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Agenda Item: 2
Meeting Date: November 9, 2005

CALIFORNIA BAY-DELTA PUBLIC ADVISORY COMMITTEE

October 12, 2005
650 Capitol Mall, Bay-Delta Room
Sacramento, California

MEETING SUMMARY

CALL TO ORDER AND OPENING REMARKS

1. INTRODUCTION AND ESTABLISHMENT OF QUORUM

Chairman Hunt called the meeting to order at 9:12 a.m.; and as part of his introductory remarks, informed members that they would receive a briefing on the recent court decision following Agenda Item 3.

The following members were present, a quorum being established: Patricia Acosta, Gary Bobker, Christopher Cabaldon, Tom Clark, Marci Coglianese, Gregory Gartrell, David Guy, Steve Hall, Gary Hunt, Ronald Jacobsma, Lillian Kawasaki, Leslie, Lohse, Steve Macauley, Robert Meacher, Barry Nelson, Bill Pauli, Timothy Quinn, Rudolph Rosen, Frances Spivey-Weber, Van Tenney, Walter Wadlow, and Thomas Zuckerman.

Others in attendance: Lester Snow, Ryan Brodderick, Michael Chrisman, Jason Peltier, Jerry Johns, and Allan Oto (serving as the Designated Federal Official).

2. ADOPTION OF SEPTEMBER 7, 2005 MEETING SUMMARY

Meeting summary was adopted as submitted.

3. BDPAC PROCEDURES AND PROCESS UNDER FEDERAL ADVISORY COMMITTEE ACT (FACA)

Diane Buzzard, U.S. Bureau of Reclamation, presented an overview of the recent BDPAC charter renewal and requirements under the Federal Advisory Committee Act (FACA). Presented as "BDPAC 101", Ms. Buzzard addressed the following four questions:

- Is it a legal issue that prompted Interior to make changes?
- What did we do wrong / specific examples?
- Why was the issue not addressed in the Little Hoover Commission Paper?
- Why does the Authority staff provide administrative support to BDPAC?

All FACA charters are required by law to be renewed every two years. BDPAC was established to advise the Secretary of the Interior on implementation of the CALFED Bay-Delta Programmatic ROD, Public Law 108-361, and other applicable law. Members serve by virtue of personal appointments and, therefore, alternates are not allowed for the purposes of BDPAC. The role of the subcommittees is to gather data and report back to BDPAC. Discussion ensued regarding the future of the subcommittees. There seems to be a consensus of opinion that the number and scope of those subcommittees need to be minimized so that each subcommittee can be more effective.

Members were also advised recommendations coming from BDPAC need to be formalized as recommendations to the Secretary of the Interior. Some concern and discussion followed in order to clarify how the recommendation process should work.

There is a difference between “formal” and “informal” BDPAC recommendations to the Secretary of the Interior. Formal recommendations are those that directly affect Interior policy or decisions, and would be transmitted in writing to the Secretary. If agreed to by the Secretary, they would be conveyed by the Secretary in writing to those Interior agencies responsible for the recommended action and to the Authority and other CALFED agencies, as appropriate. Informal recommendations are those that do not directly affect Interior policy or decisions, but would result in the Secretary conveying Interior support of the recommendation to the Authority and other CALFED agencies.

Ms. Buzzard concluded by reminding members that the charter renewal and subsequent changes were all designed to strengthen and support the continuation of BDPAC. It is expected that by following more closely the FACA requirements, BDPAC can more effectively serve both the Secretary of the Interior and the agencies responsible for implementation of the CALFED Bay-Delta Program.

1A. UPDATE ON CALFED LEGAL ISSUES – Authority Chief Counsel Chris Stevens provided a brief overview of the recent Court decision from the Third District Court of Appeals on the California Environmental Quality Act (CEQA) programmatic case. Mr. Stevens stated that the Court declined to declare a “winner” in the case, but remanded the case back to the trial court, with directions to decertify the environmental documents and the State's adoption of the Record of Decision. The Court’s opinion stated that CALFED’s original CEQA review fell short in three respects:

- The EIR analysis was flawed because it did not consider an alternative for exporting less water from the Delta in order to restrict projected growth in California and thus the need for water.
- Potential sources of water were not adequately identified and considered in the EIR.
- The EIR lacks information on components of the Environmental Water Account (EWA).

