



February 7, 2014

**Attention: Imported Water Committee**

**Bay-Delta Conservation Plan: Governance (Discussion)**

**Purpose**

The purpose of this memo is to provide information relative to the institutional structure and organizational arrangements that will be established to govern Bay Delta Conservation Plan (BDCP) implementation.

**Background**

Since the 1930s, the state and the federal government have invested significant resources in the development and operation of the Central Valley Project (CVP) and the State Water Project (SWP) to help meet the water needs of Californians. About two-thirds of residents and more than 40 percent of irrigated farmland in California receive at least some of their water supplies from the CVP and SWP. Both projects utilize the Sacramento-San Joaquin Bay-Delta (Delta) to convey a significant portion of their project water to their respective water contractors. The Delta, therefore, is an important water supply source for many Californians. The Delta is also the largest west coast estuary in North and South America, supporting many fish, wildlife, and plant species; and it is one of four major North American pathways for migratory birds. Over the years, in part due to increased water exports for human use, the Delta habitat has deteriorated, increasing concerns over ecosystem viability.

Water from the Delta makes up about 20 percent of San Diego County's annual water supply. Given the significance of a Delta water supply for San Diego County's water supply reliability and diversification, the Water Authority has long been a proponent of a Delta fix. The Water Authority is also a strong advocate for its ratepayers. The Delta Reform Act of 2009 – in Section 85089(a) and (b) of the Water Code – provided that the costs for a new water conveyance facility will be paid by water users, and as such, the Water Authority continues to advocate for a Delta solution that not only would provide improved water supply reliability for water exporters, but also one that is right-sized to match demand and includes firm, long-term financial commitments from water agencies, including member agencies of the Metropolitan Water District (MWD), to pay for the project.

In addition to the BDCP Proposed Action, which the Brown Administration and state agencies are pursuing, other stakeholders have proposed variations of Delta fix strategies. Last July, Water Authority management convened a multi-disciplinary team of Water Authority staff to evaluate four Delta fix strategies (including a no action approach) with an aim to assess how these strategies would address the Water Authority's Bay-Delta Policy Principles and meet supply diversification and reliability goals expressed in the 2010 Urban Water Management Plan. The goals of this review are two-fold: to provide input during the BDCP environmental review process, and to provide technical assessments on various proposals sufficient enough to assist the Board in making policy decisions regarding the BDCP.

## Discussion

The efforts to resolve water supply and ecosystem conflicts in the Delta have a long history in California water policy (described in detail in a Board memorandum dated July 17, 2013).<sup>1</sup> Measures to protect threatened and endangered species in the Delta in recent years have significantly impacted both projects' capability to export water through the Delta. The latest effort to address the conflict is a joint effort of state and federal agencies to develop a BDCP.

The BDCP is a habitat conservation plan, intended to result in long-term permits from regulatory agencies authorizing take of covered species so the export facilities may be operated in a more stable and reliable manner. Included in the BDCP are 22 conservation measures collectively meant to achieve the BDCP's overall goal of "*restoring and protecting ecosystem health, water supply, and water quality within a stable regulatory framework*" (described further in a Board memorandum dated September 18, 2013).<sup>2</sup> A central component of the BDCP strategy for water exporters is Conservation Measure 1 (CM1), *Water Facilities and Operations*. Conservation Measures 2 through 22 (CM2 through CM22) cover natural community restoration and protection and other stressors, which are intended to restore and protect the natural communities and species.

BDCP implementation will be very complicated and challenging, with competing interests constantly in-play, as efforts to achieve the co-equal goals are pursued over the life of the permit term. As a result, the governance structure that is outlined in the BDCP Public Draft – in Chapter 7, *Implementation Structure* – to govern BDCP implementation is complex with many different components.

### Current Governance Structure

Under the existing SWP operations, the Department of Water Resources (DWR) owns and operates the SWP, holds all the water rights for the SWP, and holds all of the permits required to operate the SWP. DWR has contracts with 29 individual state water contractors, including MWD, the largest contractor holding 45.8 percent of the SWP supply under its contract. MWD also pays a corresponding share of costs on the SWP. The contracts provide, among other things, that the contractors will pay all SWP costs, except recreation, fish and wildlife enhancement, and flood control costs.

