

CALFED Science Program Workshop

**Governing the Delta:
Principles for a New Vision**

October 12, 2007

9:00 a.m. to 4:00 p.m.

CALFED Bay-Delta Program
Bay and Delta Conference Rooms
650 Capitol Mall, 5th Floor
Sacramento, CA 95814

This workshop will be webcast:

<http://www.visualwebcaster.com/event.asp?regd=y&id=42397>.

Purpose

The CALFED Science Program is convening a workshop on Governance to discuss issues surrounding implementation of a Delta Vision. The workshop will include speakers with examples from other large restoration programs as well as local examples with emphasis on what has worked and what has not. Speakers will also discuss past CALFED governance approaches and current governance ideas in draft Delta visions. The primary workshop outcome will be key governance principles for the Delta Vision Task Force to consider in the draft Delta vision currently under development.

Products

The Science Program will produce a written report on the workshop to be provided as briefing materials to Agency Directors, Delta Vision Task Force, interested parties, and the public for informing governance decisions in the Delta.

The report and the speakers' presentations will be posted on the CALFED Science Program website (<http://www.science.calwater.ca.gov>).

AGENDA

- 9:00 a.m.
1. Opening Context – John Kirlin, Executive Director, Delta Vision
 2. Panel of Governance Examples:
 - Tim Hennessey, Chesapeake Bay Program
 - John Shurts, Columbia River Basin
 - Will Travis, Bay Conservation and Development Commission

Lunch

3. Previous CALFED governance– Brent Walthall, former Chief Consultant to the Senate Agriculture and Water Committee
4. Governance in a Complex, Changing Environment
– Judy Innes, UC Berkeley, Delta Vision Assessment Team
5. Governance Principles – Jim Mayer, Executive Director, California Forward; former Executive Director of the Little Hoover Commission
6. Discussion - Dr. Michael Healey, CALFED Lead Scientist
7. Public Comment

4:00 p.m.

Adjourn

-
- Order of agenda items is subject to change.
 - If you need reasonable accommodation due to a disability, please contact Colleen Kirtlan, CALFED Bay-Delta Program at (916) 445-5511, TDD (800) 735-2929.
 - Please allow extra time for parking and federal building security screening procedures. Current photo identification is required for building access. Visitors may bring cameras and cell phones with camera capability into the building ONLY with the prior approval of the CALFED Bay-Delta Program and the Federal Protective Service, and their use in the building will be subject to federal restrictions. Please contact Terry Smith, Security Coordinator for the CALFED Bay-Delta Program, cell (916) 716-1904, office (916) 445-5345 or tsmith@calwater.ca.gov for building access information and camera guidelines.

What needs governance to achieve a “durable vision for sustainable management of the Delta?”

1. Value choices between ecosystem function and water uses (the Delta Vision Blue Ribbon Task Force has recommended these two as co-equal and of highest importance) and other services from the Delta
2. Operations of water systems
3. Ecosystem improvement process
4. Water quality (including at least related to human use, ecosystem and drainage)
5. Land use within the Delta (boundaries may change), and land uses in near proximity to Delta which affect future choices (e.g., ability to expand into adjoining gradients as sea level rises or to construct facilities)
6. Delta watershed actions, especially those which affect (a) water volume, (b) water quality, and (c) flood plains
7. State wide polices which affect “retail” water uses (pricing, conservation programs..)
8. State policies affecting capture, storage and transfer of water for use (e.g., water rights systems, available infrastructure, pricing, distributions of liabilities, water transfer policies)

What tools are available for governance?

1. Arenas for on-going authoritative decision making
2. Establish and support relevant non authoritative systems (e.g., implementation networks, common science work, facilitated collaboration, non profits focused on achieving policy goals..)
3. Develop and support mechanisms and systems for intergovernmental action (e.g., MOUs, interagency working groups..)
4. Distributions of liabilities (e.g., from floods, from uses which impair water quality)
5. Financing systems (e.g., systems to raise and allocate public money and systems for access to public credit)
6. Create markets and improve efficiency of existing markets (e.g., water transfers, TDRs) with intent to achieve policy goals (requires property rights, ways to exchange, ways to value, etc.)
7. Price signals subject to policy control (e.g., full cost pricing of water, per unit costs increase by volume..)
8. Regulation
9. Legal forms for permissive collective action with public powers (e.g., reclamation districts)
10. Implementing agencies focused on particular activities, outcomes and/or values (e.g., existing Department of Water Resource focused on water; what agency should focus on enhancing estuarine ecosystem of Delta?)
11. Rules for access to courts for adjudication of policy conflicts

12. Legislative codification of policy direction and principles (e.g., on public trust doctrine)
13. Public education (e.g., visible marking of projected 100 year flood levels throughout areas at risk, including specifically those behind levees)

Assumptions:

1. Multiple tools will be needed. An area of governance may be characterized by one or more tools.
2. Tools will be used at differing spatial scales
3. Expect resistance to change
4. Progress will be uneven

Strategies:

1. Join decision making, financing and liability where ever possible (from institutions to individuals)
2. Use existing systems where possible, but often hard to change, so be ready to seek major changes. When change is required, seek the clearest expression of new roles and removal of old activities possible.
3. Where possible, use tools which affect behaviors of decision makers (private and public) without constant authoritative decision making or regulation

Reflections on the Columbia River Experience and “Governance”

