



October 17, 2012

**Attention: Imported Water Committee**

**Bay-Delta Update. (Information)**

**Background**

Several processes relating to the Bay-Delta are coming to completion in the next few months. Previously, staff provided a quarterly update. For the next few months, updates may be provided more frequently as these processes unfold.

**Discussion**

**Delta Stewardship Council**

After the release of six staff drafts of the Delta Plan, the Delta Stewardship Council adopted a final draft Delta Plan on September 13. Water Authority staff commented on the third, fifth, and sixth staff drafts, as well as the draft Environmental Impact Report. Staff also participated in an ACWA Ag-Urban Coalition, which was successful in obtaining modifications of portions of the Delta Plan.

The Delta Plan is intended to provide an overall blueprint for the achievement of the co-equal goals of water supply reliability and ecosystem restoration in the Delta. The Plan has provisions that will have the force of regulations, and makes recommendations that are not enforceable, but provide guidance to state and local agencies in carrying out covered activities in the Delta. Any state or local agency that intends to carry out an activity in the Delta that is covered by the Plan must provide a statement to the DSC that they activity is consistent with the Plan. If anyone objects that the activity is inconsistent with the Plan, the DSC will have appellate authority to determine consistency and require that the activity be modified to make it consistent.

Two issues of concern to the Water Authority have related to water supply reliability and ecosystem restoration. With respect to water supply reliability, early drafts of the Plan asserted that the DSC would require –and regulate-- local water suppliers throughout the state that used water from the Delta to maximize their efforts to increase reliance on local supplies and reduce their dependency on the Delta. The final draft now states that a water supplier that has an activity under review by the DSC must show that it has made the efforts currently required by law (urban water management plan, SBx7-7, etc.) and that its need for an activity in the Delta is not due to its failure to make those efforts. This provision takes the DSC out of the business of regulating all local water suppliers.

With respect to ecosystem restoration, early drafts of the Plan relied heavily on flows into and out of the Delta to restore ecosystems. The Plan did not recognize or address other stressors in the Delta, such as local waste water treatment plants, pollution from pesticides, invasive species, predation, water temperature, and salinity. The DSC has since recognized that this approach could have effects not only on exporters from the Delta, but on upstream water rights holders.

Furthermore, the DSC has recognized that increasing flows through the Delta is not sufficient to restore the ecosystem without addressing the other stressors. The Plan now calls for efforts to control other stressors and has de-emphasized the role of flows in ecosystem restoration.

With respect to financing aspects of the Plan, the Plan identifies the water bond (now moved to the 2014 ballot), and calls for a “beneficiary pays” system of water user and “stressor fees.”

Once the DSC has adopted a final draft of the Delta Plan, the draft will serve as the project description for the Project EIR. The Project EIR will be recirculated in the fall of 2012, and a final Project EIR will be certified in the spring of 2013. Once the EIR is certified, a final Delta Plan will be adopted and gain regulatory effect.

### **Bay-Delta Conservation Plan**

On July 25, Governor Brown joined with Interior Secretary Ken Salazar to announce a preferred project for the Bay-Delta. The preferred project has been studied under the Bay-Delta Conservation Plan and its associated environmental documents.

When the state Natural Resources Agency released an administrative draft of the BDCP in February, the federal wildlife and fisheries agencies issued “red flag” memos, stating they did not believe they could issue permits under the Endangered Species Act for the project proposed in the draft. After negotiations in April and May, the federal and state agencies agreed on a preferred project that will be smaller than the project proposed in the administrative draft.

The administrative draft proposed a tunnel with two bores that would run 35 miles under the Delta to the state and federal aqueducts. The tunnel would have a combined capacity of 15,000 cubic feet per second. It would require five intakes on the Sacramento River north of the Delta with capacities of 3,000 cfs each. The preferred project announced in July will still include the two-bore tunnel, but it will have a combined capacity of 9,000 cfs, with three intakes instead of five.

Another aspect of the preferred project is a “decision tree” process for determining the yield of the project. Under the administrative draft, the tunnel was assumed to yield 5.9 million acre feet per year, on average. Under the decision tree process, flows and yields will be adjusted yearly while the preferred project is being built, according to whether biological goals and objectives are being met. The ultimate yield of the completed project will not be determined until the tunnel is completed, at which time the yield could be more or less than the yield of 4.9 million acre-feet under current restrictions. In other words, the state and federal water contractors may have invested \$13 billion or more over 10 to 15 years only to find out they will receive less water, on average, than they did without the project.

