

projects and programs necessary to carry out the plan. Some have suggested that all the Authority needs to accomplish its mission is more authority and more money. We respectfully suggest that the Bay-Delta Authority has not adequately managed or accounted for the \$3 billion that it has now spent, and it will be extremely difficult to develop support to give them more money or more authority.

My organization has developed a set of principles regarding the financing of water infrastructure in the state. Those principles are attached and are recommended for the commission's consideration as you weave financing into the governance plan you recommend.

CONCLUSION

ACWA and its members have been deeply invested in the CALFED process since its inception and we remain so. We believe in the type of intergovernmental collaborative process that CALFED has attempted to carry out. We are committed to the development of and implementation of comprehensive solutions for the Delta that are balanced and that create a sustainable resource in the Delta for drinking water quality, water supply and the environment. We have offered specific recommendations for reinvigorating CALFED with the specific goal in mind of creating outcomes that can be broadly supported.

We are prepared to continue to engage constructively with the Schwarzenegger Administration, the Little Hoover Commission and other stakeholders to develop a governance structure and an implementation plan that accomplishes these goals.

WATER INFRASTRUCTURE FINANCING PRINCIPLES

Preamble

A key principle of the CALFED Program that can be applied to other infrastructure financing is that beneficiaries of program actions should, to the extent that they directly benefit, pay for those program costs. ACWA members are prepared to pay their fair share of the costs for benefits received, but believe that some of the investments made through CALFED will provide “public benefits,” which should be funded from state and federal sources. For instance, some of the system improvements to California’s “backbone” storage and conveyance system are legitimate public benefits. There will also be “water user benefits” from some of the investments made through CALFED. Those should be funded under the beneficiaries pay principle.

The following principles apply to those costs to be distributed under the beneficiaries pay principle.

Policy Principle 1

For those investments that provide direct, measurable benefits to water rate payers, ACWA supports the principle of “beneficiary pays” used in the CALFED process and other water infrastructure planning processes. The beneficiary pays principle implies that those who benefit should pay for those benefits. Likewise, those who do not benefit from a particular project or program should not be required to pay for them.

Policy Principle 2

The most effective and fair means to allocate those water infrastructure costs that provide direct, measurable benefits to water rate payers is through direct negotiations between the lead agency(ies) and those parties who may benefit from the project or program being proposed.

Policy Principle 3

Historical cost allocation formulae among federal, state and local governments should be used to guide negotiators and policymakers in the deliberations over allocation of costs for water infrastructure, both between public and water user benefit, and among the beneficiaries of water infrastructure investments.

Policy Principle 4

For state fiscal year 2005-06 and beyond, no broad user fees should be imposed to finance CALFED or any other California water infrastructure program. Only those water agencies that enter into direct negotiations and willingly agree to pay a portion of project or program costs should be asked or directed to pay.

Policy Principle 5

Those investments in and contributions to infrastructure, programs, mitigation and restoration made by local public agencies must be fully considered in determining appropriate cost shares for water infrastructure investments.

Policy Principle 6

ACWA, its members, and other legitimate stakeholder groups must be involved in any and all significant policy and fiscal decisions relative to water infrastructure financing in California.

Policy Principle 7

State formulae for allocation of costs from the CALFED Program and other water infrastructure programs should be determined in an open and transparent manner and should not be imposed by the State of California either through administrative or legislative action without open hearings by appropriate policy and appropriations and relevant budget committees.