CALFED Bay-Delta Program
Sacramento, California
October 12, 2007

John Shurts
Northwest Power and Conservation Council

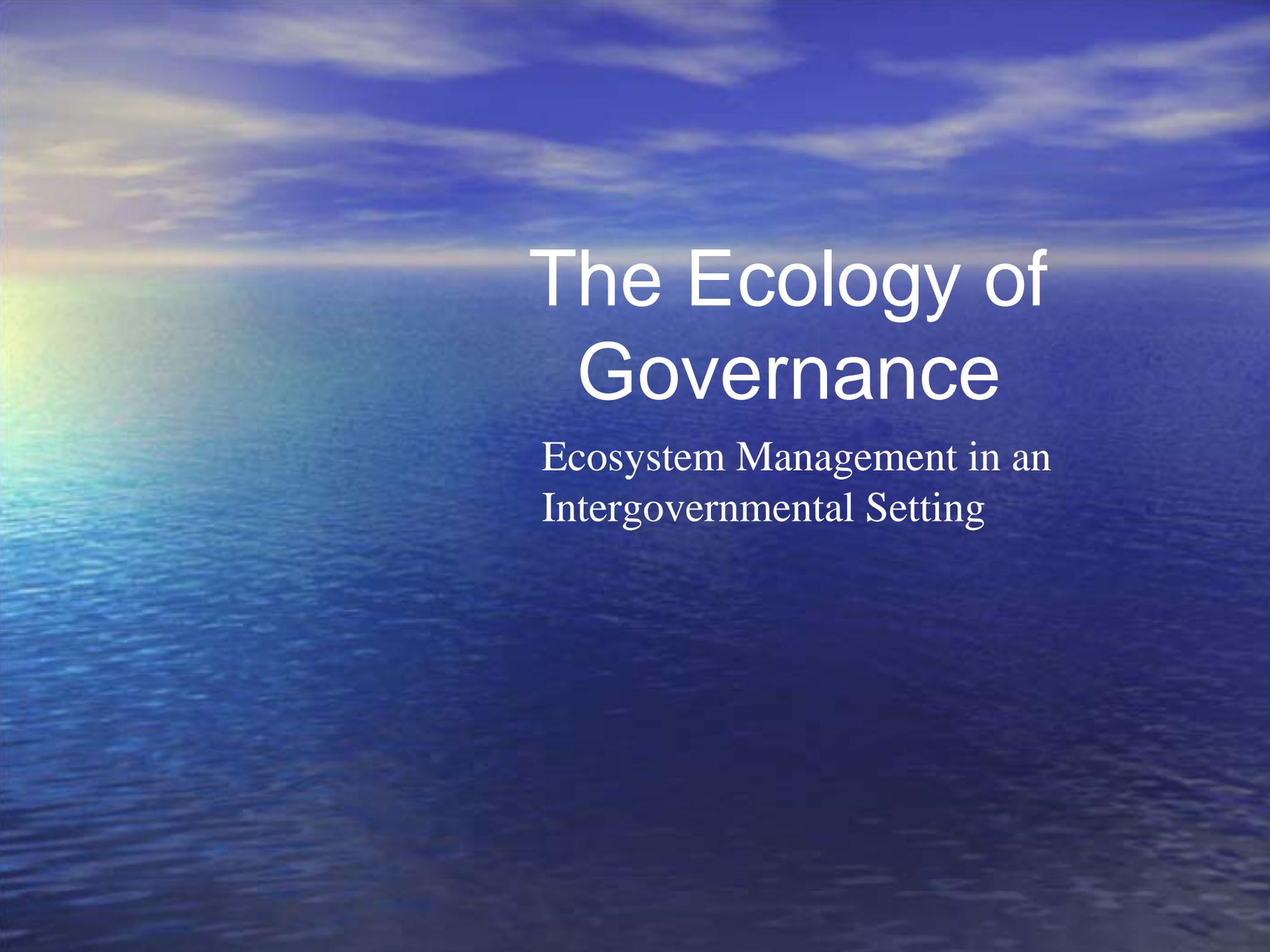
Columbia River Basin



- Columbia Basin has fragmented government between *and* within the different levels of government with different but overlapping mandates and authorities.
- Governance proposals aimed at ending fragmented government and looking for a single decisionmaker have been a waste of time.

- Still, things get decided and implemented. We are not paralyzed.
- The most useful governance arrangements have arisen organically, opportunistically, even accidentally.
- Trying to reform or reshape “governance” as a general, abstract, distinct topic in and of itself has failed.

- Whether the region succeeds in achieving sustainable salmon recovery will *not* depend on whether we get the governance structure just right.
- Focus effort on substantive authority - on the kinds of decisions and information and standards and funding arrangements needed to address the substantive problems.



The Ecology of Governance

Ecosystem Management in an
Intergovernmental Setting

Presentation at CAL/FED Oct 12, 07

Timothy M. Hennessey
The University of Rhode Island
Department of Marine Affairs and
Political Science



Policy for Watershed Ecosystems

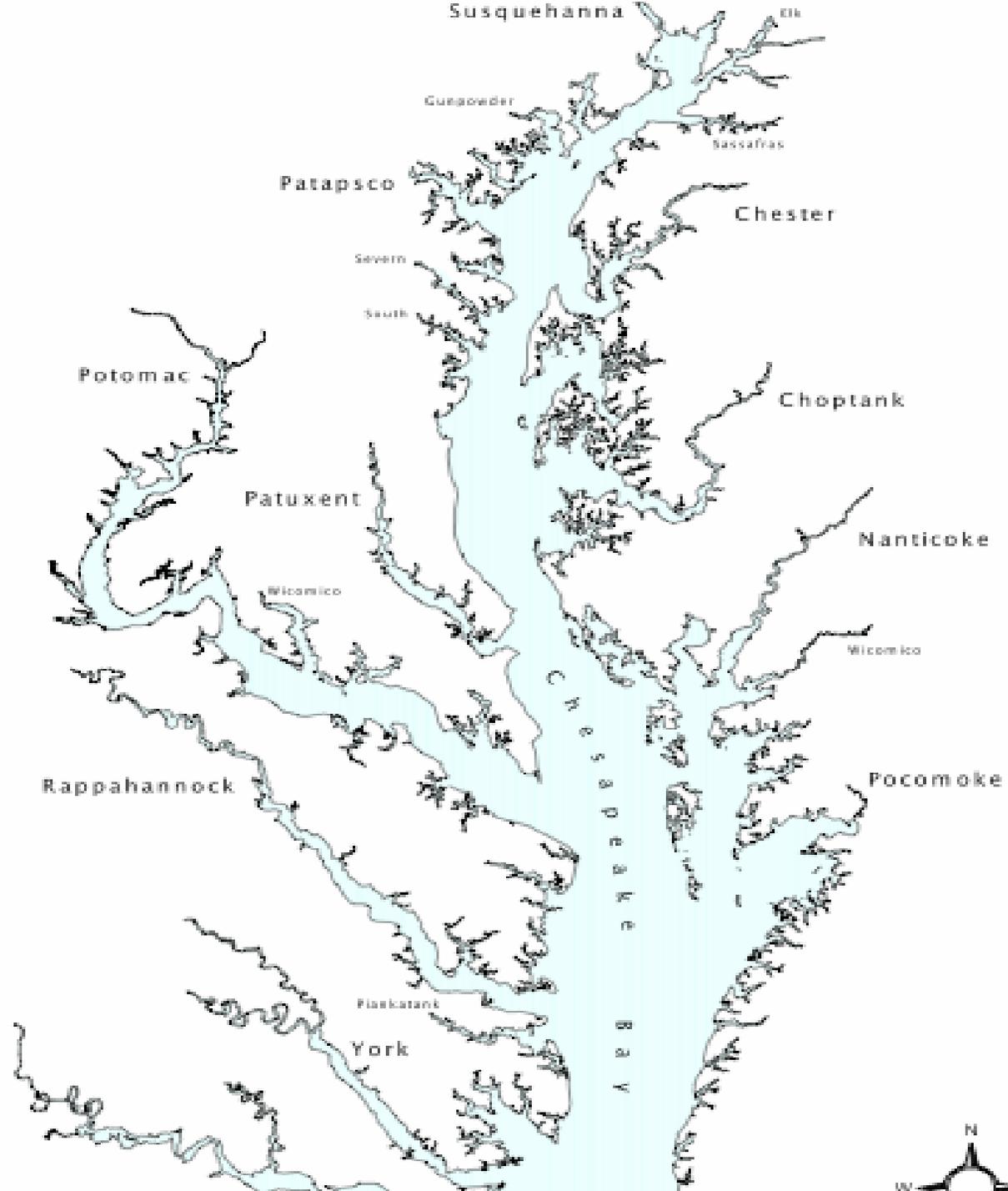
The Implications for Integrated
Adaptive Governance

Adaptive Management

- Policies as Experiments
- Adapting Administrative Structures and Processes.
- Science and The Policy Process
- Ecosystem Space and Political Space. Are they compatible?



