

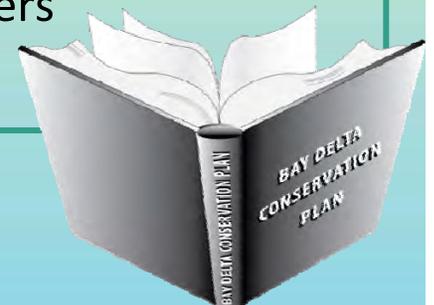
Timeline of Plan Development

- **Planning Agreement – 2006**
 - Established dual goals of the plan
- **Options Evaluation – 2006/07**
 - Coarse level evaluation of approaches to the conservation strategy
 - Evaluated 4 options:
 - Existing thru-Delta conveyance
 - Improved thru-Delta conveyance
 - Dual conveyance
 - Isolated conveyance
- **Points of Agreement Document – 2007**
 - Identified dual conveyance as most promising approach
 - Acknowledged key aspects of water facility design, operation, and governance essential to desired fishery and water supply outcomes

Timeline of Plan Development

- Overview of Draft Conservation Strategy – Feb. 2009
- Preliminary Draft Conservation Strategy – Aug. 2009
- Ongoing iterations of other plan elements

- Ch. 1. Introduction
- Ch. 2. Existing Ecological Conditions
- Ch. 3. Conservation Strategy
- Ch. 4. Description of Covered Activities
- Ch. 5. Assessment of Impacts and Level of Take
- Ch. 6. Plan Implementation
- Ch. 7. Implementation Structure
- Ch. 8. Implementation Costs and Funding
- Ch. 9. Alternatives Considered and Rejected
- Ch. 10. Independent Science Advisory Process
- Ch. 11. List of Preparers
- Ch. 12. References



Independent Science Input

Ongoing throughout preparation of draft BDCP

Panel of experts engaged in 3 ways:

Independent Science Reports – around key topics

BDCP Conservation Principles -- Nov 2007

Non-aquatic Resources – Nov 2008

Adaptive Management – Feb 2009

Small working groups

Consultations with individual experts

Covered Species

- Delta smelt
- Longfin smelt
- Chinook Salmon
 - winter, spring, fall and late fall
- Green and white sturgeon
- Central valley steelhead
- Sacramento splittail
- 48 terrestrial species
(Giant garter snake, Swainson's hawk,
Burrowing owl, others)



Aquatic Conservation Measures

Biological Goals & Objectives For Covered Fish Species

- Improve survival
- Improve fitness
- Improve distribution
- Improve growth rate
- Decrease mortality

Habitat Restoration Conservation Actions

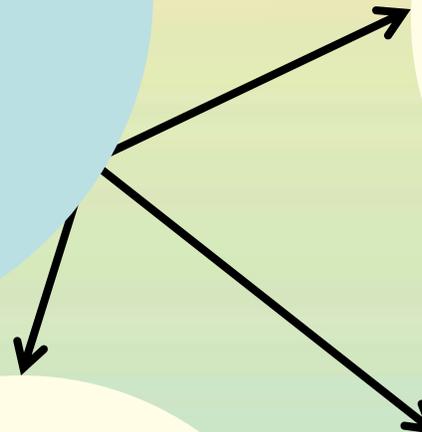
- Phytoplankton and
zooplankton (fish food)
- Spawning and rearing

Other Stressors Conservation Actions

- Reduce contaminants
- Reduce predation effects
- Improve fish passage
- Reduce Disease
- Reduce non-natives

Water Operations Conservation Actions

- Improve water quality
- Reduce entrainment
- Improve water flow and
habitat conditions

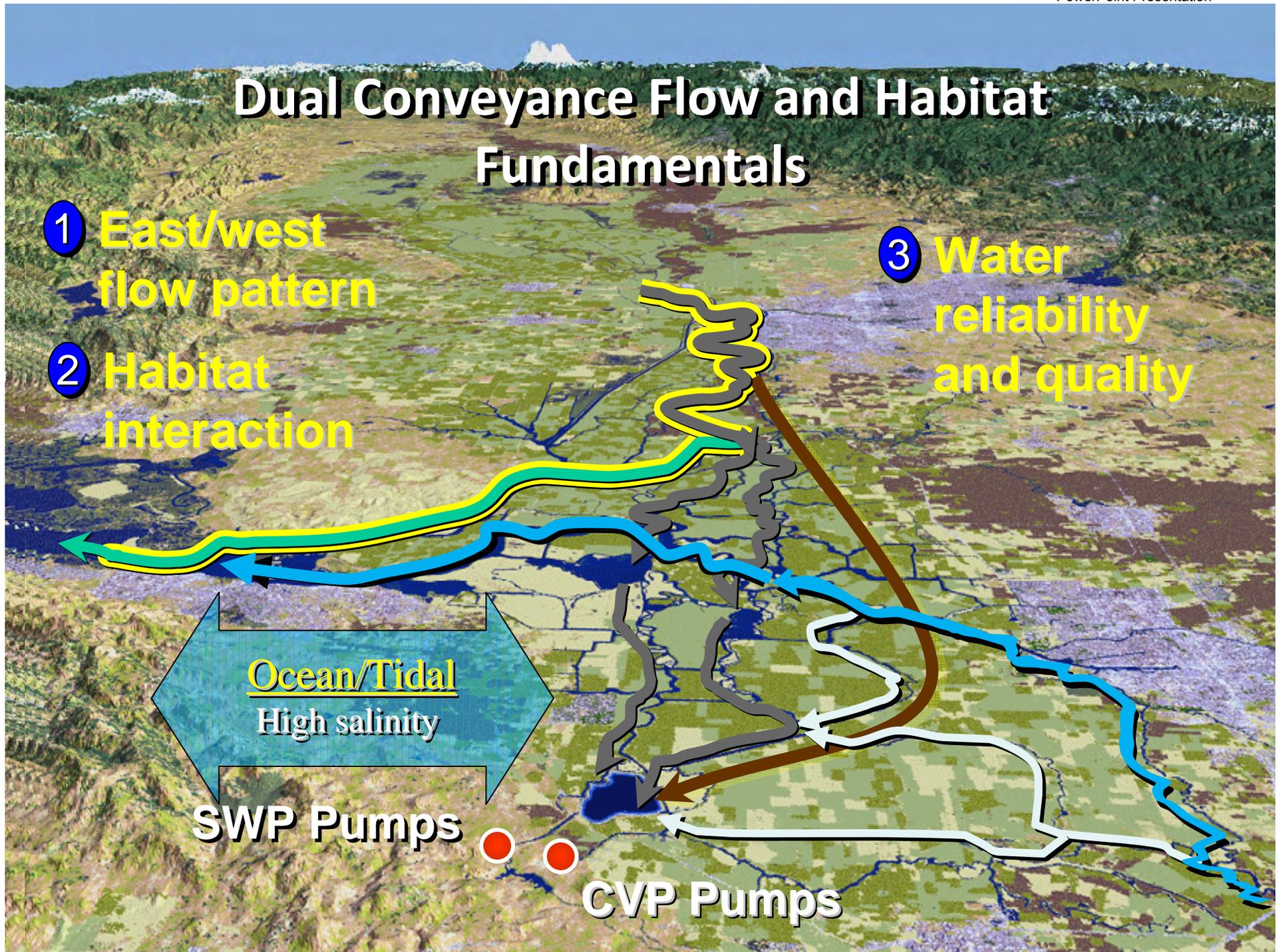


Dual Conveyance Flow and Habitat Fundamentals

① East/west flow pattern

② Habitat interaction

③ Water reliability and quality



SWP Pumps

CVP Pumps

Draft Conservation Strategy – Major Elements

Habitat Restoration

- **Up to 80,000 acres tidal marsh, riparian, and floodplain**
- **Enhanced floodplain in the Yolo Bypass-temporary inundation**
- **20-40 linear miles channel restoration**
- **Approx. 45,000 acres of terrestrial habitat (grasslands, etc) for additional plant & wildlife species needs**

Water Facilities & Operations

- **North Delta diversion**
 - Potential conveyance design capacity of 15,000 cfs w/ 5 intakes
 - Tunnel/Pipeline subject of focused study in BDCP
 - Minimum flows to ensure healthy habitat and water quality
 - Sacramento River flows are always greater than exports
- **Near-term operations**

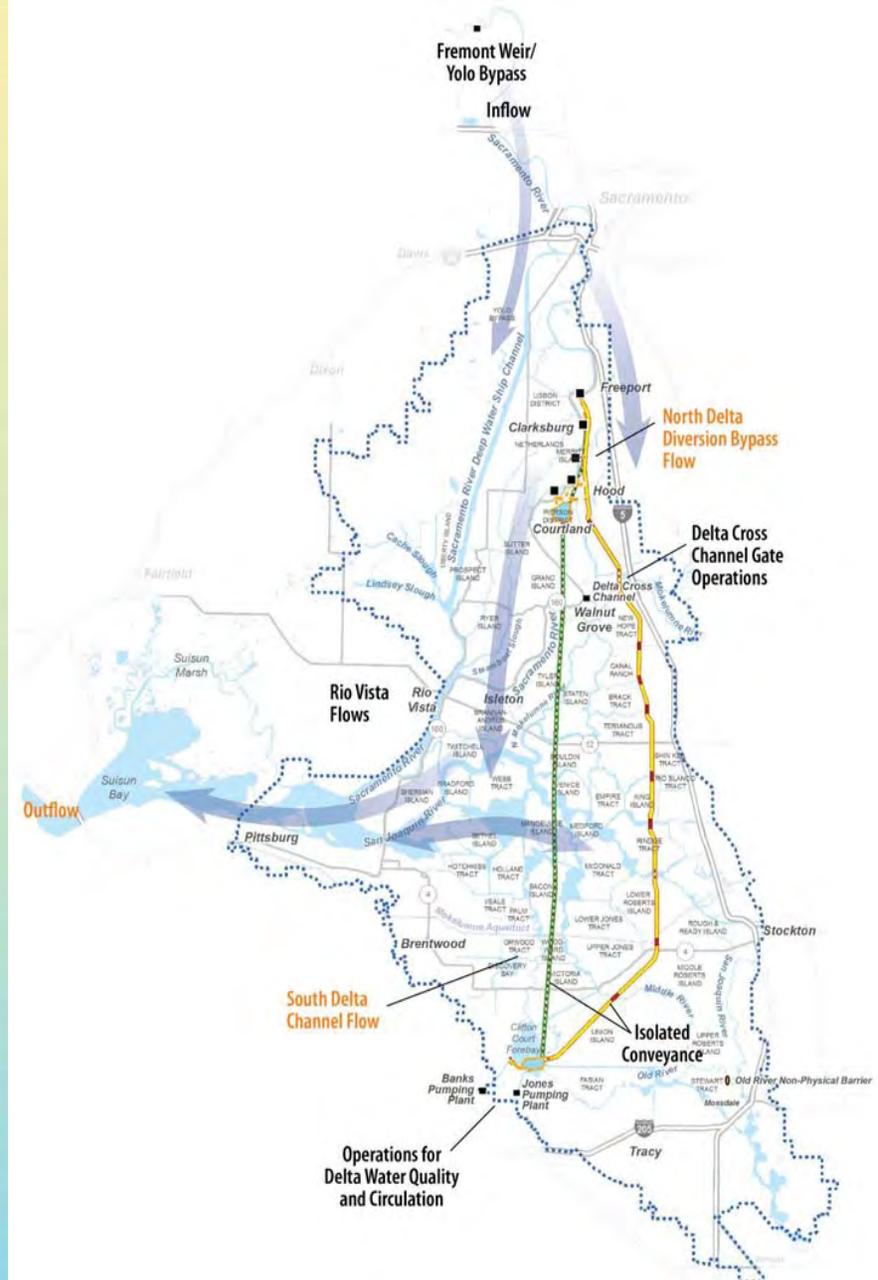
Other Stressors

- Reduce methylmercury
- Remove non-native aquatic plants
- Reduce illegal harvest
- Establish hatchery and genetic management plans
- Support Delta and longfin smelt propagation programs
- Reduce predators
- Construct non-physical barriers to re-direct juvenile salmonids

Draft Conservation Strategy - Flows

Ways that BDCP intends to help fish and their habitats through operations:

1. Provide increased operational flexibility to be more protective of fish as the move through and use Delta habitat
2. Continued strategic operation of pumps in south Delta to help maintain in-Delta water quality, but reduce fish impacts of south Delta water diversions
3. Protect fish with state-of-the-art fish screens
4. Re-connect aquatic habitats



Draft Conservation Strategy - Flows

Inflow requirements

Outflow requirements and management of X2

Assure adequate net flow at Rio Vista

Modify Delta Cross Channel gate operations

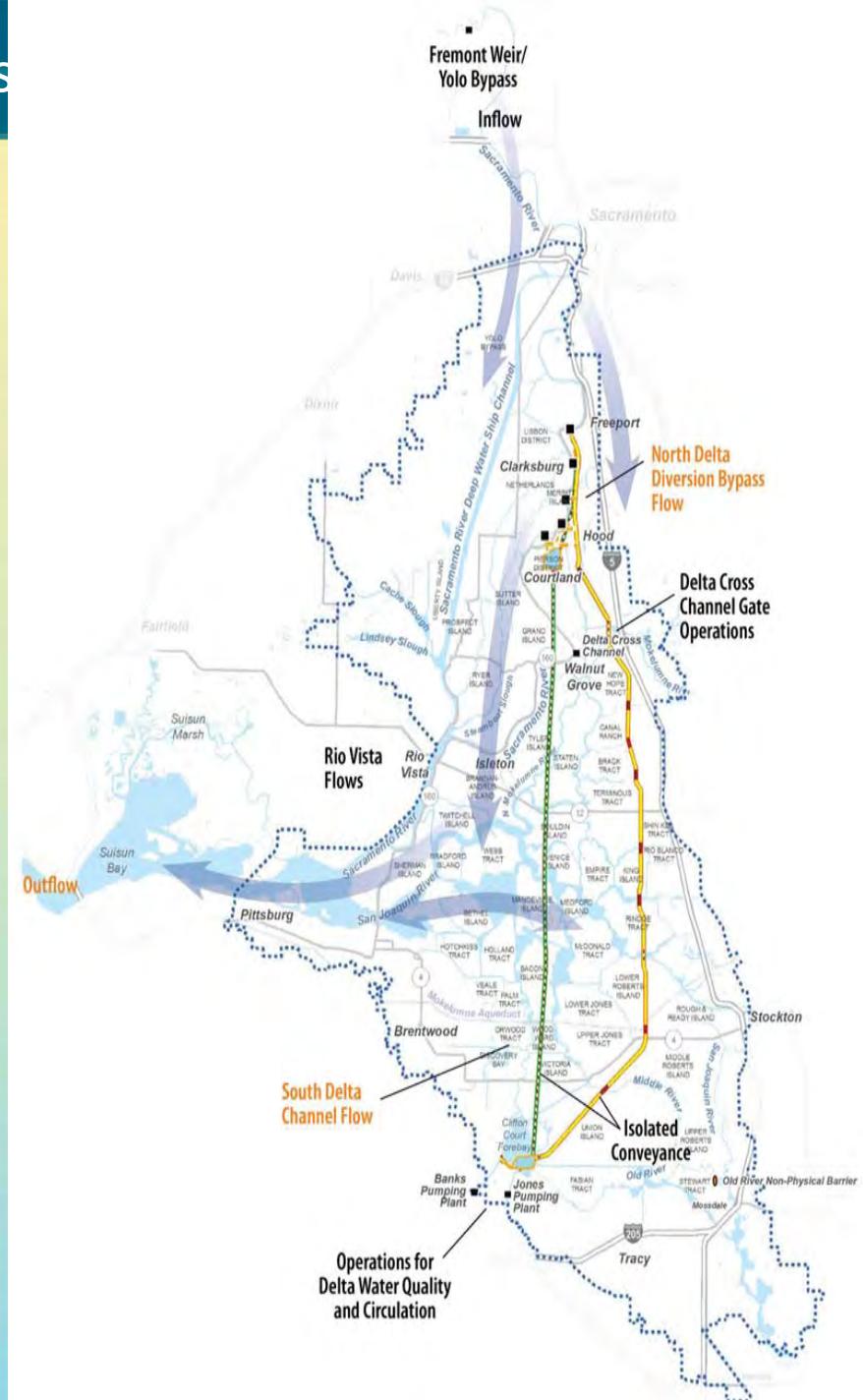
Ratio between San Joaquin River inflow and South Delta exports

Maintain protective Old and Middle River flows

Preferentially use North Delta diversions

New North Delta diversion bypass flows

Water quality standards set forth in State Board rule D-1641



Channel Margin – 20 to 40 linear miles

Floodplain (new) – up to 10,000 acres

Floodplain (enhanced existing)

Tidal Marsh – up to 65,000 acres

Riparian – 5,000 acres

Other Terrestrial Habitat – 45,000 acres (within the planning area)

Potential Tunnel/Canal Conveyance

15,000 cfs Tunnel:

- 35 miles twin bore 33' ID, +/- 150' deep
- Intake tunnel 8 miles single bore 23' – 33' ID
- 750 acre forebay in the north

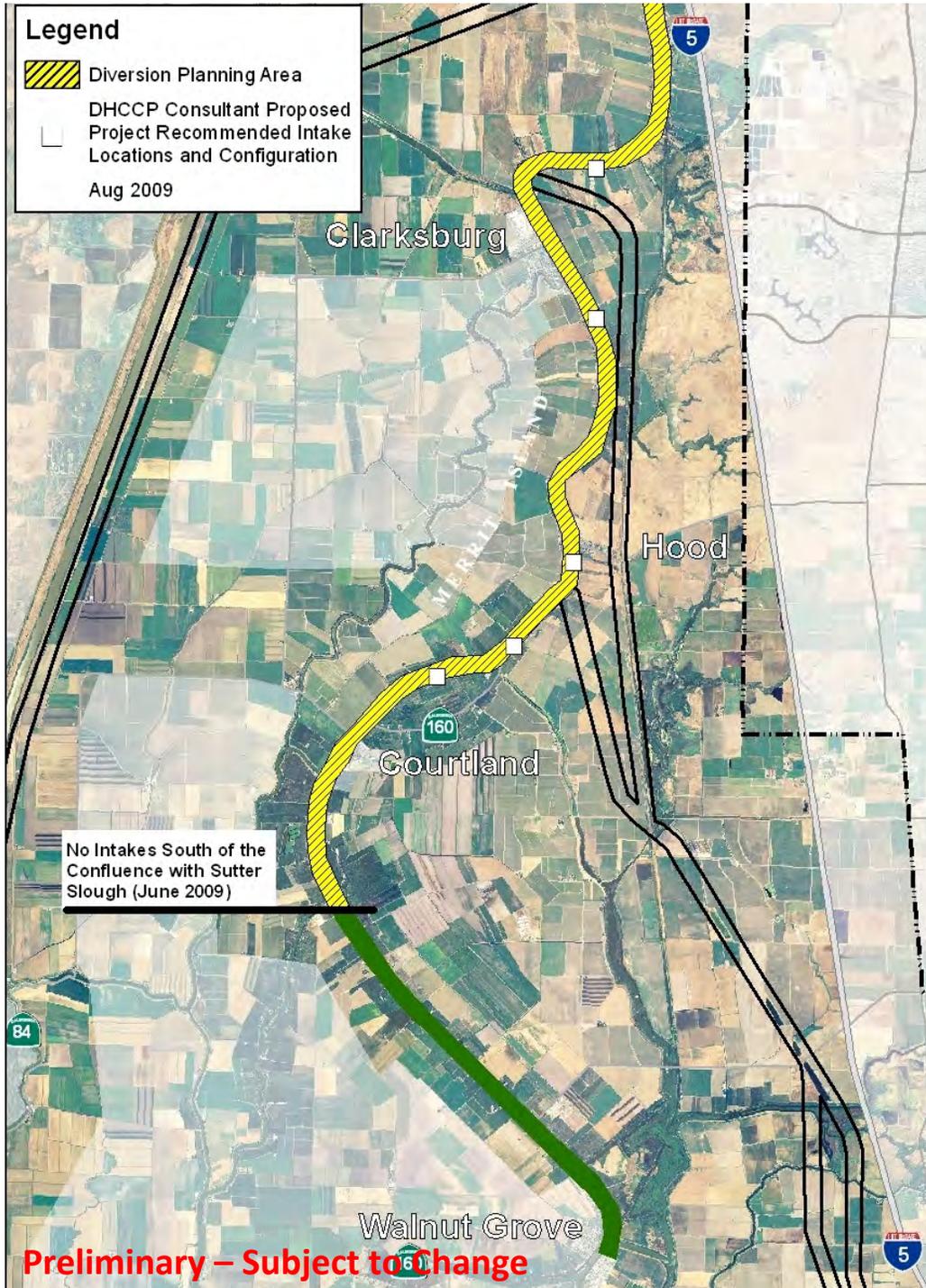
15,000 cfs Canal:

