

Delta Vision Task Force
Considerations for Governance
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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.