The Prototype of Watershed Ecosystem Management: The Chesapeake Bay Program





The Chesapeake Bay

- Is the largest and longest estuary in the US.
- Its watershed encompasses 165,000 square kilometers and stretches from Cooperstown, NY, to the Atlantic Ocean at Virginia Beach, Virginia.
- This area includes portions of six states, New York, Pennsylvania, Maryland, Virginia, Delaware, West Virginia -as well as the District of Columbia.
- Half the water in the bay comes from the Atlantic Ocean, the remainder is fresh water from the rivers and streams that work their way to the bay, the largest source of which is the Susquehanna River.

Choice of Governance Structure

- Criteria and assumptions in choosing CBP institutions
- Regional institutions have not performed well because they have been resisted by states, local governments and federal entities.
- Jurisdictional scope and institutions should correspond to impact boundaries’.
- Small institutions are more efficient and responsive than large institutions and should be no larger than necessary to incorporate preferences of all parties.
- A multi-institutional governance system is to be preferred for dealing with problems in the face of

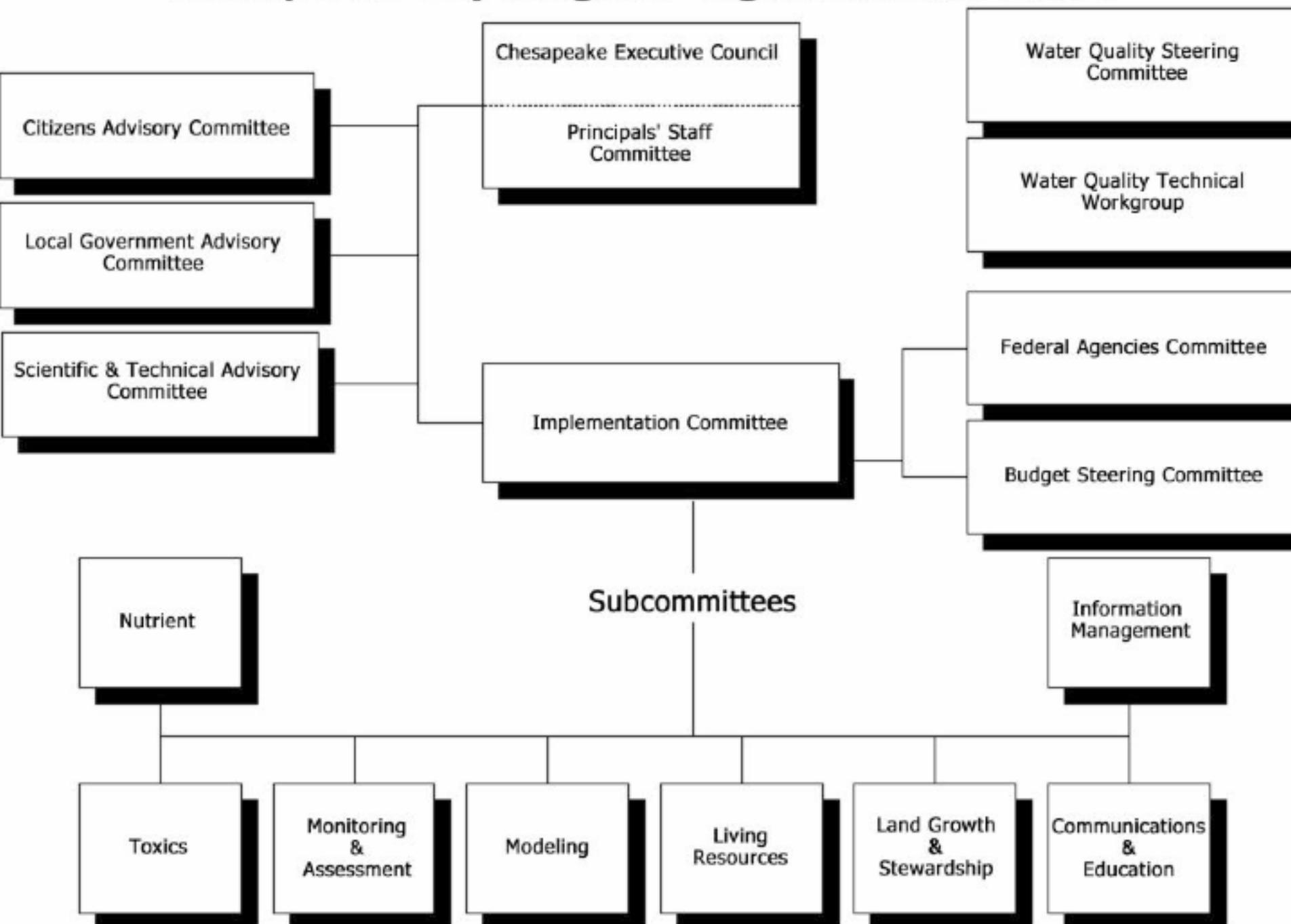
Governance Structure Cont'd

- 1983 agreement signed by EPA and the states of Virginia, Maryland and Pennsylvania and the District of Columbia.
- Established the major elements of a cooperative structure to develop and coordinate the comprehensive bay cleanup: The Chesapeake Bay Executive Council, The Implementation Committee, and EPA's Chesapeake Bay office.
- The council membership included representatives from each of the four jurisdictions and EPA. Chairmanship rotates between the states governors, the mayor of DC, and EPA. It operates by consensus.

Governance Structure Cont'd.

- The implementation Committee, the councils operating arm, has 26 members: delegates from the jurisdictions and representatives from the seven federal agencies and three interstate commissions.
- Subcommittees for planning, Non-point Sources Data Management, Modeling and Research, Monitoring and Living Resources. A Scientific and Technical committee. The council also has a Citizens Advisory Committee which has 25 members: four appointed by the governors of each state and nine at large members nominated by Citizens for the Chesapeake Bay.

Chesapeake Bay Program Organizational Chart



Stages of Evolution In Chesapeake Bay

- Stage one- 1976-83,problem recognition and agenda setting
- Stage two-1983-86,restoration objectives and management structures.
- Stage three-1987-1992-goal expansion and governance system
- Stage four-1992-1997-expanding the management scope to watersheds
- Stage five:watershed ecosystem partnerships between The federal government the states and local governments

Stage Two: 1983-1986: Restoration Objectives and Management Structure

- Chesapeake Bay Program Partnership
- Chesapeake Bay Executive Council
- Implementation Committee
- Scientific and Technical Committee
- Citizens Advisory Committee
- 1985: four general goals: water quality, living resources, toxic reduction, public input and cooperation among institutions around the bay.

Stage Three 1987-1992: Expansion of Goals and Governance Structure

- 1987 Chesapeake Bay Agreement
- Expanded the scope of the 1983 commitments
- Established 29 specific goals in the areas of water quality, living resources, population growth and development, governance, public information and public access
- A 40% reduction in phosphorus and nitrogen by the year 2000.
- Identified living resources as the ultimate indicators of bay health.

Stage Four: 1992-2000.

- 1996 Nutrient reduction reevaluation
- Reaffirmed commitment to the nutrient reduction goal
- Permanent nutrient cap after 2000
- Recognized the critical role of local action to reduce non-point source pollution.
- The bays watershed is divided into sub watersheds that drain into the estuary.
- Within each of the tributaries locally based strategies were to be developed by 1993 to achieve nutrient reduction goals.