- 40 miles of canal, 1,400' footprint
- 4 tunnels (2 miles total in length)
- 8 siphons
- Forebay with 620 acres of water surface area

Potential Habitat Restoration



Intake Site Considerations



1. Up to 5 in-river intakes at 3,000 cfs capacity each
2. Avoid high population density areas
3. Upstream locations more suitable locations for improved smelt avoidance
4. Upstream locations provide reduced tidal influence for:
 - Improved screen sweeping velocities
 - Increased diversion operating periods
 - Improved water quality
5. Several downstream locations could favor out-migrating salmon

Terrestrial Natural Communities & Species

- 48 Species for Coverage
- Total Terrestrial Restoration Target approx 101,000 – 115,000 acres
- 70,000 acres tidal marsh/riparian restoration for aquatic species also supports 28 terrestrial species
- Propose additional approx 45,000 acres.
- Natural Communities
 - Vernal Pool – 500 acres
 - Non-Tidal Aquatic and Wetland – 400 acres
 - Agricultural Habitat Landscapes – 16,000-33,000 acres
 - Grasslands and Associated Wetlands (eg Alkali Seasonal, Vernal Pool) -16,000 acres

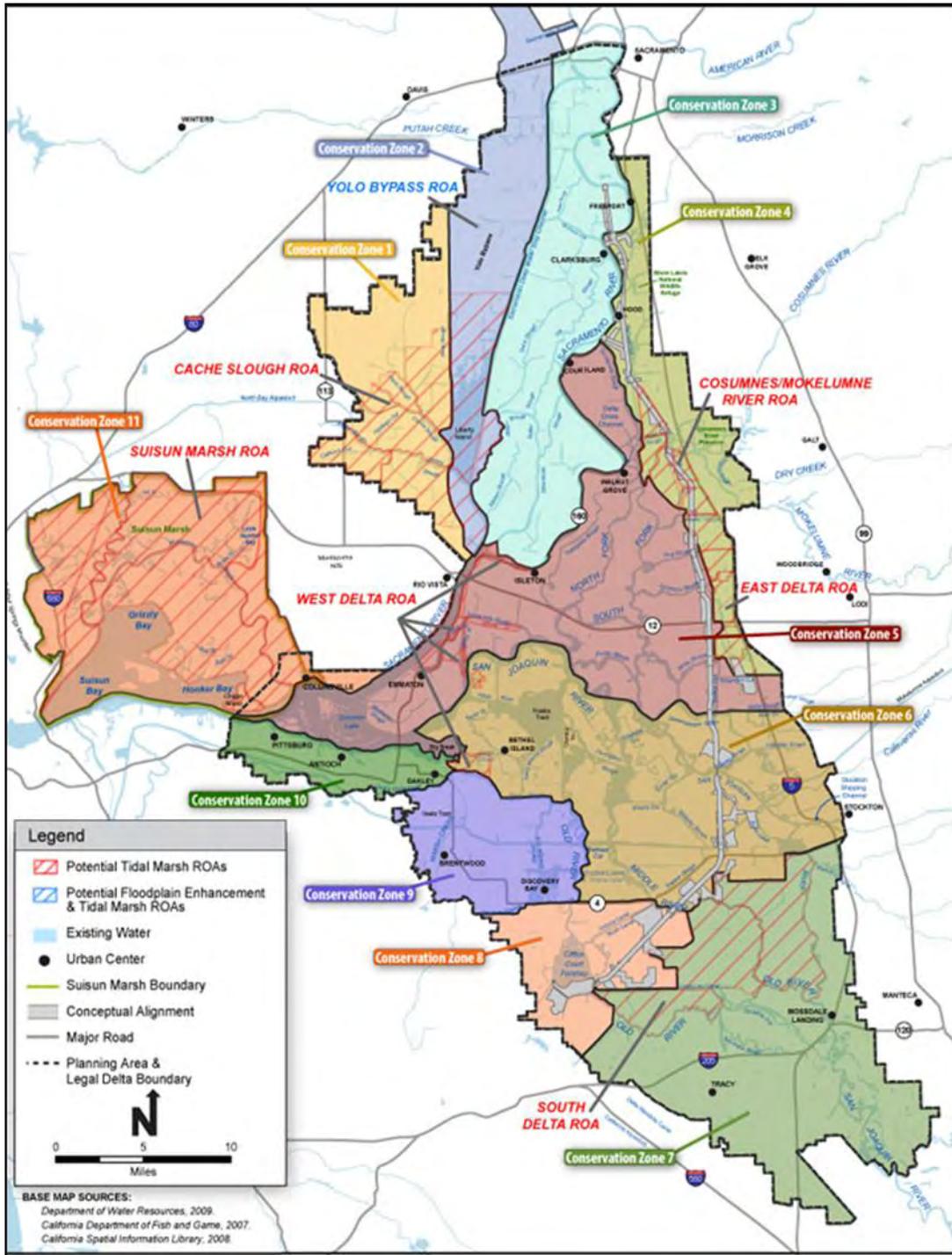
Terrestrial Communities & Conservation Zones

Based on distribution of physical and biological conditions

Used to distribute preserved and restored communities to meet covered species objectives

Ability to achieve multiple habitat objectives on the same land base

No minimum targets for conservation zones



Key Issues

- Ongoing analysis to determine effects of plan on fish and wildlife species
 - Refine/determine proposed conservation measures
- Determine design aspects of facilities
 - Tunnel or canal
 - Sizing – evaluation under way of 6,000, 12,000, 15,000 cfs
 - Number of intakes
- Near-term water operations
- Refine initial approaches to habitat restoration
 - Work with Counties and Reclamation Districts on compatibility with existing and planned future land uses; integrating with other Delta conservation efforts
- Determine what gets implemented when during 50-year planning horizon
- Cost and financing of conveyance, habitat restoration, and other stressor measures
- Governance structure

Public Input

- Ongoing Steering Committee Meetings – Open to the Public
- Delta Community Workshops Held in 2009
 - Technical focus on draft conservation strategy
- Stakeholder Briefings
 - Local jurisdictions
 - Recreational interests
 - Water users
 - Agriculture
 - Tribes
 - Environmental Justice communities
- Public Draft Conservation Plan - Public Draft EIR/EIS – Early 2011

Environmental Review Process

PROPOSED ACTION: BAY DELTA CONSERVATION PLAN

California Environmental Quality Act



Environmental Impact Report

National Environmental Policy Act



Environmental Impact Statement

EIR/EIS PROCESS

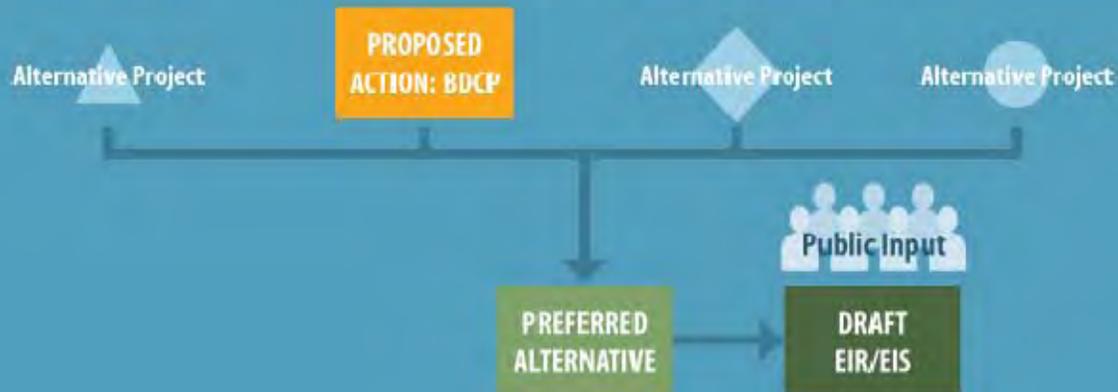
Conduct environmental analysis



Lead Agencies • Staff/Consultants



Public Input
Scoping Meetings



EIR/EIS

Delta Stewardship Council DHCCP Overview

Chuck Gardner
Program Manager

Delta Habitat Conservation and Conveyance Program
Advancing the Bay Delta Conservation Plan



**DHCCP
TEAM**

A Primary Goal of the DHCCP is Going from Plan to Permits

BDCP Develops HCP Proposed Project
(Includes habitat plan and conveyance)



DHCCP Develops project design and EIR/EIS



Issuance of Permits
(Record of Decision /
Notice of Determination)

Bay Delta Activities

Delta Habitat Conservation and Conveyance Program (DHCCP)

- Initiated 2008 in response to the Governor's call to address water supply and the environmental crisis in the Delta
- Preliminary design of conservation measures including conveyance facilities
- Programmatic assessment of restoration
- Preparation of EIR/EIS



DHCCP Objectives

- Develop engineering designs for habitat restoration and conveyance facilities
- Analyze the Proposed BDCP Plan and alternatives through a formal EIR/EIS process
- Identify the preferred alternative
- Complete the Record of Decision (ROD) and Notice of Determination (NOD)

NEPA/CEQA Lead Agencies

- *USFWS*
- *Reclamation*
- *NOAA Fisheries*
- *DWR*

Other Regulatory Agencies

- *EPA*
- *SWRCB*
- *USACE*
- *DFG*

DHCCP Responsible Agencies

Under CEQA - a public agency with discretionary approval authority over that portion of a project under its regulatory jurisdiction

- DFG
- SWRCB
- APD
- Caltrans
- Various irrigation districts
- EPA
- Water users JPA
- Delta Stewardship Council

DSC is invited to work with the Lead Agencies and review and make comments on the draft EIR relative to its discretionary approval authority.

DHCCP Accomplishments

Environmental Documentation

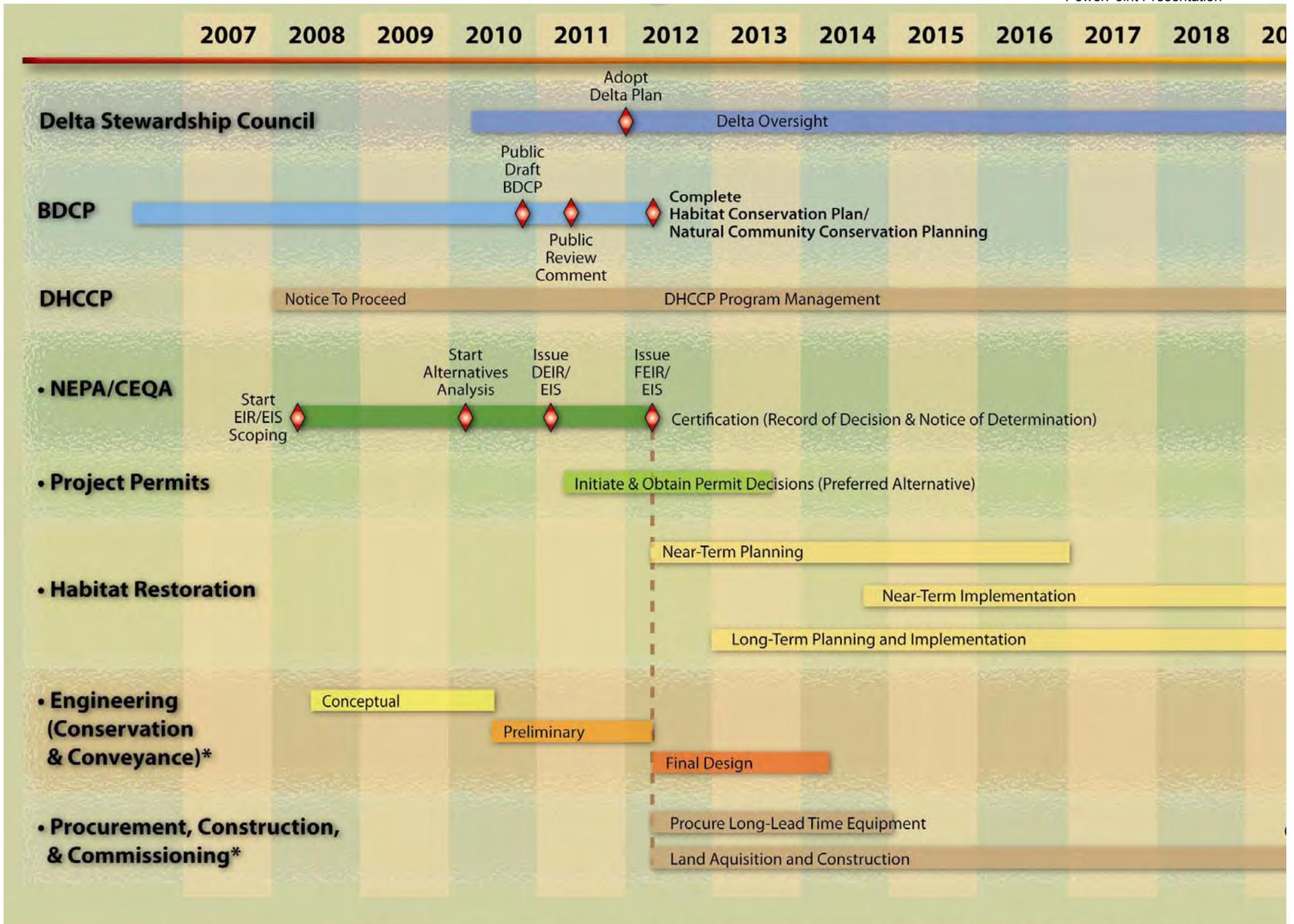
- ✓ Public Scoping Report
- ✓ Biological Resources Surveys
- ✓ Permitting Handbook
- ✓ Documented Affected Environment
- ✓ Baseline Models Developed
- ✓ Initial Screening of Alternatives is Underway

Engineering Design

- ✓ Original Conceptual Engineering Design Completed
- ✓ Intake Design Options
- ✓ Preliminary Cost Estimates

Scoping

- 2008 Scoping
 - 10 Meetings
 - 498 Registered Attendees
 - 123 Letters
 - 94 Verbal Commenters
- 2009 Scoping
 - 12 Meetings
 - 788 Registered Attendees
 - 182 Letters
 - 84 Verbal Commenters
- Scoping Report has 2950 Separate Comments



* Final engineering and construction is based upon certification of Record of Decision (ROD) and Notice of Determination

EIR/EIS



Ron Milligan

USBR

Delta Habitat Conservation and Conveyance Program
Advancing the Bay Delta Conservation Plan



**DHCCP
TEAM**

Role of the Federal Government

- Issuance of Section 10 and other permits
- Governance Structure
 - Program Implementation/Oversight
 - Habitat Restoration
 - Water Operations
 - Annual Reviews and Planning
 - Real-time Operations
- Funding Structure
- Implementing Authorities of Federal Agencies

Issuance of Permits for Species

Endangered Species Act §10(a)(1)(B)

- Issuance of a permit to non-federal entities for take of federally listed species, based on the development of an adequate HCP
- Permits would be issued by both USFWS and NMFS

California Natural Community Conservation Planning Act

- Issuance of a permit to non-federal entities for take of state listed species, based on the development of an adequate Natural Community Conservation Plan (NCCP)
- Permit would be issued by DFG

Federal Agency Coverage under ESA

Consultation Under §7(a)(2) of the ESA

- Results in Issuance of a Biological Opinion with Incidental Take Statement (ITS)
- Federal Agencies Do Not Receive “No Surprises” Assurances

Most or All Covered Activities have associated Discretionary Federal Action, Independent of HCP and §10 permit

Discretionary Federal Actions

- **USBR** long term operation and maintenance of the Central Valley Project
- **USFWS and NMFS** must engage in intra-service §7 consultation for §10 permit
- **USACE** for permits under River and Harbor Act §§10 and 14 and CWA §404
- **USEPA**, potentially, for ratification of any changes in the Water Quality Control Plan for the Bay-Delta that the State Water Resources Control Board may make in response to the BDCP

Role of Science

- NAS/NRC Committee on the Delta
- Ongoing Independent Science Reviews
- Delta Stewardship Council's Independent Science Board
- Interior/Commerce Task Force Effort
 - Near-term Science Strategy
 - Integrated BDCP Biological Opinion Strategy



Questions?

Delta Habitat Conservation and Conveyance Program
Advancing the Bay Delta Conservation Plan



**DHCCP
TEAM**

California Central Valley Salmon

Their Status and Needs



A

This slide shows the economic cost to California of the 2008 and 2009 salmon season shutdown. It shows a cost of \$1.4 billion each year and lost jobs at 23,000. The losses in Oregon from the California shutdown add approximately 50% to each of these figures.

This report was prepared by Southwick and Associates for the American Sportfishing Association. Southwick is a leading economic analyst for outdoor activities. The data used for this study was based entirely on government reports. The 2006 NMFS survey was used for the commercial sector. The recreational sector data was derived from the California Department of Fish and Game Angler Day reports for salmon.

The slide also shows the economic impact of a full recovery of the California fall-run salmon. Full recovery is estimated to be a commercial catch of 15 to 20 million pounds with a related recreational catch. The figures indicate \$5.7 billion of economic impact and 94,000 new jobs.

Economics of Calif. Salmon

Economic Cost	2008	\$1.4 billion
of Current Shutdown	2009	\$1.4 billion

		\$2.8 billion
Jobs Lost		23,000
Annual Value at full Recovery		\$5.7 billion
New jobs created		94,000

American Sportfishing Association by Southwick Associates

B

These figures show the size of the industry by different types of businesses. In 2008 and 2009, the Federal Government provided disaster relief for businesses that were directly impacted by the shut down. This relief held the industry infrastructure in place pending recovery of the salmon. That recovery has not taken place and if there is no 2010 salmon fishing season, it is estimated that 30% of the businesses listed here will fail. Many of these businesses have 60 to 80 percent of their sales dependent on salmon. The biggest impact will be with commercial boats and retailers located near the Pacific Ocean. This impact will also hit hard in the smaller coastal communities where a high percentage of the stores, lodges, camps and marine services are dependent on salmon. These figures do not include the impact on the boating industry. Salmon fishing boat sales have fallen to near zero and over 30 boat dealers have gone out of business in 2008 and 2009

The California Salmon Industry

- 1,200 Commercial Boats
- 500,000 Recreational Fishermen
- 11 Equipment Manufacturers
- 7 Equipment & 16 Fish Wholesalers
- 904 Retailers
- 131 Commercial Charters
- 150 River Guides
- 74 Marinas Serving Salmon Boats

30% Will Fail Without 2010 Recovery

C

There are four separate salmon runs in the Central Valley. This slide shows the three weaker runs, two of them being currently listed under the ESA. Fishing seasons in the past have been set to avoid the catching of these runs.

