

**Independent Science Board**  
**CALFED Bay-Delta Program**  
**Draft Operating Guidelines**  
*(July 31, 2006)*

Scope and Purpose

The mission of CALFED Bay-Delta Program is to develop and implement a long-term comprehensive plan that will restore ecological health and improve water management for beneficial uses of the Bay-Delta System. The 2003 Bay-Delta Authority Act notes that the San Francisco Bay/Sacramento-San Joaquin Delta Estuary is the largest estuary on the West Coast of the United States. The tributaries, sloughs and islands support over 750 plant and animal species. The Bay-Delta, its tributaries, and watershed are critical to California's economy, supplying drinking water for two-thirds of Californians and irrigation water for over 7 million acres of the most highly productive agricultural land in the world. It also supports 80% of the state's commercial salmon fisheries. But water supplies are limited and conflicts currently exist regarding water use. One of the cornerstones of California Bay-Delta Authority's mandate is to integrate high-quality science and peer review into every aspect of the Bay-Delta Program. The CALFED Science Program is designed to provide authoritative and unbiased information on the state of scientific knowledge, continuously build and support high quality scientific practices throughout the program, contribute to and grow the base of relevant scientific knowledge, and provide independent review of program accomplishments critical to the success of the CALFED Bay Delta Program.

The scope of CALFED's Independent Science Board (ISB) is partially defined in the legislation establishing the Authority, and defined in more detail by the charge approved by the Authority on June 15, 2006 (see Appendix A). The ISB's primary roles are to advise the CALFED Bay-Delta Program on the application of science and scientific practices and assure that disciplinary balance, rigor, and the best available information and processes characterize the scientific input to decision making.

The Board's advice must reflect high scientific and technical standards, and the widest possible representation of knowledge, disciplines and trends of thought. The ISB provides autonomous advice directly to the Authority. The Board has no decision-making authority over programs or regulatory functions, nor does it directly implement its advice. The ISB respects the mandates of other advisory committees/panels to the CALFED Program.

The general responsibilities of the ISB are outlined in the Charge and include the following:

- Understand the technical underpinnings of the CALFED Bay-Delta Program;
- Evaluate and provide insights on progress toward addressing underlying premise's of the Bay-Delta Program;
- Annually evaluate the science agenda;
- Assure balance and credibility of analyses;
- Approve performance measures;

- Assure science is used in all programs;
- Identify impending issues and significant interconnections;
- Work with the National Research Council
- Help select the Lead Scientist.

## Membership

As defined in the Charge, membership may include up to 12 individuals. Future potential members will be nominated by the Lead Scientist and approved by the Authority. The 12 members of the ISB should be carefully selected to ensure provision of the diverse range of expertise required to fulfill its responsibilities.

During the selection/nomination process, the Lead Scientist will consult with other government departments and agencies, scientific and research organizations, professional societies, and non-governmental organizations, as well as this ISB and its Chair during meetings or via direct contacts, in developing list of potential candidates for new members of the Board, taking into account the needed (a) breadth and depth of experience and expertise; (b) diversity of scientific perspectives; (c) continuity of knowledge and understanding of CALFED missions and environmental programs; and (d) diversity factors, including, geographical areas and professional affiliations.

## Terms of Membership

Membership of the Board will generally be a two-year term. Board membership for an individual may be renewed up to two times at the request of the Lead Scientist, with concurrence from the Director and the Authority. The Lead Scientist and ISB may evaluate the number and diversity of membership on an annual basis

## Reporting Relationship

The ISB reports to the Authority Board or its successor.

## Operations

The ISB may work on a variety of CALFED Program water and restoration- related projects and may provide a range of functions. Activities of the ISB can be characterized as one of the following six types:

- 1) a consultation;
- 2) an advisory;
- 3) a review;
- 4) a commentary;
- 5) a self-initiated approach; or
- 6) requested briefings.

**Consultations** and **advisories** may be used to provide advice early in and during product development. A consultation provides oral advice on a technical issue prior to having staff begin substantive work on that issue. An advisory provides written advice on CALFED's technical works-in-progress.

**Reviews** may be conducted by the ISB regarding the application of science within the CALFED Program. Rather than providing detailed reviews of specific products, the ISB will focus on how scientific reviews are being organized and how the information and recommendations from the various reviews are being integrated and utilized. In general, the role of the ISB is one of overview rather than initiating reviews.

A **commentary** is a format for the ISB to provide forward-looking comment on important technical or emerging issues and activities within the CALFED Program in the form of a short communication.