The BDCP and its environmental documents are scheduled to be released in a public comment draft this month. The state and federal water contractors are continuing to participate in the process. They will ultimately have to decide, however, whether the value of an unquantified, but reduced yield is sufficient to justify the investment of \$13 billion or more over a 10-year to 15-year construction period. Urban agencies, such as MWD, are generally supportive of going

forward with the project. CVP contractors that have fixed crops, such as orchards, are also generally supportive of the project. Other CVP contractors that have access to groundwater or have variable crops, such as cotton, are less supportive. The Kern County Water Agency has a split among its member agencies and has given notice that it might pull out unless the Natural Resources Agency can provide it with sufficient information to make a determination as to whether the benefits of investing in the BDCP would outweigh the costs.

### **Financing the BDCP**

Chapter 8 of the BDCP relates to financing the BDCP. The chapter includes estimates of the costs of completing the BDCP and the conveyance project. Chapter 8 contains an estimate of the cost of the conveyance project at approximately \$13 billion over 10 years. It also assesses the state, federal, and local funds that will be available to pay for completion of the BDCP over the next 50 years.

The Water Authority sent a letter (attached) with comments and concerns about Chapter 8 to Dr. Jerry Meral, the Natural Resources Agency official in charge of the BDCP effort.

The Natural Resources Agency contacted each of the state and federal water contractors and has received assurances that they are willing to finance the conveyance project. The Agency has not investigated the financial ability of the contractors to finance the project, even though the Water Authority has expressed concerns about the long-term ability of the Metropolitan Water District to carry its share, due to declining sales, rising rates, and the lack of commitments from its member agencies to pay its fixed costs.

MWD has been conducting a public relations campaign in support of the BDCP, together with the Southern California Water Committee. MWD is considering how it will finance its share of the project. MWD estimates that the cost of construction of the project will add \$175 per acre foot to MWD's rates. The most likely method of financing is to add the cost directly to MWD's rates. In its discussions of financing the BDCP, MWD staff do not address the effect additional declines in sales would have on MWD's ability to pay.

MWD is developing a proposal for the Department of Water Resources that would involve the use of an independent construction authority to build the project. MWD asserts that DWR, due to staffing constraints and general administrative inefficiencies, is not well suited to managing the construction of the project. Furthermore, according to MWD, it is the contractors, not the state, that will be financing the project. According to MWD General Manager Jeff Kightlinger, the state has agreed to consider MWD's proposal, when MWD completes and presents it.

At a public meeting on August 29, several agricultural water suppliers asked when the Natural Resources Agency would provide them with the information necessary for them to decide whether the costs of participating in the BDCP would exceed the benefits in terms of water supply reliability. They were assured that the information would be available later this fall. The federal fisheries agencies are working to finalize a definition of the "decision tree" process, which is necessary to identify the extent of the benefits.

The Agency commissioned a report by economist David Sunding to identify whether the benefits of the project to the SWP and CVP contractors exceed the costs of the project. Dr. Sunding has not completed his report, but he presented some tentative conclusions at a public meeting in Sacramento on June 20. He concluded that the value of water supply reliability, especially in Southern California, far exceeds the cost of the project. Another economist, Dr. Jeffrey Michaels of the University of the Pacific, also presented a study that showed the costs of the project far exceeding the benefits to the state as a whole. Dr. Michaels did not study the value of water supply reliability as part of his report. He was hired by local Delta interests that are generally opposed to the BDCP.

**Next Steps for the BDCP**

The current schedule calls for the BDCP to be released in public review draft in September 2012. However, this deadline has passed with no release. The draft EIS/EIR are scheduled to be released for public review later in the fall. The final environmental documents should be completed in the spring of 2013, with the Notice of Determination being issued in the summer of 2013. Once the NOD is issued, the BDCP may be finalized and the Endangered Species Act permits issued.

Prepared by: Jeffrey Volberg, Government Relations Manager

Reviewed by: Dennis Cushman, Assistant General Manager

Attachment: Comments on BDCP Chapter 8



## San Diego County Water Authority

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August 28, 2012

### MEMBER AGENCIES

Carlsbad  
Municipal Water District

City of Del Mar

City of Escondido

City of National City

City of Oceanside

City of Poway

City of San Diego

Fallbrook  
Public Utility District

Helix Water District

Lakeside Water District

Olivenhain  
Municipal Water District

Otay Water District

Padre Dam  
Municipal Water District

Camp Pendleton  
Marine Corps Base

Rainbow  
Municipal Water District

Ramona  
Municipal Water District

Rincon del Diablo  
Municipal Water District

San Dieguito Water District

Santa Fe Irrigation District

South Bay Irrigation District

Vallecitos Water District

Valley Center  
Municipal Water District

Vista Irrigation District

Yuima  
Municipal Water District

### OTHER REPRESENTATIVE

County of San Diego

**Dr. Gerald Meral**  
**Deputy Secretary**  
**California Natural Resources Agency**  
**1416 Ninth Street, Suite 1311**  
**Sacramento, CA 95814**