The figures show that in spite of the listings, that these runs are now closer to extinction than they were a decade ago. The implications are clear that the activities to recover these species have been inadequate. The fishing industry believes the scientific studies that have been performed by the fishery agencies in the past six years have identified the root causes of the losses and the biological opinion issued by the National Marine Fisheries Service in June of 2009 is the best hope for recovering these salmon species.

Central Valley Salmon Spawning Returns

	<u>1998</u>	<u>2008</u>
Winter Run (Listed)	2,079	2,626
Spring Run (Listed)	30,473	13,315
Late Fall Run	40,185	9,824
	-----	-----
Total	72,737	25,765

**After rebounding in the 1990's, these three runs
now remain close to extinction. The June 2009
Biological Opinion is their best hope.**

D

The salmon industry is concerned with the “Business as Usual” mode of the fishery agencies. They seem to have forgotten that the “Salmon Industry is Shut Down”. Dozens of studies are underway on how to recover the endangered runs and to improve salmon genetics but there is little or no focus on the problems of the fall-run fish and the early steps needed to recover them and restart a fishing season. Each agency has part of its charter which requires them to support and maintain a viable recreational and commercial salmon industry. The salmon fishing industry believes some priorities need changing particularly for the fall-run.

The Salmon Fishing Industry Operates on the Fall-Run Fish

The Salmon Fishing Industry is

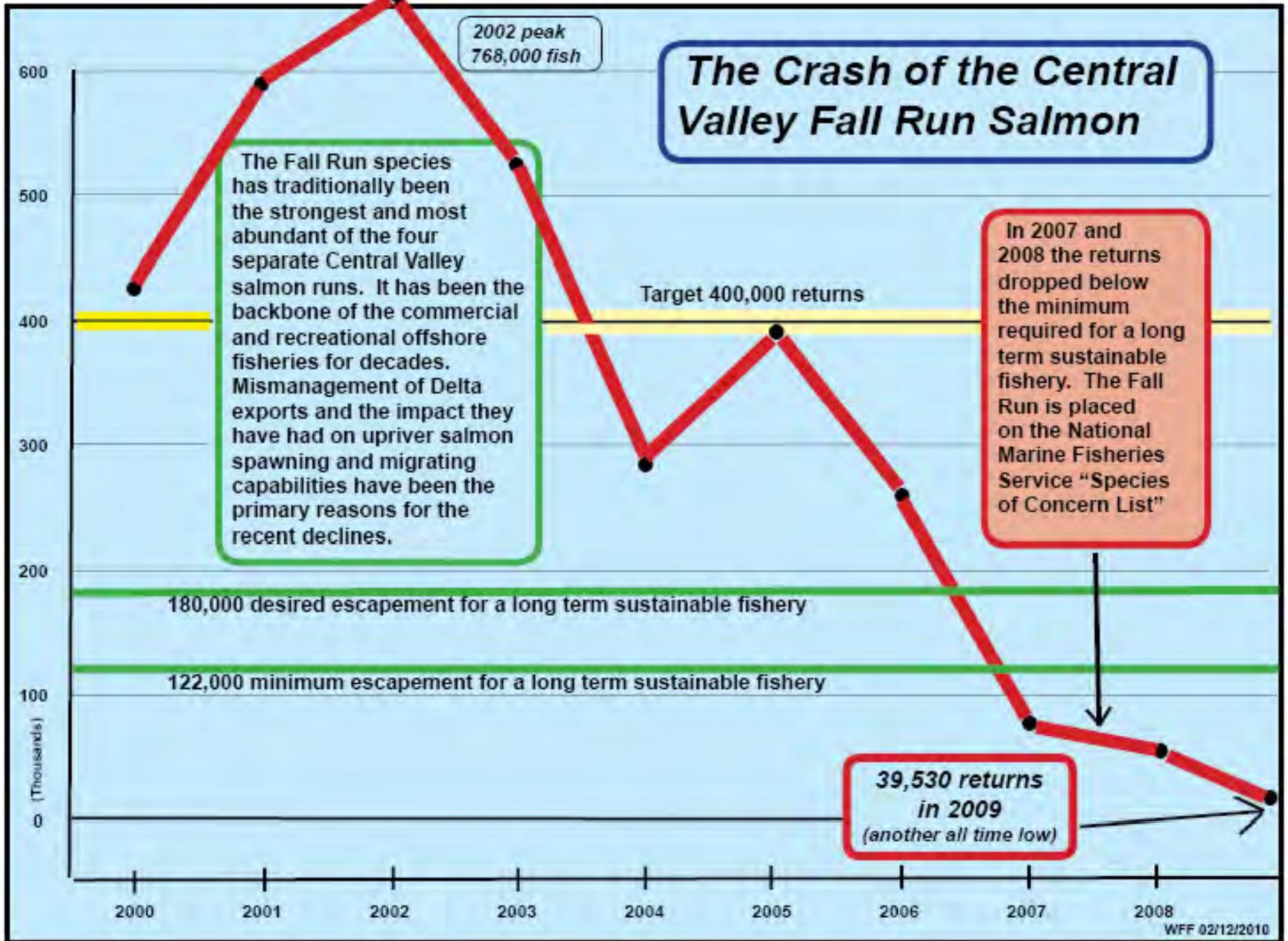
“Shut Down”

The Fall-Run needs rebuilding

E

The chart shows the dramatic crash of the fall-run. From 768,000 returning spawners in 2002, the returns dropped 90% to 66,000 fish in 2008 and then to a disastrous low of 39,500 in 2009. 2009 is the third year in a row the returns have dropped below 122,000 fish which is considered the minimum escapement needed for long term survival of the species.

This chart cries for action but very little is being done. Since the fall-run is not a listed species under the ESA, it does not require emergency action on the part of the fishery agencies.



F

The June 2009 NMFS biological opinion was targeted to recover the listed spring and winter runs. Since it is not listed, the biological opinion is not targeted to the fall-run. Some of the reasonable and prudent alternatives in the opinion will assist the fall-run but for the most part, the fall-run problems have been ignored

The NMFS Biological Opinion does not cover the Fall-Run

- The June 2, 2009 Biological Opinion offers some help to the fall-run but leaves large gaps



G

If actions are going to be taken to rebuild the fall-run fish, one must first examine where the fall-run fish spawn and then determine why these areas are no longer productive. This chart shows where the non hatchery fall-run fish spawned in 2005. The three most important areas are the Upper Sacramento Main Stem, The American River and the Feather River. All of these areas now have significant problems that must be addressed for rebuilding.

Where Fall Run Spawn

Sacramento Main Stem *	70,313	31.1%
American River	54,001	23.8%
Feather River	43,738	19.3%
Battle Creek	16,635	7.3%
Yuba River	16,251	7.2%
Clear Creek	9,768	4.3%
San Joaquin System	15,843	7.0%
Total	226,549	

*High proportion of wild fish

H

Two of the top fall-run spawning areas now have significant temperature problems. River water temperatures above 58 to 59 degrees become lethal to egg survival. The eggs will rot in the gravel. The Shasta Dam temperature curtain now makes cold water available for the main stem Upper Sacramento but this water is now dedicated to recovery of the ESA listed winter and spring run salmon. There is some help to the early spawners of the fall-run but much of the run is now subject to lethal temperatures.

Fall-Run River Losses

- Lethal spawning temperatures are left in the top two fall-run spawning areas
- Upper Sacramento Main Stem
- American River



I

The American River is now probably the biggest upriver fall-run salmon disaster in the state. The Bureau of Reclamation has turned the river into a near exclusive water delivery channel for the Delta pumps. Early in the year all the cold water held by Folsom Dam is released to meet Delta pumping and salinity requirements. By the time the fall-run adult fish are ready to enter the river, the water is so hot that the migrating adult salmon cannot survive. The figures show the pre-spawn adult fish kills for three years. This fish kill surpasses the infamous Klamath River salmon kill in 2003.

American River Pre-Spawn Temperature Fish Kills

- 2001 - 87,600
- 2002 - 35,400
- 2003 - 58,600
- Lethal temperatures are heavily impacting the American River fall-run



J

The National Marine Fisheries scientific studies show that when the Delta Cross Channel Gates are open during the migration of salmon smolts, the smolt fatalities are the highest in the state. Acoustic tagging now makes it possible to document where the smolts go at different water diversion points. When the Delta pumps are running and the Cross Channel Gates are open, 50% of the smolts are pulled into the Central Delta where food and cover do not exist. They either starve or are eaten by predators. Just South of the Cross Channel Gates another 20% of the smolts are pulled into Georgiana slough where they meet the same fate. When these losses are combined with the river loss leading to the Delta there is a 92% loss of smolts. The runs can never be recovered with a loss of this magnitude. The NMFS biological opinion requires closing the Cross Channel Gates for the endangered migrations but the fall-run does not get this protection.

Fall-Run Delta Losses

- **Fall-run are present in the Delta from January – May. When the cross channel gates are open, losses from entrainment of fall-run smolts are huge. Up to 92% perish.**

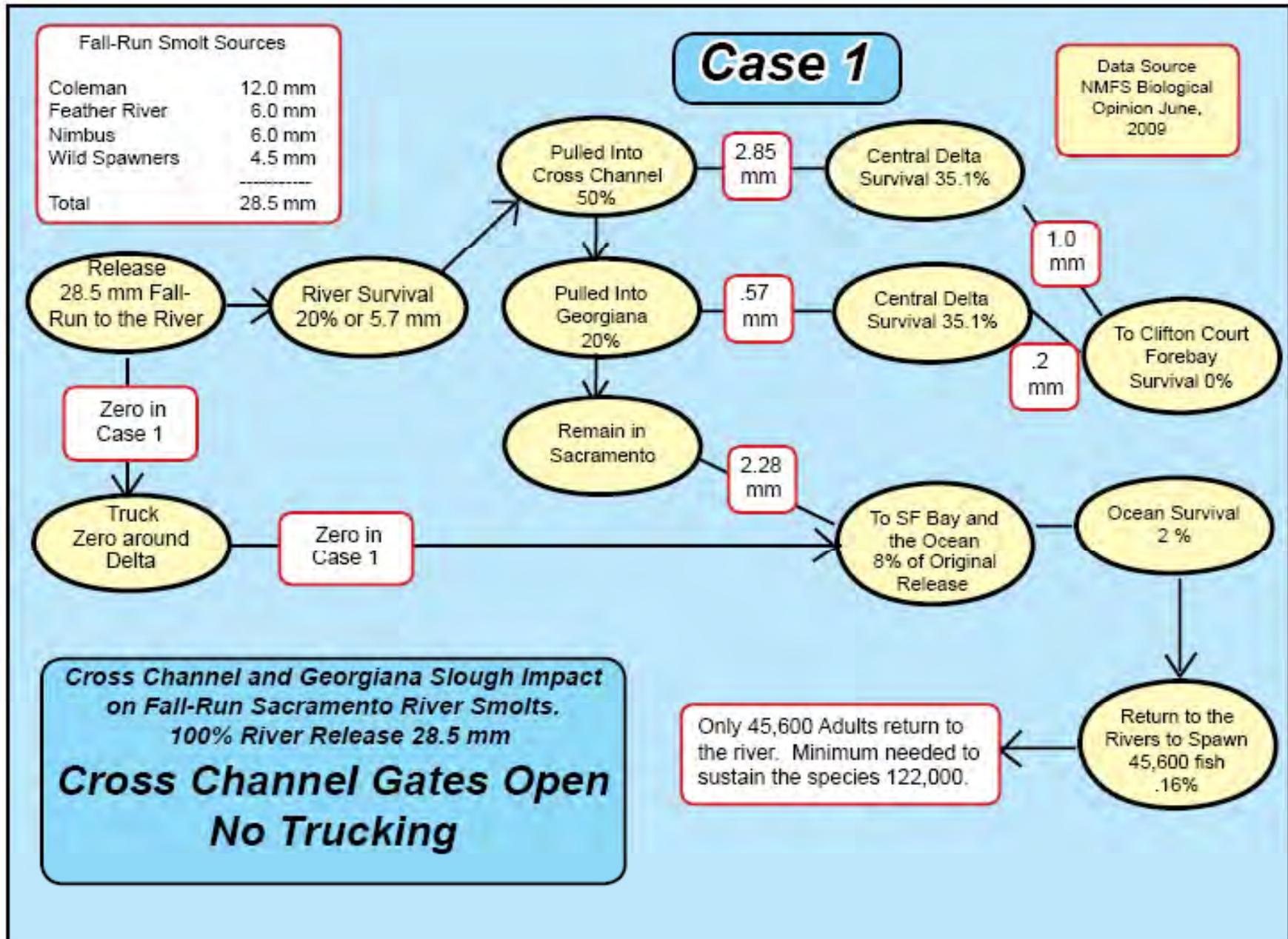
- Adrian Mendoza Photo



K

This chart and the next show where the losses were identified in the NMFS scientific acoustic tagging studies. The two charts also show why without trucking in the foreseeable future, the fall-run salmon cannot be recovered.

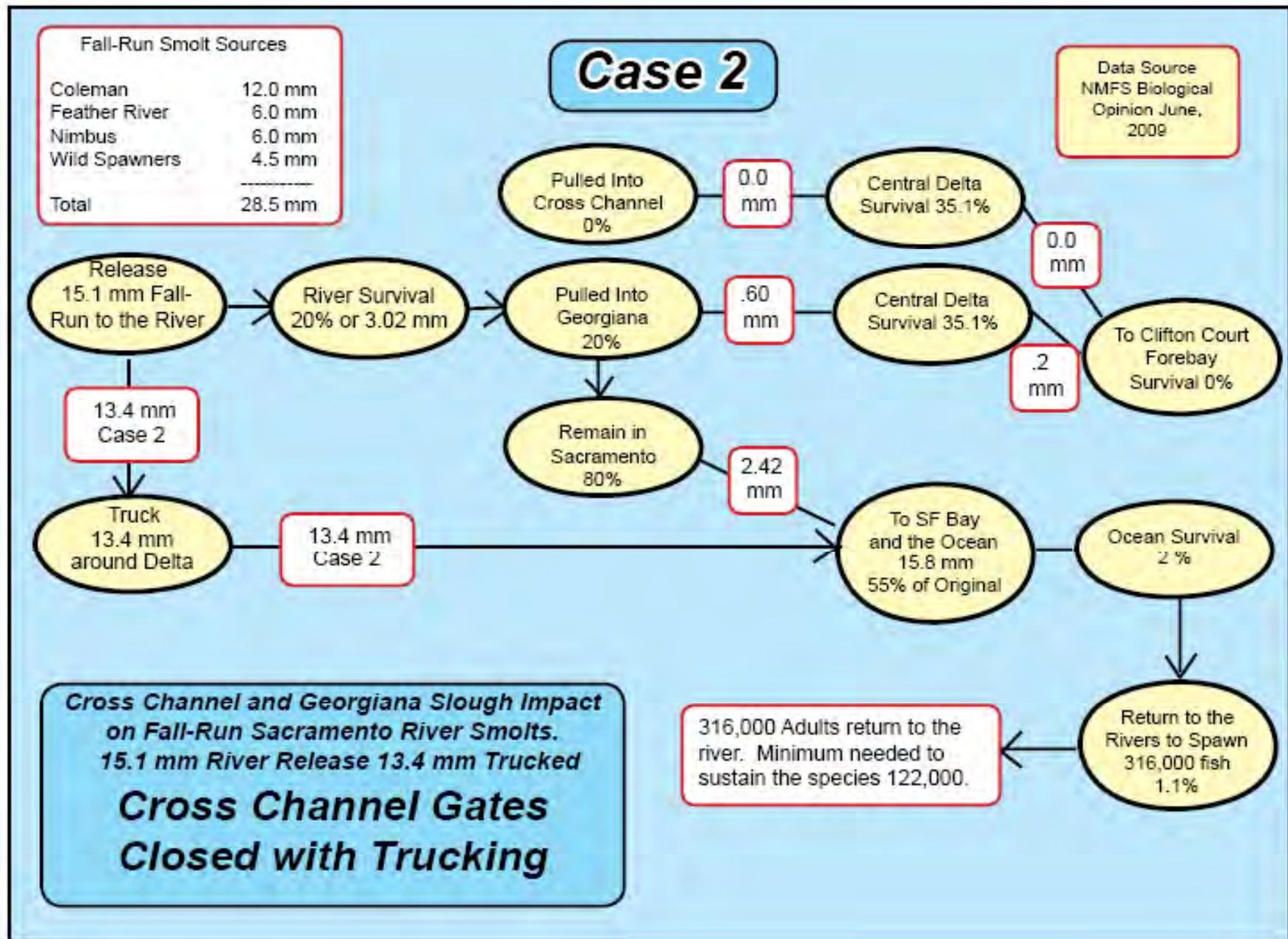
Case 1 shows the results if 100% of the Sacramento River smolts (28.5 million) are left in the river to migrate to the ocean. Losses in the river, the Cross Channel Gates and Georgiana Slough destroy 92 % of the smolts. Only 8% reach the ocean. With 2% ocean survival the bottom boxes show there will only be 45,600 adults return three years later. At this level the run is rapidly headed for extinction.



L

This chart shows what happens if the Cross Channel Gates are closed when the fall-run smolts are migrating and it also shows the impact of trucking 13.4 million smolts around the Delta. The result is that 15.8 smolts reach the ocean and the returns three years later are 316,000 adults. These figures meet the criteria for open fishing seasons.

All the figures on these charts were sourced from the NMFS river and Delta studies over the past 6 years that are included in the 2009 biological opinion. Some of the research studies include: Perry and Skalski 2008, Vogel 2004 & 2008 and SJRGA 2007.



M

The Mokelumne River salmon hatchery is the most modern and efficient hatchery in the state. It has been virtually shut down by the Delta pumping operations. In September and October the adult Mokelumne fish migrate through the San Joaquin River and then turn North up the East and West branches of the Mokelumne. To reach the main stem Mokelumne, they must turn right at the junction of the main stem and the Cross Channel Gates. At that time of the year, the Mokelumne main stem is flowing at 80 cfs and the Sacramento water coming through the Cross Channel Gates is flowing at 3,000 cfs. The adults are pulled to the heavy water flow and end up lost in the Sacramento River as strays. In 2008 the Mokelumne hatchery received only 49 female fall-run salmon. To meet its mitigation and production requirements, it needs at least 2,000 females. This problem has had a huge impact on the fishing industry and has been a significant part of the fall-run loss.

