

Reflections on Governance Issues Raised in the Visions for the Delta

By Judith Innes

Sept. 6, 2007

Overall Perspective

The visions and my own research over the years suggest that uncertainty, conflicting interests and values, and continuing change are the key challenges for governance of the Delta. Any governance system from this perspective must be designed to work with this reality. Thus it has to be adaptive and conflict resolving. It needs the incentive to reach out for and respond to information from monitoring and external factors that will have impact on the Delta.

Governance Ideas in the Face of Uncertainty

A number of the visions contain fragments of governance ideas that are compatible with this framing. For example the idea that preliminary actions should be reversible in the EJ vision makes sense not just for the low income residents and farmers, but for many of the other interests. When we do not have certainty and predictability, pilot projects and other ways of testing and building knowledge are important. The SCG talks about building knowledge through action projects—another interesting idea. A couple of the visions also talk about taking incremental steps where possible. Both SCG and TBI emphasize the importance of monitoring, but there needs to be an institutional framework such that the monitoring actually gets done, possibly by an outside entity. People do not willingly report on the limitations of their own efforts.

Robust Knowledge

Robust knowledge is crucial to effective governance and effective policy. Almost all the visions mention the importance of scientific information. Some seem to suggest that much will be resolved through the best science. While better information can reduce some uncertainty, the governance system should be designed to work with the probability that scientists will continue to disagree, models will be imperfect, and the overall complexity of the system will prevent definitive answers. Continuing scientific inquiry will be essential but that will not be enough. There will need to be ways of resolving difference among scientists, perhaps using something like the collaborative model that produced the salinity measure in the San Francisco Estuary Project 15 years ago. Moreover formal science will not be enough as it does not typically deal with specific problems in specific places. Local people often know things the scientists do not. There needs to be a governance approach that assures the incorporation of local knowledge as needed. Some visions hint at this from an equity standpoint but do not develop it. Whatever the process, it is particularly important that opposing stakeholders and agencies can all accept the data on which action is to be based or cooperation will not be forthcoming and challenges will be made, both in courts and the political arena. Joint fact-finding, which has been used in CALFED, the Estuary project and many other science-intensive water-related planning projects, is something that needs to be considered seriously as a component of a governance system.

Sustainability of the Delta

The subtext in the visions seems to be creating a sustainable Delta, though each vision tends to take hold of a different aspect of sustainability. The SCG is the most comprehensive in its thinking, but the issue of how to assure a sustainable Delta needs to be much further developed in any governance plan. A sustainable Delta has to address not only the needs of the environment, but also of the economy and of the most disadvantaged—the three e's. The list of principles on p. 4 of the SCG offer an excellent guide to the components of a sustainable system. While it is the environment that is especially threatened at the moment, any durable approach will require that all the players buy into a plan. It will not be possible to impose certain solutions or actions if there is not broad agreement, whether for political reasons or simply because there will never be the resources for total enforcement of all of the ideal measures for restoration and maintenance through a police powers approach. Ideally there needs to be a strategy to enlarge the pie rather than solely to tradeoff and compromise because the former is what keeps players on board.

A few ideas in the visions reflect this. For example in RTD the concept of a local Delta conservancy with local membership would be one way to get buy in from the very people to whom the viability of the Delta is most important as well as to get them to implement actions only they can do. This could only work if there is a separate activity and governance approach to address the non Delta water users' needs. This may be one of the thorniest problems of Delta governance—how to assure local maintenance of this fragile environment and yet protect this water resource for the rest of the state. While a couple of visions suggest that the Delta should just be Delta people this is not practical.

The beneficiary pays principle is also a good one for sustainability as people are less likely to waste or overuse if they pay. However it will be important to keep the equity issue in mind as some beneficiaries may not be able to pay.

Monitoring has to be central to sustainability as the Stakeholder 1 report suggests but this report appears to be suggesting this can all be done by experts, whereas local knowledge may be also important. In the first phases of the Operations Group at CALFED both scientific and local knowledge worked together to help the group to make operations recommendations to the Policy Group.

It should be noted that the Stakeholder 1 report indicates that agreement on steps to take to reduce the uncertainty has been remarkable, though there has not been agreement on what the Delta should look like. This is an indication that is confirmed by my own research that it is difficult if not impossible to get a single vision of outcomes. What is much more possible is to agree on finite steps toward addressing a shared problem.