Stage Four cont'd.

- Set nutrient reduction goals for tributaries.
- 1997 watershed model: phase IV
- 1996-1997 pfiesteria outbreaks associated with agric

Stage Five-Watershed Partnerships-2000-10.

- The scale paradox: Large scale watershed management requires cooperation with 1653 local governments in several states
- By 2010 implement locally supported watershed plans in two thirds of the bay
- By 2004 each jurisdiction will develop stream corridor restoration goals based on local planning.
- By 2010 correct the nutrient and sediment problems in the bay and its tidal tributaries to remove the bay from the impaired waters list

Watershed Ecosystem Management :Research Implications

- Institutional design and performance
- Challenges: long term sustainability,
- clearly defined goals.
- sound ecological models,
- complexity and interconnectedness,
- adaptability and accountability.

GOVERNANCE IN A COMPLEX, CHANGING ENVIRONMENT

LESSONS FROM NORTHERN CALIFORNIA WATER MANAGEMENT PROJECTS

Judith E. Innes

Department of City and Regional Planning
University of California Berkeley

FIGURE 4.6

The Sacramento-San Joaquin Delta

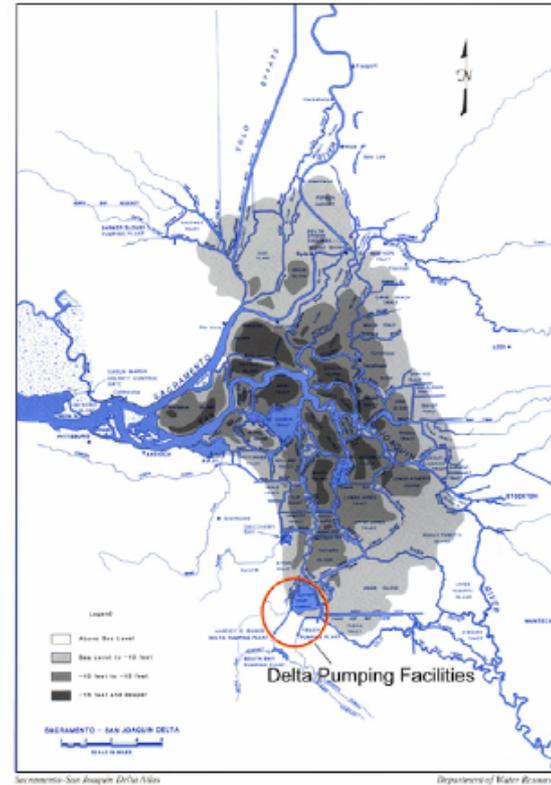
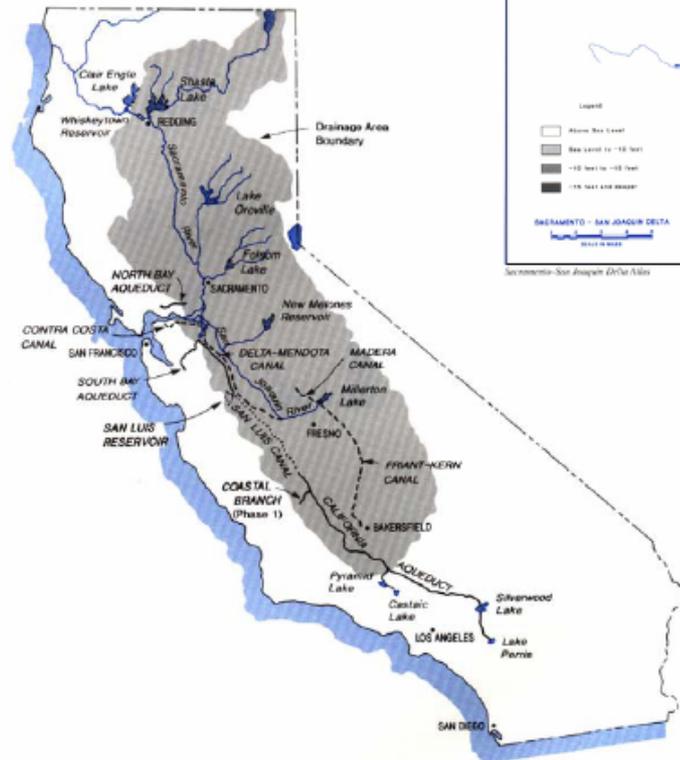


FIGURE 4.5

The Delta Watershed



PROJECTS STUDIED

- San Francisco Estuary Project 1988-1993
- Sacramento Area Water Forum 1993-2000
- CALFED Bay-Delta Program 1994-2003

The Lower American River in Northern California



The Lower American River is at the Confluence of the Waters that Serve 25 Million People





SOURCES OF UNCERTAINTY AND COMPLEXITY IN THE DELTA

LEGAL AND GOVERNMENTAL

- 128 public agencies at all levels of government each with some jurisdiction
- 20 major federal and state laws and constitutional requirements
- Dizzying array of overlapping and conflicting water rights, which cannot all be exercised at once
- Effects of current and future court decisions

CHALLENGES FOR INFORMING DECISIONS

- Multiple disciplines
- Advocacy science
- Local knowledge
- Species projections
- Climate predictions
- Levee capabilities
- Effects of operations
- Private sector actions



MULTIPLE AND CONFLICTING GOALS

- Conflicting interests and stakeholders
- Agriculture, urban, environment
- History of conflict and distrust
- Interdependence



In this context top down hierarchy and authoritative decision making is infeasible.