Fall-Run Mokolumne Losses

- **In September and October the pumps run at max with the cross channel gates open.**
- **Adults cannot find their way to the Mokolumne River. Natural and hatchery production drops to near zero.**

- Adrian Mendoza Photo

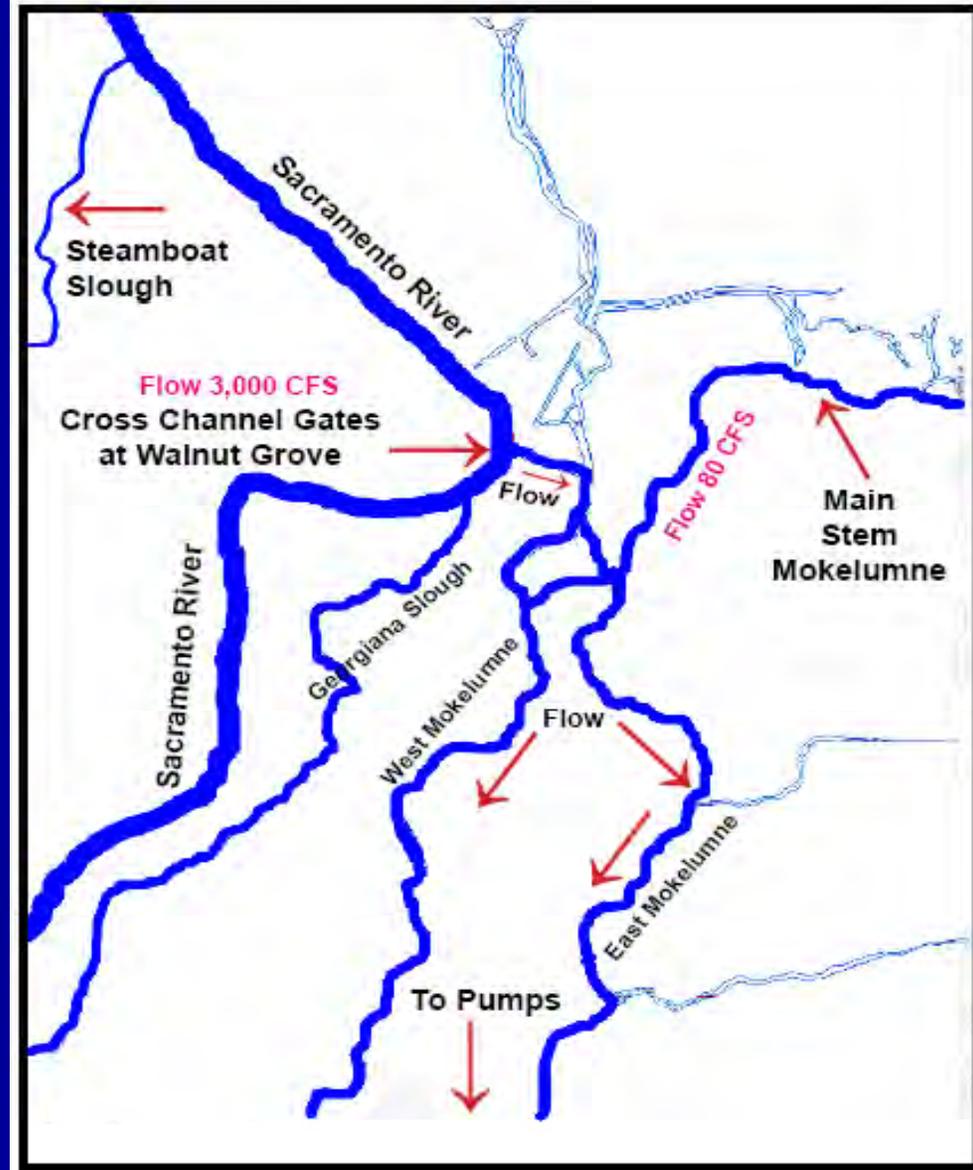


N

The chart shows the geographical location of the Sacramento River, the Cross Channel Gates and the branches of the Mokelumne. The fall season flow differences through the Cross Channel Gates and in the Main Stem Mokelumne are also shown.

The chart also shows the proximity of Georgiana Slough to the Cross Channel Gates. Flows down Georgiana and the two branches of the Mokelumne head directly to the pumps. This is where millions of salmon smolts perish.

Central Delta Layout and Cross Channel Gates



○

The salmon fishing industry believes the fall-run fish must get attention if the industry and the fall-run are to survive. “Business as Usual” will only lead to continuing declines and a complete loss of the industry.

The much preferred alternate is to aggressively develop a fall-run rebuilding plan and proceed to get it accomplished. There is not much time left.

Fall-Run Management Options

- Do nothing and allow the fall-run to continue deteriorating
- Develop a fall-run rebuilding and management plan and proceed to get it accomplished



P

The industry has several specific steps it is proposing but central to the accomplishment of any programs are the commitments of the state and federal fishery agencies of resources towards the fall-run objectives. The agencies have admitted they currently have almost no staff working on fall-run proposals. The industry is proposing a minimum of one senior biologist be assigned exclusive attention to projects that will rebuild the fall run. Parallel to those staff assignments will be the funding needed to develop and implement the projects. The industry looks to congress and the legislature for this support.

The industry also proposes establishment of a stakeholder advisory committee to partner with the agencies.

Stakeholder Proposed Action Plan

- **Create an interagency task force of at least one senior biologist from each agency whose sole job is to develop and implement fall-run rebuilding projects.**
- **Create a broad based participating fall-run stakeholder committee.**



#1

With the Delta in its current degraded condition the salmon fishing industry believes it will be impossible to ever fully recover the Central Valley salmon runs until the Delta is fixed. We are pleased with the new laws and state and federal commitments to bring about this restoration but all parties agree it will take years in not decades to bring this about.

The salmon industry is seeking interim programs that can keep the salmon runs from sliding further towards extinction and at the same time will allow fishing seasons. Ten such proposals are included in this presentation.

The first and probably the most important is the trucking of hatchery smolts around the Delta. There are approximately 28.5 million fall-run salmon smolts produced in the three Sacramento River hatcheries and the natural spawning fish areas. If all of these smolts were released in the rivers, only 2.28 million or 8% of the smolts would reach the ocean. The problem is the severe Delta and river losses. With ocean survival of 2%, only 45,600 adult fish will then return three years later to the rivers to spawn. With the minimum escapement at 122,000 adults required, this is a rapid death spiral.

However, if 13.4 million of the hatchery smolts are trucked around the Delta and acclimated in pens at the release site, a total of 15.8 million smolts will reach the ocean and 316,000 adults will return to spawn 3 years later. 13.5 million smolts approximates the number of smolts that were trucked by the agencies to San Pablo Bay in 2008. The salmon industry proposes this program be continued until the Delta improvements demonstrate that survival rates can be dramatically increased.

Stakeholder Proposed Action Step #1

- **Continue trucking and acclimating a high percentage of the hatchery smolts around the delta until it is restored.**
- **Study better release sites below the central delta but in the root natal river where straying can be reduced.**



#2

Because of the Cross Channel Gates flow problem mentioned earlier, most of the Mokelumne hatchery adult salmon end up straying into the Sacramento River instead of the main stem Mokelumne. They then end up at Nimbus hatchery on the American River. In 2009 more Mokelumne fish arrived at Nimbus hatchery than Nimbus fish. Until the Cross Channel flow problems are solved, Mokelumne eggs must be returned from Nimbus to the Mokelumne hatchery.

In 2009 The National Marine Fisheries Service and the California Department of Fish and Game approved the transfer of Mokelumne eggs from Nimbus back to Mokelumne. The East Bay Municipal Utility District cooperated by paying to mark Mokelumne smolts with coded wire tags so they can be identified.

Mokelumne is a major hatchery supporting the salmon fishery. The fishing industry strongly supports continuing this transfer bringing Mokelumne back to capacity until the returning adult problem can be solved.

Stakeholder Proposed Action Step #2

- **Implement the stakeholder and East Bay MUD marking and egg movement proposal to separate Mokelumne and Nimbus fish and bring Mokelumne back to full mitigation production starting in 2009.**



#3

The main stem of the Upper Sacramento River is the primary location for natural spawning of fall-run salmon. Hot water, variable flows and poor gravel beds are taking a heavy toll on the spawning success and egg survival. Fall-run productivity in this area had dropped dramatically in the last few years. Cold water from Shasta Reservoir needs to be provided for the fall-run in addition to the endangered runs. In addition, river flows must be managed to avoid de-watering fall-run redds and spawning gravel must be replenished in this section of the river.

Stakeholder Proposed Action Step #3

- **Require the Bureau to provide cold water down to Balls Ferry for the full fall-run upper Sacramento River spawning period.**
- **Require replenishment of the upper river gravel.**
- **Authority - CVPIA doubling, Magnuson Stevenson Act and B2 water.**



#4

Cold water from Folsom Reservoir is now being wasted. Two things need to happen. The Bureau needs to alter the water deliveries from Folsom to save the cold water for salmon and steelhead. In addition, the unworkable louvers at Folsom Dam need to be replaced so that cold water can be released on demand. Third, the intakes to the El Dorado Irrigation District's diversion must be raised so they operate in the warm water zone of the reservoir instead of the cold water zone.

Stakeholder Proposed Action Step #4

- Accelerate construction of the Folsom Dam automated cold water louvers.
- Raise the El Dorado Irrigation District water intake pipes to save cold water.
- Use this water to cover the fall-run spawning requirements in the American River.



#5

The renegotiation of the FERC license for the Oroville Dam included a number of Feather River improvements which will be of significant benefit to fall-run natural spawning and Feather River hatchery productivity. These include a counting weir, a blocking weir, more consistent cold water flows and restoration of the river's gravel beds. These improvements have been held up for two years by a lawsuit by Butte County. This logjam needs to be broken so the improvements can proceed.

Stakeholder Proposed Action Step #5

- **Accelerate the FERC driven improvements to the Feather River wild spawning areas. A counting weir, a blocking weir, more gravel and more consistent cold water flows.**



#6

The new California state Water Bill passed by the Legislature in September of 2009 and signed by the Governor requires the State Water Resources Control Board to determine the minimum Delta freshwater inflow and outflow required for the survival of salmon and other species. These determinations will indicate how much Delta water is available for export. This is an urgent step in reaching the co-equal goals of Delta restoration and reliable agricultural water supplies. The salmon industry urges priority attention to these scientific studies.

Stakeholder Proposed Action Step #6

- **Determine the minimum Delta fresh water in flow and out flow required for both listed salmon and fall-run salmon in order to reduce entrainment to an acceptable rate for rebuilding the stocks.**
- **Cover both drought and non drought conditions.**



#7

The barriers to the successful returning of adult fall-run salmon to the Mokelumne hatchery must be solved. Starting in 2009 the East Bay Municipal Water District, which owns the hatchery and has the mitigation responsibility, made some changes in an effort to help. The problem is low attraction flows in the main stem of the Mokelumne. The adult salmon are attracted to the heavy Sacramento water flows coming through the Cross Channel Gates. During the spring East Bay MUD held back some water to be used for a 7 to 10 day pulse flow when the adults were searching for the main stem. This helped in 2009 but the hatchery was still far below its adult count needed for mitigation.

East Bay MUD has pledged continuing pulse flows in the future but to be successful the Cross Channel Gates must be closed at the same time. This proposal calls for the gates to be closed for a two week period in September or October when the biologists conclude the timing is optimum.

Stakeholder Proposed Action Step #7

- **Require that the cross channel gates be closed in a ten day to two week period in September or October to keep Mokelumne adults out of the Sacramento River and in the Mokelumne River.**
- **Authority - CVPIA doubling and Magnuson Stevenson Act.**



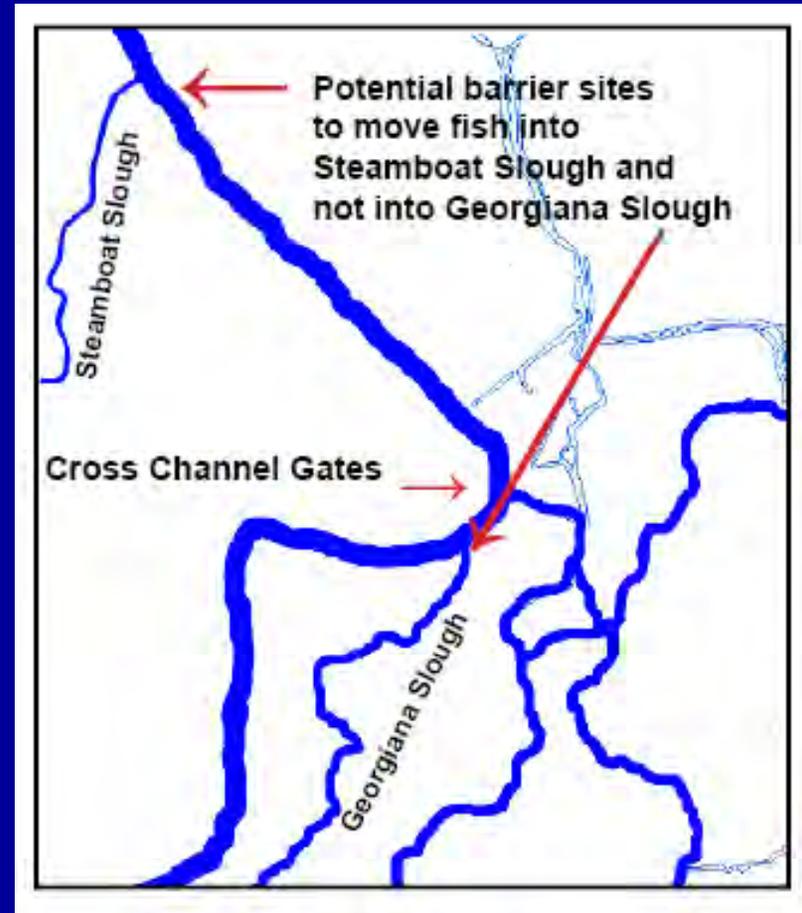
#8

Delta entrainment losses are huge at Georgiana Slough. 20% of all the smolts coming down the Sacramento River are pulled into Georgiana. The salmon industry proposes barriers be investigated at the entrance to the slough to keep that smolts in the river. Bubble, light and sound barriers have been tested with some success on the San Joaquin. Even a partial barrier success could make a huge difference in salmon survival. Salmon are also strongly repelled by small DC electrical fields. We believe these should also be tested.

Steamboat slough connects to the Sacramento River a few miles above the Cross Channel Gates. Salmon smolts which enter Steamboat are safe from delta entrainment. Steamboat slough re-enters the Sacramento near Rio Vista, well beyond the impact of the pumps. The Sacramento is very wide at this point but barriers should also be evaluated here. In this case the smolts would be diverted out of the Sacramento River into Steamboat slough. If successful, the Delta entrainment loss would be cut substantially.

Stakeholder Proposed Action Step #8

- Test physical barriers and bubble/sound barriers at the entrance to Steamboat and Georgiana Sloughs to divert the maximum number of smolts into Steamboat and keep them out of Georgiana.



#9

As stated earlier, the salmon industry believes hatchery production must be maintained at maximum capacity and a percentage of the smolts must be trucked around the Delta to maintain a viable fishery. Unfortunately the smolts from wild spawning fish do not have a trucking advantage and are subject to the severe Delta losses. The result is more hatchery fish and fewer wild fish. This result is the opposite of what is needed for the long term survival of the species. The diversification of wild spawning fish strengthens the runs while hatchery interbreeding weakens the runs. The ultimate solution to the problem is the restoration of the Delta but this will take time. A multi agency science team is now studying ways the wild runs can be enhanced in the interim. Some of these strategies involve marking of hatchery fish and others include blocking access of hatchery fish to wild salmon spawning areas. The salmon industry strongly supports and encourages these studies.

Stakeholder Proposed Action

Step #9

- **Undertake a multi-agency scientific study to determine the best ways to change hatchery and weir blocking practices to provide preferential spawning areas to the wild fish while maintaining full hatchery production.**



#10

A number of fishery scientists are concerned with the distorted ratio of hatchery fish to wild fish in the Central Valley. The National Fisheries Service in particular has studied the long term negative implications of this trend. One of the ways to correct the problem is to reduce the number of hatchery fish and allow the wild spawners to rebuild. NMFS has published numerous reports saying "There Are Too Many Hatchery Fish". The fishing industry concurs with the ratio problem but strongly disagrees with the reduced hatchery solution. There will never be enough natural spawning areas in the Central Valley to sustain a fishery on wild fish only. The dams that blocked the original spawning areas established that fact. The only solution is to maintain the hatchery production, fix the delta and implement preferential spawning and other genetic solutions.

Stakeholder Proposed Action

Step #10

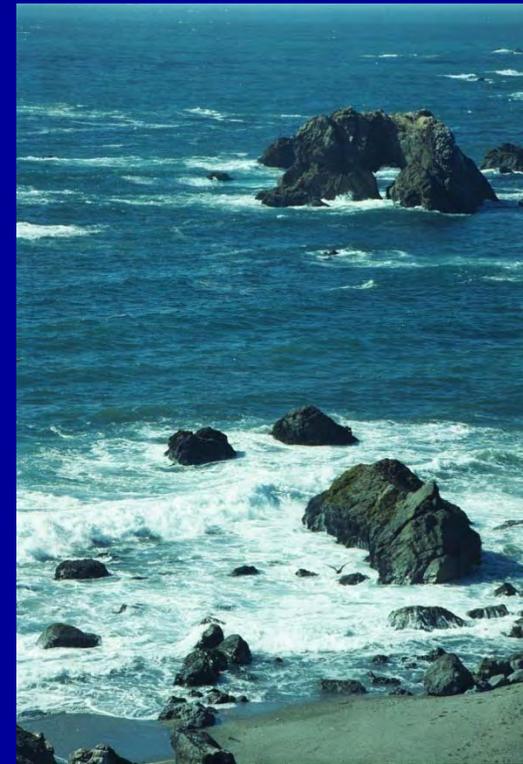
Change the working policy at the
National Marine Fishery Service

from

~~There Are Too Many
Hatchery Salmon~~

to

There are not Enough
Wild Salmon



Summary

This presentation was prepared by the commercial and recreational salmon businesses of California. The unprecedented collapse of the Central Valley salmon runs of California is of deep concern to the members of this industry. The collapse of the fall-run which has been the backbone of the offshore and in river fishery for decades is of particular concern

This presentation provides information on the status of the industry, the major problems are that have caused the crash of the fall-run and industry recommendations for early actions that will restore it such that fishing seasons can be opened again in the near future. This Power Point presentation has been reviewed with the Calif. Department of Fish and Game, The National Marine Fisheries Service and the U.S. Fish and Wildlife Service. The response of all the agencies was positive.

Summary Objectives

- **Reopen the fall-run based salmon fishing seasons and keep them open = jobs & food**
- **Minimize the impact on other water users of the state.**



BDCP

BAY DELTA CONSERVATION PLAN

A Collaborative Approach to Restore the Delta Ecosystem and Protect Water Supplies



AN OVERVIEW AND UPDATE

March 2009

It is a major challenge to restore an ecosystem in an environment like the Delta that is highly altered and largely unnatural.

The Delta was once a vast marsh and floodplain dissected by meandering channels and sloughs that provided a dynamic habitat for a rich diversity of fish, wildlife and plants. The Delta of today has been altered by a system of artificial levees and dredged waterways constructed to support farming and urban development on islands as well as to provide flood control. These waterways also provide transportation corridors for ships and boats and convey water for urban and agricultural uses inside and outside the Delta.

The BDCP aims to enhance and restore the ecosystem processes and function, including seasonal flood plain habitat, subtidal and intertidal habitat, hydrologic conditions, and salinity within the Delta estuary, as well as to reduce direct losses of fish and other aquatic organisms. Because it is a permitting vehicle, the BDCP is in a unique position to implement restoration while simultaneously securing a reliable freshwater source for human use.