**Dear Jerry:**

**Thank you for visiting with us on Wednesday. We enjoyed our discussion, and appreciate the information you shared on the progress of the Bay-Delta Conservation Plan. We very much appreciate the efforts by you, Secretary Laird, Governor Brown, Secretary Salazar and all of the state and federal agencies in bringing the BDCP to this point.**

**We promised to send you the Water Authority's comments on BDCP Chapter 8. We understand that work is under way to produce a new draft of Chapter 8. It is our hope that the issues outlined below will be considered and addressed.**

### **Introduction**

**The San Diego County Water Authority is a wholesale water agency providing a safe and reliable water supply to 24 public agencies in San Diego County, supporting our region's \$186 billion economy and the quality of life of 3.1 million Californians. Highly dependent on imported water supplies, the Water Authority has historically and consistently been a strong advocate for the Delta and for the co-equal goals of providing a more reliable water supply for California, while protecting, restoring and enhancing the Delta ecosystem. The Water Authority's board of directors reaffirmed this longstanding support at its February 2012 board meeting. The board also adopted an updated set of policy principles relating to the Bay-Delta outlining the critical issues that must be resolved in the BDCP process; a copy of these Policy Principles is enclosed.**

**Chief among the Water Authority's concerns is the need to define the various components of the financing plan for the BDCP and the recently announced decision-tree concept in a manner that allows potential participants to evaluate the cost-benefit (or feasibility) of participating in the project. We believe the financing plan must include enforceable agreements to pay for the project, not only from state water contractors directly, but from the member agencies or units**

that provide their revenues. The costs are simply too great to rely on the hope that there will be enough water purchasers over the long-term to pay the project's costs.

As the largest customer of the largest state water contractor – the Metropolitan Water District of Southern California (MWD) – the Water Authority's ratepayers have a great deal at stake in the BDCP process and its financing plan. The Water Authority must be able to assess not only that the project will provide sufficient benefits to be affordable by our ratepayers, but also that they are not at risk of paying BDCP costs associated with the water supplies of other MWD member agencies or state contractors. The Water Authority is already in litigation with MWD over how it allocates its current State Water Project costs.

The Water Authority is concerned that all of the progress that has been made in bringing the BDCP to this point will be stymied, and that the BDCP will fail if participants are not able to evaluate the cost-benefit of the project or reasonably limit the risk their ratepayers are being asked to assume. It is in this light that we offer the following brief comments on the administrative draft of Chapter 8 – *Implementation Costs and Funding Sources*.

### **Comments**

As the largest state water contractor, MWD is the foundation for financing the project. And yet, MWD itself has been struggling over the past several years to pay its current fixed costs – let alone a substantially larger cost associated with the BDCP. The reason is simple: more than 80 percent of MWD's costs are fixed while less than 20 percent of its revenues are paid from fixed charges. More than 80 percent of MWD's revenues come from water sales. Yet, MWD's member agencies are not required to purchase *any* water from MWD. With its member agencies unwilling to sign take-or-pay contracts or make any other firm financial commitments to MWD to cover its fixed obligations, the agency remains heavily dependent on revenues from variable water sales. MWD's water sales have declined approximately 30 percent since 2008, with its firm sales declining to less than 1.3 million acre-feet in fiscal year 2012. MWD's member agencies – including the Water Authority – have also experienced significant reductions in sales. A direct consequence of these declining sales is sharply higher imported water rates that have made additional local water supply investments economically competitive. As a consequence, MWD's member agencies – and their sub-agencies -- are doing what they have been asked to do over the past 20 years: reducing reliance on water supplies imported from the Delta.

We are concerned that the BDCP will become the kind of “big ticket project” that MWD board members vocally and enthusiastically support – at the same time their agencies are unwilling to make enforceable commitments to pay for the project.

A final note on the subject of risk: because the project is anticipated to be financed through project revenues, we are informed that bond underwriters are expected to require a “step up” provision by which each BDCP participant in BDCP-related bonds pledges to assume the obligations of defaulting participants.<sup>1</sup> The current draft of Chapter 8 is silent on this issue, yet it is conceivable that some of the BDCP participants may default, which would cause remaining participants, including MWD, to assume a greater portion of the debt. It is important that Chapter 8 analyze the possible effects of the “step up” provisions on MWD and the other participants in the BDCP.