The California Water Commission was created at the same time in California's water history that DWR was created, and is directed (pursuant to Water Code Section 161) to "*confer with, advise, and make recommendations to the director [of DWR] with respect to any matters and subjects under his jurisdiction. The rulemaking power of the department shall be exercised in the following manner. All rules and regulations of the department, other than those relating exclusively to the internal administration and management of the department, shall be first presented by the director to the commission and shall become effective only upon approval thereof by the commission.*"

Other provisions of state law grant additional powers and authorities to the California Water Commission with respect to the SWP. State law requires the Commission to:

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<sup>1</sup> [http://www.sdcwa.org/sites/default/files/files/board/2013\\_agendas/2013\\_07\\_13\\_FormalBoard.pdf](http://www.sdcwa.org/sites/default/files/files/board/2013_agendas/2013_07_13_FormalBoard.pdf), pages 106-123.

<sup>2</sup> [http://www.sdcwa.org/sites/default/files/files/board/2013\\_agendas/2013\\_09\\_26\\_BoardPacket.pdf](http://www.sdcwa.org/sites/default/files/files/board/2013_agendas/2013_09_26_BoardPacket.pdf), pages 57-66.

- Conduct an annual review of the progress of construction and operation of the SWP, and make a report on its findings to DWR and the Legislature, together with whatever recommendations it deems appropriate.
- Hold public hearings on all additional facilities proposed to be added to the SWP by DWR.

Similar to the existing governance structure relative to DWR and the SWP, the U.S. Bureau of Reclamation (USBR) owns and operates the CVP, holds all of the water rights for the CVP, and holds all of the permits necessary to operate the CVP. Additionally, the USBR has individual contracts with water agencies that govern the financing of the CVP.

A background report for an informational hearing held on August 13, 2013 in the Senate Natural Resources and Water Committee identified two significant differences regarding the governance structures of the SWP and CVP:

- The CVP includes a number of distinct contracting “units,” many of which do not require moving water through or around the Delta (such as the Sacramento Canals Unit, north of the Sacramento Valley and the Friant Unit, on the east side of the San Joaquin Valley). On the other hand, all but three of the SWP contractors (City of Yuba, County of Butte, Plumas County Flood Control and Water Conservation District) rely on moving water through or around the Delta.
- The cost allocation and financing system of the SWP ensures that the SWP contractors pay all costs of the SWP, whereas the CVP’s system does not guarantee full repayment and there is some question as to whether the costs will ever be fully repaid<sup>3</sup>.

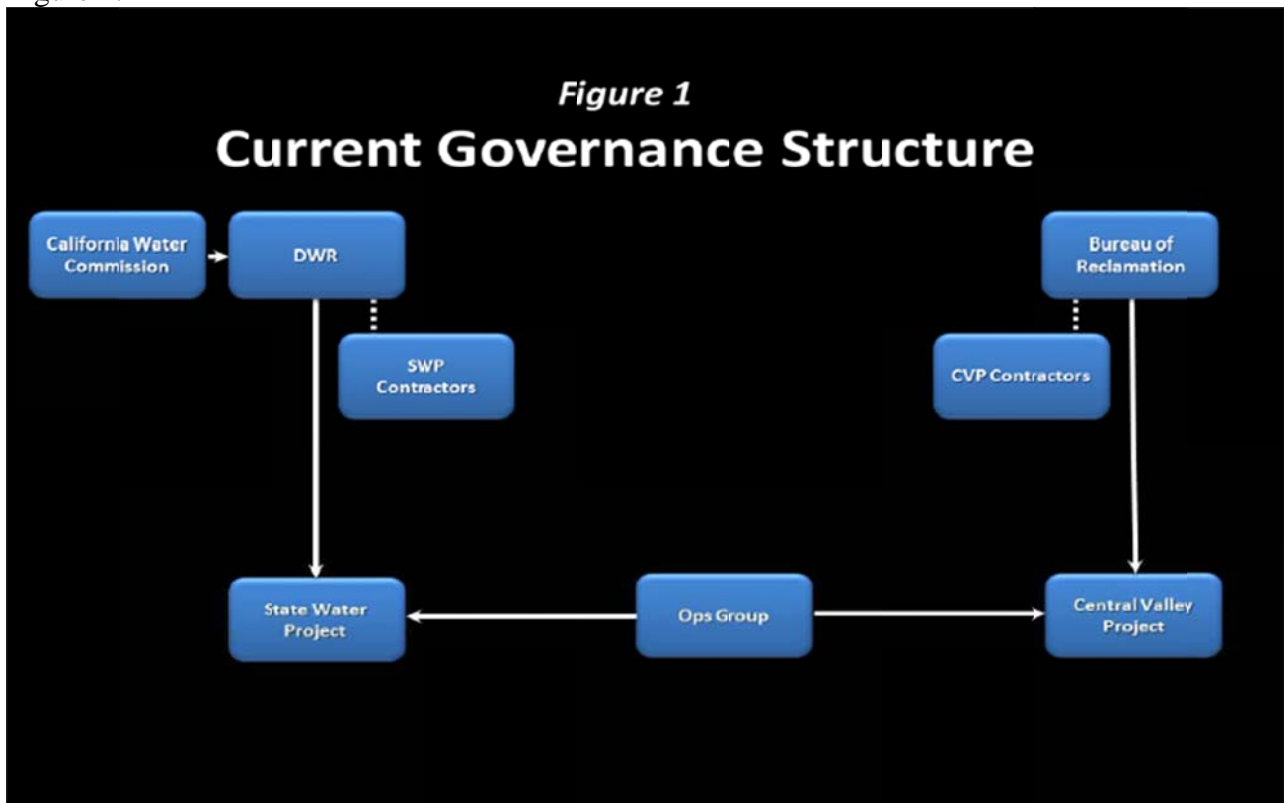
Because both the SWP and CVP convey water from the Sacramento River and the Delta, facility operations are coordinated between the two projects based on a Coordinated Operating Agreement. HR 3113, authored by Representative George Miller and signed into law by President Ronald Reagan in 1986, was a milestone in water management in California, providing for the coordination of operations between the state and federal water projects in the diversion of water from the Delta. The Coordinated Operating Agreement and the various additional ancillary agreements are intended to ensure that both projects operate consistent with operating conditions and requirements, water rights conditions, endangered species requirements, and other permits. These operations are presently overseen by an Operations Group (Ops Group). The Ops Group is comprised of both state – Department of Fish and Wildlife (DFW), DWR, and State Water Resources Control Board (SWRCB) – and federal – Fish and Wildlife Service (USFWS), National Marine Fisheries Service (NMFS), USBR, and Environmental Protection Agency (USEPA) – representatives, and this group meets monthly to discuss operations issues. The three areas of project operations overseen by the Ops Group include:

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<sup>3</sup> Report for an informational hearing by the Senate Governance and Finance Committee and the Senate Natural Resources and Water Committee – *The Governance and Financing of the Bay Delta Conservation Plan: Overview of the Issues* – August 2013

- Adjustment of export limits to minimize endangered species' take or to improve fishery conditions in general
- Operation of the Delta cross-channel
- Changes in the point of diversion to improve fishery conditions or make up losses to water supply caused by previous operational changes to improve fishery conditions

Figure 1.



The graphic above depicts the governance arrangement that is in place today. The existing structure is clearly delineated between the SWP and CVP, and there is only a single line of formal coordination between the two water projects through the Ops Group.

#### BDCP Proposed Governance Structure

The BDCP Public Draft documents present a significantly modified proposed governance structure. The BDCP proposes to entirely eliminate the segregated and disconnected governance structure and replace it with a more centralized structure over both projects. The BDCP Public Draft identifies five new organizational entities that, together, would be responsible for ensuring that the BDCP is implemented:

- Implementation Office
- Authorized Entity Group
- Permit Oversight Group
- Adaptive Management Team

- Stakeholder Council

Under the proposed new BDCP governance structure, DWR, the USBR, and those state and federal water contractors who receive take authorizations for activities covered under the BDCP, will have ultimate responsibility for compliance with the provisions of the BDCP and the associated regulatory authorizations. The implementation of the BDCP will be organized around a newly-created BDCP Implementation Office, which will be managed by a Program Manager and governed by a newly-created Authorized Entity Group. The USFWS, NMFS, and DFW (the state and federal fish and wildlife agencies) will maintain an ongoing role in BDCP implementation, including participation in the Permit Oversight Group, to ensure that implementation proceeds in a manner consistent with the BDCP and its associated regulatory permits.

The chart below, found in Chapter 7 of the BDCP Public Draft, depicts the scope of the BDCP implementation activities that would be centralized within the new Implementation Office.

Figure 2.