Introduction to the BDCP Draft Conservation Strategy

As a Habitat Conservation Plan/Natural Community Conservation Plan under federal and state law respectively, the purpose of the Bay Delta Conservation Plan (BDCP) is 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. When adopted and approved by the federal and state fishery agencies, it will 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 completed, the BDCP is required to have the plan elements listed below on the left. This document is an overview and summary of some of the conservation measures that could comprise the BDCP's conservation strategy, shown as chapter 3 below. This document provides details on the approach and status of the development of the conservation strategy to date.

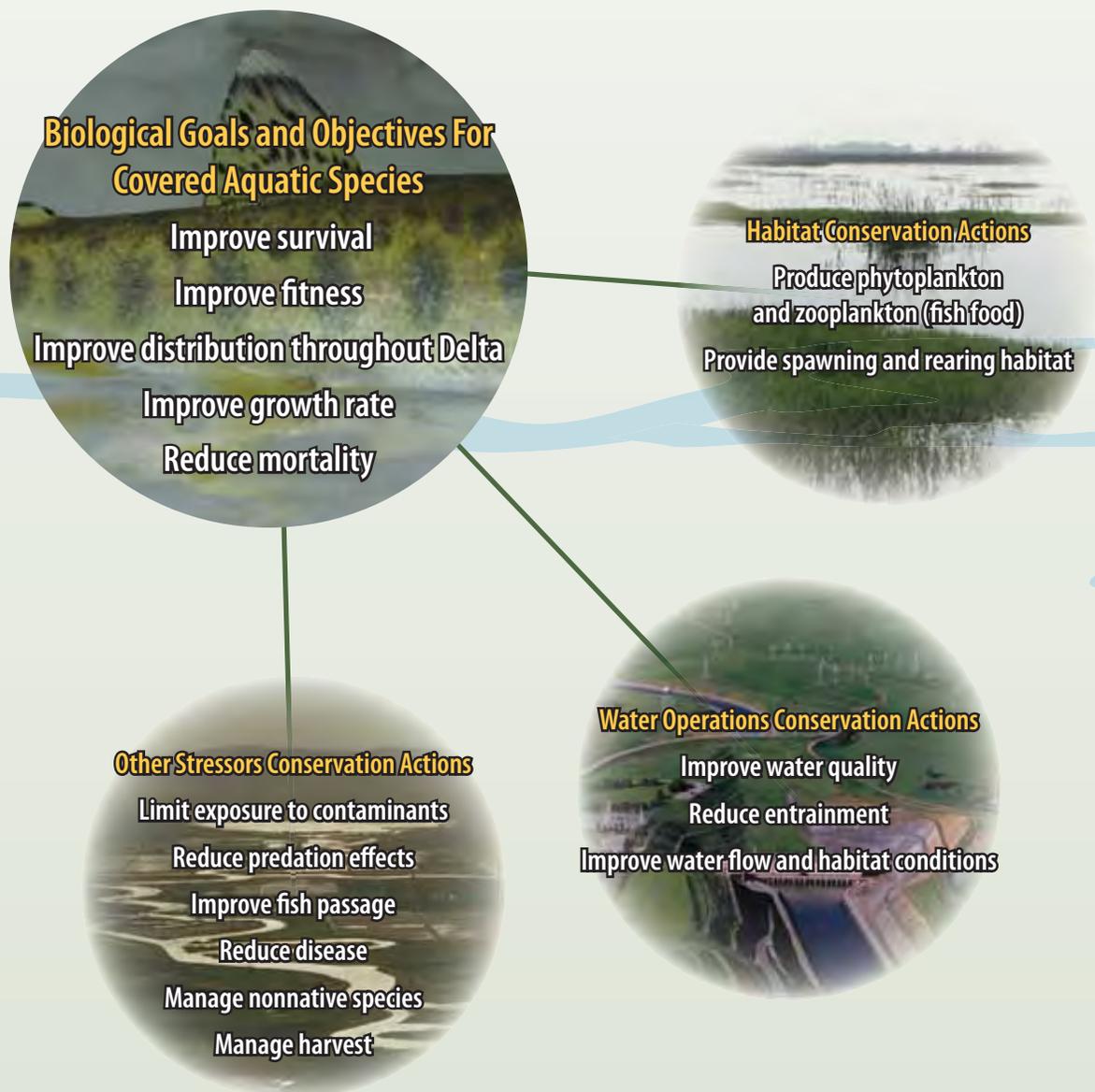
- Chapter 1.** Introduction
- Chapter 2.** Existing Ecological Conditions
- Chapter 3. Conservation Strategy**
- Chapter 4.** Description of Covered Activities
- Chapter 5.** Assessment of Impacts and Level of Take
- Chapter 6.** Plan Implementation
- Chapter 7.** Implementation Structure
- Chapter 8.** Implementation Costs and Funding Sources
- Chapter 9.** Alternatives Considered and Rejected
- Chapter 10.** Independent Science Advisory Process
- Chapter 11.** List of Preparers
- Chapter 12.** References
Appendices

- 3.1** Introduction
- 3.2** Biological Goals and Objectives
- 3.3** Approach to Conservation: Overview of Key Conservation Measures and Their Integration
- 3.4** Conservation Measures
- 3.5** Monitoring Plan
- 3.6** Adaptive Management Program
- 3.7** Summary of the Approach to Minimization and Mitigation of Effects
- 3.8** Summary of Expected Outcomes for Covered Species and Natural Communities

Conservation Strategy Overview

The BDCP approach is essential to making significant contributions to the recovery of covered species and to the restoration of a more naturally functioning ecosystem while securing a reliable freshwater source for human use. The draft conservation measures in this overview document reflect BDCP efforts to date with regard to fish species that are covered by the plan. Consideration of terrestrial species for coverage in the BDCP is ongoing.

The BDCP's draft conservation measures are highly interrelated. Any one of the conservation measures alone would have limited effectiveness. However, implementing these measures together as an integrated package dramatically increases the potential for success of the overall Conservation Strategy.



Primary Components of the Draft Conservation Strategy

Physical habitat restoration

- Including floodplain, freshwater and brackish tidal marsh, channel margin, riparian, and shallow subtidal habitat restoration
- Intended to improve spawning, rearing and migration habitat and to increase nutrient and food availability for covered fish species and to restore and enhance habitat for covered wildlife and plant species

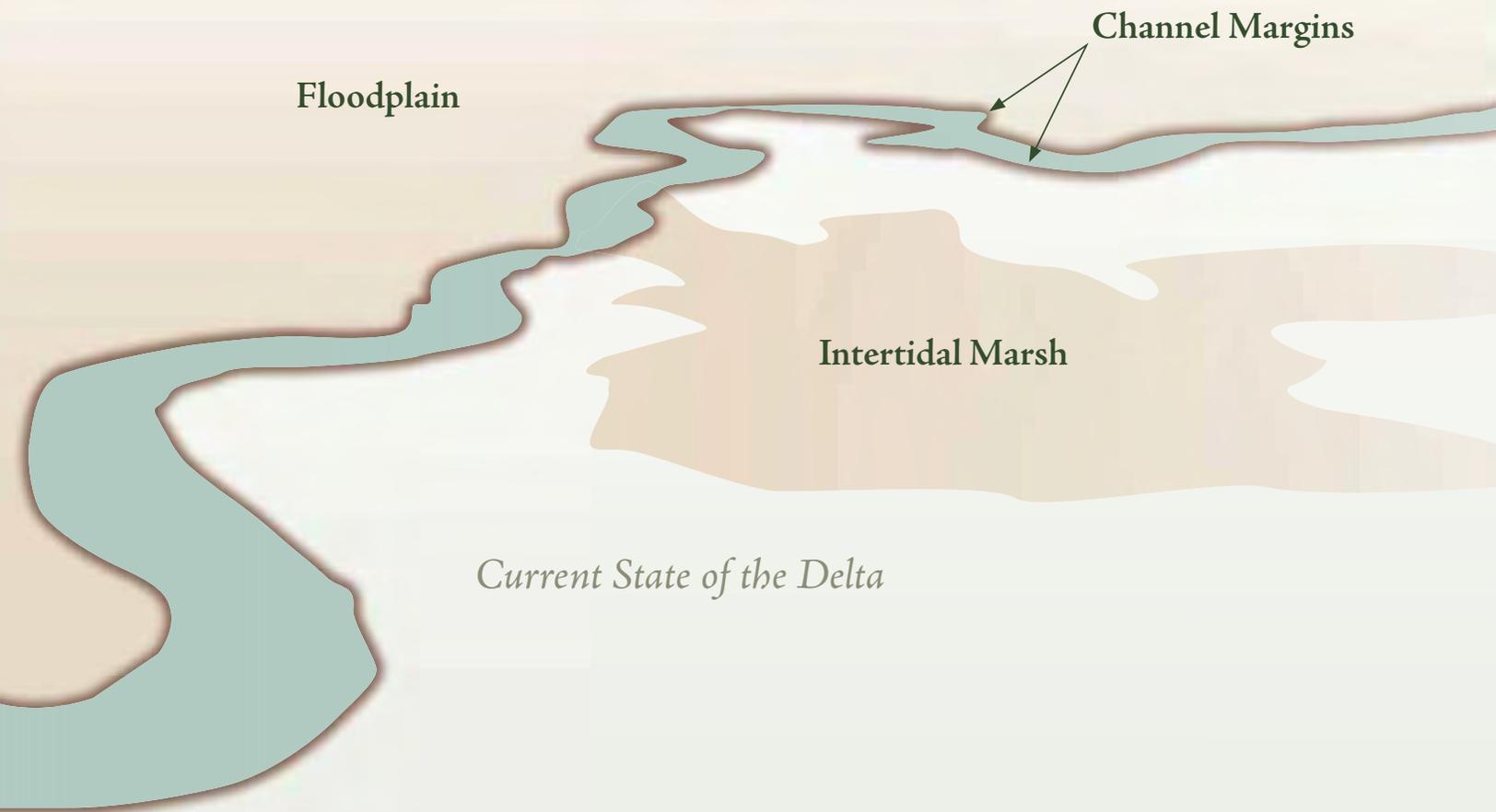


Reduction in other stressors

- Reducing the occurrence of toxic contaminants
- Controlling nonnative aquatic species
- Improving the physical design of operations of non-Project diversions to reduce entrainment
- Managing legal harvest and reducing illegal harvest of covered fish species
- Improving hatchery management practices to minimize adverse effects on wild salmonid stocks
- Providing a safety net against extinction by creating and expanding fish conservation hatchery/refuge programs
- Reducing the adverse effects of commercial and recreational activities on covered fish species

Improvements to water operations and flow

- Improving the existing system for moving water through the Delta using existing points of diversion in the southern Delta
- Constructing and operating new points of diversion in the northern Delta reach of the Sacramento River with isolated conveyance around the Delta to existing south Delta State Water Project and Central Valley Project facilities
- Providing seasonal fresh water flows to support fish survival, transport and migration, food production, growth, and reproduction
- Protecting the state water supply system against the threat of sea level rise, earthquakes, continued land subsidence, and higher winter flood flows
- Providing opportunities for habitat restoration that are otherwise incompatible with the existing through-Delta water conveyance and export system



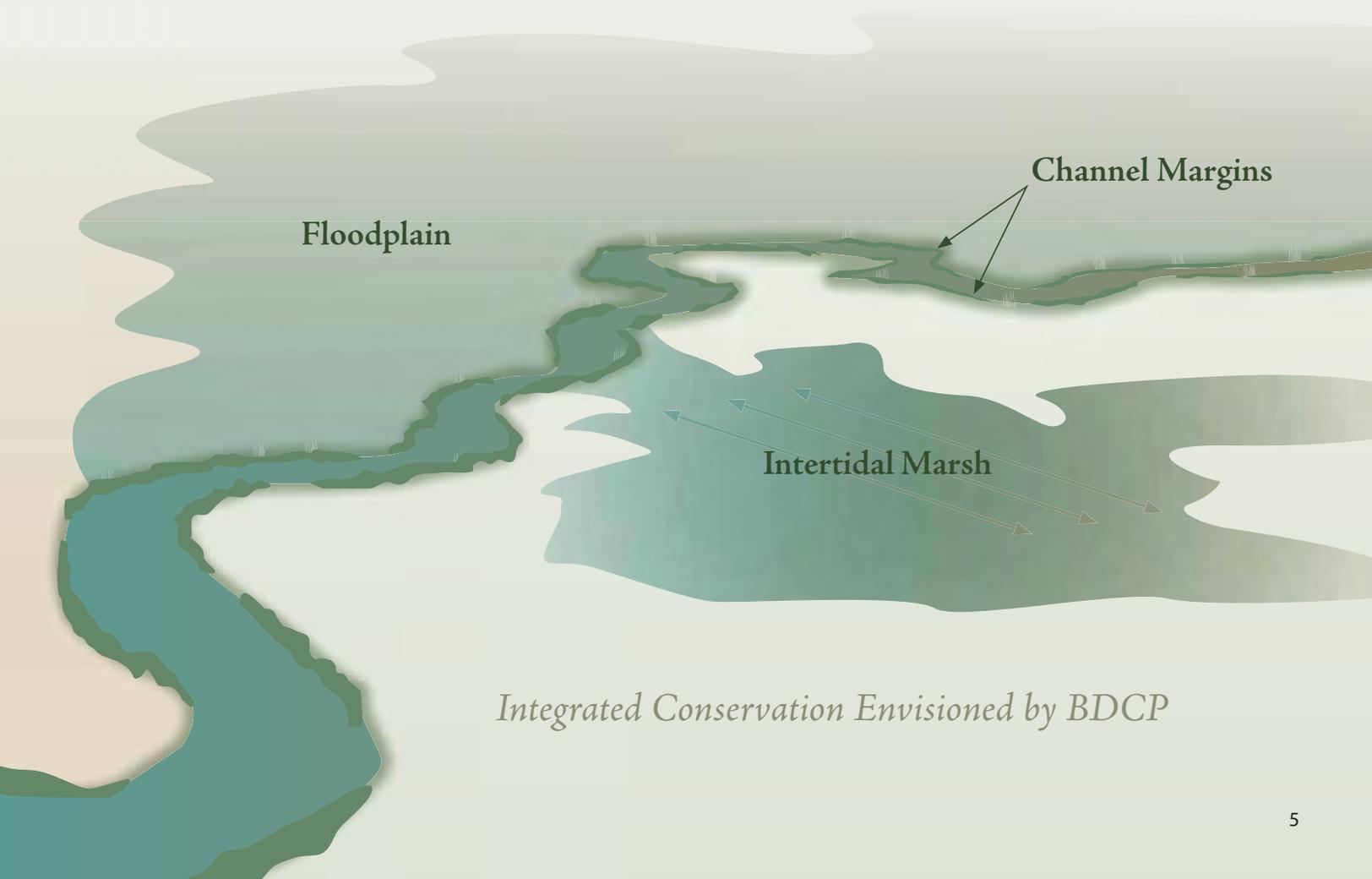
Current State of the Delta

Current State of the Delta

- Many historical floodplains are disconnected from water channels by levees. Many of those floodplains that are still connected are not inundated as frequently, at great enough depths, or for long enough periods of time to provide beneficial habitat for fish.
- Levees and riprap do not provide the types of habitat features that are beneficial to fish, such as overhanging shade, instream woody material and shallow benches.
- Lands that historically provided intertidal marsh and shallow subtidal habitat are disconnected by levees and dikes, meaning less habitat for fish and less production of phytoplankton, zooplankton, and less organic material that provide food for fish.
- The flow of water is affected by the pull of the State Water Project and Central Valley Project pumps. Fish and their food supply are pulled toward and into the pumps. Fish get disoriented and get lost or stuck in channels. Predators have learned where to find the fish, giving them an unnatural advantage.
- Toxic contaminants affect water quality, fish health and habitat conditions.
- Invasive species change the natural balance in the ecosystem, affecting the prey/predator system and disrupting the food web.

Integrated Conservation Envisioned by BDCP

- Reconnected floodplains produce large quantities of phytoplankton, zooplankton and organic material, as well as spawning and rearing habitat.
- Reintroducing flows of brackish and fresh water (unaffected by the pull of the water project pumps) to tidal marshes and subtidal aquatic habitat also supports a beneficial food web.
- Riverbanks in a more natural state (more logs, trees, bushes, and shallow benches) increase food production, provide rearing habitat, improve local water temperature conditions, and provide movement corridors for fish.
- Water that is free of toxic contaminants improves fish health and the health of the food web.
- Controlling invasive species protects fish from predation and helps support a more natural balance of the ecosystem.
- Constructing new diversions equipped with state-of-the-art fish screens while reducing diversions from the south Delta is expected to reduce mortality and substantially improve aquatic habitat within the Delta.



Integrated Conservation Envisioned by BDCP

Planning Principles

To help guide their deliberations the BDCP Steering Committee developed the following planning principles to clarify the approach to the integration of conservation measures and the underlying rationales for the BDCP.

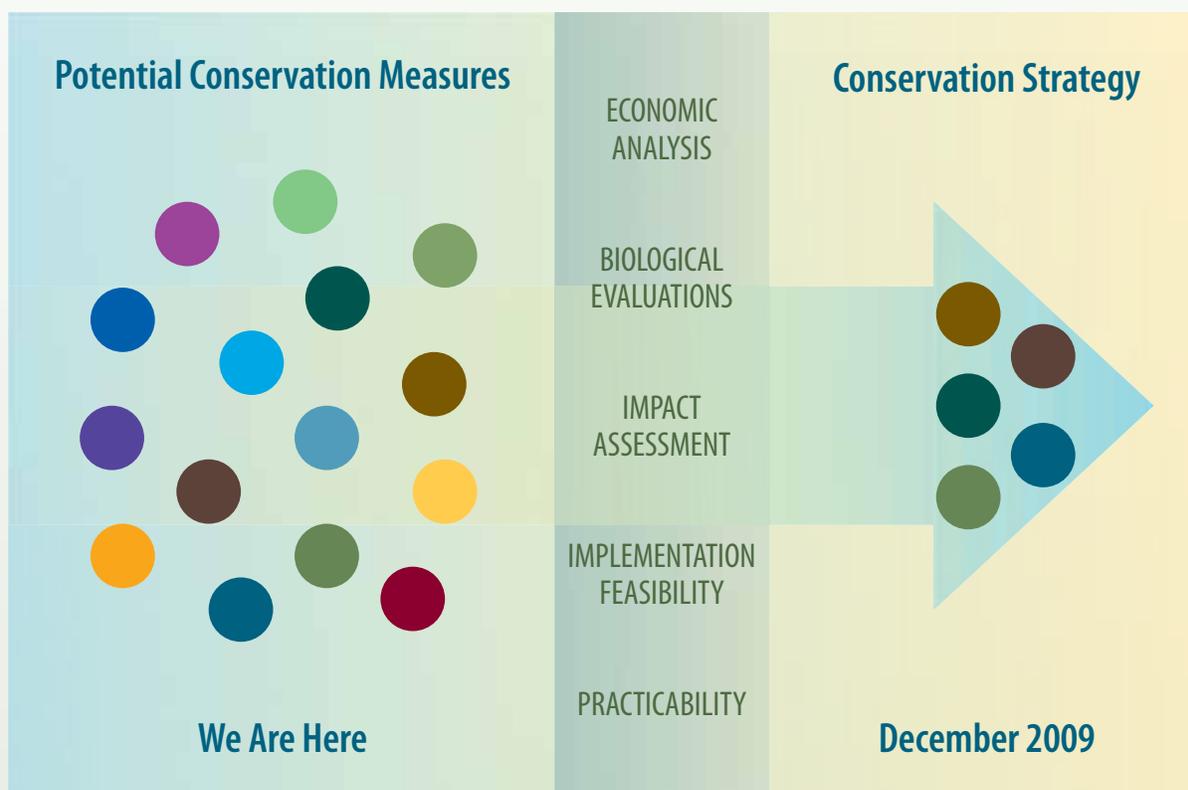
1. Provide a comprehensive set of conservation measures to recover species
2. Divert more water in the wetter periods and less in the drier periods
3. Focus on natural biological and physical processes
4. Build in flexibility
5. Address scientific uncertainty directly through adaptive management
6. Provide for reliable water supplies



BDCP Process Moving Forward



Developing Conservation Measures



At this stage, the BDCP Steering Committee is discussing and considering a wide variety of potential conservation measures. After continued analysis, including economic analysis, biological evaluations, impact assessment, and a feasibility assessment, only those conservation measures that meet the plan's objectives will be carried forward.