**Self-initiated approaches** may be developed to assist the CALFED Program in addressing emerging or overarching scientific or technical issues. The ISB may outline or suggest approaches that would address critical unknowns, promote integration, or otherwise help CALFED move its programs forward.

**Briefings, workshops, and other information** regarding pertinent scientific and technical issues and activities may be requested by the ISB. The Science Program will collaborate with the appropriate implementing agencies to design and produce information requested by the ISB. The Science Program will gather the appropriate experts and organize the forum in which the information is transmitted.

Issues can be nominated for ISB consideration, by working with and through the Lead Scientist, from several sources including individual ISB members, the Authority Board, the Lead Scientist, implementing agencies, or referrals from standing boards or review panels.

The ISB may constitute such specialized panels and teams as necessary to carry out its responsibilities. The ISB may also commission studies relevant to its mandate, and liaise with outside organizations, including the National Academy of Science. The ISB shall consider presentations, public comments, and background material on a given topic, and then deliberate and provide advice.

### Criteria for Project Selection

Nominated projects that are best suited for the ISB's consideration are those that meet several criteria. Selection criteria include the following:

- **General Criteria:** Provides an opportunity to make a significant contribution to the type and quality of scientific research being accomplished by the CALFED Bay-Delta Program and to the credibility and consistency of science practices.

- Client-related Criteria: Supports CALFED’s goals and major program initiative by providing advice on how best to manage given general regulatory goals. Supports leadership interests (e.g. the Authority Board or Director) by providing advice based on existing information for short term management needs (i.e. project decision), but also includes strategic advice on new information in support of longer term needs (i.e. adaptive management and program-wide performance assessment).
- Science-driven Criteria: Focuses on major scientific questions. Addresses key cross-program questions and information. Involves scientific approaches that are new to the Authority or addresses areas of substantial uncertainties.
- Problem-driven Criteria: Involves risks to water supply, water quality or to the environment. Relates to emerging water or environmental issues. Exhibits a long-term outlook.
- Organizational Criteria: Serves as a model for future agency methods. Requires the commitment of substantial resources to scientific or technological development. Transcends organizational boundaries, within or outside CALFED. Strengthens the Program’s basic capacity for problem solving.
- Science-Management Criteria: Focuses on development and formation of networks that foster the flow of information among agencies and between scientists and managers.

In addition to the above criteria, the ISB will consider the overall mix of the nominated projects for a given fiscal year as well as the time and available resources needed to take on these projects.

### Chair and Vice-Chair (s)

A Chair and Vice-Chair of the ISB will be appointed by the Lead Scientist after consultation with the ISB. The Chair and the Vice-Chair shall each serve terms of two years, after which they may be reappointed for an additional term. No Chair or Vice-Chair may serve more than four years in either position in any eight year period. The duties of the Chair are as follows:

- Acting as a spokesperson for the ISB
- Coordinating with the Lead Scientist to prepare an agenda for the ISB meetings
- Presiding over ISB meetings
- Assigning ISB members as lead persons or to Board subcommittees
- Coordinating with the Lead Scientist after meetings to approve meeting summaries for distribution
- Transmission of Board formal communications with the Authority or other entities/individuals.

The Vice-Chair and/or other Board members shall assist the Chair in performing these duties. In the Chair’s absence, the Vice-Chair will assume the Chair’s duties.

Staff support for all activities of the Chair, Vice-Chair, and Board members shall be provided by the CALFED Science Program staff.

## Meetings

The ISB shall conduct its business through meetings and correspondence as appropriate, in accordance with the Bagley-Keene Open Meeting Act and the provisions listed in this document. When there are many public comments and meeting time is limited, the Chair can adopt rules or time limitations so that all interested persons may be heard within the agenda parameters.

The ISB shall meet approximately four times per year. Meetings of the ISB will be composed of two types:

- Open meetings with structured public comments; and
- Open work sessions, where the Board may interact with observers and representatives of agencies and stakeholders.

The meeting agenda shall permit time for ISB members to disclose important contacts (meetings, correspondence, and conversations) related to ISB business.

## Relationship with Lead Scientist

The ISB shall be supported by a Lead Scientist, Science Program staff, and other program and agency staff and consultants as appropriate. The Lead Scientist shall provide strategic advice and support to the Board; and oversee preparation of the agenda for each meeting in consultation with the Chair; and coordinate the preparation of documents for the meetings as well as meeting summaries.

