

## Framework for Review of Bay Delta Conservation Plan (BDCP)

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**Requested Action:** Review, provide direction and approve Framework for Review of Bay Delta Conservation Plan (BDCP).

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### **Background**

The Bay Delta Conservation Plan (BDCP) is a major project considering large-scale improvements in water conveyance and large-scale ecosystem restorations in the Delta under the state Natural Communities Planning Act and the federal Habitat Conservation Planning Act. When completed, and if it meets certain statutory requirements, it must be incorporated into the Delta Plan.

The Delta Reform Act assigns three roles to the Council relative to the BDCP: 1) consult with the lead agency, the Department of Water Resources (DWR), on Development of the Delta Plan; 2) act as a responsible agency under the California Environmental Quality Act (CEQA) in development of the Environmental Impact Report (EIR); and 3) act as an appellate body for any appeal of the Department of Fish and Game's determination that the BDCP has met requirements spelled out in the Delta Reform Act.

In addition, the Delta Reform Act requires the Delta Independent Science Board to review the draft EIR and submit its comments to the council and the Department of Fish and Game.

The attached memo from Department of Justice Attorney Tara Mueller provides excellent foundation for understanding the Council's roles and responsibilities (Attachment 1).

At its June 2010 meeting the Council approved a process to retain an independent consulting firm to assist with its roles in BDCP. In July, the Council retained the consulting firm ARCADIS, and this firm will assist in reviewing the EIR under an existing Task Order.

### **The Council's Role in Reviewing the Administrative Draft EIR for BDCP**

BDCP is now starting to release pre-administrative drafts of various chapters of the EIR and intends to release the formal administrative draft for comments in two stages on February 27 and on May 9, each for a 30-day comment period. The BDCP expects to release the draft EIR/S for broad public comment in June.

The following is an outline what needs to be done for the Council and for the Science Board, based upon Ms. Mueller's memo and the Delta Reform Act.

1. Per CEQA rules, Council may submit comments on draft EIR regarding those activities involved in BDCP that are within an area of the Council's expertise, that are required to be carried out or approved by the Council, or that are otherwise germane to the Council's statutory responsibility.
2. Because WC Sec. 85320(b)(2), requires Council to find that the BDCP EIR "complies" with CEQA (for purposes of inclusion in the Delta Plan), the Council may make wide-ranging comments regarding the adequacy of the draft and final EIR under CEQA; however, comments must be supported by specific documentation, and should focus on shortcomings or on additional alternatives or mitigation measures (with performance objectives or appropriate reference documents)
3. Because WC Secs. 85320(b)(2)(A)-(G) further require that the BDCP EIR include specified analyses as part of its CEQA compliance, the Council's comments should focus on (but not necessarily be limited to) the adequacy of those specified analyses. In particular, whether the EIR includes a "comprehensive review and analysis" of:
  - a. a reasonable range of flow criteria, rates of diversion, and other operational criteria required to satisfy the criteria for approval under NCCPA, and other operation requirements and flows necessary for recovering the Delta ecosystem and restoring fisheries under a reasonable range of hydrologic conditions, which will identify the remaining water available for export and other beneficial uses.
  - b. a reasonable range of Delta conveyance alternatives, including through-Delta, dual conveyance, and isolated conveyance alternatives and including further capacity and design option of a lined canal, an unlined canal, and pipelines.
  - c. the potential effects of climate change, possible sea level rise up to 55 inches, and possible changes in total precipitation and runoff patterns on the conveyance alternatives and habitat restoration activities consider in the EIR.
  - d. the potential effects on migratory fish and aquatic resources.
  - e. the potential effects on Sacramento and San Joaquin River flood management.
  - f. the resilience and recovery of Delta conveyance alternatives in the event of catastrophic loss caused by earthquake or flood or other natural disaster.
  - g. the potential effects of each Delta conveyance alternative on Delta water quality.

### **The Delta Independent Science Board's Role**

In addition, the following applies to the Delta Independent Science Board:

1. WC Sec. 85320(c) requires the Board to review the draft EIR and submit comments to the Council and DFG (i.e., not as a responsible agency to DWR).
2. WC Sec. 85280(a)(3) requires the Board, generally, to provide oversight of scientific research, monitoring, and assessment programs that support adaptive management of the Delta through periodic reviews of each of those programs.
3. Consequently – although not limited by “responsible agency” role – Board comments on environmental analysis or shortcomings with a nexus to adaptive management would clearly be germane to the Board’s general statutory responsibility.
4. In addition, because the Board is required to submit comments to the Council (and not DWR), its comments — if the duration of the public comment period permits – could/should inform the Council’s comments as a responsible agency. In this regard, the Board could add scientific basis, to the Council’s comments, especially with regard on a, c, d, and g above.

Due to the length and scope of the Draft BDCP EIR, the Delta ISB is anticipating that it will need additional expert assistance to accomplish its review in the 90-day public review period that will be provided. At its January 12-13, 2012 meeting, the Board discussed using staff from ARCADIS, individual experts, and independent scientific expert review panels organized by the Delta Science Program (DSP) to assist in its review. The Delta ISB will then use the reports prepared by the independent scientific review panel to review the draft BDCP Effects Analysis and associated technical appendices. Delta Science Program staff will prepare a straw proposal outlining a Draft BDCP EIR review approach for the Delta ISB to consider at its March 2012 meeting. The DSP proposal will include topics recommended for review directly by the Delta ISB and those recommended for review by others, including individual science experts, small independent expert panels and/or ARCADIS staff. The proposal will also outline the budget associated with the recommended review approach.

### **List of Attachments**

Attachment 1: May 20, 2010 Memo from Deputy Attorney General Tara L. Mueller Re: The Delta Stewardship Council’s “Responsible Agency” Role Regarding the Bay Delta Conservation Plan

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