2010

1ST
DRAFT
BDCP

PUBLIC
DRAFT
BDCP

PUBLIC REVIEW

FINAL
BDCP

PUBLIC REVIEW

SIGNED
IMPLEMENTATION
AGREEMENT

PERMIT
DECISION

Overview Strategy Elements

In December 2008, the BDCP Steering Committee released *An Overview of the Draft Conservation Strategy for the Bay Delta Conservation Plan* to share key components of the draft Conservation Strategy as well as the approach and direction being taken by the BDCP Steering Committee. The Overview identified a number of elements that demonstrated the integrated nature of the draft Conservation Strategy, including those that are likely to form the nucleus of the overall Conservation Strategy. These elements were selected based on the following attributes:

1. Elements that shape the overall architecture of a new hydrodynamic system that would be developed as a result of the BDCP.
2. Measures that would be likely to be included in any scenario to rehabilitate the Delta ecosystem and water supply system.
3. Elements that could be planned or constructed in the next five to 10 years.

A significant amount of additional detail than can be included in this brief summary—including a discussion of assumptions, rationale, issues, concerns, and next steps—is available by reading *An Overview of the Draft Conservation Strategy for the Bay Delta Conservation Plan* dated January 12, 2009.

Large Scale Tidal Marsh Restoration in the Cache Slough Complex

The Cache Slough area provides an excellent opportunity to expand habitat supporting multiple aquatic and terrestrial covered species. Restoration of freshwater tidal marsh and shallow subtidal habitats would be designated to support the physical and biological attributes that benefit covered species. This habitat restoration element would be further enhanced by integration with increased flows through the Yolo Bypass (see “Modify Fremont Weir and Yolo Bypass” on page 9).

Strategic Tidal Marsh Restoration in the West Delta

Tidal and subtidal marsh and channel margin habitat located in the western delta may provide an important linkage between upstream and downstream habitats. This area’s location at the confluence of the Sacramento and San Joaquin rivers makes it uniquely important to improving connectivity among the communities and species of the Delta.

Large Scale Tidal Marsh Restoration in the Suisun Marsh Area

Suisun Marsh is the largest brackish water marsh complex in the Western United States. It supports many listed and sensitive terrestrial and aquatic species. Much of the marsh is currently diked to remove tidal influence and is managed as seasonal wetlands for waterfowl. Return of diked lands to tidal influence would result in tidal brackish marsh and benefit a number of listed aquatic species. Several covered fish would benefit by expansion of available spawning and rearing habitat. Restoration also may contribute nutrients and food to adjacent open water habitats.

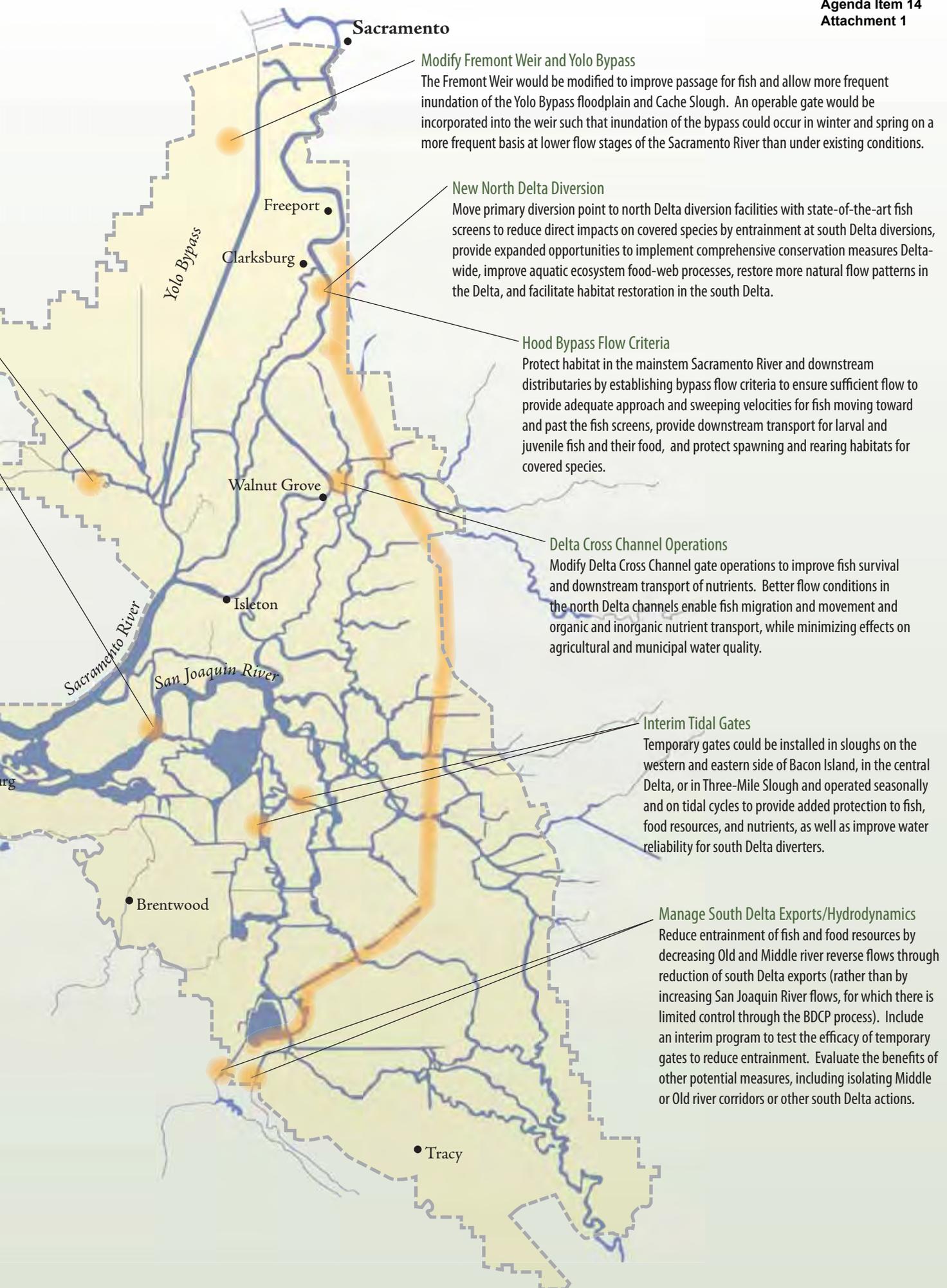


Delta Outflow Targets

Delta outflows provide downstream transport of fish and other aquatic organisms as well as nutrients and food supplies into the lower reaches of the Delta and Suisun Bay. Delta outflows also control, in balance with salinity intrusion from the Bay, the location of the low salinity region of the estuary (often described as the location of “X2”). Outflow targets above and below the range currently contained in the Water Quality Control Plan and Water Right Decision 1641 will be evaluated in future modeling and analysis.

Other Stressors

Continue to identify, develop and refine measures to address other stressors on covered species and natural communities



Conservation Measures Addressing Other Stressors

A number of stressors that affect covered fish species throughout the Delta and Suisun Bay and Marsh would be addressed through conservation measures that are not specific to individual geographic regions. Examples of potential Other Stressors measures include:

- Preventing, identifying and rapidly responding to new introductions of nonnative species, and controlling existing populations.
- Reducing inputs of toxic contaminants to Delta waterways.
- Improving hatchery practices to benefit wild-reared salmonids.
- Supporting conservation hatcheries to create refuge populations of delta and longfin smelt.
- Improving harvest practices to protect covered fish species from overfishing and illegal harvest.
- Improving the design and operations of non-Project diversions to reduce entrainment of covered fish species.
- Reducing the effects of recreational activities on specific sensitive habitat sites in the Delta.



BDCP Background

The BDCP Steering Committee was formed in mid-2006. Members of the Steering Committee signed a Planning Agreement in late 2006. Throughout 2007, the Steering Committee evaluated different conceptual approaches to the development of the BDCP, focusing primarily on water conveyance and ecosystem restoration opportunities. Ten conservation strategies were analyzed based on biological, planning, and other criteria, then narrowed to four conservation options.

In late 2007, the Steering Committee published *Points of Agreement for Continuing into the Planning Process*, which outlined basic approaches for developing the elements of the BDCP. The Steering Committee agreed that the most promising approach for achieving both BDCP conservation and water supply goals would be to develop and analyze more environmentally friendly ways to move water through and/or around the Delta, and then to develop corresponding conservation strategies.

Throughout 2008, the Steering Committee focused on:

- Developing biological goals and objectives
- Identifying existing ecological conditions
- Identifying habitat restoration and conservation actions
- Analyzing different water conveyance approaches
- Developing ideas for the eventual organizational structure for governing BDCP implementation
- Developing an adaptive management and monitoring program

Purpose of the BDCP

The purpose of the Bay Delta Conservation Plan is to provide for the recovery of endangered and sensitive species and their habitats in the Delta in a way that also will provide for the protection and restoration of water supplies. The BDCP is being developed to provide for the issuance of permits under the Federal Endangered Species Act and the California Natural Community Conservation Planning Act and will undergo extensive environmental analysis that will include opportunities for public review and comment.

For more information about the BDCP, please contact Karla Nemeth by phone at (916) 651-7587 or by email at Karla.Nemeth@resources.ca.gov.

Challenges

The changes in Delta land use and hydrology, water conveyance facilities, and ways to reduce other stressors on fish species that are being contemplated in the Draft Conservation Strategy have raised concerns among Delta communities about the potential local and Delta-wide effects of such actions. The BDCP Steering Committee recognizes these concerns and the need for an intensified, ongoing dialogue with Delta communities and other members of the public to better understand and explore solutions to conflicts that may arise as a result of the implementation of the BDCP.



The issues and concerns identified currently include, but are not limited to:

- existing land uses such as agriculture and ag-based economies
- recreational activities and recreation-based economies
- property tax, in lieu fees and user fee revenues of local jurisdictions
- potential regulatory effects on adjacent property owners
- mosquito and vector controls
- the production of methylmercury
- the effects of the plan on other protected terrestrial species
- the compatibility of the plan with flood control plans
- the effects on existing irrigation and drainage infrastructure
- adverse effects on local water quality such as salinity, dissolved oxygen, and organic carbon
- existing water rights
- effects on existing wastewater treatment operations of local jurisdictions
- local control over local land use

The BDCP Steering Committee will strive to resolve these issues and additional concerns that may arise through further detailed analysis of the BDCP as draft conservation measures are refined, as well as during the environmental review process of the proposed plan and through the design of avoidance and mitigation strategies for potentially unavoidable effects as the planning process progresses.

Public Participation

The BDCP process is open to public participation. All Steering Committee, Technical Team and Working Group meetings are open to the public. Documents, links, a calendar of events, and other useful information are available at the BDCP Web site, located at <http://resources.ca.gov/bdcp/>.

There is a three-tiered approach to public participation, tied directly to milestones in the development of the BDCP.

1. Leading up to the Administrative Draft of the BDCP, which is expected in summer 2009, the public is encouraged to participate in Steering Committee, Technical Team and Working Group meetings and to submit comments in writing (which are posted on the Web site for public review). BDCP staff are actively engaged in making presentations and providing briefings to interested organizations. The focus in this time period will be on crafting the Administrative Draft, which will be the first opportunity to see the shape of an overall, integrated plan.
2. After the Administrative Draft is made available, public participation will shift toward seeking input directly about elements of the plan, and narrowing in on issues and details that can be addressed in the Public Review Draft. Again, BDCP staff will be available for briefings and presentations, and the public will be encouraged to continue participation in the various BDCP meetings and to provide comment.
3. Once the Public Review Draft has been released, there will be public meetings and a public review period, as established by state and federal law, typically lasting 90 days.

In addition, there are several opportunities for public input as a part of the environmental review process, including scoping meetings and public meetings associated with both the Draft and Final Environmental Impact Report/Environmental Impact Statement. For information about the environmental review process, visit <http://www.water.ca.gov/deltainit/bdcp.cfm>.

For more information or to set up a presentation or briefing, contact Karla Nemeth at 916/651-7587 or karla.nemeth@resources.ca.gov.



General BDCP Definitions & Acronyms

BDCP	Bay Delta Conservation Plan, a conservation plan prepared to meet the requirements of the Federal Endangered Species Act, California Endangered Species Act and/or the Natural Community Conservation Planning Act
CEQA	California Environmental Quality Act
CESA	California Endangered Species Act
Covered Activities	Activities to be identified in the BDCP that support water supply and power generation, including water conveyance (pipes, canals, and pumps) and facility maintenance and improvements
Covered Species	Species that are threatened or endangered in the Delta and potentially affected by certain water and energy projects to be identified in the BDCP
CVP	Central Valley Project—operated by the Bureau of Reclamation; irrigates more than 3 million acres of farmland and provides drinking water to nearly 2 million consumers
EIR/EIS	Environmental Impact Report / Environmental Impact Statement
Endangered	At risk of becoming extinct
Entrainment	The loss of fish and other organisms as a direct result of water diversion operations
ESA	Federal Endangered Species Act
Fishery Agencies	CA Department of Fish and Game (DFG), US Fish and Wildlife Service (USFWS) and National Marine Fisheries Service (NMFS)
Flow	The rate, direction and volume of water movement through Delta channels
HCP	Habitat Conservation Plan—prepared pursuant to section 10(a) (1) (B) of ESA
Incidental Take Permit	Permit that allows for the take of listed species incidental to, and not the purpose of, an otherwise lawful activity
Listed Species	Species designated as candidate, threatened or endangered pursuant to CESA and/or listed as threatened or endangered under ESA
NCCPA	Natural Community Conservation Planning Act
NCCP	Natural Community Conservation Plan, prepared to meet the requirements of Fish and Game Code, section 2800



NEPA	National Environmental Policy Act
NOI/NOP	Notice of Intent (federal) and Notice of Preparation (state)
Planning Area	The legal Delta, which is the geographic area proposed to be addressed in the BDCP
PRE	Potential Regulated Entity—Those entities that may seek take authorizations, including federal and non-federal entities that export, divert, or utilize water from the Delta and/or its tributaries within the Planning Area for water supply or power generation
Rearing Habitat	Areas in Delta channels where juvenile fish find food and shelter to live and grow
Spawning Habitat	Aquatic habitat suitable for reproduction (e.g., egg laying and incubation)
Steering Committee	The principal forum within which key policy and strategy issues related to the BDCP are discussed and considered. Members of the Steering Committee include state, federal, and local water agencies; state and federal fish agencies; environmental organizations; and other interested parties
SWP	State Water Project—operated and maintained by the California Department of Water Resources; provides water supplies for 25 million Californians and 755,000 acres of irrigated farmland
Take	Defined in the federal and state Endangered Species Acts as to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect a threatened or endangered species
Threatened	At risk of becoming endangered in the foreseeable future

Immediate Next Steps in Developing the Plan

The BDCP Steering Committee anticipates the publication by the federal and state lead agencies of a draft joint Environmental Impact Statement/Environmental Impact Report by the end of 2009, with public reviews to follow. To meet this schedule, environmental review has commenced and other work is underway to map out the necessary analyses that will be undertaken to ensure a full and complete environmental review of the proposed plan.

In coming months, the Steering Committee will address a number of important and difficult issues that are intrinsic to such a large and complex conservation planning process, including the following issues related to the development of Chapter 3:

1. Continued identification, development and refinement of measures to address other stressors
2. Completing further analytical work and modeling to assess and refine conservation measures
3. Refining the operating parameters for the State Water Project and Central Valley Project taking into consideration effects on Delta water quality
4. Refining the current draft biological goals and objectives for the BDCP and developing biological goals and objectives and conservation measures for covered terrestrial species
5. Completing the adaptive management and monitoring plans
6. Refining conservation measures and their monitoring metrics in response to comments and new information

The Steering Committee also will address governance and assurances, and implementation structures for the plan, as well as identify costs and address funding. In addition, a number of issues extend beyond the current scope of the BDCP, but yet are related to the actions being considered in the Conservation Strategy. These include, but are not limited to:

- Sacramento River inflows
- San Joaquin River inflows
- New water storage facilities
- Conservation measures outside the planning area
- Measures to address changed circumstances
(e.g., levee failure and climate change)

BDCP Steering Committee

Federal and State Agencies

California Bay-Delta Authority
California Department of Water Resources
California Resources Agency (chair)
State Water Resources Control Board
US Department of Interior, Bureau of Reclamation
US Army Corps of Engineers

Fish Agencies

California Department of Fish and Game
US Fish and Wildlife Service
National Marine Fisheries Service

Water Agencies

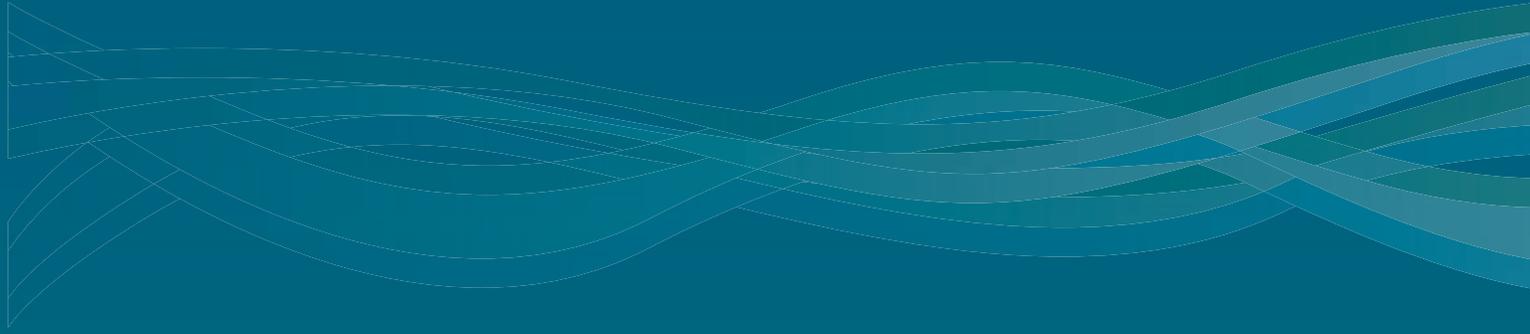
Kern County Water Agency
Metropolitan Water District of Southern California
San Luis & Delta-Mendota Water Authority
Santa Clara Valley Water District
Westlands Water District
Zone 7 Water Agency
Contra Costa Water District
Friant Water Authority
North Delta Water Agency

Environmental Organizations

American Rivers
Defenders of Wildlife
Environmental Defense Fund
Natural Heritage Institute
The Bay Institute
The Nature Conservancy

Other Organizations

California Farm Bureau Federation
Mirant Delta



BDCP

BAY DELTA CONSERVATION PLAN

www.resources.ca.gov/bdcp/



650 CAPITOL MALL, FIFTH FLOOR
SACRAMENTO, CALIFORNIA 95814
WWW.DELTACOUNCIL.CA.GOV
(916) 445-5511

DELTA STEWARDSHIP COUNCIL

May 10, 2010

Chair
Phil Isenberg

Members
Randy Fiorini
Gloria Gray
Patrick Johnston
Hank Nordhoff
Don Nottoli
Richard Roos-Collins

Interim Executive Officer
P. Joseph Grindstaff

Bay-Delta Conservation Plan Steering Committee
C/o Ms. Karen Scarborough
Undersecretary
Natural Resources Agency
1416 Ninth Street, Suite 1311
Sacramento, California 95814

Re: Delta Stewardship Council Roles in BDCP Process

Dear Steering Committee Members and Ms. Scarborough:

As you know, the Delta Stewardship Council was established as an independent state agency, effective February 3, 2010, by the Sacramento-San Joaquin Delta Reform Act of 2009 (new Div. 35 (commencing with Section 85000) of the Water Code).

