

Governing the Delta: Principles for a New Vision

Workshop Report

October 12, 2007

A copy of the webcast can be found at:
<http://www.visualwebcaster.com/event.asp?regd=y&id=42397>.

Purpose

The CALFED Science Program convened a workshop on October 12, 2007 to discuss governance options for Delta Vision. The workshop discussed examples from other large restoration programs as well as local examples. Emphasis was on what has worked and what has not. Speakers discussed past CALFED governance approaches and current governance ideas in draft Delta visions. One outcome of the workshop was a set of key governance principles for the Delta Vision Task Force to consider in developing its vision. The following is a summary of the principles discussed throughout the workshop followed by key points by speaker.

Key Governance Principles:

The panel members discussed that in designing governance for Delta Vision, it is first critical that all parties agree to the shared Vision. Conflicting goals and values need to be reconciled with clarity around functions, purpose, and decisions. The Vision should identify the public agencies and assets needed for its achievement, with shared goals highlighting the need for multi-agency cooperation. The Vision should define a process for the agencies to identify individual goals and performance measures so they can better understand their contribution.

Within the discussion it was also noted that it would be important to identify the Vision's governance functions clearly. The workshop participants recommended that the form of governance should follow its function. For example, it may be best to look first within existing structures and identify roles and responsibilities for established agencies. Governance systems may emerge organically from focused efforts to address particular problems among agencies that already have decision-making and implementation authority.

The workshop participants also thought a resilient Delta needs a flexible,

networked governance system that uses multiple strategies and engages key players in a continuously changing environment. Joint decision-making, financing, and liability should be used by the implementing agencies wherever possible. Continuing participation by diverse players should be encouraged and opportunities for authentic dialogue created. Broad public involvement and a process for conflict resolution are also considered important. Continued partnerships and collaboration is critical and can be fostered through development of social capital and a strong sense of place for the Delta. If possible, a system that includes federal consistency determinations (such as used under the Bay Conservation and Development Commission) should be proposed by the Delta Vision to ensure continued federal participation.

If new legislation is drafted, workshop participants noted that it should seek the clearest expression of new roles, relationships, and responsibilities, as well as outline performance measures. This legislation should avoid setting up conflicting functions, and if authority is given to one overarching entity, it should be unequivocally removed from any existing agency. Responsibility must also be aligned with authority, and resources with goals and priorities. The legislation should also align authority and incentives to create synergies, and if possible, engage the Department of Finance in the governance structure. Finally, if the legislation identifies a new governing board, it should be made up of individuals with suitable technical expertise and diverse experience rather than political connection. The board members should have a big-picture understanding of the system so there is a broader perspective for fulfilling the Vision.

Finally, it was discussed that a range of new or revised activities will need to be implemented to meet the governance needs for the Vision. Change will be resisted and progress will be uneven. By maintaining flexibility and learning from the lessons of the past, governance can help in creating a successful network for fulfilling the Delta Vision.

Key Points by Speaker

John Kirlin (Executive Director, Delta Vision)

Concepts in the current Delta Vision:

- Need to balance ecosystem values and water for human use values.
- Ecosystem as an estuary (improve its function as an estuary).
- Committed for a design of resilience using nature, human engineering (facilities) and governance.
- Delta water is very complex delivery system.
- The water system should decrease its reliance on the Delta.

Assumptions:

- There is not a single policy tool that will serve the governance needs. A range of activities will need to be implemented.
- Tools will be used at differing spatial scales.
- Expect resistance to change.
- Progress will be uneven.

Strategies

- Join decision making, financing and liability where ever possible (from institutions to individuals).
- 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.
- Where possible, use tools that affect behaviors of decision makers (private and public) without explicit governmental decisions (e.g. regulatory enforcement or permits).

Tim Hennessey (Chesapeake Bay Program)

- Regional institutions have not performed well because they have been resisted by states, local governments and federal entities, but Chesapeake is an exception.
- The Chesapeake system has used passive adaptive management in its governance, treating policies as experiments.
- 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 uncertainty.
- A series of retreats assisted in getting the blessing of objectives by a broad range of stakeholders.
- Politics were a positive force in pushing others to be responsive to citizen's desires.

John Shurts (Columbia River Basin)

- Columbia Basin has fragmented government between *and* within the different levels of government with different but overlapping mandates and authorities.
- Things do still get decided and implemented so they are not paralyzed.
- Most useful governance arrangements and rearrangements have arisen organically, opportunistically, even accidentally out of focused efforts to

address particular substantive problems, in situations in which decision making and implementation authority related to the problem does exist.

- Trying to reform or shape governance as a general, abstract, distinct topic in and of itself has failed.
- Whether the Columbia region succeeds in achieving sustainable salmon recovery will *not* depend on whether we get the governance structure just right.

