

## Bay Delta Conservation Plan – Adaptive Management and Governance

---

**Summary:** The Natural Resources Agency and the Department of Water Resources (DWR) have announced they will be releasing the final draft of the Bay Delta Conservation Plan (BDCP) soon, following a review of the BDCP by the federal permitting agencies. In addition to the release of the BDCP, DWR will release a public review draft of the BDCP's associated Environmental Impact Report/Environmental Impact Statement (EIR/S). The Council, as a CEQA responsible agency, will be commenting on the BDCP's draft EIR. This information item, the second of several to be presented to the Council over the coming months, is provided in anticipation of the release of these documents and includes an overview of the BDCP's adaptive management program and provisions of its governance. Discussion of the BDCP's finance provisions, which staff had been previously intended to include in today's discussion, will be deferred to a future hearing.

---

### **Background**

The BDCP is being developed as a 50-year Natural Community Conservation Plan (NCCP) with the goals of recovering the Delta's endangered or threatened species and securing long-term permits to continue state and federal operating water projects. Both would be accomplished by establishing parameters for operating those projects, and by restoring wildlife and fish habitats in and around the Delta. If the BDCP meets the requirements of the California Environmental Quality Act (CEQA), and the California Natural Community Conservation Planning Act (NCCPA), as well as the requirements set forth in the Delta Reform Act, the BDCP will be incorporated into the Delta Plan and will play a key role in achieving the goals of providing a more reliable water supply for California and protecting, restoring, and enhancing the Delta's ecosystem. These legal requirements are summarized in Attachment 1.

An administrative draft of both the BDCP and its EIR/S were released this past spring. These administrative draft documents were works in progress and may not be reflective of the final draft BDCP or its EIR/S. The Delta Reform Act designates the Council as a responsible agency in the development of the BDCP's EIR/S, providing a formal opportunity for the Council (informed by comments from the DISB) to comment on the draft plan and its environmental impacts when they are released this fall. The Act also gave the Council a consultative role with regard to plan development, and a possible appellate role with regard to BDCP satisfaction of specified criteria for purposes of incorporation into the Delta Plan.

Because the BDCP, once successfully completed and approved, will be incorporated into the Delta Plan, recommendations about how the implementation of the BDCP will be governed and how it will be coordinated with other actions recommended in the

Delta Plan are potentially important to the effectiveness of both plans. In adopting the Delta Reform Act, the Legislature intended to ‘... establish a governance structure that directs efforts across state agencies to develop a legally enforceable Delta Plan’ (Water Code Section 85001(c)). It also declared that inherent in the law’s coequal goals is “... establishing a new governance structure with the authority, responsibility, accountability, scientific support, and adequate and secure funding” to achieve the law’s objectives (Water Code Section 85020). The Council, the Delta Plan, the BDCP, and the Delta Science Program are key elements of that governance structure.

### **Adaptive management of the BDCP**

The Delta Reform Act requires that the Delta Plan include a science based, transparent, and formal adaptive management strategy for ongoing ecosystem restoration and water management decisions (Water Code Section 85308f). This strategy is described in the Delta Plan’s Chapter 2 and is carried out, in part, through the provisions of Section 5002(b)(4) of the Council’s regulations. As an NCCP, the BDCP is also required to include an adaptive management program.

The BDCP’s 22 conservation measures (CMs), including its two new tunnels to convey water through the Delta for diversion to water users, are intended to further science-based biological goals and objectives that the BDCP establishes for each of the animal or plant species covered by the plan. The BDCP recognizes the considerable uncertainty that exists regarding the understanding of the Delta ecosystem and the likely outcomes of implementing the conservation measures. To address this uncertainty, the BDCP’s adaptive management and monitoring program is designed to accomplish three tasks:

1. Confirm Plan implementation;
2. Measure the efficacy of the conservation measures in achieving the biological goals and objectives; and,
3. Use new information and insight gained during the Plan’s implementation to develop and potentially implement alternative strategies to achieve the biological goals and objectives.

The BDCP’s monitoring and research programs are ambitious. The BDCP lists more than 100 monitoring actions to track permit compliance and the conservation measures’ outcomes. A dozen of these can be at least partly supplemented by existing programs underway through the Interagency Ecological Program or other efforts. Eighty-five potential research actions are also proposed to address uncertainties about the conservation measures or the effects.

The BDCP’s adaptive management program is consistent with the three-phase approach of the Delta Plan. It was guided by advice from the Council’s former Lead Scientist, reports of the National Research Council, and other independent advice. It appears well integrated with programs recommended by the Delta Science Plan, including its protocols for science synthesis and peer review. The Independent Science

Board's role in periodically reviewing the research, monitoring, and evaluation of the BDCP's adaptive management program is acknowledged.