The Council's primary duty is to develop and adopt by January 1, 2012, a comprehensive resource management plan for the Delta that furthers the co-equal goals of providing a more reliable water supply for California and protecting, restoring and enhancing the Delta ecosystem (which must be achieved in a manner that protects and enhances the unique cultural, recreational, natural resource, and agricultural values of the Delta as an evolving place).

The purpose of this letter is to clarify the Council's roles with regard to the Bay-Delta Conservation Plan, which shall be considered for inclusion in the Delta Plan in accordance with the provisions of Chapter 2 (commencing with Water Code Section 85320) of the new Act.

In addition to establishing conditional criteria for inclusion into the Delta Plan, the provisions of Chapter 2 require the Council to be involved with the development and review of the BDCP in various capacities.

- First, the Department of Water Resources is required to consult with the Council (and the Delta Independent Science Board) during the development of the BDCP.
- Second, the Council is designated as a responsible agency for CEQA review of the BDCP EIR/S.

"Coequal goals" means the two goals of providing a more reliable water supply for California and protecting, restoring, and enhancing the Delta ecosystem. The coequal goals shall be achieved in a manner that protects and enhances the unique cultural, recreational, natural resource, and agricultural values of the Delta as an evolving place."

– State Water Code §85054

Bay-Delta Conservation Plan Steering Committee
May 10, 2010
Page Two

- Finally, the Council is designated as an appellate body with regard to a decision by the Department of Fish and Game that the BDCP has met the requirements in Chapter 2 for inclusion into the Delta Plan.

You may recall that the new Act transferred to the Council all of the staff, resources, and administrative rights, duties and obligations of the California Bay-Delta Authority, which included the Authority's representative seat on the BDCP Steering Committee. We have carefully considered whether it is appropriate for us to continue as the successor to the Authority on the Steering Committee, especially given the need for the Council to independently and objectively carry out its statutorily-prescribed roles in the BDCP process—particularly the potential role as an appellate body with regard to a decision by DFG. *We have determined that, in order to preserve our impartiality and prevent even an appearance of a potential conflict of interest, it is prudent for us to resign our membership on the Steering Committee, effective today.*

At the same time, we are fully committed to actively engaging in the BDCP process in our "consultative" and "responsible agency" roles as required by law, and propose for your consideration the following:

1. The Council, through a representative, will attend Steering Committee meetings as an "Interested Responsible Agency Observer". I presume this may require an amendment to the Planning Agreement, or otherwise. As such, the Council representative will not vote on action items, or be bound by decisions of the Steering Committee, but may participate in discussion, as appropriate. It would be appreciated if the Steering Committee will arrange for seating of the Council representative (and other Interested Observers) at a separate table located near the table at which Steering Committee members sit.
2. Outside of Steering Committee meetings, Council staff will regularly consult with, and provide comments to, DWR, DFG and other relevant stakeholders in the development of the BDCP and its EIR/S, to help ensure that the BDCP and its EIR/S adequately address the statutory criteria for inclusion in the Delta Plan by among other things:
 - (a) furthering the co-equal goals;
 - (b) including proposed water and ecosystem actions that will be implemented in a concurrent, balanced, and comparable manner; and
 - (c) identifying and securing sufficient funding associated with those actions.

Bay-Delta conservation Plan Steering Committee
May 10, 2010
Page Three

The Council looks forward to working with the BDCP Steering Committee, its members, and other interested stakeholders in successfully implementing the new Act, and greatly appreciates the accommodation shown to the Council as it transitions into its new governance role.

Sincerely,


P. Joseph Grindstaff
Interim Executive Officer

cc: Delta Stewardship Council

State of California

Department of Justice

1515 Clay Street, 20th Floor
P.O. Box 70550
Oakland, CA 94612-0550

M e m o r a n d u m

To : Chris Stevens, General Counsel
Delta Stewardship Council

Date: May 20, 2010
Telephone: (510) 622-2136
FACSIMILE: (510) 622-2270
E-mail: Tara.Mueller@doj.ca.gov

From : Tara L. Mueller
Deputy Attorney General
Land Law Section
Office of the Attorney General – Oakland

Subject : The Delta Stewardship Council's "Responsible Agency" Role Regarding the Bay Delta Conservation Plan

I. INTRODUCTION

Senate Bill 1 (SB 1) designates the Delta Stewardship Council (Council) as a responsible agency with respect to the Department of Water Resources' (DWR's) preparation of an environmental impact report (EIR) for the Bay Delta Conservation Plan (BDCP) pursuant to the California Environmental Quality Act (CEQA). (Water Code, § 85320, subd. (c).) As you requested, this memorandum analyzes the significance of the Council's designation as a responsible agency as to the BDCP EIR.

II. BACKGROUND

A. The Ongoing BDCP Process

The BDCP process was initiated several years ago by various public water agencies as a “collaborative approach to restore the delta ecosystem and protect water supplies.” (*BDCP: An Overview and Update*, Mar. 2009.)¹ The overarching goal of the BDCP process is “to formulate a plan that could ultimately be approved by” federal and state wildlife agencies as a habitat conservation plan (HCP) under section 10 of the federal Endangered Species Act (ESA)² and a natural community conservation plan (NCCP) under the California National Community Conservation Planning Act (NCCPA) (or alternatively, a mitigation plan pursuant to section 2081 of the Fish and Game Code, part of the California Endangered Species Act, CESA).³

¹ All of the documents cited in this section are available on the BDCP website, <http://baydeltaconservationplan.com>.

² 16 U.S.C. § 1539(a).

³ The NCCPA is codified at Fish and Game Code sections 2800 et seq., and CESA is codified at Fish and Game Code sections 2050 et seq.

Chris Stevens, General Counsel
Delta Stewardship Council
May 20, 2010
Page 2

(Frequently Asked Questions About the BDCP EIR/EIS; Planning Agreement Regarding the BDCP, Oct. 6, 2006, as amended Mar. 3, 2009, pp. 8-9 (hereafter “BDCP Planning Agreement”).) The BDCP will apply to the statutory delta, with some exceptions. (BDCP Planning Agreement, p. 11.)

If the BDCP is approved by the U.S. Fish and Wildlife Service (FWS) and the National Marine Fisheries Service (NMFS) as a HCP, and by DFG as a NCCP and/or a section 2081 mitigation plan, then these agencies would issue “incidental take permits” under the ESA and the NCCPA and/or CESA. The permits would authorize state and local government agencies and private parties participating in the BDCP to “take”⁴ federally- and state- listed endangered, threatened and other species specifically “covered” by the BDCP. This take would be authorized in connection with specified activities, including operations of the State Water Project (SWP) and construction of certain new SWP infrastructure, which also would be specifically “covered” by the BDCP. (*BDCP Planning Agreement*, pp. 8-9, 16-17.) In addition, the FWS and NMFS would engage in consultation with the U.S. Bureau of Reclamation (Bureau) and issue biological opinions and accompanying “incidental take statements” pursuant to section 7 of the federal ESA⁵ authorizing the Bureau and certain federally-regulated entities to take federally-listed species in connection with operation of the federal Central Valley Project (CVP) and other covered federal activities. (*Id.*)

As the BDCP “Overview and Update” document dated March 2009 explains:

As an [HCP/NCCP] under federal and state law, respectively, the purpose of the [BDCP] is to provide for the conservation of threatened and endangered fish species in the Delta and to improve the reliability of the water supply system within a stable regulatory framework. When adopted and approved by the federal and state fishery agencies, it will result in the issuance of long-term permits for those activities that support water supply and power generation.

(BDCP, An Overview and Update, Mar. 2009.)

The BDCP Planning Agreement⁶ provides for a “Steering Committee” to “assist in the development of the BDCP” and to serve as “the principal forum within which key policy and

⁴ “Take” is defined somewhat differently under federal and state law; however both the federal ESA and the California Fish and Game Code define “take” to include death of individual members of a species. (16 U.S.C. § 1532(19); Fish & Game Code, § 86.)

⁵ 16 U.S.C. § 1536.

⁶ The Planning Agreement was executed by the California Resources Agency, DFG, FWS, NMFS, DWR, Bureau, Metropolitan Water District, Kern County Water Agency, Santa Clara Valley Water District, Alameda County Flood Control and Water Conservation District, San

Chris Stevens, General Counsel
Delta Stewardship Council
May 20, 2010
Page 3

strategy issues pertaining to the BDCP will be discussed and considered.” (*BDCP Planning Agreement*, p. 14.) Steering Committee decisions are preliminary, and not legally binding. (*Id.* at p. 15.) Members currently include all of the signatories to the Planning Agreement, plus the California Bay Delta Authority, State Water Resources Control Board and the U.S. Army Corps of Engineers.

The BDCP Steering Committee has agreed that:

[T]he most promising approach for achieving the BDCP conservation and water supply goals involves a conveyance system with new points of diversion, the ultimate acceptability of which will turn on important design, operational and institutional arrangements that the Steering Committee will develop and evaluate through the planning process. The main new physical feature of this conveyance system includes the construction and operation of a new point (or points) of diversion in the north Delta on the Sacramento River and an isolated conveyance facility around the Delta.

(*The BDCP: Points of Agreement for Continuing Into the Planning Process*, p. 3, Nov. 16, 2007.)

Concurrently with development of a draft BDCP, federal and state agencies have commenced the environmental review process for the plan pursuant to the National Environmental Policy Act (NEPA) and CEQA. DWR is the lead agency under CEQA, and issued a Notice of Preparation of an EIR for the BDCP on February 13, 2009. (*DWR Revised Notice of Preparation for EIR/EIS for the BDCP*, State Clearinghouse No. 2008032062, Feb. 13, 2009.) The Bureau, FWS and NMFS are the co-lead agencies under NEPA, and likewise issued a Notice of Intent to prepare an EIS for the BDCP on February 13, 2009. (74 Fed. Reg. 7257 (Feb. 13, 2009).) The EIR and EIS will be prepared as a joint document.

Both the state Notice of Preparation and the federal Notice of Intent describe the purposes of the BDCP to include, *inter alia*, “[t]he operation of existing SWP Delta facilities and construction and operation of facilities for the movement of water entering the Delta from the Sacramento Valley watershed to the existing SWP and CVP pumping plants located in the southern Delta.” (NOP, p. 3; 74 Fed.Reg. at p. 7258.) The purposes of the BDCP also include “[p]roviding for the conservation and management of covered species through actions within the BDCP Planning Area that will contribute to the recovery of the species” and “[p]rotecting, restoring and enhancing certain aquatic, riparian, and associated terrestrial natural communities and ecosystems.” (*Id.*) Covered activities will include, *inter alia*: (1) “[e]xisting Delta

Luis and Delta-Mendota Water Authority, Westlands Water District, Contra Costa Water District, North Delta Water Agency, Friant Water Authority, Mirant Delta Corporation, American Rivers, The Bay Institute, California Farm Bureau Federation, Defenders of Wildlife, Environmental Defense Fund, Nature Conservancy, and the Natural Heritage Institute.

Chris Stevens, General Counsel
Delta Stewardship Council
May 20, 2010
Page 4

conveyance elements and operations of the CVP and SWP;” (2) “[n]ew Delta conveyance facilities . . . and operations of the CVP and SWP generally described in the BDCP November 2007 Points of Agreement;” (3) “[f]acility improvements of the CVP and SWP within the statutory Delta;” and (4) implementation of a variety of conservation measures included in the BDCP. (NOP, p. 4; 74 Fed.Reg. at p. 7259.)

The federal and state lead agencies completed the scoping process for the BDCP EIS/EIR in March of 2009, and are now in the process of preparing a draft BDCP for public review. According to the BDCP website, the lead agencies currently anticipate releasing a draft plan and draft EIS/EIR for public review by late summer of 2010.

B. SB 1 and the BDCP

Meanwhile, Governor Schwarzenegger signed and filed SB 1 on November 12, 2009, and it became effective on February 3, 2010. SB 1 established the Council as the successor to the California Bay Delta Authority and included certain provisions concerning the Council’s role vis-à-vis the BDCP. (Water Code, §§ 85034, 85200, 85320 et seq.) Specifically relevant to this memorandum, SB 1 does the following:

- 1) Establishes several new policies governing management of the delta and the Council’s actions (Water Code, §§ 85020-85023), including the overarching requirement that the delta be managed to achieve the “co-equal goals” of “providing a more reliable water supply for California and protecting, restoring, and enhancing the Delta ecosystem” (Water Code, §§ 85001, subd. (c), 85020, 85054);
- 2) Requires the Council, on or before January 1, 2012, to develop a Delta Plan that furthers the statute’s co-equal goals, as well as specified subgoals and strategies (Water Code, §§ 85300, 85302-85308);
- 3) Establishes a process by which state and local government approvals of certain “covered actions,” as defined, may be appealed to the Council for a determination as to whether the covered action is consistent with the Delta Plan (Water Code, §§ 85022, 85057.5, 85225 et seq.);
- 4) Requires the Council to consider incorporating the BDCP into the Delta Plan if the BDCP complies with CEQA and the NCCPA. (Water Code, § 85320, subds. (a) and (b));
- 5) Requires that, to be considered for inclusion, the CEQA EIR must include “a comprehensive review and analysis of” seven specifically described items concerning flow and other operational criteria, conveyance alternatives, climate change, fish and aquatic resources, flood management, natural disasters and Delta water quality;⁷

⁷ Water Code section 85320(b)(2) contains the following list of items that the EIR must compressively review and analyze:

Chris Stevens, General Counsel
Delta Stewardship Council
May 20, 2010
Page 5

- 6) Requires DWR to consult with the Council in developing the BDCP and provides that the Council is a “responsible agency in the development of” the BDCP EIR (Water Code, § 85320, subd. (c));
- 7) Mandates that the Council incorporate the BDCP into the Delta Plan if DFG approves the BDCP as an NCCP and determines that the BDCP meets the requirements of section 85320 and the FWS/NMFS also approve the BDCP as an HCP under the federal ESA (Water Code, § 85320, subd. (e));
- 8) Allows DFG’s determination that the BDCP has met the requirements of section 85320 to be appealed to the Council (Water Code, § 85320, subd. (e)); and
- 9) Allows the Council to make recommendations to the BDCP “implementing agencies” regarding BDCP implementation (Water Code, § 85320, subd. (g)).

III. COUNCIL’S ROLE AS A CEQA RESPONSIBLE AGENCY FOR THE BDCP EIR

As mentioned, under CEQA, DWR is the “lead agency” for preparation of the BDCP EIR. The CEQA statute and Guidelines define a “lead agency” as “the public agency which has the principal responsibility for carrying out or approving a project which may have a significant effect upon the environment.” (Pub. Resources Code, § 21067; Cal. Code Regs., tit. 14, § 15367.) In contrast, SB 1 expressly designates the Council as “a responsible agency in the development of” the BDCP EIR. (Water Code, § 85320, subd. (c).) CEQA defines a “responsible agency” as “a public agency, other than the lead agency, which has responsibility for carrying out or approving a project.” (Pub. Resources Code, § 21069.) Responsible agencies “include all public agencies other than the lead agency which have discretionary approval power over the project.” (Cal. Code Regs., tit. 14, § 15381.)

-
- A) A reasonable range of flow criteria, rates of diversion, and other operational criteria required to satisfy the criteria for approval of a natural community conservation plan as provided in subdivision (a) of Section 2820 of the Fish and Game Code, and other operational 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 options 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 considered in the environmental impact report.
 - (D) The potential effects on migratory fish and aquatic resources.
 - (E) The potential effects on Sacramento River 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.

Chris Stevens, General Counsel
Delta Stewardship Council
May 20, 2010
Page 6

Each responsible agency independently must consider the lead agency's EIR "prior to acting upon or approving the project." (Cal. Code Regs., tit. 14, §§ 15050, subd. (b), 15096, subd. (f); *Citizens for Quality Growth v. City of Mount Shasta* (1988) 198 Cal.App.3d 433, 443 n. 8, 444.) However, a responsible agency's authority to require changes to and mitigation measures for the project is more limited than that of a lead agency. A lead agency has authority to disapprove or to "require feasible changes in *any or all activities* involved in the project in order to substantially lessen or avoid" significant environmental effects. (Pub. Resources Code, § 21002.1, subd. (d); Cal. Code Regs., tit. 14, §§ 15041, subd. (a), 15042, emphasis added.) A responsible agency, by contrast, may only disapprove or require changes in a project that will reduce or avoid the direct or indirect effects of those aspect(s) or part(s) of the project which the responsible agency "is required by law to carry out or approve." (Pub. Resources Code, § 21002.1, subd. (d); Cal. Code Regs., tit. 14, §§ 15041, subd. (b), 15042, 15096, subd. (g)(1).)

In the Council's case, its approval authority regarding the BDCP is somewhat unorthodox. Rather than directly approving the BDCP, under SB 1 the Council hears appeals challenging, among other things, DFG's approval of the plan as an NCCP and its determination that the plan EIR complies with CEQA. (Water Code, § 85320, subd. (e).) In essence, the Council is a unique, statutorily-designated "responsible agency" that does not necessarily have the kind of direct "approval authority" over the project in question (i.e. the BDCP itself) that is typically the case for responsible agencies under CEQA. With the Council's unique role in mind, we will now turn to specific actions that the Council can take concerning the CEQA process.

A. **Council Response to Notice of Preparation of BDCP EIR**

DWR is required to send a copy of the notice of preparation of the BDCP EIR to each responsible agency and to notify each responsible agency of any EIR scoping meetings. (Pub. Resources Code, §§ 21080.4, subd. (a), 21083.9, subd. (b)(2); Cal. Code Regs., tit. 14, § 15082, subd. (a).) The Council has the authority as a responsible agency to prepare comments in response to DWR's notice of preparation. Public Resources Code section 21080.4, subdivision (a) provides that "[u]pon receipt of the notice, each responsible agency . . . shall specify to the lead agency the scope and content of the environmental information that is germane to the statutory responsibilities of that responsible agency . . . in connection with the proposed projects and which, pursuant to the requirements of this division, shall be included in the [EIR]." (Pub. Resources Code, § 21080.4, subd. (a); see also Cal. Code Regs., tit. 14, § 15082, subd. (b).)