Will Travis (Bay Conservation and Development Commission)

- BCDC has clear and focused objectives, unlike a lot of other commissions and governments. BCDC did its job of protecting the Bay from destructive shoreline development while permitting appropriate development and enhancing public access.
- A key to the success of BCDC was realizing both the conservation AND development aspects of their charge.
- There has to be a broad agreement to approve a permit. Staff works with applicants to put forward successful applications.
- At times, the key for success was to have the right individual in the right place at the right time leading the Commission.
- BCDC has established broad goals for the Bay and allows developers to use creative ways to satisfy the goals.
- BCDC creates partnerships with people or organizations that want to be located or involved somewhere in the bay (shoreline). BCDC works with them and show value added to have a better project in the end.
- BCDC's successful approach to governance will not work for the Delta if the people (farmers, builders, etc) do not have a shared vision of the Delta.
- The Bay is the heart of the region and a strong sense of place. The Delta is difficult to describe and to locate and doesn't have that sense of place.
- The Coastal Zone Management Act (CZMA) calls for federal consistency which has kept federal agencies engaged. Delta Vision should explore the potential for authorization under the federal CZMA.
- Having a spot for the Department of Finance on the BCDC Committee has made it much easier to get financial support.
- Need to have federal, state, and local consistency in order to have a broader vision.

Brent Walthall (Previous CALFED Governance):

- A first bill for CALFED governance failed but then in 2002 a CALFED governance bill was passed by Costa (in his last year in office).
- The main discussion surrounding the bill was the make-up of the Authority members. In the end a number of the positions were political appointments, which in hindsight may not have been the best approach.

- Members of the Authority needed a broad perspective about Delta issues. Instead, regional members became regional advocates.
- The budget process did not work as intended. It created a conflict between agencies and CALFED in developing budgets by allowing competing budgets to be submitted to the legislature.
- The Department of Finance was not on the Authority Board and also did not like that the Board had public members when budgets were being discussed.
- Federal agencies participated but weren't fully committed.
- Members of the Board were also not knowledgeable about some the more detailed aspects of the program. More technical experts may be beneficial but may take longer to get on board and accepted by a broad audience.
- For any new Delta institution it is essential to be clear on the purpose. Legislation needs to clearly articulate responsibilities down the line with a Coordinating Agency on top.
- If the Coordinating Agency is given responsibility for something currently within another agency's mandate, authority must be clearly transferred to the new agency. This was not done with CALFED.
- There is a lot of value to working within the existing bureaucracy. It may not always work to try to create something new, sometimes old is better than new.
- In designing governance, form follows function.

Judy Innes (Governance in a Complex, Changing Environment)

- The Delta contains enormous uncertainty and complexity with multiple and conflicting goals, 128 public agencies all with some jurisdiction, 20 federal and state laws, constitutional requirements, and conflicting water rights.
- A top down hierarchy in this situation is infeasible and leads to policy paralysis.
- A resilient delta needs a flexible, networked governance system; employing multiple strategies and key players in a continuous learning and action process.
- Local people often know things that scientists do not. There needs to be a governance approach that assures the incorporation of local knowledge.
- Use mixed task groups or collaborative working groups of diverse players focused on specific tasks.
- Development of social capital is important.
- Informality as a planning strategy – CALFED worked within agency mandates and negotiated a project for joint action.
- Implementation was informal. The Record of Decision was an agreement and everyone improvised to meet the goals.
- Key to successful collaborative governance is having diverse players, an understanding of interdependence, and opportunity for authentic dialogue.

- Collaborative governance uses network clusters, distributed control and shared authority.

Jim Mayer (Governance Principles):

- Little Hoover Commission found that CALFED authority was diffuse and disconnected and CALFED could not discipline multi-agency focus.
- The Authority lacked capacity to resolve contentious issues and the Board was burdened with conflicts and didn't contain the right set of people.
- The Little Hoover Commission recommended a sustainable delta plan, and comprehensive state plan.
- It recommended identification of management functions in an appropriate management structure.
- It recommended broad public involvement, a state advisory committee, and a process for conflict resolution.
- A legislative role is important with clear direction and oversight.
- Conflicting goals and values need to be reconciled with clarity around functions, purpose, decisions.
- The nature of decisions guides structure and process. (Decisions need to form and guide.)
- Another challenge is poor coordination among agencies that need to cooperate to improve results.
- In the Delta, allocation of resources is not aligned to priorities.
- Reorganization and consolidation may not be as powerful as effective management.
- It is difficult to legislate cooperation so policy solutions must emphasize expectations, capacity and accountability.
- Some assets and opportunities are not part of the solution. Determine the assets that can be brought to bear. Some assets are not public and that may be good.
- Involve non-traditional stakeholders.
- For the 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.
- For the Organizational strategy:
 - Form follows function.
 - Align responsibilities with authority.
 - Avoid conflicting functions (don't ask an agency to do something they can't do).
 - Clearly identify relationships, roles, responsibilities.
- What is not consolidated must be integrated or coordinated.
- Management structure requires clear objectives and measurement toward those objectives (objectives can change over time).

- Align resources with goals and priorities.
- Use resources as a control and as an incentive.
- Incentives include additional resources, additional discretion, and early success.
- Authority and incentives should be aligned to allow for synergies.
- Science can assist in developing and selecting a sound preferred alternative and in ensuring that in the legislative process integrity of the proposal is not compromised.
- Science can help develop criteria for assessing alternatives and as a means to guide legislative debate.

Other discussion:

- Science informs decisions but does not make policy judgments
- Is best to develop new governance structures last.
- Role of public trust doctrine in Delta?
- Partnerships are key.