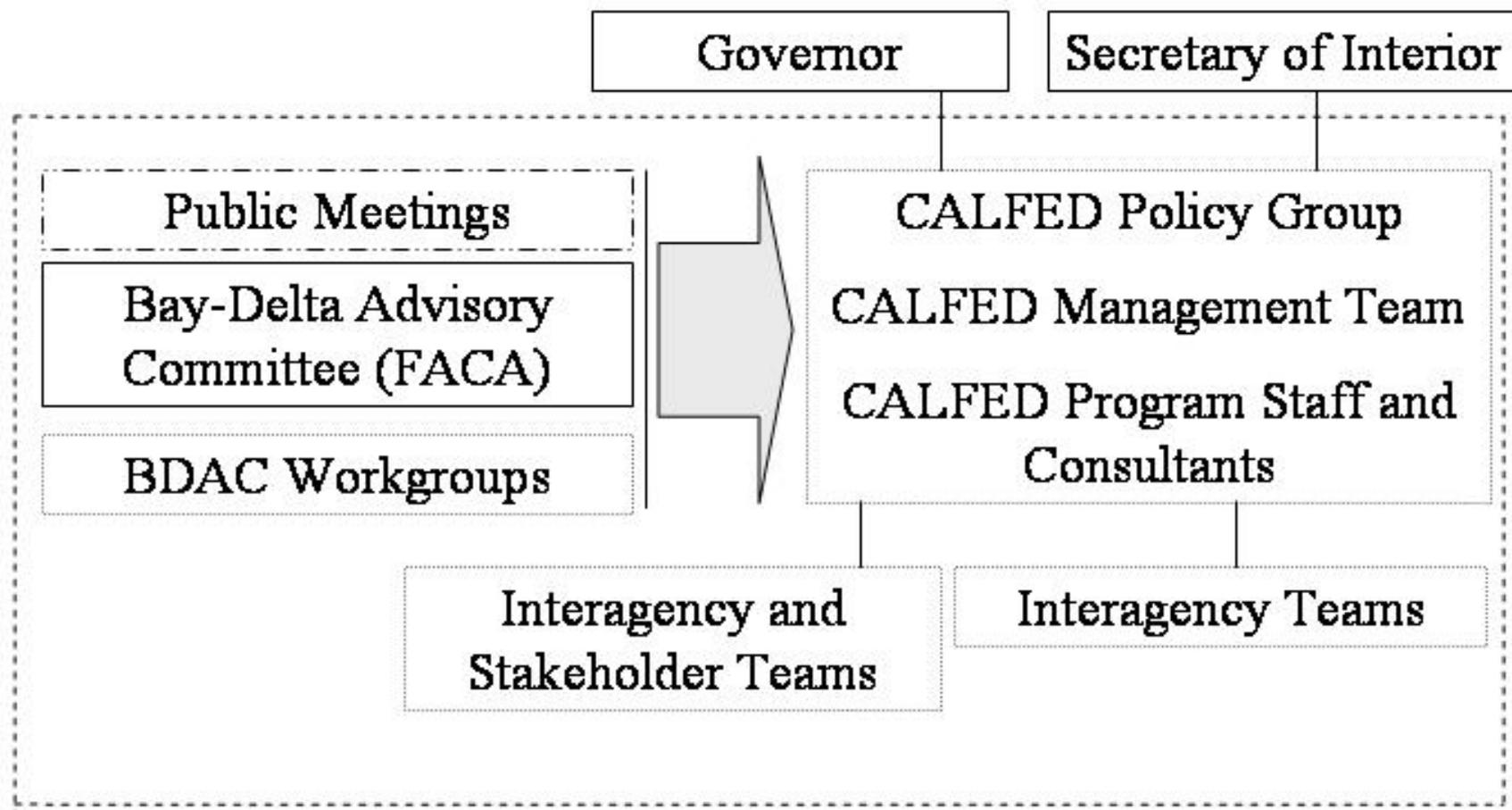
Bureaucratic rule making is slow and subject to lawsuits, has led to policy paralysis.



The resilient Delta of the future requires a flexible, networked governance system, employing multiple strategies and engaging key players and multiple knowledges in a continuous learning and action process



The CALFED Structure 1995-2003





SOME SUCCESSES AND IDEAS

MIXED TASK GROUPS

- Collaborative working groups of diverse players focused on specific tasks and addressing problems agreed on by a larger group



EXAMPLES

- *Management of Water Operations in Calfed*
 - Four Linked Agency-Stakeholder Task Groups.
 - Reviewed Water And Fishery Conditions Around The State On A Real Time Basis.
 - Made Recommendations For Pumping, Delta Cross Channel Operation.

- *The Environmental Water Account*

- A “bank account” for environmental water.
- Flexibility to release for environment or agriculture as needed.
- Joint gaming and modeling.
- More reliable water supply.

AGREEMENT ON A BIODIVERSITY CRITERION FOR THE SF ESTUARY

- Opposing agency and stakeholder scientists spent two weekends in facilitated dialogue
- All but one or two agreed on a controversial measure of best conditions for biodiversity





**INFORMALITY AS A
PLANNING STRATEGY**

Planning Method

- Started as Stepwise Linear Method
- Evolved to Non Linear Method
- Negotiated Process for Joint Action
- Negotiated Set of Issues
- Agreed on Heuristics for Solutions

Implementation

- Implementation was informal
- Similar to song book for jazz combo
- Prepared Record of Decision (ROD)
- Adaptation of EIR & EIS process
- Agreement of agents to implement ROD
- No legislative approval of plan or program
- Agents Adapted Actions to Fit Changed Conditions



KEYS TO SUCCESSFUL COLLABORATIVE GOVERNANCE

*Diversity, Interdependence,
and
Authentic Dialogue*

**Comparing Traditional
Governance with Collaborative
Complex Adaptive System
Governance**

Traditional vs Collaborative CAS Governance

- Top Down Hierarchy
- Central Control
- Closed Boundary
- Clear Goals, Problems
- Single Authority
- Manager is Controller
- Plan, Lead, Control
- Networked Clusters
- Distributed Control
- Open Boundary
- Various/Changing
- Shared Authority
- Guide Interactions
- Influence Conditions, Select Agents/Resources

Traditional vs Collaborative CAS Governance (cont.)

- Directive Leadership
- Linear Planning
- Success is Attainment of Goals of Policy
- System Determined by Components
- Representative Democracy
- Generative Leadership
- Nonlinear Planning
- Success is Realization of Collective Action
- System Determined by Interactions
- Deliberative Democracy

The problems we have created as
a result of our thinking so far,
cannot be solved by thinking the
way we thought when we
created them.

Albert Einstein

Is the Delta Governable

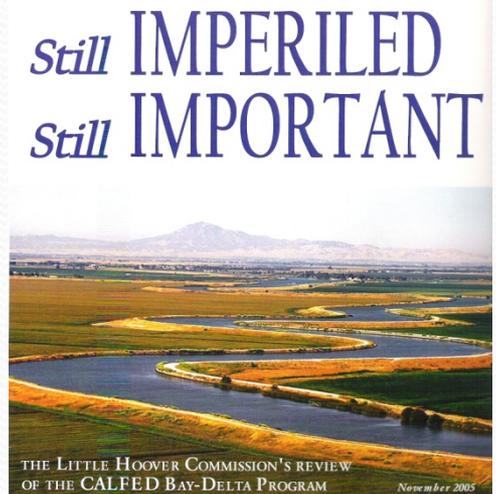
James P. Mayer

October 12, 2007

Little Hoover Commission

Still IMPERILED, *Still* IMPORTANT

- CALFED authority diffused and disconnected.
- CALFED could not discipline multi-agency focus.
- CBDA lacked capacity to resolve remaining issues.
- CBDA board burdened with conflicts.



Little Hoover Recommendations

- Sustainable Delta plan, comprehensive state plan.
- Management functions in management structure.
- Performance management to focus and coordinate efforts.
- Broad public involvement, state advisory committee, conflict resolution.
- Legislative role: clear direction, oversight.

Challenges and Responses to fragmented public decision-making

Challenge: Conflicting goals, values and approaches need to be reconciled.

- Delta application: Fish, water, levees.
- Organizational solutions: Energy policy.
- Process solutions: Land use planning.

Response: Reconciling conflicting goals, value and approaches.

- Clarity around functions, purpose, decisions.
- Consolidation, integration, coordination.
- Nature of decisions guide structure and process.

Challenge: Poor coordination among agencies that need to cooperate to improve results.

- Delta application: Allocation of resources not aligned to priorities.
- Organizational issue: Child Welfare System
- Coordination issue: Higher ed.

Response: Getting cooperation to improve results.

- Reorganization, consolidation may not be as powerful as effective management.
- Difficult to legislate cooperation so policy solutions must emphasize expectations, capacity and accountability.

