

## Bay Delta Conservation Plan Update

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**Summary:** Bay Delta Conservation Plan (BDCP): A refresher on the requirements for incorporation into the Delta Plan and the Council's roles and responsibilities. This will be followed by an update on the BDCP process from a representative of the BDCP.

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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 improve the reliability of the water supply system within a stable regulatory framework. It is intended to be both a Habitat Conservation Plan under federal law and a Natural Community Conservation Plan under state law (Attachment 1 is a Summary Paper on Natural Community Conservation Plans, Habitat Conservation Plans, and the BDCP, prepared by the Department of Fish and Game, June 2010). When adopted and approved by the federal and state fisheries agencies, it 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.

On July 25, 2012, Governor Brown, U.S. Secretary of the Interior, Ken Salazar, and NOAA Assistant Administrator for Fisheries, Eric Schwaab, announced a path forward for an "enhanced" or "revised" BDCP process. A joint state/federal press statement, and a working draft set of joint recommendations regarding key elements of the BDCP (dated July 16, 2012) are included as Attachments 2 and 3, respectively. On July 26, 2012, Chair Isenberg issued his own media advisory in response to the BDCP announcement, which is included as Attachment 4.

In light of this joint announcement on the BDCP, it is timely to provide to the Council a brief "refresher" on the requirements set forth in the Delta Reform Act for incorporation of the BDCP into the Delta Plan and the various roles and responsibilities assigned to the Council with regard to the BDCP. [Immediately following, a representative from the BDCP will give an update on the enhanced BDCP process and a timeline for moving towards successful completion.]

### What the Delta Reform Act says about the BDCP and its relationship to the Delta Plan and the Council

Water Code Section 85320, is most pertinent for these purposes, and is set forth in full in Attachment 5.

In particular, Section 85320(e), provides that the Council shall incorporate the BDCP into the Delta Plan if:

- (1) The Department of Fish and Game (DFG) approves the BDCP as a Natural Community Conservation Plan.
- (2) DFG determines that the BDCP meets the requirements of Section 85320.
- (3) BDCP has been approved as a Habitat Conservation Plan under federal law.

Section 85320(b), in turn, provides that the BDCP shall not be incorporated into the Delta Plan and public benefits associated with the BDCP shall not be eligible for state funding unless the BDCP:

- (1) Complies with the NCCPA.
- (2) Complies with CEQA, including comprehensive review and analysis of seven specifically described items concerning:
  - flow/operational criteria
  - conveyance alternatives
  - climate change
  - fish/aquatic resources
  - flood management
  - natural disasters
  - Delta water quality

Finally with regard to possible incorporation, Section 85320(e) provides that DFG's determination that the BDCP meets the requirements of Section 85320 may be appealed to the Council. The Council's "Administrative Procedures Governing Appeals", adopted as state regulations on September 23, 2010, provide a process for hearing any such appeal.

Section 85320(c) assigns two additional roles and responsibilities to the Council with regard to the BDCP - first, as a Responsible Agency for BDCP's EIR/S (included as Attachment 6 is a memo dated May 20, 2010 from Deputy Attorney General Tara Mueller on this subject); and second, as a consulting agency to DWR during the development of the BDCP. The ISB is assigned similar responsibilities. The Council in 2010 retained the services of Arcadis, to provide assistance with these roles, and staff will update the Council on plans for the EIR review closer to its release date later this fall.

### **List of Attachments**

- Attachment 1: DFG Summary Paper on NCCPs, HCPs, and BDCP, June 2010
- Attachment 2: Joint State/Federal Press Release dated July 25, 2012
- Attachment 3: Joint State/Federal Recommendations Regarding Key Elements of the BDCP dated July 16, 2012
- Attachment 4: Media Advisory from Chair Isenberg dated July 26, 2012
- Attachment 5: Text of Water Code Section 85320
- Attachment 6: Memo from Deputy AG Tara Mueller dated May 20, 2010 ("The Delta Stewardship Council's 'Responsible Agency' Role Regarding the Bay Delta Conservation Plan")

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