## Role of Science Program Staff

Representatives of the CALFED Program shall provide briefings on scientific issues and describe how these issues affect the Authority's decisions. They shall serve as a resource for the Board members, and be available to answer questions about relevant CALFED programs and policies.

Staff may give presentations and may provide relevant information during discussions, but are discouraged from participating in ISB deliberations.

## Relationship to Other CALFED Science Boards and Panels

The Independent Board cannot rescind the technical results of Standing Boards or Technical Panels or any other working group. But the Independent Board will review the activities of those groups for rigor and use of authoritative science representing a fair balance among disciplines. It is expected that individual Standing Boards and technical review panels will act with independence with regard to their areas of assignment; although they might consult with the Independent Science Board for insights and suggestions to aid these activities.

## Correspondence to the ISB

Any person may send a letter to the ISB by addressing it to either the ISB Chair or to the Lead Scientist or by delivering it during a public meeting. The ISB will acknowledge receipt of correspondence received through the Science Program staff. The ISB and Lead Scientist will copy each other on significant correspondence. Formal correspondence to the ISB from other science panels, advisory boards, and teams shall be directed to the ISB Chair in c/o the Lead Scientist or his/her designee. The Lead Scientist or his/her designee will assume responsibility for distribution of the formal correspondence to the Chair and ISB members and for compliance with public record requirements.

## Reporting

Following each meeting, staff shall write up a meeting summary to be approved by the Lead Scientist, ISB Chair, and Vice-Chair. Meeting records and relevant materials will be posted on the Science Program website.

Draft reports or other documents prepared by ISB members will need to be reviewed and approved by the full ISB prior to formal transmittal to the Science Program (including the Authority Board and CBDA Director). The ISB will make a determination about the quality of the draft report by considering the following factors:

- whether the original charge questions were adequately addressed;
- whether there are any technical errors or omissions in the report or issues that are inadequately dealt;
- whether the report is clear and logical; and
- whether the conclusions drawn or recommendations provided are supported by the body of the report.

The outcome of the Board's evaluation would be one of the following:

- approve the report;
- return the draft report for further work;
- reject the work and request a reconsideration and a revised report in the future; or
- constitute an entirely new Panel or Subcommittee.

The Board's work products are to reflect its independent scientific judgment. To the extent that Science Program staff uses or alters work products there will be clear identification as to authorship.

While the Board may make recommendations on priorities for projects and studies, and on the direction of programs, these will not have the force of management decisions. Both the Authority Board and staff will consider ISB recommendations along with input from others in making decisions.

## Conflict of Interest

The ISB and its members shall abide by the CALFED Science Program Conflict of Interest Policy (see Attachment B). ISB members shall disclose any professional activities in which they are engaged that may be perceived as being related to the CALFED Program. A listing of disclosed activities will be maintained and posted on the Science Program web site. ISB members will update disclosure information as necessary at each ISB meeting, including relevant updates pertaining to specific agenda topics. ISB members shall consult with the Lead Scientist who may consult with CALFED legal counsel, if questions arise regarding a potential conflict of interest.

## Federal Data Quality Act

Section 515 of the Treasury and General Government Appropriations Act for Fiscal Year 2001 (Public Law 106-554), directs the Office of Management and Budget (OMB) to issue government-wide guidelines that "provide policy and procedural guidance to federal agencies for ensuring and maximizing the quality, objectivity, utility, and integrity of information (including statistical information) disseminated by federal agencies." In turn, the OMB directed that each individual federal agency issue its own guidelines. For example, the Data Quality Guidelines for the National Oceanic and Atmospheric Administration can be found on the following website: <http://www.noaaneews.noaa.gov/stories/iq.htm>

The ISB is dedicated to ensuring the highest standards for the quality of data used by CALFED and will consistently strive to meet the requirements of the CALFED's mission consistent with the guidelines established by the Federal Data Quality Act.

## Amendments

These Operating Guidelines may be amended based upon a consensus of ISB members.

**ATTACHMENT A**  
**CHARGE TO THE RECONSTITUTED INDEPENDENT SCIENCE BOARD**  
**OF THE CALIFORNIA BAY-DELTA AUTHORITY**  
**(Adopted June 15, 2006)**

An Independent Science Board is called for in the CALFED ROD (August 2000) to ensure the application of world-class science to the California Bay-Delta system. Similarly, the Act requires an Independent Science Board to provide this function.

