

## Plan to Review the Bay Delta Conservation Plan Documents and EIR/S

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**Summary:** This staff report provides an update on the plan and schedule for the Council's review of the draft BDCP and its Draft EIR/S, both by the Delta Independent Science Board and by the Council's BDCP consultant, ARCADIS, U.S. It also briefly describes a potential engineering Review of the BDCP. The Council is requested to concur with the general approach described herein, and/or provide additional instruction so the staff can focus its review.

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### **Background**

The Bay-Delta Conservation Plan (BDCP) – which began in 2006 – is intended to provide for the conservation of threatened and endangered fish species in the Delta, and to improve the reliability of the state and federal water supply systems, within a stable regulatory framework. It is both a Habitat Conservation Plan (HCP) under federal law and a Natural Community Conservation Plan (NCCP) under state law is expected to result in the issuance of long-term permits for those activities that support water supply and power generation, such as water conveyance and facility maintenance and improvements.

When adopted and approved by the federal and State fish and wildlife agencies, it is to be incorporated in the Delta Plan if it meets certain statutory criteria specified in the Delta Reform Act (DRA) (Water Code section 85320(e)).

### **EIR/S Review**

Under the Delta Reform Act (Water Code section 85320(c)-(e)), the Council has three roles relative to the BDCP: 1) to provide consultation on development of the BDCP to the Departments of Water Resources (DWR) and Fish and Game (DFG) (Water Code section 85320(c)), 2) as a responsible agency in the development of the EIR/S (also Water Code section 85320(c)), and 3) appellate jurisdiction on whether the BDCP meets the requirements of the DRA (Water Code section 85320(e)). For purposes of this staff report, we will focus on the review of the EIR/S, although to do so it is necessary to address issues with the underlying Plan itself.

Under the Act, DFG must determine whether the BDCP meets the provisions of Water Code section 85320(b)(2) before BDCP can be incorporated in the Delta Plan and is eligible for public funding. A key provision of this section is whether the BDCP meets the Natural Community Conservation Planning Act (NCCPA) and the California Environmental Quality Act (CEQA) (including an analysis of seven specified issues). If DFG determines that BDCP met these requirements, and BDCP has been approved as a habitat conservation plan pursuant to the federal Endangered Species Act, the council shall incorporate the BDCP into the Delta Plan (Water Code section 85320(e)). However, DFG's determination that the BDCP has met these requirements can be appealed to the Council.

In fulfilling its responsible agency role, the Council will utilize the services of ARCADIS in providing the Council with technical and other expert advice and assistance to answer the following questions:

- 1) CEQA: Adequate Analysis of Seven Specified Issues. Does BDCP adequately address in its EIR/S the seven specified requirements of Water Code section 85320(b)(2)(A)-(G); e.g., has BDCP adequately reviewed and analyzed an adequate range of alternatives and impacts of various diversion options?
- 2) CEQA: Adequate Mitigation. Does the EIR/S propose adequate mitigation of impacts to, among other things, the unique values of the Delta as an evolving place, especially agricultural resources, recreation and related attributes, such as aesthetics and historic sites, and land use?
- 3) NCCP: Adequate Conservation Measures. Are there enough specifics on conservation measures other than conveyance to assure that the plan meets the requirements for an NCCP?
- 4) NCCP: Adequate Financing. Is there adequate assurance of financing for habitat restoration and mitigating other stressors, as well as conveyance? How will the financing plan affect the price and demand for the water diverted from the Delta? How does the financing plan consider costs of other actions to provide a more reliable water supply, such as additional storage projects or local water management actions, or to restore the Delta ecosystem, such as the costs of anadromous fish recovery plans or wetland and riparian area management programs.
- 5) NCCP: Adequate Governance. Does the BDCP governance structure improve clarity for Delta decision making, including monitoring and adaptive management? Is it or can it be adequately integrated with other elements of the Delta Plan, including its policies, recommendations, performance measures, and implementing regulations. Also, does the governance structure reasonably coordinate governance with a comprehensive science program?

The Delta Independent Science Board (ISB) will also review the EIR/S, as required under Water Code section 85320(c), and provide its comments to the Council and to the Department of Fish and Game. The Council's Lead Scientist has drafted a charge for detailing the questions the Delta ISB will address in their review. The Delta ISB will utilize the Delta Science Program BDCP Effects Analysis Review Panel reports and may look to consultants to help support their review. To enhance the efficiency of the Council's review, ARCADIS' review will endeavor to complement, rather than duplicate, the review by the Delta ISB. The Delta ISB's review is the subject of another staff report prepared by the Delta Science Program.

In addition, the Delta Science Program has proposed to conduct an independent engineering review of the BDCP design. The purpose of the review will be to examine issues related to engineering aspects of the proposed conveyance facility that have been raised by various parties. The engineering panel would consist of internationally-recognized experts to be convened by the Council, possibly in cooperation with the Delta ISB. Discussions with DWR and USBR regarding this proposal are ongoing.

### **Review Schedule**

The Resources Agency indicates the EIR/S may be circulated for public review and comment sometime prior to the end of this year. While CEQA requires a minimum 45-day comment period, at this time it is anticipated that the comment period will be at least 90 days. The EIR/S is expected to be several thousand pages in length, and reviewing it in detail and providing comments within 90 days will be very difficult. Based on our current understanding, the following is a model of what a schedule to produce comments on the EIR/S after the release of the documents may look like if only 90 days are provided.

- Day 1: The BDCP Draft EIR/S is released. ARCADIS will immediately begin to review the document and work with Council staff to develop “responsible agency” comments for consideration by the Council.
- Day 60: ARCADIS will provide final assistance to staff with regard to draft comments on the EIR/S. Staff will work closely with ARCADIS on comment format and identify those comments that are most critical.
- Day 70: Staff will provide proposed comments to the Council for its consideration. The Council will have 20 days to review comments and direct changes.
- Day 90: Staff will finalize comments per Council direction and transmit to BDCP.

The above model assumes a very expeditious consideration of the comments by the Council. In order to achieve this, staff recommends the Council appoint a subcommittee to review the comments and recommend edits on behalf of the Council. The Council will be provided with the edited version at one of its scheduled meetings.

### **List of Attachments**

Attachment 1: Memo from Deputy Attorney General Tara Mueller dated May 20, 2012 (“The Delta Stewardship Council’s ‘Responsible Agency’ Role Regarding the Bay Delta Conservation Plan”)

### **Contact**

Carl Lischeske, P.E.; Lead Engineer  
Delta Stewardship Council

Phone: (916) 445-5891