Challenge: Some assets, opportunities are not part of the solution.

- Delta application: Upper watershed, market mechanisms, conservancy.
- Affordable housing.
- Teen foster-youth.
- Parole.

Response: Incorporating new assets.

- Some assets are not public, and that's a good thing.
- Requires involving non-traditional stakeholders, and that's a good thing.

Lessons Learned

From Fragmented to Cohesive

1. Vision

- Identify precisely the public agencies and assets needed to achieve the vision.
- Develop shared goals highlighting need for multi-agency cooperation.
- Develop individual objectives so agencies understand their contribution.

2. Organizational strategy

- Form follows function (or strategy).
- Align responsibilities with authority.
- Avoid conflicting functions.
- Relationships, roles, responsibilities.

3. Management Strategy

- What is not consolidated must be integrated or coordinated.
- Requires clear objectives and measurement toward those objectives.

4. Resource allocation

- Resources are aligned with goals and priorities.
- Resources can be used as a control and as an incentive.

5. Market and other incentives

- Incentives include additional resources, additional discretion, and early success.
- Authority and incentives should be aligned to allow for synergies.

Epilogue: How can “science” help?

TWO GOALS:

1. Developing and selecting a sound preferred alternative.
2. Ensuring that in the legislative process integrity of the proposal is not compromised.

How “science” can help?

TWO OPPORTUNITIES:

1. Criteria for assessing alternatives.
2. Means to guide legislative debate.

Governance Issues Which Need to Be Addressed in Visions of the Delta

Paul Sabatier
University of California, Davis
Email: pasabatier@ucdavis.edu
September 24, 2007

Governance involves the development of institutional rules and social norms to alter human behavior and ameliorate social problems.

Variation in Uncertainty

Both of my Berkeley colleagues, Judith Innis and Richard Norgaard, correctly stress the role of uncertainty in complicating the development of governance institutions to manage the myriad problems of the Delta. But uncertainty varies by problem area.

Some problems are reasonably well-known in terms of their magnitude, causes, and possible solutions. This would include the urbanization of the Delta due to pressures for new housing spilling out of the Bay Area, together with the related demand for additional transportation and utility infrastructure. Land use conflicts in the Delta and throughout the state pit proponents of property rights, economic development, and local control against advocates of environmental quality, sustainability, and the representation of non-local interests. While the members of the environmental coalition can sometimes affect the location and quality of development, the attractiveness of the development coalition's ideology -- plus the incredible growth in the state's population -- makes it extremely difficult to affect the overall amount of development. The exceptions occur when a particularly precious resource—e.g. the Tahoe Basin, the coast, or the surface of San Francisco Bay—is at stake. I doubt such a symbolic resource is at stake in the Delta. Thus the long term pattern of urbanization is much more likely to reflect the Castro Valley than the Tahoe Basin. On the other hand, the effective institutionalization of various “smart growth” policies should reduce the probability that the Delta will witness the unrestricted growth of Fairfield.

Other problems are plagued by greater uncertainty. The implementation of the federal and state endangered species acts with respect to the Delta smelt is complicated by lack of knowledge. While the magnitude of the smelt's decline has now been well-documented, the relative importance of various causes of that decline are largely unknown, and the implementation of any recovery plan is plagued by our inability to predict when the smelt will arrive at the CV P and SWP pumps. The critical problem of the Delta—levee failure—is complicated by uncertainty regarding several of the critical causal factors. Prediction of failure from storm events is complicated by the tendency of Corps' models to underestimate floods on the Sacramento River. Predictions of levee failure from earthquakes is complicated by the absence of events to validate the engineering models. And predicting levee failure from sea rising is complicated by all the uncertainties surrounding virtually all models involving global temperature change. Unfortunately, the issue with the greatest uncertainty, levee failure, is probably the most important one politically because it critically affects the viability of Delta agriculture, the prospects of urbanization, and the interruption of water exports to 20 million people.

The Topics of Governance

Debates about how to govern the Delta typically involve the following topics, often in an implicit or indirect fashion. This discussion attempts to make them more explicit and to offer some options for each.

1) *Orientation on Basic Value Priorities.* At the core of most political conflicts are fundamental value priorities: equality, efficiency, freedom, security, etc. In environmental policy disputes, the fundamental conflict is usually between environmental quality and economic development.

2) *Whose Welfare Counts?* The answer to this question is usually, "Me and my buddies." Thus Delta farmers are usually preoccupied with the welfare of Delta farmers. But there are exceptions. The proponents of environmental justice are usually not poor fishermen concerned about mercury in fish, but rather middle class advocates of equity.

4) *Overall Seriousness and Causes of the Problem (s).* This is here scientific information usually plays its most important role. But I agree thoroughly with Judith Innis that local citizens and target groups can often contribute very useful information.

5) *Proper Distribution of Authority between Government and Markets.* This is usually the fundamental point of conflict between liberals and conservatives., and tends to be strongly correlated with proponents of environmental quality and economic development, respectively.

6) *What's the Proper Level of Government?* In general, conservatives prefer local government because it is usually dominated by local businessmen with a preference for market allocation. Liberals often prefer non-local institutions for a variety of reasons.

Governing the Delta will probably include one or more regional institutions representing both local and nonlocal interests. California has considerable experience with regional land use agencies with strong planning and permit review responsibilities: the Coastal Commissions, the Tahoe Regional Planning Agency, and the Bay Conservation and Development Commission. Several visions support BCDC as a model. I think that's a reasonable option. But experience has shown that regional regulatory agencies need to be supplemented with a regional conservancy that has the authority to negotiate creative, win-win deals.

7) *What's the Most Appropriate Policy Instruments?* There's a wide variety of policy instruments used in the U.S.: government ownership of land (e.g. the Forest Service), command and control regulation (usually preferred by liberals and attorneys), marketable permits (preferred by economists), insurance (e.g. flooding), information (e.g. the toxics inventory, subsidies (farming), and collaborative negotiations. Most policy areas contain a variety of policy instruments.

8) *What's the Preferred Distribution of Authority Among Elected Officials, Citizens, and Experts?* Citizens and elected officials are needed to provide democratic legitimacy, while experts provide information on the seriousness and causes of the problem, as well as the impacts of policy options. Expertise is critical to effectiveness.

A Cautionary Note Concerning Resiliency.

Both of my Berkeley colleagues stress the importance of organizational resiliency. . While this is clearly a desirable goal, I question its feasibility. Most bureaucracies are neither innovative nor resilient. Instead, they are preoccupied with procedural safeguards, equitable treatment, and program implementation. In most bureaucracies, the institutional rules and norms favor risk aversion rather than risk-seeking.