There is an October 21 deadline to petition the Appellate Court for rehearing; if unsuccessful, a petition for review by the California Supreme Court must be filed by November 17.

4. SOUTH DELTA IMPROVEMENTS PROGRAM (SDIP)

DWR's Jerry Johns provided an overview of the SDIP. Mr. Johns informed members of the two-stage process of the SDIP review, which includes a review of the physical components (configuration of the gates) and a review of the preferred operational alternatives (none of which have yet been selected). The review will be conducted in light of a full consideration of the impacts of the Pelagic Organism Decline (POD). The POD is looking at invasive species, toxic, and water project operations as primary potential causes of the organism decline.

5. DISCUSSION AND RECOMMENDATIONS ON 2005 – 2006 PROGRAM PLANS

Members approved the staff recommendation regarding Program Plans as follows:

Conveyance – Approve
Transfers – Disapprove
EWA – Disapprove
ERP – Disapprove
Drinking Water Quality – Disapprove

Conveyance was approved with revised language describing the decision-making process for the SDIP and additional language from the Record of Decision (ROD).

It was further decided that the BDPAC decision on Program Plans should be made as a formal recommendation to the Secretary of the Interior for the purposes of conveying State Interior's support to the State. Authority Director Joe Grindstaff also reminded members that the current Program Plans refer only to the current year's activities (Year 5).

Members also adopted by a 10-7 vote a motion made by Tom Clark to request the Authority to send a letter to the Legislature and State Administration asking that agency commitments to publicly fund the EWA, as specified in recently extended agreements, be honored. It was determined that this action would go forward as an informal recommendation to the Secretary of the Interior.

6. YEAR 5 CALFED PROGRAM PROGRESS AND BALANCE

Several members wanted to have the discussion on Program progress and balance before making a decision on the Program Plans. Based on that input, Chairman Hunt switched the order of agenda items so that this item took place before the item listed above.

State law requires the Authority, on or before November 15 of each year, to review progress in implementing the Program. If it is determined that either the "Program schedule or objective has not been substantially adhered to", a revised schedule must be prepared, in coordination with BDPAC, that will achieve balanced progress in all Program elements.

Federal law similarly requires the Secretary of Interior, on or before November 15, to review progress in implementing the Program based on consistency with the ROD and balance in achieving the goals and objectives of the Program. If it is determined that either the Program implementation schedule has not been substantially adhered to, or that balanced progress in achieving the goals and objectives of the Program is not occurring, a revised schedule must be prepared, in coordination with BDPAC, to achieve balanced progress in all Program elements consistent with the intent of the ROD. Any written determination and revised schedule must then be included in the Annual Report, which under Federal law must be submitted by the Secretary no later than February 15 of the following year.

In sum, neither State nor Federal law requires an affirmative written statement of balance; however, a determination of substantial non-adherence to the ROD schedules or balanced progress among the Program's goals and objectives (in effect, a finding of "imbalance") would trigger the need to prepare a remedial schedule to achieve balance across all Program elements. To date, the Authority has not made such a finding, but has attempted to address identified areas of concern in the next year's program plans.

Members expressed concern and some confusion over the question of balance and its implications for the Program. In general, caution was urged in determining whether to make a formal finding of imbalance. The action of disapproving certain Program Plans was a strong message to agencies and the Legislature indicating the status of those programs and funding issues related to them, but without the fuller implications of a finding overall Program imbalance. Nearly every member responded affirmatively when asked by Authority Director Joe Grindstaff whether they wanted to be briefed on the balance issue before the next meeting. Chairman Hunt also requested that this same topic be placed on the agenda for the November BDPAC meeting.

7. PUBLIC COMMENT

None.

ADJOURNMENT

Chairman Hunt adjourned the meeting at 12:35 p.m. The next BDPAC meeting is scheduled for November 9, 2005.