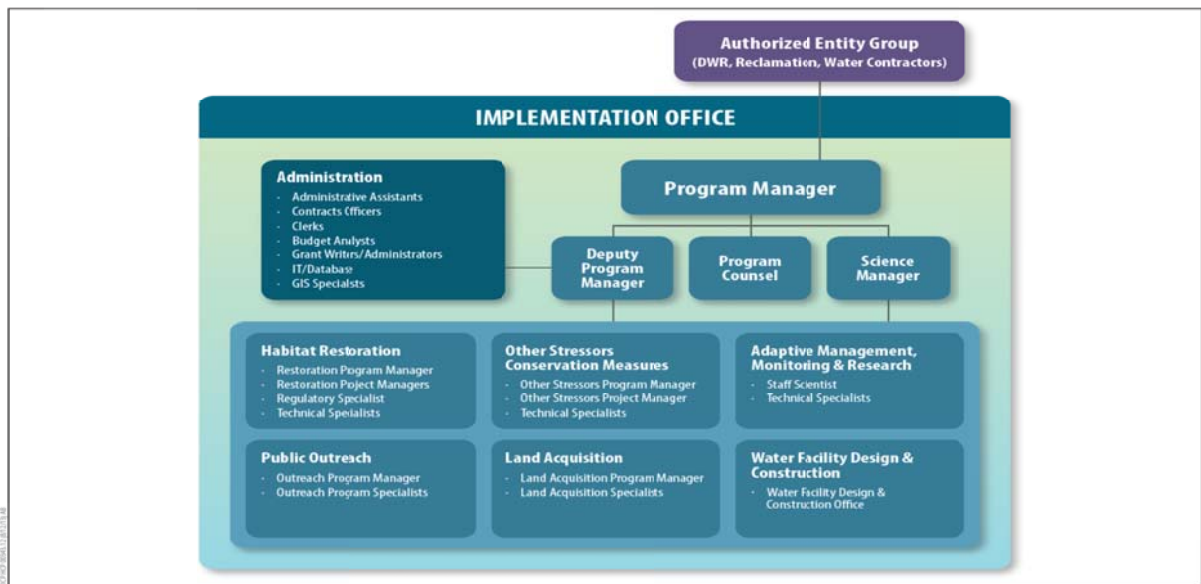


Figure 7-2  
Staff Organization for BDCP Implementation Office

**Implementation Office:** The new Implementation Office would be led by a Program Manager, who would be selected by, and report to the Authorized Entity Group. The Program manager would manage, coordinate, oversee, and report on all aspects of BDCP implementation, subject to oversight by the Authorized Entity Group. The Program Manager, with the assistance of the Implementation Office staff, would ensure that the BDCP is properly implemented throughout the duration of the project operations. The Program Manager would coordinate with the appropriate designated state or federal official to ensure that necessary functions are carried out. The Program Manager may be a state employee, a federal employee, or a person retained under a personal services contract.

The Program Manager would direct, oversee, and select staff for the Implementation Office. The Implementation Office, which would not be a legal entity authorized to enter into contracts directly or hold property in its own name, would administer the implementation of the BDCP under the existing legal authorities of the Authorized Entities. The Implementation Office would assume responsibility for implementing a broad range of actions, including:

- Overseeing and coordinating the administration of program funding and resources, including budgets and work plans
- Overseeing and/or implementing conservation measures
- Technical and logistical support to the Adaptive Management Team with respect to administration of the Adaptive Management and Monitoring Program
- Coordinating with Delta-wide governance entities, including the Delta Stewardship Council, the Delta Science Program, the Delta Protection Commission, and the Delta Conservancy

Not only would the Implementation Office be the centralized point of all BDCP implementation activities under the governance of the Authorized Entity Group, but the chart below, also found in Chapter 7 of the BDCP Public Draft, depicts that the Implementation Office is expected to be the central linchpin for all BDCP-related activities and the coordinator and facilitator of the various BDCP implementation groups.

Figure 3.