Some have suggested that property taxes may provide the ultimate security for BDCP payment obligations of individual contractors. Putting aside the question whether property taxes levied under the authorization of the Burns-Porter Act may be used to pay for new projects contemplated by the BDCP, it is important to remember that MWD’s taxing authority is further limited by the provisions of the MWD Act.<sup>2</sup> Although the Act contains override ability in the event of a fiscal crisis as determined by the MWD board (one year at a time<sup>3</sup>), it effectively limits MWD’s ability to levy taxes to pay its SWP obligations. It is also unclear whether changes to this limit would require voter approval. Thus, a careful legal analysis of MWD taxing authority should be included in the BDCP due diligence process if taxes are contemplated as additional back-up security for project debt.

To effectively evaluate the finances available for the BDCP, the drafters of Chapter 8 need to conduct comprehensive due diligence on all of the facts and

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<sup>1</sup> Under Section 50(h) of MWD’s current State Water Project contract, non-defaulting contractors can be assessed to cover payments not made by defaulting contractors, up to 25 percent of the payment not made. Under Section 49(i) of its East Branch Extension of the State Water Project contract, MWD is obligated to cover a default by any and all other participants.

<sup>2</sup> Section 124.5 of the Metropolitan Water District Act limits MWD’s property tax levy to “the composite amount required to pay (1) the principal and interest on general obligation bonded indebtedness of the district and (2) that portion of the district’s payment obligation under [the SWP contract] which is reasonably allocable, as determined by the district, to the repayment by the state of principal and interest on [SWP bonds] as of [January 1, 1985] and used to finance construction of facilities for the benefit of the district.”

<sup>3</sup> In such an event, the State of California would be relying upon an annual vote of MWD’s Board of Directors in which it “...finds that a tax in excess of these restrictions is essential to the fiscal integrity of the district....”

circumstances described in this letter. Without such due diligence, the BDCP faces a potential cascading collapse of funding. At a minimum, state water contractors that are wholesale water agencies must demonstrate that their customers – the member agencies or units that buy their water and provide their revenues – have take-or-pay contracts or other enforceable commitments to pay the fixed costs of the project commensurate with the term of the BDCP obligation. The Water Authority continues to stand ready to make such a commitment to MWD that provides benefits commensurate with its payments.

Ultimately, the full faith and credit of the State of California will back up the bonds issued to build the conveyance project. Failure to secure enforceable financial commitments from the member agencies or units of water wholesale contractors could place all of California at significant risk of having tens of billions of dollars of new outstanding debt without sufficient water contractor payments to cover the debt service. This is why all California taxpayers have a stake in ensuring that there is a solid foundation and financing plan for the BDCP going forward.

Thank you again for providing the opportunity to comment on the administrative draft of Chapter 8 of the BDCP. We are committed to working with you and all parties to address and resolve these issues.

Sincerely,

A handwritten signature in black ink, appearing to read 'Maureen A. Stapleton', written in a cursive style.

Maureen A. Stapleton  
General Manager

Enclosure: Water Authority Bay-Delta Policy Principles





February 15, 2012

**Attention: Imported Water Committee**

**Adopt Delta Policy Principles. (Action)**

**Staff recommendation**

Adopt Delta Policy Principles to guide staff in evaluating Bay-Delta initiatives and the Water Authority's advocacy to ensure a successful implementation of a Delta solution.

**Alternatives**

1. Modify one or more draft principles.
2. Do not adopt Delta Policy Principles.

**Fiscal impact**

None.

**Background**

The Sacramento-San Joaquin Bay Delta is an important water supply source for Southern California. Metropolitan Water District (MWD) purchases water from the Department of Water Resources through its State Water Project (SWP) contract. MWD is the SWP's largest customer, providing more than 50 percent of its revenues. As such, MWD is the principle source of revenue under the current SWP as it will be for any proposed Bay Delta solution. As the largest steady purchaser of MWD water, the Water Authority has a vital interest in assuring that any Bay Delta solution is financially sustainable. The Water Authority has advocated for a number of changes in the MWD rate structure, including securing take-or-pay contracts with its member agencies or other firm commitments to pay the fixed costs of a Delta conveyance project.

**Discussion**

The Water Authority has been a strong advocate for a sustainable Bay Delta solution. The Water Authority actively engages in Bay Delta issues at the MWD board and other forums including the State Capitol, where it lobbied for passage of the 2009 comprehensive Bay Delta bill package. The 2009 bill package approved as state policy the co-equal status of restoring the Delta ecosystem and creating a more reliable water supply for California. Recently, the Water Authority held two Bay-Delta workshops receiving input from stakeholders on their views of the issues and a Bay Delta solution. The Water Authority also participates directly on three Bay Delta Conservation Plan (BDCP) working groups on Conveyance, Governance and Finance.