1
2 **Aims of Governance Change for the Future of the Sacramento – San Joaquin Delta**
3

4 Richard B. Norgaard
5 University of California, Berkeley
6 September 11, 2007
7
8
9

10 As we ponder the driving forces on the future of the Delta and sift through the technical alterna-
11 tives, the importance of governance becomes ever more clear. In this short essay, I try to identify
12 and briefly describe different aims for governance that will be needed to strengthened to work
13 with the powerful driving forces, especially in light of the large uncertainties around them, in the
14 context of the diverse services the Delta provides to different interest groups. Needless to say,
15 governance and financing are interlinked, and so this memo keeps the links.
16

17 **Driving Forces**
18

19 Many now expect climate change to be a powerful, new driver forcing the system in novel ways:
20 increasing sea level; impacting the amount, periodicity, and form of precipitation; affecting the
21 intensity of storms; compounding the difficulties of managing of local species and addressing the
22 dynamics of invasives, as well as creating a whole new problem of helping species in need of
23 refuge from other regions undergoing environmental change. Population growth and urbaniza-
24 tion will surely continue, shifting water needs from agriculture to domestic and perhaps indus-
25 trial uses. Infrastructure, always decaying, will need to be maintained and in many cases seri-
26 ously upgraded. New technology meanwhile will open up new opportunities to conserve and
27 desalinate water as well as to monitor, understand, and manage ecosystems.
28

29 If the future were certain, or even its trajectory known, we could design governance institutions
30 for all time. Legislation and administrative regulations have historically been written as if they
31 could be correct not only for all time but all places as well. This is because property owners
32 desire property rights that do not change and corporations seek regulatory frameworks that
33 reduce the uncertainty of any investments they make. Yet underlying these practical concerns,
34 “The Quest for Certainty” (John Dewey, 1929) seems fundamentally a part of the modern
35 psyche. And science has frequently been called upon to answer this quest. Yet we are now in a
36 period when the rates of change of climate, ecosystem transformation, population (at least in
37 California), technology, and globalization are so great that the specifics of how they will interact
38 and play out over time leave us in a period of great uncertainty.
39

40 With the increasing strength of new driving forces and speed of change, stronger governance is
41 needed. To a large extent we need the institutions we have, and more. But, we cannot simply add
42 more governance institutions on to existing ones. To some extent, existing institutions have
43 gotten us into the problems we have and few sufficiently address the future we now see. This
44 means we need to loosen the grip of some existing institutions, give existing agencies new
45 mandates, and establish new governance structures to meet public goals under changed
46 circumstances.

Governance

47
48
49 Risk, Resilience, and Responsibility. Historically many risks have been substantially alleviated at
50 the local and individual level because higher levels of government have absorbed the costs of
51 avoiding the risks and of recovering from disasters. This is both a legacy of big government and
52 large engineering projects and an outcome of interest group politics. Those bearing risks had a
53 clear incentive to incrementally push them on to the public at large without the public at large
54 ever organizing to determine whether the end result was desirable or not. Thus land developers
55 and homeowners expect the public to bear the costs of flood protection and the benefits of such
56 protection are already capitalized in the value of the land. Agricultural districts expect state and
57 federal agencies to deliver water on a fixed schedule even though rainfall is highly variable, and
58 this benefit has been incorporated in the value of agricultural land. In both cases, this leads to an
59 expansion of development dependent on higher levels of government because developers do not
60 have any incentives to stem development or tailor it around diverse local solutions.

61 As a consequence, we have a system that has pushed large engineering approaches at the
62 state and federal levels nearly to their limits while local approaches to meeting needs are under-
63 exploited. Meanwhile some major investments, undertaken as big government projects in the
64 past, are decaying (levees). The governance overseeing the future of some existing projects
65 needs to be reconsidered. In general, we now need a shift in governance responsibility toward the
66 regional, local, and individual to provide appropriate incentives and finance mechanisms. In
67 accordance with this aim, major investment projects such as conveyance structures should be
68 designed, to the extent possible, in increments that provide specific services that specific
69 potential users then bid on.

70
71 Adaptiveness. Governance institutions must respond to the increased level of uncertainty by
72 shifting toward increased flexibility in responses. This flexibility must be with respect to both
73 timing and place. Adaptive environmental management, at least in a reduced form that more
74 formally acknowledges that new information arises over time to which management should
75 respond, is now a well-accepted concept within resource management agencies. We now need to
76 apply the concept more fully in practice and extend its application to the public interest in the
77 regulation of private land uses. One of the interesting things about climate and ecosystem change
78 is that there is also considerable uncertainty as to where phenomena will arise. Governance to
79 meet public goals has historically been tightly tied to particular places. Parks, wildlife reserves,
80 and habitat conservation plans all have boundaries that particular species “respect” at their peril
81 as climate and ecosystems change. The concept of adaptive environmental management needs to
82 be extended to address the uncertain spatial dynamics of climate change as well as the uncertain
83 duration of an ecological regime in any particular place.

84
85 Coordination. As we rely more on individual and local incentives to act, regional and statewide
86 institutions must be strengthened to assure that decisions under consideration in one locale do not
87 burden people in other locales or broader environmental goals. Higher levels of government are
88 gradually shifting from centers of command and control to coordinators of multiple actors at
89 lower levels. Regional agencies have a strong history as coordinating institutions. To a consider-
90 able extent, CALFED worked as an institution in which various parties became better informed
91 of how their interests and actions intersected with the interests and actions of others. At the same
92 time, however, “peace” has been maintained through existing coordinating mechanisms by a lack

93 of action that has pushed the system into crisis. Stronger coordinating governance mechanisms
94 will be needed to facilitate the public good as we address the ever strengthening driving forces.
95 More time and effort will have to go into coordination as we look to the strength of diverse,
96 context specific approaches to reducing problems and meeting goals.
97

98 Trust-building. Ironically, water is an extremely divisive issue in California, yet the water system
99 operates because of great trust. We expect those making day-to-day decisions about water to do
100 their best to assure its quality and reliability while protecting the environment, and they do.
101 Distrust between Northern and Southern California has decreased since the peripheral canal was
102 on the ballot because the environment is higher on everyone's agenda and all are aware that there
103 are no simple solutions. The CALFED process helped build this trust. At the same time, even
104 greater trust will be needed as we shift decision-making toward the local and individual, as we
105 rely on diverse ways to meet our water goals, and as the environment changes in the future. The
106 strengths of the coordinating institutions can complement or work against increasing trust, but
107 for governance to be effective over the long run, trust-building needs to be recognized as an
108 important aim and be an attribute built into many aspects of governance.
109

110 Both the increased efforts at coordination and in trust-building institutions need to be supported
111 out of general revenues, probably statewide, so that poor locales and less powerful interest
112 groups can continue to participate.
113

114 Monitoring, Analysis, and Information Sharing. As we move toward a more decentralized, adap-
115 tive, and resilient water system, we need to think about the governance structures supporting the
116 generation and sharing of data and knowledge. Information gathering and analysis is becoming
117 less and less costly and easier to share. How we interpret the significance of changes in
118 ecological and other complex systems, however, still relies on human judgment. Different types
119 of scientists use different frameworks for analyzing different parts of complex systems.
120 Reconciling what different scientists know and building a shared understanding among scientists
121 and practitioners is an intensive process. The CALFED Science Program has helped breakdown
122 the compartmentalization of science in the agencies and across the disciplines through
123 interagency research efforts and workshops uniting academic and agency scientists. But we need
124 even greater effort in the future given the importance of water to California and the uncertainties
125 that need to be resolved with respect to the interactions between the driving forces to better
126 manage water in the future.