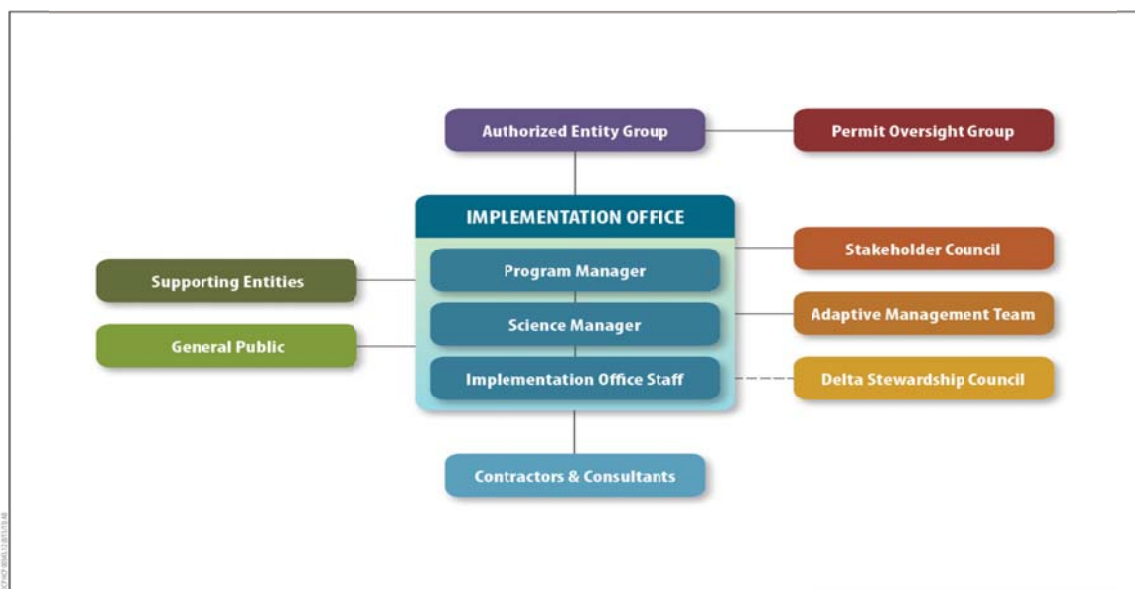


Figure 7-1  
Organization of BDCP Implementation

While broadly responsible for many of the implementation aspects of the BDCP program over the course of the permit term and project life, the Implementation Office would not be an independent body. It is important to note and understand the role of the newly-created Authorized Entity Group within the proposed BDCP governance framework.

**Authorized Entity Group:** The Authorized Entity Group is a four-member body that would consist of:

- Director of DWR
- Regional Director for USBR
- A representative of the participating state water contractors
- A representative of the participating federal water contractors

The purpose of the Authorized Entity Group is to provide program oversight and general guidance to the Implementation Office Program Manager regarding the implementation of BDCP. The Authorized Entity Group would be responsible for ensuring that the management and implementation of the BDCP are carried out consistent with its provisions, the Implementing Agreement, and the associated regulatory permits. The Authorized Entity Group would meet on a schedule of its own choosing, but would meet in public at least quarterly to review issues that arise during BDCP implementation. The BDCP Public Review Draft indicates that all meetings of the Authorized Entity Group would be conducted in public, but is silent with respect to requirements under California's public record laws.

A significant level of decision-making authority would be granted to the Authorized Entity Group under the proposed BDCP governance framework. For many of the decisions outlined in Table 1 below, the Authorized Entity Group is identified as having a primary decision-making authority. Additionally, for many BDCP implementation decisions, it appears that the Authorized Entity Group is being granted substantial decision-making authority. Even for those decisions where the Authorized Entity Group is not identified as the party making decisions on implementation issues, the dispute resolution process, outlined below, proposes to grant substantial deference to the Authorized Entity Group. For disputes that must be resolved by the Authorized Entity Group and Permit Oversight Group together, it should be noted that there is a lack of balance in the membership of the two groups – four members of the Authorized Entity Group and three members of the Permit Oversight Group. There is nothing in the Public Review Draft BDCP that provides for anything other than a one member-one vote structure for actions undertaken by the Authorized Entity Group and the Permit Oversight Group, and for joint decision-making actions by both groups together. Additionally, there are no provisions within the Public Review Draft BDCP that require “consensus” decisions between the Authorized Entity Group and the Permit Oversight Group, except for those joint decisions relating to adaptive management, as described further below.

The BDCP dispute resolution process outlines a nonbinding review process for unresolved disputes between the Authorized Entity Group and the Permit Oversight Group; however, it remains unclear how that nonbinding review process would be executed in a situation where the Authorized Entity Group (controlled by the water export interests) is able to out-vote the Permit Oversight Group (controlled by the fish and wildlife interests).

**Permit Oversight Group:** This group would be comprised of state and federal fish and wildlife agencies. Proponents of BDCP anticipate that the USFWS, NMFS, and DFW will issue regulatory authorizations for BDCP activities pursuant to the federal Endangered Species Act and the National Communities Conservation Planning Act. Consistent with existing law, the fish and wildlife agencies would retain responsibility for monitoring compliance with the BDCP, working with the Authorized Entity Group to approve certain implementation actions, and enforcing the provisions of their respective regulatory authorizations. In addition to fulfilling those regulatory responsibilities, the state and federal fish and wildlife agencies would also provide technical input on a range of implementation actions that would be carried out by the Implementation Office. The Permit Oversight Group would not be a separate legal entity, nor would it be delegated any authority by its three member agencies – those statutory and regulatory authorities would remain with each individual fish and wildlife agency, as provided in existing law. The Permit Oversight Group would meet publicly with the Authorized Entity Group at least quarterly. The BDCP Public Review Draft is silent with regard to the Permit Oversight Group’s requirements with respect to complying with California’s open meeting and public records laws.