The Independent Science Board would be a standing board of distinguished experts (scientists and engineers) who would directly advise the Authority and BDPAC, as appropriate, on the application of science and the effectiveness of science practices across the Bay-Delta Program. The Independent Science Board would not be asked to pass direct judgment on the success or failure of Bay-Delta programs, but to provide insights that can make the science underlying those programs, the application of that science, and the technical aspects of those programs the best they can be. This includes overseeing the goal of explicitly characterizing the status of knowledge and identifying assumptions and uncertainties. Independent Science Board members would be paid. Many of the members of the Independent Science Board will also be members of existing standing boards and technical panels. The Board as a whole should thus include the necessary expertise to cover the breadth of California Bay-Delta issues. It is expected that the Independent Science Board will grow beyond the initial appointees to address the necessary expertise, but will be no larger than 12 members total.

The specific charge of the Independent Science Board is outlined as follows:

1. Understand the technical underpinnings of the Bay-Delta Program. Work with the Lead Scientist and the Science Program to effectively incorporate science into large scale water management and restoration programs. As a group, the Independent Board should have and sustain an up-to-date understanding of the Authority's proposed actions and the state of the science applicable to those actions.
2. Evaluate and provide insights on progress toward addressing underlying premises of the Bay-Delta Program. Implicit in the CALFED ROD are basic premises about balanced progress toward achieving the four goals of the program. Can outcomes of ecosystem restoration balance outcomes of modifications of water diversion? Should ecosystem restoration proceed across the Delta or avoid areas influenced by stressors such as the diversion pumps? How does the program balance the benefits of bioavailable carbon genesis in restoration projects with the adverse consequences of DOC for drinking water? An important mission of the Board is to explicitly identify the fundamental premises and help the program track progress toward addressing the technical aspects of these.
3. Annually evaluate the science agenda. Annually provide insights and evaluation on the implementation of a strategic, balanced, and proactive science agenda across the

entire program. Evaluate technical priorities, adequacy of funding, peer review, use of outside experts, and the successes and weaknesses of the investments in gaps in scientific knowledge. Evaluate progress on the development of an authoritative body of knowledge relevant to each goal and program of the Authority. Help identify where important gaps in knowledge or the science effort might exist, with an emphasis on considering interconnections among different elements of the Program.

4. Assure balance and credibility of analyses. Provide insights in an annual report as to whether the analyses of the state of the science being applied to specific issues under the purview of the Authority are balanced and credible, including insights on how to improve such analyses in general or in the case of specific issues.

5. Approve performance measures. Evaluate and provide final approval of performance measures for the Bay-Delta Program, assuring scientific rigor and balanced interpretation of each measure and its updates.

6. Assure science is used in all programs. Compare development of science in different standing programs of the Authority and give advice on how to move science forward in all programs (including advice on selection of experts of advisory functions or standing boards; evaluation of science priorities).

7. Identify impending issues and significant interconnections. Help the Authority anticipate issues and identify areas of interconnection among programs that might otherwise be missed by more specialized boards and panels; and suggest solutions, where needed, to interconnecting issues (e.g., technically-based actions, workshops, reviews, RFPs, program collaborations, or new research).

8. Work with the National Research Council. Work with National Academy of Sciences and National Research Council board representatives to develop broad questions suitable for outside review by the National Research Council.

9. Help select the Lead Scientist. Working closely with the Director, the Independent Science Board will lead and oversee the selection process when the Lead Scientist position is vacant. This will include making a recommendation to the Authority on the nomination of potential candidate(s).

The Independent Science Board's proposed role is one of overview rather than initiating reviews. The Independent Board cannot rescind the technical results of standing boards or technical panels or any other working group. But the Independent Science Board will review the activities of those groups for balance, rigor, and use of authoritative science. It is expected that individual standing boards will continue to act with independence with regard to their areas of assignment; although they might consult with the Independent Science Board for insights and suggestions to aid these activities. Like all technical expert bodies, the Independent Science Board will not be asked to make policy decisions, but it will provide insights on how to improve credibility, improve clarity, and

advance the debate about Bay-Delta issues, as well as how to better connect science and management.

Board members may be asked to testify on their evaluations before the Legislature or Congress. The Board will meet approximately four times per year unless experience dictates a greater or lesser meeting frequency. Board membership for an individual may be renewed up to two times at the request of the Lead Scientist, with concurrence from the Director and the Authority.