To administer the adaptive management and monitoring program, the BDCP proposes to establish a nine-member adaptive management team composed of representatives of the Department of Water Resources, the Bureau of Reclamation, the State and Federal Water Contractors' Agency science manager, the Department of Fish and Wildlife, the US Fish and Wildlife Service, National Marine Fisheries Service, the Interagency Ecological Program lead scientist, the director of NOAA's Southwest Fishery Science Center and, as a non-voting member, the Delta Science Program's Lead Scientist. The adaptive management team will meet publically at least quarterly. The team is responsible for recommending whether adaptive changes of the BDCP's goals, objectives, or conservation measures are advisable. It will operate by consensus. Its adaptive management recommendations require approval of the Authorized Entity Group (e.g., the state and federal water agencies) and the Permit Oversight Group (the state and federal fish agencies).

The adaptive management program, including its monitoring and research actions, is critical to the BDCP's success and the Delta Plan's ability to further the co-equal goals. As Natural Resources Agency Undersecretary Jerry Meral explained to the Council in February, the adaptive management program will affect both water consumers around the state and the plan's success in achieving its goals for recovering Delta wildlife and fish. Billions of dollars of infrastructure and many millions of dollars to implementation expense may be affected by the program. As one example, the Natural Resources' Agency's August presentation to the Council noted that the potential to divert up to 900,000 acre feet of water will be determined using the BDCP's decision tree, which will be based partly on what monitoring reveals about habitat restorations' contributions to the recovery of native fish.

As the Council receives today's briefing, staff suggests it consider the following questions:

- Are there opportunities to better coordinate the BDCP's adaptive management program with the Delta Plan's other provisions for adaptive management and science?
- Should the BDCP consider extending its monitoring beyond effects on covered species to consider the efficacy of measures to mitigate adverse impacts on agriculture, recreation, historic and cultural resources, or the other unique values of 'the Delta as a place' that are recognized in the Delta Plan?
- Can the adaptive management team, with its disparate membership and diverse goals, operate by consensus effectively?

Later, when the BDCP's finances are discussed, funding for the monitoring and adaptive management can be considered.

## **BDCP Governance**

Natural Resources Agency Undersecretary Jerry Meral's February briefing to the Council on proposed governance of the BDCP emphasized how the BDCP's proposals meshed with the administrative features of other elements of the Delta Plan. Dr. Meral explained that the draft BDCP implementation structure calls for creation of an **Implementation Office**, overseen by a **Program Manager**, to address planning, budgeting, sequencing, scheduling of the BDCP's implementation, and coordinating with the Delta Stewardship Council and others. The Program Manager "will seek to ensure that the funding commitments set out in the BDCP and its Implementation Agreement are being met." The Implementation Office may act directly or through others to implement conservation measures to protect, enhance, or restore habitats called for in the BDCP and will oversee management and maintenance of conservation lands acquired by the BDCP.

Recently, a report by the Legislative Analyst's Office (LAO) examined the governance of the BDCP (Attachment 2). The LAO observed that the Implementation Office will have no statutory authority over other agencies whose cooperation to carry out the BDCP is essential. Nor will the Implementation Office have any contracting authority, but will need to work through the authorities of the water agencies to administer the BDCP's implementation. The Program Manager is responsible for coordinating the expenditure of funds for the BDCP, but "in most instances DWR and the Bureau of Reclamation serve as the fiscal agents, consistent with their existing agency authorities, for the expenditure of funds by the Implementation Office, from both public and private sources, to support implementation actions."

The LAO's questions about the proposed BDCP governance structure touch the core of the Delta Reform Act's intention to establish a new governance with adequate authority, responsibility, and accountability to achieve the co-equal goals for the Delta. Post mortems on the CALFED Bay-Delta era note the Bay-Delta Authority's difficulty to exercise its responsibility for the program without any authority to direct actions of the participating agencies. The Delta Reform Act's requirement for a legally enforceable Delta Plan and governance that directs efforts across state agencies is intended to cure that weakness.

As the Council receives today's briefing, staff suggests it consider the following questions:

- Are there opportunities it would recommend to further enhance the authority of the implementation office within the BDCP structure?

- After the BDCP has been successfully completed and approved, are there opportunities to enhance BDCP's governance as it is incorporated into the Delta Plan by employing the Council's authority to adopt regulations enter into contracts, request reports (Water Code Section 85210), and review Delta actions' consistency with the Delta Plan (Water Code Section 85225-85225.25)?

### **List of Attachments**

Attachment 1: Water Code Section 85320 Requirements for Incorporation of BDCP into Delta Plan

Attachment 2: Governance and Financing of the Bay Delta Conservation Plan (Legislative Analyst's Office, August 13, 2013)

### **Contact**

Dan Ray  
Chief Deputy Executive Officer

Phone: (916) 445-5511