**Adaptive Management Team:** This team would be chaired by a newly-selected Science Manager (selected by the Program Manager and working within the Implementation Office), and would consist of representatives of DWR, USBR, DFW, USFWS, and NMFS; a Delta Science Program representative; and the State and Federal Contractors Water Agency Science Manager. This team would have primary responsibility for administration of the adaptive management and monitoring program, development of performance measures, proposed changes to conservation measures, and proposed modifications to the biological objectives.

The Adaptive Management Team would operate by consensus. (Under the Public Review Draft BDCP, “consensus” is considered to be achieved if either all members of the Adaptive Management Team agree to a proposal or no member of the team dissents from a proposal). In the event that consensus is not achieved, the matter would be elevated to the Authorized Entity Group and the Permit Oversight Group for resolution. Any proposed changes to conservation measures or biological objectives would be elevated to the Authorized Entity Group and the Permit Oversight Group for their concurrence or for their own determination regarding the matter. If concurrence is not achieved between the Authorized Entity Group and the Permit Oversight Group, then the entity or entities with the statutory or regulatory decision-making authority under existing law would make the decision. The team would hold public meetings at least quarterly. The BDCP Public Review Draft indicates that all meetings of the Adaptive Management Team would be conducted in public, but is silent with respect to requirements under California’s public record laws.

As it has been identified in previous Board memos, the BDCP Public Review Draft provides that a “Decision Tree” process will be used to determine the initial operations for spring outflow under CM1 once construction is completed. According to the Public Review Draft BDCP at Section 5.5.2.1.1 – *Spring Outflow Decision-Tree Process* – “the fish and wildlife agencies will make the final decision about which... criteria will be applicable when the conveyance facilities become operational pursuant to the decision-tree process. The fish and wildlife agencies’ determination will be based on best available science at the time of CM1 operation. The determination will include updated analysis of historical data and other appropriate scientific information that exists at the time of the decision.” Following this decision-tree process, the Adaptive Management Team will then play the main role in managing performance of the BDCP Program relative to achieving



the intended objectives, and thus will become an important component of the BDCP governance structure.

**Stakeholder Council:** This council would consist of representatives from entities and organizations with an interest in BDCP-related issues or otherwise engaged in BDCP matters. At a minimum, representatives of the following entities would be invited to participate on the Stakeholder Council:

- Representatives of DWR and USBR
- Representatives of SWP and CVP water contractors
- Representatives of other authorized entities
- Representatives of USFWS, NMFS, and DFW
- Representatives of other state and federal regulatory agencies, including the U.S. Army Corps of Engineers, USEPA, and SWRCB
- A representative of the Delta Stewardship Council
- A representative of the Delta Protection Commission
- A representative of the Delta Conservancy
- A representative of the Central Valley Flood Protection Board
- Representatives of San Joaquin, Sacramento, Solano, Yolo, and Contra Costa Counties

Additional members would be selected from the following categories by the Secretary of the California Natural Resources Agency, in consultation with the Directors of DWR and DFW:

- Conservation groups with expertise in fish and wildlife management (at least three)
- Local government agencies within the Delta (at least three)
- Fishing organizations (at least one)
- Hunting organizations (at least one)
- Recreation organizations (at least one)
- Delta reclamation districts (at least two)
- Delta agriculture (at least two)
- Scientists with expertise in the management of natural lands and native plant and animals species (at least three)
- Water agencies located in the Sacramento Valley (at least one)
- Water agencies located in the San Joaquin River watershed (at least one)
- Organized labor working in the building trades (at least one)
- Representative of state-employed scientific or engineering professionals (at least one)
- Other stakeholders whose assistance will increase the likelihood of the success of BDCP implementation, including Delta civic organizations and members of the general public

The Program Manager would convene and facilitate the Stakeholder Council at least quarterly, to exchange information and provide input to the Program Manager concerning the current significant issues at-hand. Stakeholder Council meetings would be open to the public. The BDCP Public Review Draft indicates that all meetings of the Stakeholder Council would be conducted in public, but is silent with respect to requirements under California's public record laws. The Stakeholder

Council will develop its own internal organization and process to consider and provide input regarding the various aspects of BDCP implementation, including matters related to:

- Work plans and budgets
- Water operations plans
- Implementation of conservation measures
- Adaptive management changes
- Monitoring and reporting activities
- Scientific research and review processes
- Annual reports<sup>4</sup>

For matters considered by the Stakeholder Council, the BDCP expects that the Council will make reasonable efforts to provide input to the Program Manager and the Authorized Entity Group that reflects the general agreement of the members of the Council. However, according to the BDCP Public Review Draft, in Section 7.1.10.3 – *Dispute Resolution* - “any member of the Council will have the right to object to any proposal of the Program Manager concerning the annual work plans, annual reports, budgets, the acquisition of land and water interests, or the major elements of the adaptive management program...Any member may also object to any prior implementation action taken by the Program Manager.” According to the BDCP Public Review Draft, the only real authority provided to the Stakeholder Council relates to exchanging information and providing input to the Program Manager concerning current significant BDCP implementation issues.