### **Definition of Independent Expert**

Independent experts are defined by their academic credentials in specific areas of needed expertise. Except in specifically defined circumstances, they have little or no direct stake in the issue for which they are advisors. The experts are typically paid for their work by the Authority, unless they are Federal or State employees (whose hours may be reimbursed to their employer).

Typical activities of independent experts include the following:

1. Bringing detailed expertise to bear on scientific issues of concern. This may include characterizing the status of knowledge about critical issues; identifying key scientific issues, or helping staff prioritize issues. Other duties include organizing or participating in workshops on critical subjects, and/or identifying, proposing, prioritizing, or writing white papers or reviews. Some expert advisors have identified pending issues before they become critical or worked directly with managers, staff biologists, or operating engineers to help them take into account broader scientific practices, principles and implications.
2. Reviewing, advising, or providing technical insights for documents, proposals, or programs. Programs can include either issues that require multiple studies or proposals for an action by implementing agencies, such as changes in conveyance, threats to levees, and restoration strategies.
3. Analyzing existing data related to specific actions or programs as relevant to reviews or advising as described above.
4. Designing, conducting, or leading studies relevant to accomplishing Program goals that are not in conflict with review roles.

### **Qualifications of Independent Experts**

Independent experts are agents for facilitating communication between the Authority and the scientific and management community. Therefore, they must have the highest level of expertise and stature so that their advice is respected by the public, scientists, agency technicians, agency staff, BDPAC, and management. The ability to sustain a

balanced view of issues is just as important as stature in an independent expert. It is critical that the expert (or advisor) have a reputation for willingness to listen to opposing views, willingness to change one's mind in the face of evidence contrary to an original view, and willingness to separate one from biases associated with employment or professional associations. Thus, invitation to be an independent expert requires all or most of the following:

- Scientific stature. Evidence of stature in the broad scientific community (invited contributions to workshops, conferences or panels; evidence of scientific leadership; awards, membership, or important committee assignments in prestigious organizations).
- Advisory experience. Experience advising top managers and promoting constructive uses of environmental science, especially in arenas relevant to water management and/or ecosystem restoration.
- Technical publications. A strong record of publication in peer-reviewed scientific literature in an area of expertise relevant to the issues at hand.
- Relevant knowledge. Evidence of extensive and/or intensive working knowledge of a scientific field related to the specific issues of concern.
- People skills. Evidence of abilities to work and communicate well with people.
- Reputation for achieving balance. Evidence of ability to weigh issues in a balanced manner when in an advisory capacity.
- Interdisciplinary skills. Evidence of ability to work and think across disciplines, and/or experience in working with and advising on complex issues that integrate multiple disciplines.

**ATTACHMENT B  
DRAFT (7/31/06)**

**CALFED SCIENCE PROGRAM POLICY ON  
OPEN MEETINGS AND CONFLICT OF INTEREST  
FOR  
RECONSTITUTED  
INDEPENDENT SCIENCE BOARD**

At its June 15, 2006, meeting, the California Bay-Delta Authority board established, upon the nomination of the Lead Scientist, a reconstituted Independent Science Board (ISB) comprised of 12 members, with the following charge: 1) understand the technical underpinnings of the CALFED Bay-Delta Program; 2) evaluate and provide insights on progress toward addressing underlying premises of the Program; 3) annually evaluate the science agenda; 4) assure balance and credibility of analyses; 5) approve performance measures; 6) assure science is used in all programs; 7) identify impending issues and significant interconnections; 8) work with the National Research Council; and 9) help select the Lead Scientist.

Individual ISB members are required to have national-level stature in their fields of research. Also by design, membership in the ISB includes individuals who conduct research directly related to the Bay-Delta system as well as individuals with experience in other systems and programs with no previous connection to the program. This balance between deep local knowledge and external perspectives is necessary for meeting CALFED's needs.

Several questions have arisen with respect to the application of California's open meetings and conflict of interest laws to the Independent Science Board. This policy is an attempt to address some of those questions.

**Open Meetings Laws**

California's Bagley-Keene Open Meetings Act applies to advisory bodies that are created by law. The California Bay-Delta Authority Act provides for the creation of the ISB. Thus meetings of the ISB must be noticed at least 10 days in advance and held in public in compliance with the requirements of the Bagley-Keene Act. A "meeting" occurs when a quorum, or a majority, of the ISB convenes, either serially or all together, in one place to hear, discuss, or deliberate upon issues under the ISB's jurisdiction.