127 Existing agency driven and funded science and CALFED driven and funded science
128 might be supplemented with more non-agency funded water science to strengthen the community
129 of scientists addressing California water issues. With increased dispersal of decision-making,
130 there may be more reason to support more citizen involvement in science to sustain trust and
131 build bridges to local leaders.

TO: Hap Dunning
Eze Burts
Governance Work Group

FROM: Mike Madigan
Sunne Wright McPeak

DATE: December 10, 1999

RE: CALFED Bay-Delta Program Governance

Following the CALFED Policy Group discussion on November 17, 1999 regarding governance, we want to underscore a few matters for your consideration.

Before reaching conclusions about a specific governance structure, there must be agreement about essential functional characteristics of a governance structure. We think that there are at least three essential functional characteristics of a governance structure:

- All CALFED agencies must be represented in the governance structure and Governing Body, as now is the case with the Policy Group. The CALFED agencies must be represented on the Governing Body at the highest possible level of executive leadership. There must be the genuine attention of senior officials in order to succeed. In addition, it is essential that there be a binding agreement that requires all the CALFED agencies to comply with the adopted CALFED solution and bring concerns or issues to the Governing Body before unilaterally exercising independent authorities that would impact the CALFED program. This binding agreement should be enforceable in court by real parties of interest. In addition, the Governor and President through the Secretary of the Interior need to be directly represented on the Governing Body.
- Stakeholder participation must be institutionalized. This does not mean that there needs to be a continuing advisory body such as the Bay Delta Advisory Council. Rather, there needs to be an opportunity for self-initiated and self-identified stakeholder groups to be recognized by the Governing Body and to be consulted in an ongoing sincere fashion. In fact, it may be appropriate to discuss the concept of recognized

stakeholder groups nominating representatives into a candidate pool from which some public appointments are made. This approach does not need to preclude other public appointments to be made by specified officials.

- Participation by State Legislators and members of Congress from California should be institutionalized in the governance structure, perhaps even as ex officio (either voting or non-voting) in the Governing Body. Perhaps this could be the Chair and Vice Chair of the two standing committees in the State Assembly and Senate plus 2-4 members from the California Congressional Delegation (achieving bi-partisan and geographically diverse representation).

We recognize that these recommendations would need to be referred through review by legal counsel. However, we strongly encourage that your Work Group address these functional characteristics before finalizing recommendations about composition and size of a governance structure and Governing Body.

Thank you for your attention to these issues.

cc: BDAC
Policy Group

Delta Vision Task Force
Considerations for Governance
Sunne Wright McPeak
October 1, 2007

Problem Overview

- The current governance structure is inadequate to manage multiple responsibilities, programs and operations that impact the health of the Delta Estuary and the availability and reliability of exports south of the Delta.
- Responsibilities for the Delta and exports are dispersed and splintered among a multitude of state and federal agencies with insufficient integrated management and coordinated action.
- Existing law constrains regulatory agencies in being able to address the needs of the Delta Estuary through adaptive management, although that is the preferred regime that has emerged from consensus among stakeholders and expert advisors.
- Previous governance attempts have failed because: (a) there was insufficient leadership from the state and federal governments; (b) there was no compelling legal obligation for the responsible state and federal regulatory and management agencies to cooperate on reaching agreement regarding solutions and implementation; and (c) there was no legal authority assigned to an entity to lead implementation of an action plan (and no associated funding).
- A new governance structure is needed which avoids the mistakes of the past but does not require huge resources or a lot of time to establish. It is critical that establishment of the new governance bureaucracy not become the preoccupation, but rather that the focus be on implementation of actions to improve the Delta Estuary and reliability of exports.

Essential Elements of a New Governance Structure

- A coherent plan that incorporates the recommendations of the Delta Vision Task Force (including responsibility for adaptive management) must be formally adopted (such as with a “record of decision”) as the purpose and responsibilities of a new governance structure. The plan must focus on restoration on the health of the Delta Estuary ecosystem and export supply reliability (and must have ground rules for land use, but need not duplicate the work of the Delta Protection Commission). The plan must have explicit goals and objectives and measurable outcomes. No governance structure will succeed without such a plan as a foundation.
- The plan must be recognized and adopted by both the Governor and the President (and hopefully the Legislature and Congress as well). Implementation of the plan must be led by an entity (agency and/or individual) accountable to the Governor and President, with oversight by the Legislature and Congress. There must be at least annual reporting requirements. It is important to understand that the most important elements for a successful new governance structure are that: (a) someone is in charge; and (b) all existing agencies and stakeholders must have a new way of working together and doing business differently. This is far more important than creating a new entity that has no connection to existing agencies (and their authorities).

- The new governance structure must involve in some configuration: (a) top-level leadership from both the state and federal governments and all agencies/departments that have statutory responsibility / authority for some aspect of the Delta or factor that impacts the Delta; (b) state and federal elected officials; and (c) stakeholders. There are many ways and configurations in which this can be accomplished once the principle of inclusion of these participants is accepted. The decision to involve these three groups of participants is threshold for moving to deliberations for design.
- State and federal agencies with existing statutory responsibilities for management of the Delta Estuary or exports must be legally required to cooperate in implementing the adopted plan and must be legally required to consult that plan governance structure (involving all the other state and federal agencies) before being able to exercise their existing statutory responsibilities. (In other words, it is envisioned that the state and federal agencies would retain their existing statutory responsibilities—such as DWR to operate the SWP or USF&W to implement ESA—but that these agencies would be required by new law to consult with the governance structure before unilaterally exercising their existing and continuing statutory. Further, there should be a threshold of objection from the governance structure that would require an override by the Governor or President for one of the agencies to act unilaterally in the face of substantial objection from the rest of the participants in the governance structure.)
- Local elected officials could be included in the governance structure and/or a coordination mechanism can be established with the Delta Protection Commission to continue to focus on land use. The Delta Protection Commission has developed institutional capacity to address land use matters, but is not an appropriate entity to manage Delta Estuary health and exports. Likewise, the new governance structure should not duplicate the work of the Delta Protection Commission regarding land use (or it will risk consuming much time and energy in “reinventing this wheel”).
- The state should establish a governance structure which invites participation from the federal government, but does not give the federal government a veto over whether or not it is established. In other words, the state should establish a governance structure that allows for all the relevant federal agencies to participate, but does not wait for the President or Congress to act. Yet, at the same time, the state should pursue formal and legal participation by the federal government. Without this kind of approach, implementation could stall once again because of lack of action by the federal government. But, without this kind of approach that invites the federal government to be full partners, federal agencies would still be able to take unilateral action that stymies real progress.
- There should be a new state “special designation” of the Delta as a “unique place” of natural and environmental heritage as discussed by the Delta Vision Task Force at the last meeting. The governance and management of such a designation need not be the same entity as the governance structure for implementation of the plan for restoring the health of the Delta Estuary and improving export reliability. If an existing state agency were to be given management responsibilities for the “special designation”, then it would make sense to establish a citizen oversight group for that purpose.

As additional background, please see the memorandum that Mike Madigan, Chair of the Bay Delta Advisory Committee, and I (as Co-Chair) submitted to BDAC and the Legislature in 1999 regarding

governance. CALFED was not successful in many ways because there was a failure to establish a workable governance structure.