Decision-Making Processes

The following table summarizes the governance process for key decisions expected during BDCP implementation. Among other things, the Program Manager will manage and/or monitor implementation actions associated with the protection and restoration of habitat, reduction of ecological stressors, management of conserved habitat, and operation of the water projects, including the development of infrastructure. This table clearly demonstrates the role that the Authorized Entity Group will have in the decision-making process relative to BDCP implementation and the oversight of the BDCP Implementation Office and Program Manager.

Table 1: BDCP Governance Decision-Making<sup>5</sup>

Decision	Who initiates?	Who has input?	Who makes decision?	Who has final authority to decide the matter?	Final decision subject to review process? <sup>1</sup>
<b>Program Management</b>					
Selection of Program Manager (Section 7.1.1.1)	Authorized Entity Group (AEG)	Permit Oversight Group (POG); Stakeholder Council	AEG	AEG	No
Selection of Science Manager (Section 7.1.1.2)	Program Manager	POG; AEG; Stakeholder Council	Program Manager	Program Manager	No
Oversight and administration of program funding and resources and of contracting (except for water conveyance infrastructure)	Program Manager	Stakeholder Council	Program Manager in conjunction with designated State and Federal agents	AEG	No
Oversight and implementation of conservation measures (except	Program Manager	AMT, Stakeholder Council	Program Manager	AEG	No

<sup>4</sup> Section 7.1.10.2 – *Function* – of the BDCP Public Review Draft

<sup>5</sup> Chapter 7 – BDCP Public Review Draft – pp. 7-3

Imported Water Committee

February 7, 2014

Page 11 of 13

water operations)					
Implementation of outreach, compliance monitoring and reporting requirements	Program Manager	Stakeholder Council	Program Manager	AEG	No
Annual Work Plan (Section 7.1.3.1)	Program Manager	AEG; POG; Stakeholder Council	AEG review and approval. POG concurrence that plans are consistent with past decisions that involve the POG	AEG	Yes
<b>Decision</b>	<b>Who initiates?</b>	<b>Who has input?</b>	<b>Who makes decision?</b>	<b>Who has final authority to decide the matter?</b>	<b>Final decision subject to review process?<sup>1</sup></b>
Annual Progress Report/Annual Water Operations Report	Program Manager	AEG; POG; Stakeholder Council; Real Time Operations Team	AEG review and approval	POG	No
Formal amendment (Section 7.2.11)	Program Manager	AEG	AEG review and approval	POG	No
<b>Adaptive Management and Monitoring</b>					
Adaptive management change to a conservation measure (water operations and non-water related measures)	AMT (proposals may be submitted by any party or stakeholder)	AEG; POG; Stakeholder Council (Technical Facilitation Subgroup)	AEG and POG	Regional director of relevant federal agency(ies) USFWS or NMFS) and/or CDFW director <sup>2</sup>	Yes
Adaptive management change to a biological objective	AMT (proposals may be submitted by any party or stakeholder)	AEG; POG; Stakeholder Council	AEG and POG	Regional director of relevant federal agency(ies) USFWS or NMFS) and/or CDFW director	Yes
Adaptive management change to problem statement and model refinement	AMT	AEG; POG; Delta Science Program; Interagency Ecological Program; Stakeholder Council	AEG and POG; if no consensus among AMT	POG	Yes
Development and modification of monitoring and research plans	Program Manager	AMT, AEG; POG; Delta Science Program; Interagency Ecological Program; Stakeholder Council	AEG and POG	POG	Yes
Science Review initiation and panel selection (independent and internal)	AMT and/or AEG/POG	AMT; AEG; POG; Stakeholder Council	AEG and POG	POG	Yes
<b>Water Operations</b>					
Annual Delta Water Operations Plan (Sections 7.1.4 and 7.3.2.1)	DWR and Reclamation	Implementation Office; POG; AMY; Stakeholder Council; Real Time Operations Team	DWR and Reclamation (POG review and concurrence regarding consistency with BDCP and associated authorizations)	DWR and Reclamation	Yes
Real-time operations changes	Real Time Operations Team	Case-by-case, as needed	Real Time Operations Team	Regional director of relevant federal agency(ies)	No

				USFWS or NMFS) and/or CDFW director	
Notes: <sup>1</sup> See Section 7.1.7 <i>Review of Disputes Regarding Implementation Decisions</i> for details. <sup>2</sup> DWR and Reclamation need to confirm that any changes to a conservation measure are within their legal authority to implement.					