The Act also applies to subcommittees of three or more members formed by the ISB or by its chairman, which are considered to be advisory committees to the ISB. Larger subcommittees must meet the agenda and open session requirements of the

Bagley-Keene Act. However, small advisory subcommittees of two members are not subject to the open meeting requirements, and may therefore meet and deliberate in private.

### **Conflict of Interest Laws**

#### **A. Political Reform Act**

The California Political Reform Act prohibits public officials from making government decisions in which they have a financial interest. The disqualification provision of the Act hinges on the effect a decision will have on a public official's financial interests. When a decision is found to have the requisite effect, the official is disqualified from making, participating in the making, or using his or her official position to influence the making of that decision. (Gov. Code, section 87100.)

The Act also requires public officials to file statements of economic interests. (Gov. Code sections 87302, 87500.) Members of decision-making boards are subject to this requirement, but an advisory board is not, unless it has made substantive recommendations that have been, over an extended period of time, regularly approved without significant amendment by another government agency. Because the ISB is advisory in nature, does not make final government decisions or have the power to compel or prevent governmental decisions, and does not have a track record of having its recommendations adopted without change by the California Bay-Delta Authority, individuals serving on the ISB are not considered government officials for purposes of compliance with the California Political Reform Act, and are not required to file disclosures of financial interests (Form 700) as a result of their participation on the ISB. This may change in the future if the ISB does acquire a track record of having its recommendations adopted.

Certain members of the ISB do, however, carry out other activities for the CALFED Science Program, and may be considered "consultants" to the Authority as a result of those activities, and in that case, they will be required to file Form 700s.

#### **B. Common Law Conflict of Interest Rules.**

Even though members of the ISB are not formally covered by the Political Reform Act, they are still bound by common law conflict of interest rules. A clear expression of the common law doctrine is found in *Noble v. City of Palo Alto* (1928) 89 Cal. App. 47, 51:

A public officer is impliedly bound to exercise the powers conferred on him with disinterested skill, zeal, and diligence and primarily for the benefit of the public.

If a situation arises where a common law conflict of interest exists as to a particular transaction, the official is disqualified from taking any part in the discussion and vote

regarding the particular matter. The common law doctrine applies to *non-financial* as well as financial personal interests.

C. California Government Code Section 1090

Although members of the ISB are not considered public officials for the purposes of the Political Reform Act, they are considered public officers or employees for purposes of compliance with California Government Code section 1090, which prohibits a public officer or employee from making a contract in which he or she is financially interested.

The prohibition applies to virtually all officers, employees, and multi-member bodies, whether elected or appointed, at both the state and local level. It also includes the members of advisory bodies if they participate in the making of a contract in their advisory function. *Any participation by an officer or employee in their public capacity in the process by which such a contract is developed, negotiated, and executed, including planning and priority-setting through a PSP process or otherwise, is a violation of section 1090.*

For decision-making boards, if a member of the board has a financial interest, unless it is defined as a “remote” interest or non interest in Government Code sections 1091 or 1091.5, the entire board is precluded from acting on the contract. The Attorney General’s Office has not applied this restriction to bodies, such as the ISB, that are advisory only. If a member of the ISB has a financial interest in a proposed contract or grant, or a remote interest as defined in Government Code section 1091, the ISB may still make recommendations regarding that contract or grant, so long as the interested member discloses his or her interest, and disqualifies himself or herself from *any* involvement in or discussion of the contract. If a member of ISB has a “non interest” as defined in Government Code section 1091.5, he or she may participate in the discussions leading to a recommendation regarding a future contract.

Universities—remote vs. non-interests. The general rule, as stated above, is that a person having a non-interest as defined in Government Code Section 1091.5 may participate in discussions or recommendations leading to a future contract. Professors and other employees of public universities have a non-interest in contracts between a state agency and their public university, so long as the contract does not “directly involve” the professor’s own department. (Gov’t Code section 1091.5 (a)(9).) They must disclose their interests, but they are not precluded from participating in preliminary discussions or recommendations. In other words, if they do participate in the early stages of preparation of a proposal solicitation, other employees of their university, in other departments, will not be precluded from seeking and accepting grants in that solicitation process.

However, the rule is different for ISB members who are employees of a private university. The university is considered a source of income to them, and they do not fit within the non-interests set out in Government Code section 1091.5. Financial interests

in a private, non-profit university would be considered “remote” interests under Government Code section 1091 (b)(1). Such an interest would require an ISB member to disqualify himself or herself from the shaping of future contracts with his or her university. If an ISB member did participate, the state agency could not subsequently enter a contract with the private university for work recommended by the ISB member.