Sustainability also requires dealing with what is going on outside the region. Several visions mention this, though they mostly do not develop an overall way to do this. It may require two or more separate systems that are interlinked. Perhaps there would be widening circles of stakeholders and agencies with different responsibilities and ways to communicate and coordinate. Monitoring is of course crucial in this regard.

TBI Long Term Vision

This vision offers the most detail and creativity in governance ideas and goes beyond fragmented suggestions to come up with some overall institutional arrangements. They have done considerable work on getting past the piecemeal and uncoordinated arrangements we now have. They offer however a list of actions to be taken on p 6 that have been argued over for years. To get these actions taken there will have to be a strategy to get opponents and potential losers to back off their opposition, either because they recognize there are no other options or because they have some compensating benefit. I do not see in this proposal any such plan.

In Attachment 4 they have developed a number of interesting ideas for new governance institutions. This includes a proposal to make parts of the Delta into state or federal parks or wildlife refuges. The idea of going for state legislative changes relating to land use and urbanization is worth exploring, as long as we recognize the sacred quality of local land use decision making and the difficulty of modifying this in any way. It would require highly compelling arguments about public safety etc, but it might be feasible for at least some areas of the Delta.

The idea of setting performance targets is popular these days but it is much more problematic than perhaps it sounds. The problem of measurement is the first challenge. The second is the idea of attributing blame or responsibility to any agency or action. It is a complex system and there will always be many causes. This type of measurement is good for monitoring and feedback, but less for evaluation. And in my observation agencies are very reluctant to implement performance measurement and typically find ways to avoid it in practice.

The idea this vision proposes to set up a Delta Protection Commission rather like the Bay Conservation and Development commission with limited powers over certain aspects of the Delta has some promise. The Coastal Commission in general is perhaps a model that could be examined as it limits some property rights and has various means of rule setting and appeal. It can be very much a litigation system which may not be desirable however. This report mentions also a Delta Conservancy, an idea which definitely has promise based on what I learned in studying the setting up of the Sierra Nevada conservancy. This got local buy in as well as become a receiving entity for funds. It also gave visibility to the needs of conservation in the Sierra.

I find puzzling the idea of a Delta Water Management Commission to have oversight over the SWP and the CVP. While I admire the effort to include the stakeholders in principle, I do not see how the state much less the federal government would, or even could, cede power over these projects to any sort of commission. While the concept of oversight or at least more accountability is an interesting one I think this needs further development. It is possible that simply making their processes more transparent and perhaps setting up a public advisory committee that could comment might help. This idea however does suggest that a successful Delta management process should include some way of working with both water projects.

The idea of a fair share of water approach would require a lot of negotiation and I suspect it is not practical. Everyone has different ideas of fairness and fairness is not the only criterion.

The proposal to eliminate public subsidies for endangered species act compliance appears to boil down to dismantling the Environmental Water account. The report claims this was a colossal failure, though both the Little Hoover Commission and CALFED's own independent review cited many successes, such as the ability to work in real time, the cooperative relationships between different players and the building of new knowledge. EWA has however not been successful in getting a stable source of funding (in part because of environmentalists' objections) but based on my own research and these other studies, it seems that EWA is worth fixing rather than dismantling. The TBI proposal would likely take us back to the days of litigation and policy paralysis. In any case this is outside the scope of this visioning effort.

Types of Governance Models

Perhaps it would be helpful to think in terms of some of the major governance alternatives that are out there and might be applied to the Delta. These could be considered in terms of some of the criteria that have been laid out. How well would they deal with uncertainty and conflict? How well would they be able to take beneficial actions for the Delta etc? Here is my preliminary list. Some of these have been suggested in different visions. It is possible to find examples of these to see how they work in different settings.

1. Administrative agency
2. Elected body
3. Blue Ribbon Style Commission made up of elites
4. Governing body made up of representatives of jurisdictions, agencies and stakeholders
5. Creating a special region with its own rules over certain things. Like the Coastal Zone commission which limits land use near the coast.
6. Memoranda of Understanding
7. Joint Powers Agreements
8. Private contracting arrangements
9. Coordinating body, like a Council of Government or Metropolitan Planning Organization
10. Collaborative Leadership Group, like Policy Group in Calfed, with stakeholder and expert task groups, including leaders of state and federal agencies and others with the power to act.