The Water Authority has consistently advocated for a "right-size" solution in the Delta that is also supported by a broad range of stakeholders in order to reduce challenges to implementation. A central point of the Water Authority's advocacy position in determining the "right size" of a Bay

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**Delta solution is clear commitments to pay through take-or-pay contracts or legal equivalent to pay the fixed costs of a project.**

**The Delta Policy Principles will help guide staff as they evaluate the BDCP and other projects and actions relating to the Bay Delta solution. Draft principles were presented to this committee for review last month; the attached recommended principles reflect comments received on the prior draft.**

**Prepared by: Debbie S. Discar-Espe, Senior Water Resources Specialist**

**Reviewed by: Jeff Volberg, Government Relations Manager**  
**Amy I. Chen, MWD Program Chief**

**Approved by: Dennis A. Cushman, Assistant General Manager**

**Attachment: Delta Policy Principles**

## **San Diego County Water Authority Delta Policy Principles**

The San Diego County Water Authority Board of Directors supports a Bay Delta solution that will meet the co-equal goals and provide San Diego County with a reliable, high-quality supply of affordable, imported water consistent with the Water Authority's Urban Water Management Plan and Regional Facilities Optimization and Master Plan. The adopted policy principles will guide staff in evaluating projects and actions concerning the Bay-Delta.

### **Water Supply Reliability**

- Continue to support the co-equal goals of water supply reliability and environmental restoration embodied in the 2009 Delta bill package.
- Support deliberative processes that are designed to ensure a meaningful dialogue with all stakeholders in order to reduce future conflicts and challenges to implementation of a Bay Delta solution.
- Provide regulatory certainty and predictable supplies to help meet California's water needs in the long-term.
- Encourage a Bay Delta solution that acknowledges, integrates and supports the development of water resources at the local level including water use efficiency, seawater and brackish water desalination, groundwater storage and conjunctive use, and recycled water including direct and indirect potable reuse.
- Improve the ability of water-users to divert water from the Delta during wet periods, when impacts on fish and ecosystem are lower and water quality is higher.
- Encourage the development of a statewide water transfer market that will improve water management.
- Support improved coordination of Central Valley Project and State Water Project (SWP) operations.

### **Ecosystem Restoration**

- Restore the Bay-Delta ecosystem consistent with the requirements established under the state Natural Community Conservation Plan and the federal Habitat Conservation Plan, taking into account all factors that have degraded Bay-Delta habitat and wildlife.
- Work with all stakeholders to ensure a meaningful dialogue and that ecosystem restoration issues are addressed in an open and transparent process.

### **Finance and Funding**

- Encourage and support a Bay Delta solution and facilities that are cost-effective when compared with other water supply development options for meeting Southern California's water needs.
- Require the total cost of any Bay Delta solution be identified before financing and funding decisions are made. The total cost must include the cost of facilities, mitigation and required or negotiated ecosystem restoration.
- Allocate costs of the Bay-Delta solution to stakeholders in proportion to benefits they receive.

- Seek and support independent financial analyses of Bay-Delta solution including the ability of all parties to pay their proportional costs.
- Require a firm commitment and funding stream by all parties to pay for the fixed costs associated with the proportional benefits they will receive from a Bay Delta solution, through take-or-pay contracts or legal equivalent.
- Condition financial support on provisions allowing access to any water conveyance or storage facilities that are included in the Bay Delta solution.
- Support the use of public funds to support specific projects and actions with identified costs that protect and restore the environment and provide broad-based public benefits.
- Oppose water user fees to fund ecosystem restoration and other public purpose, non-water-supply improvements in the Delta that benefit the public at large.

#### Facilities

- Require independent technical analysis of proposed key elements of the Bay-Delta solution, including forecasting future urban and agricultural demands and size and cost of any proposed conveyance facility, to ensure the solution realistically matches statewide needs.
- Support “right-sized” facilities to match firm commitments to pay for the Bay Delta solution.
- Allow access to all SWP facilities to facilitate water transfers.

#### Governance

- Support continued state ownership and operation of the SWP as a public resource.
- Support improved efficiency and transparency of all SWP operations.
- Oppose any transfer of operational control of the SWP or any of its facilities to MWD, the State Water Project Contractors, Central Valley Project Contractors, the State and Federal Contractors Water Agency, any entity comprised of MWD or other water project contractors, or any other special interest group.