The reason for the disqualification is that the private university is a source of income to the ISB member, and the member thus has a financial interest in any contract with the university. If the ultimate contract were between the state agency and an individual who happened to work at the same university, or to a consulting firm of which he was a member, and the university itself did not receive any funds, the ISB member would not have a financial interest in the contract (unless he had a financial interest in the individual or firm separate from his interest in the university).

### **Guidelines for ISB members**

The following sets of guidelines apply these principles and others to specific activities members of the ISB are likely to engage in as part of their ISB service.

#### *Representing ISB*

The ISB as a body deliberates and provides advice to the Authority and the Bay-Delta Public Advisory Committee, as well as to the Science Program and the Lead Scientist, on the science relative to implementation to all Program elements. ISB members should avoid situations where they speak for the Board unless specifically delegated to do so by the Board.

#### *Open Meetings*

ISB meetings and deliberations will be held as a public meeting and public notice for these meetings will be distributed at least 10 days in advance. Once the agenda has been distributed, matters may not be added to the agenda (with certain exceptions specified in the Bagley-Keene Act), and the ISB may not make recommendations on items not listed on the agenda.

The ISB may form subcommittees of 1 or 2 people to work on an issue to prepare it for deliberation by the broader ISB at a public meeting, and meetings of these small subcommittees are not required to be public. Subcommittees of 3 or more, formed by the ISB or its chair, will be considered advisory committees and will be subject to the open meetings requirements.

The Open Meeting Act contains a specific prohibition against so-called “serial meetings”-that is, a series of communications employed to develop concurrence as to actions to be taken by the ISB, each of which involves less than a quorum, but which taken as a whole involves a majority of the ISB members. Conversations that advance or clarify a member’s understanding of an issue, or facilitate an agreement or compromise communications that contributes to the development of a concurrence of action to be

taken. Serial meeting issues arise most commonly in connection with **rotating staff briefings, telephone calls or e-mail communications** among a quorum of board members.

For example, the Attorney General's Office has previously opined that a majority of board members may not e-mail each other to discuss current topics related to the board's jurisdiction even if; the e-mails are also sent to the secretary and chairperson of the agency; the e-mails are posted on the agency's Internet website; and a printed version of each e-mail is reported at the next public meeting of the board.

In a related context, the AG's Office has advised that staff may receive spontaneous input from board members on the agenda or on any other topic, but cautions that problems arise if there are systematic communications involving a quorum of the body acquiring information or engaging in debate, discussion, lobbying or any other aspect of the deliberative process, either among themselves or between board members and staff. If staff receives the same question on substantive matters to be addressed in an upcoming agenda from a quorum of the body, the AG's Office recommends that a memorandum be prepared by staff addressing these issues so that members of the body and the public will receive the same information.

CALFED Science Program staff will maintain the public record and members of the public may view the record and make copies of specific documents. Meeting agendas, meeting summaries and background reading materials provided as a packet prior to the ISB meeting will be posted on the Science Program website. In addition, e-mail correspondence from staff or other individuals to the entire ISB will be considered a public document and may be posted on the ISB website and/or distributed to the public during the next ISB meeting.

#### Teleconference Meetings

The Open Meeting Act allows for publicly-noticed teleconference meetings, so long as, among other requirements, each site where a member will be present is particularly identified on the meeting notice and accessible to members of the public, all proceedings are audible, and votes are taken by roll call. Teleconference meetings would permit, by way of example, comments by interested ISB members on draft reports or other documents between regularly scheduled meetings, without requiring out-of-state members to travel to California.

#### *Conflict of Interest*

*Disclosure:* Although membership on the ISB does not, by itself, trigger the need to file financial disclosure statements under the California Political Reform Act, the Science Program has determined as a matter of policy that disclosure of an individual member's activities is an important element of managing the public perception of bias.

It is the responsibility of Board members to disclose any professional activities in which they are engaged, including service as an expert witness or advisor, that may be perceived as being related to the CALFED Program and it is the desire of the ISB to construe this

responsibility broadly (i.e. included funded and unfunded work, and disclosure when there is uncertainty about the relevance of work to CALFED). Disclosures should be timely, for example before discussing a specific agenda item at a meeting.

#### *Fact-Finding*

ISB members may be requested or assigned by the Board, as part of a subcommittee or otherwise, to engage in various CALFED activities or conduct limited research or investigations as part of the process of learning more about the management context and specific technical issues. However, such assignments will not be used as a means of circumventing the conditions under which ISB members may engage directly in original work through directed action processes. Members' contracts may contain a limit on the amount which can be expended for these purposes.