### Dispute Resolution Process

The BDCP Public Draft presents two distinct dispute resolution processes – one for disputes arising from within the decision-making hierarchy of the Authorized Entity Group and Permit Oversight Group, and one for disputes arising from members of the Stakeholder Council.

In the context of disputes arising from within the decision-making hierarchy of the structure, the BDCP Public Draft presents a dispute resolution process for the following situations:

- The Authorized Entity Group and the Permit Oversight Group are unable to reach agreement on a BDCP implementation matter over which they have joint decision-making authority
- A member(s) of the Authorized Entity Group and/or Permit Oversight Group does not agree with the resolution of a matter by the entity with authority over the matter

A member of either the Authorized Entity Group or the Permit Oversight Group may initiate the nonbinding review process with a written notice of dispute that describes the nature of the dispute and a proposed approach to resolution. The notice must be provided to the parties within 14 days of the memorialization of the disputed issue.

Within 14 days of the issuance of the written notice of dispute, the parties, with the administrative assistance of the Implementation Office, will form a three-member panel of experts. One member of the panel will be selected by the Authorized Entity Group, one member will be selected by the Permit Oversight Group, and a third member will be selected by mutual agreement of the first two panel members. The panel may meet and confer with any of the parties regarding the matter and gather whatever available information it deems necessary and appropriate. Within 14 days of the submittal of the written positions of the parties, a non-binding recommendation will be issued by a majority of the panel, in writing, which will include a statement explaining the basis for the recommendation.

Within 14 days of the panel’s non-binding recommendation, the entity with the statutory or regulatory decision-making authority over the matter, in existing law, will consider the recommendation, as well as any other relevant information concerning the issue, and convey its final decision regarding the matter to the Authorized Entity Group and the Permit Oversight Group. The BDCP Public Review Draft identifies this as being the final stage of the dispute resolution process, with the entity having existing statutory or legal authority over the matter at-hand making the final decision. The availability of this review process provided for within the BDCP Public Review Draft is not intended to have an effect on the ability of a party to pursue legal remedies that may otherwise be available regarding a disputed matter.

The BDCP Public Draft also identifies a dispute resolution process for issues arising through the Stakeholder Council process. As provided in the BDCP Public Draft, any member of the Stakeholder Council may object to any implementation action taken by the Program Manager. Any objection of that nature must be made on the basis that the proposed or prior action will not adequately contribute to achievement of the goals and objectives of the BDCP, or is inconsistent with the requirements of the BDCP and/or the permits and authorizations.

When a member of the Stakeholder Council makes an objection to a proposal or prior action related to BDCP implementation, the Council will make reasonable efforts to resolve the dispute by general agreement. The Stakeholder Council will take action on a dispute within 60 days, and if the dispute is not resolved within the 60-day period, the issue in dispute will be elevated to the Authorized Entity Group for its consideration. If the issue remains unresolved between the Authorized Entity Group and objecting member(s) of the Stakeholder Council for more than 90 days, it will be referred for decision by the entity with primary responsibility for the matter in dispute.

The BDCP Public Draft provides that: *“This dispute resolution process, however, does not create a legal right nor does it give rise to a right of action with regards to the members of the Stakeholder Council nor may it be used by any member of the council to delay, or otherwise impede, the proper implementation of the BDCP.”*

### **Summary and Observations**

The BDCP Public Draft proposes a significant restructuring of and departure from the existing institutional governance arrangements to undertake and oversee BDCP implementation. The proposed governance model would be centralized around the Implementation Office, which would be operated by a BDCP Program Manager, who would be selected by and report to the Authorized Entity Group, representing the water exporters’ interests. Based on evaluation of the proposed governance model, decision-making framework, and dispute resolution process, it is evident that the Authorized Entity Group would have substantial authority and would be granted significant deference in the BDCP implementation process. Governance is a particularly important component of the BDCP, given that the various BDCP implementation elements and the adaptive management model to be employed following completion of the construction work for the conveyance system, would be subject to this BDCP governance framework.

### **Next Steps**

Staff is continuing to undertake its multidisciplinary evaluation and analysis of the four Delta fix options. Following staff’s review of the preliminary engineering report, more in-depth analyses of the economic issues, including sensitivity analyses on construction costs, supply yields, and rate impacts on the Water Authority will be produced.

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