#### *Providing Expert Opinions and Analysis*

One of the goals of the CALFED Science Program is to bring scientific expertise into all areas of the program by engaging experts in standard practices of the research community including peer review, information synthesis, and the development of new knowledge through inquiry and investigations. Most of the individuals serving on the ISB have worked in one or more of these capacities for the Program on topics ranging from the Environmental Water Account and wetlands monitoring program reviews; to demonstrations of approaches for applying sophisticated modeling techniques to Delta smelt population questions.

Individual experts, including members of the ISB, may accept invitations from the Lead Scientist, Science Program staff, and other CALFED Programs to serve in these capacities (paid or unpaid), so long as public contracts requirements are met, and so long as they have not in any way participated in a public capacity in recommending that the particular work be done.

#### *Participation in Workshops*

Individuals who serve on the ISB may participate in public workshops, and report on their past or ongoing work. ISB members shall take care, however, not to participate in their public capacity in making recommendations for future work for which they themselves would seek funding, or in which they would have a financial interest.

As a way to permit participation by ISB members in workshops, in order to allow them to share the results of their past or current research, while avoiding the conflict of interest consequences of making recommendations for future work/funding, the Science Program should bifurcate its workshops into sessions involving reports on current work, current developments, etc. and separate sessions involving recommendations for future work. Those who wish to compete for future work, or who have financial interests in entities who may wish to compete, would not participate in the recommendation sessions.

#### *Review Panels*

Individuals who serve on the ISB may also agree to serve on other review panels and Boards in CALFED. These activities fall under those that should be disclosed to the

public in a timely manner and individuals serving on the review panels must not have a financial interest in any of the projects being reviewed.

*Avoidance of Conflicts.* In order to minimize or avoid conflicts of interest, the ISB as a body will not be asked to provide advice to the Authority, BDPAC or the Science Program on specific elements within any request for proposals. The ISB may, however, advise on peer review processes in general.

#### *Peer Reviews*

Individuals who serve on the ISB and other standing CALFED Science Boards may agree to conduct a peer review of an individual proposal, subject to the standard condition that reviewers should not have any financial or professional interest in the proposal. As with disclosure guidelines, individuals should construe financial and professional interests broadly. A potential reviewer should not review a proposal in which he would have a direct interest, or a remote interest as defined in Government Code section 1091. If the individual's interest would be considered a non interest under Government Code section 1091.5, the individual could review the proposal. Because proposals by others in the same department are not considered non-interests, scientists in public universities should not review proposals by their own graduate students or others in their department, but are not precluded from reviewing proposals from parts of the university other than their own employing unit or department. As a matter of policy, an ISB member may want to preclude reviewing any proposals from a reviewer's home university.

#### *Calls for Proposals (PSPs, RFPs, IFBs, etc.)*

Individuals who serve on the ISB may serve as reviewers and advisors to the Science Program and other CALFED Programs on specific calls for proposals and as members of panels in the proposal selection process. These activities include reviewing implementation and Proposal Solicitation Process (PSP) documents, reviewing multiple proposals, and participating as members of technical synthesis and selection panels. While the ISB as a body will not be asked to participate in these activities, individual board members who have elected to do so must disclose these activities in ISB deliberations.

The Science and Ecosystem Restoration Program's selection processes are generally comprised of 5 main steps. The first is preparing documents describing programmatic scientific priorities. The second is a mail review by at least three experts of each proposal received. The third is a technical synthesis panel whose charge is to prepare an integrated and balanced technical evaluation of all proposals received based on the individual mail reviews. The fourth step is a selection panel whose charge is to select and prioritize the high quality technical proposals based on program need, and to recommend the full package to the funding agency. The fifth step is approval by the funding agency.

Individual board members who elect to participate as advisers or reviewers in any specific calls for proposals are prohibited from submitting a proposal to the same process. Individuals who have advised a CALFED program in general terms on peer review and

RFP processes, for example by communicating the sequence and rationale used by the National Science Foundation, are not presumed to have participated in a specific PSP.

The general rule for avoiding conflict in the review of individual proposals in this process is that individuals should not review proposals in which they have a direct or remote financial interest and should disclose associations.

To preserve the utmost independence and integrity of the ISB, members are requested not to submit proposals to any CALFED PSP or be recipients of CALFED grants during their tenure.