A responsible agency's comments in response to a notice of preparation must be specific and must be related to the responsible agency's "area of statutory responsibility" -- a "generalized list of concerns not related to the specific project" will not suffice. (Cal. Code Regs., tit. 14, § 15082, subs. (b) and (b)(3).) The response must identify the significant environmental issues and reasonable alternatives and mitigation measures that the responsible agency "will need to have explored in the draft EIR." (*Id.*, subd. (b)(1).) Here, Council comments in response to DWR's notice of preparation would appropriately focus on the CEQA

Chris Stevens, General Counsel
Delta Stewardship Council
May 20, 2010
Page 7

criteria specified in Water Code section 85320, subdivision (b). These criteria include the requirements that the draft BDCP EIR complies with CEQA and that it contains a comprehensive review and analysis of the seven specific items listed in footnote seven of this memorandum. (Water Code, § 85320, subdivision (b)(2).)

Generally, a responsible agency must provide written comments in response to the notice of preparation to the lead agency in writing not later than 30 days after the responsible agency's receipt of the notice. (Pub. Resources Code, § 21080.4, subd. (a); Cal. Code Regs., tit. 14, §§ 15082, subd. (b), 15103.) In this case, DWR issued its notice of preparation for the BDCP EIR on February 13, 2009 but did not send the notice to the Council because the Council was not then in existence. Given the Council's statutory role as responsible agency, however, the Legislature presumably intended it to have the ability to provide DWR with input concerning the proper scope of the BDCP EIR. The Council therefore may wish to request a meeting with DWR and possibly other responsible and trustee agencies to discuss the best way for the Council to provide that input. (See Pub. Resources Code, § 21080.4, subd. (b); Cal. Code Regs., tit. 14, § 15082, subd. (c).)

B. Council Comments on Draft BDCP EIR

Because the BDCP is a project of statewide, regional or areawide significance (see Cal. Code Regs., tit. 14, § 15206) and is subject to state agency review, DWR must provide a minimum 45 day state agency and public review period for the draft BDCP EIR. (Pub. Resources Code, § 21091, subd. (a); Cal. Code Regs., tit. 14, § 15205, subd. (c).) DWR must consult with and request comments from the Council on the draft BDCP EIR. (Pub. Resources Code, § 21104, subd. (a); Cal. Code Regs., tit. 14, § 15086, subd. (a).)⁸ The Council may submit comments on the draft EIR "regarding those activities involved in [the] project 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 that agency's statutory responsibility." (Pub. Resources Code, § 21104, subd. (c); Cal. Code Regs., tit. 14, §§ 15086, subd. (c), 15096, subd. (d), 15204, subd. (d).)

Because Water Code section 85320, subdivision (b)(2) requires the Council to find that the BDCP EIR "complies with CEQA," the Council may make wide-ranging comments regarding the adequacy of the BDCP EIR under CEQA. However, the Council's comments must be "supported by specific documentation." (Cal. Code Regs., tit. 14, §§ 15086, subd. (c), 15096, subd. (d).) Comments "should focus on any shortcomings in the EIR, . . . or on

⁸ Note that SB1 anticipates a Council participation in the creation of the BDCP that is arguably even more robust than its responsible agency involvement. Under SB1, DWR "shall consult with the council . . . during the development of the BDCP." (Water Code, § 85320, subd. (c).) Given that role, as well as its designation as a responsible agency, the Council may wish to participate in BDCP Steering Committee meetings as an active observer and to provide other consulting input as parties develop the BDCP.

Chris Stevens, General Counsel
Delta Stewardship Council
May 20, 2010
Page 8

additional alternatives or mitigation measures which the EIR should include” that would avoid or mitigate significant environmental effects. (*Id.*, §§ 15096, subd. (d), 15204, subd. (a).)

If the Council identifies what it considers to be any significant environmental effect(s), it must advise DWR of those effects prior to the close of the public review period on the draft EIR. (Cal. Code Regs., tit. 14, § 15086, subd. (d).) The Council also may submit proposed mitigation measures to address these significant effects. (*Id.*, § 15204, subd. (f); Pub. Resources Code, § 21081.6, subd. (c).)

If the Council submits proposed mitigation measures, it must either: (1) submit to DWR “complete and detailed performance objectives for mitigation measures addressing those effects” or (2) “refer [DWR] to appropriate, readily available guidelines or reference documents concerning mitigation measures.” (Cal. Code Regs., tit. 14, §§ 15086, subd. (d), 15204, subd. (f); Pub. Resources Code, § 21081.6, subd. (c).) If the Council is not aware of any mitigation measures to address the identified effects, it shall so state. (Cal. Code Regs., tit. 14, § 15086, subd. (d).)

If the Council chooses not to submit comments on the draft BDCP EIR, DWR may presume that the Council has no comments to make. (Cal. Code Regs., tit. 14, § 15207.)

C. Council Consideration of and Findings Regarding Final BDCP EIR

“A responsible agency complies with CEQA by considering the EIR . . . prepared by the lead agency and by reaching its own conclusions on whether and how to approve the project involved.” (Cal. Code Regs., tit. 14, § 15096, subd. (a).) The responsible agency must certify that it “reviewed and considered the information contained in” the EIR prior to approving or carrying out a project. (Cal. Code Regs., tit. 14, §§ 15004, subd. (a), 15025, subd. (b), 15050, subd. (b).)

In addition, prior to approving or carrying out a project, a responsible agency (like a lead agency) must make one or more of the following findings with respect to each significant effect identified in the EIR that is relevant to the responsible agency’s authority:

- 1) Changes or alterations have been required in, or incorporated into, the project which mitigate or avoid the significant effects on the environment;
- 2) Changes or alterations that are within another agency’s responsibility or jurisdiction have been, or can and should be, adopted by that other agency; or
- 3) Specific economic, legal, social, technological or other considerations make infeasible the mitigation measures or alternatives identified in the EIR and specific overriding economic, legal, social or technological benefits of the project outweigh its significant environmental effects.

Chris Stevens, General Counsel
Delta Stewardship Council
May 20, 2010
Page 9

(Pub. Resources Code, § 21081; Cal. Code Regs., tit. 14, §§ 15004, subd. (a), 15043, 15091, subd. (a), 15093, subd. (a), 15096, subd. (h).) All of the foregoing findings must be supported by substantial evidence in the record. (Pub. Resources Code, § 21081.5; Cal. Code Regs., tit. 14, § 15091, subd. (b), 15093, subd. (b).)

As the California Court of Appeal First Appellate District has stated: “although the lead agency prepares the EIR, the responsible agency must independently make its own findings and conclusions,” and these findings must be supported by a statement of facts. (*Resource Defense Fund v. Local Agency Formation Comn. of Santa Cruz County* (1987) 191 Cal.App.3d 886, 896-897.) The responsible agency’s findings also must include a statement of overriding considerations, if necessary. (*Id.* at pp. 897-898.)

The Council's obligations as a responsible agency reviewing the final BDCP EIR, however, should not require many findings beyond those that it would need to make anyway as part of its appellate review. That is because, in exercising its appellate function to review whether DFG correctly determined that the BDCP and EIR meet the requirements of Water Code section 85320, the Council would already need to decide whether the final EIR complies with CEQA.⁹ The Council would, for example, need to make an independent determination of whether the lead agency (DWR) properly made one or more of the three CEQA findings noted above that are required by Public Resources Code section 21081. If the Council determined that DWR properly made those findings, it could use the same analysis and evidence to support its own parallel findings as a responsible agency.

If the Council upholds DFG’s determination on an appeal, it must file a notice of determination with the Governor’s Office of Planning and Research (OPR) within five working days. (Cal. Code Regs., tit. 14, § 15096, subd. (i).) The notice must state that the Council considered the EIR prepared by DWR, and must otherwise meet the requirements of Public Resources Code section 21108 and Guidelines section 15094.

D. Council Options if BDCP EIR is Inadequate

In general, the final BDCP EIR “shall be conclusively presumed to comply with CEQA for purposes of use by responsible agencies” that were previously consulted regarding the draft EIR unless:

- 1) The EIR is “finally adjudged in a legal proceeding not to comply with the requirements of CEQA”; or

⁹ SB1 would also require the Council to decide, as part of the appeal, whether the BDCP complies with the Natural Community Conservation Planning Act (Chapter 10 of Division 3 of the Fish and Game Code). (See Water Code, § 85320, subd. (b)(1).)

Chris Stevens, General Counsel
Delta Stewardship Council
May 20, 2010
Page 10

2) A subsequent EIR is required.¹⁰

(Cal. Code Regs., tit. 14, § 15231; see also Pub. Resources Code, § 21167.2 [lead agency's EIR "shall be conclusively presumed to comply" with CEQA "for purposes of its use by responsible agencies" if no judicial challenge to the final EIR is filed, unless a subsequent EIR is necessary].) As a result, with certain limited exceptions, responsible agencies must generally either accept the lead agency's EIR, or challenge it in court within 30 days of the date that the lead agency files its notice of determination. (Cal. Code Regs., tit. 14, §§ 15052, 15096, subd. (e).)

Under SB 1, however, the Council has an additional option. As previously explained, the Council may review, on appeal, DFG's determination that the BDCP complies with CEQA and other requirements. In that capacity, the Council could find, if warranted by the facts, that the BDCP EIR is inadequate. Although the finding would not invalidate the EIR, under SB 1 it would prevent the BDCP from being incorporated into the Delta Plan, and it would preclude state funding for the public benefits associated with the BDCP. (Water Code, § 85320, subd. (b).)

Please do not hesitate to let us know if you would like any additional information concerning the Council's role under CEQA regarding the BDCP.

¹⁰ A subsequent EIR is required whenever any one or more of the three circumstances specified in Guidelines section 15162, subdivision (a) exists. (Cal. Code Regs., tit. 14, § 15162, subd. (a); see also Pub. Resources Code, § 21166.) Generally, these include: (1) substantial changes are proposed in the project which will require major revisions to the EIR; (2) substantial changes occur with respect to the circumstances under which the project is being undertaken which will require major revisions to the EIR; or (3) new information, which was not known and could not have been known at the time the EIR was certified, becomes available. (*Id.*) Guidelines section 15162, subdivision (c) provides that "[i]f after the project is approved, any of the conditions in subdivision (a) occurs, a subsequent EIR or negative declaration shall only be prepared by the public agency which grants the next discretionary approval for the project, if any."

BDCP Key Decisions by Major Issue

(Revised April 22, 2010)

- Issue/Decision**
- 1 **Near Term (NT) Water Operations & NT Strategy**
 - a Identify NT operations/export "ramp-up" steps/triggers (within v. outside RPAs?)
 - b Describe NT year-by-year actions (research, CMs, monitoring)
 - 2 **Goals & Objectives (G+O's)**
 - a Create specific examples of objectives
 - b Develop objectives for all species & communities following example objective structure
 - 3 **Composition of Management Entity (Governance)**
 - a Define composition of Management Entity (currently joint DWR/USBR)
 - b Define composition/role of Implementation Council/Committee
 - c Define role of PRE JPA in implementation
 - d Describe approach to real-time operations (contrast with adaptive range)
 - e Identify lead entity for real-time operations decisions
 - 4 **Conservation Measures (CM's) - additions and revisions**
 - a Other Stressor measures identified as Important Related Actions - any additions to CMs?
 - b Separate Analyses (sizing, intakes, pathways, SJR flow, isolated OR) - changes to CMs?
 - c Long-term operations - changes based on Effects Analysis
 - 5 **Terrestrial Resources - G&Os, CMs, Monitoring Plan (MP)**
 - a Inland Dune Scrub (in or out?)
 - b Terrestrial Species and Communities CMs (including conservation acreages & rationale)
 - 6 **Monitoring Plan**
 - a Create specific examples of monitoring actions & metrics
 - b Develop effectiveness monitoring metrics and actions for conservation measure
 - c Develop system monitoring metrics and actions for objectives
 - 7 **Adaptive Management Plan structure (routine/non-routine changes)**
 - a Identify lead for adaptive management within Management Entity
 - b Define decision making process for adaptive changes (e.g., routine/non-routine changes)
 - c Define role of independent science input to adaptive management process
 - d Define Adaptive Ranges for water operations parameters
 - 8 **Funding mechanisms and share**
 - a Determine overall cost of BDCP implementation and specific cost breakdown
 - b Identify funding sources for costs that are clearly the responsibility of specific entities
 - c Identify funding share arrangement among entities for remaining costs
 - 9 **Covered Activities revisions**
 - a Addition of new covered activities (e.g., NBA)
 - b Clarification of specific existing DWR & USBR actions
 - c 3rd Party Issues
 - 10 **Changed Circumstances and Assurances**
 - a Changed Circumstances - describe w/remedial actions as appropriate
 - b Regulatory assurances

* D=decision, D/P=both decision and product, P=product, T=tee-up discussion

JOHN GARAMENDI
10TH DISTRICT, CALIFORNIA

2459 RAYBURN HOUSE OFFICE BUILDING
WASHINGTON, DC 20515
(202) 225-1980
FAX (202) 225-6914

DISTRICT OFFICE:
1981 N. BROADWAY, SUITE 220
WALNUT CREEK, CA 94696
(925) 932-8899
FAX (925) 932-9159

<http://garamendi.house.gov>

Congress of the United States
House of Representatives
Washington, DC 20515

COMMITTEE ON SCIENCE AND
TECHNOLOGY
SUBCOMMITTEE ON ENERGY AND ENVIRONMENT
SUBCOMMITTEE ON TECHNOLOGY AND INNOVATION
COMMITTEE ON TRANSPORTATION AND
INFRASTRUCTURE
SUBCOMMITTEE ON AVIATION
SUBCOMMITTEE ON WATER RESOURCES AND
ENVIRONMENT

May 25, 2010

David Hayes
Deputy Secretary
Department of the Interior
1849 C Street, N.W
Washington, DC 20240

Dear Deputy Secretary Hayes:

I am writing to seek clarification on the Bay-Delta Conservation Plan (BDCP) process and to emphasize the importance for the process to fully engage all members of the Bay Delta community.

I represent California's 10th Congressional District, which includes a substantial portion of the Sacramento-San Joaquin Delta. My constituents, including people from every walk of life share a common bond with this ecosystem, as well as a concern about its future. The community is very concerned about the potential impacts of a conveyance facility in the Delta, as well as of potential changes in project operations. No stakeholder group has a greater stake in the future of the Delta than its residents. It is, therefore, essential to the success of the BDCP that the process fully engage the Delta community. To date, this has not happened.

As you know, the Bay-Delta Conservation Plan process is engaged in the development of a proposal that could dramatically change the Delta, thereby presenting significant implications for my constituents.

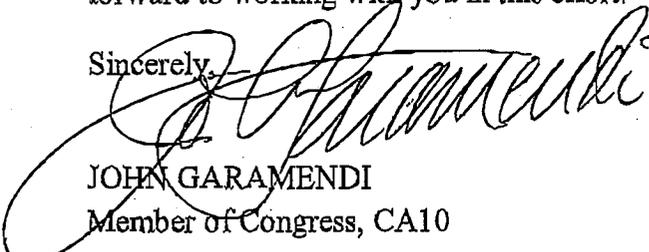
The BDCP is unlike any other process I have encountered in my long experience working on water issues. To clarify my understanding of the BDCP, I would appreciate answers to the following questions regarding the structure of the process.

- What are the respective roles of the management committee and the steering committee?
- Who serves on the BDCP management committee and steering committee?

- Who pays for and holds the contracts for the consultants who are assisting in the preparation of the BDCP?
- From whom do those consultants receive direction, under the terms of their contracts?
- Who are the prospective BDCP applicants under state and federal law?
- How does the Department of the Interior intend to use the BDCP to ensure the Central Valley Project's compliance with federal law?
- How does Interior plan to ensure that all stakeholders are treated equally, provided with equal influence over the direction of the BDCP and equal access to information?
- Specifically, how will the BDCP ensure the full involvement of the Delta communities who have such a stake in the BDCP plan?

Thank you for your commitment to address the serious challenges facing the Delta. I look forward to working with you in this effort.

Sincerely,



JOHN GARAMENDI
Member of Congress, CA10



NATURAL RESOURCES DEFENSE COUNCIL

May 27, 2010

Phil Isenberg, Chairman
Delta Stewardship Council
650 Capitol Mall
Sacramento, CA 95814

Re: **Council Involvement in the BDCP Process – Agenda Item 14**

Dear Chairman Isenberg:

I am writing to offer NRDC's recommendations to assist the Council as it considers its involvement in the Bay Delta Conservation Planning process. This is an important issue for the Council, as the BDCP effort is striving to address difficult and important issues, and could ultimately be incorporated into the Delta Plan.

In defining this involvement, the Council should carefully consider the charge provided in your authorizing legislation. For example, the Council should provide guidance to the BDCP, but preserve your independence, in light of your independent oversight role regarding the BDCP process at its conclusion. Therefore, the Council should not sign the BDCP planning agreement or endorse BDCP work products. The legislature also charged the Council with knitting together the efforts of multiple agencies into a single integrated Delta Plan. To this end, the Council should provide guidance that will assist in the development of sound, scientifically-based products and that will assist in the integration of related agency processes.

With these roles in mind, we offer the following recommendations for the Council's involvement in the BDCP process.

Biological Goals and Objectives: The Council is required to include in the Delta Plan "quantified or otherwise measurable targets associated with achieving the Delta Plan" (85308(b)). The legislature provided a similar charge to the Department of Fish and Game. The Bay-Delta Conservation Plan process must also develop quantifiable biological objectives (see the "Federal Agencies White Paper on Application of the 5-point Policy to the Bay Delta Conservation Plan", 5/29/10). Every effort should be made to ensure that these are complementary and scientifically sound efforts. Per our May 2 letter regarding the Interim Plan, we recommend that the Council direct the

May 27, 2010

Page 2

Science Program to assist the BDCP in developing these quantifiable metrics. We further recommend that you direct the Science Program to assist the BDCP in the “logic chain” approach, which is designed to integrate these biological objectives into critical BDCP efforts such as designing conservation measures, evaluating potential impacts, modeling alternatives, and designing an adaptive management program. In short, these quantifiable metrics should serve as the foundation of the BDCP. To date BDCP has not developed these metrics. Delaying their development would result in additional delay, in order to develop a scientifically based plan. This is an area in which the Council and the Science Program could be helpful.

Developing a Robust Range of Alternatives: The Council’s authorizing legislature also requires the BDCP to consider a range of alternatives, including a “reasonable range of flow criteria, rates of diversions and other operational criteria” and a “reasonable range of Delta conveyance alternatives, including through-Delta, dual conveyance, and isolated conveyance alternatives and including further capacity and design options” (85320(b)(2)(A) and (B)). To date, however, the BDCP process has been primarily focused on a narrow range of conveyance capacities and project operations. Like the BDCP, the Council is required to “promote options for new and improved infrastructure related to the water conveyance in the Delta” (85303). We recommend that the Council engage in the BDCP to encourage the early development of a robust range of alternatives to meet the requirements of state law. These alternatives should include, at a minimum, project operations that are more and less protective than current requirements, large and small conveyance capacities, and investments in export areas designed to reduce reliance on the Delta. We urge you to ensure that these alternatives are developed prior to the development of a draft plan, rather than waiting for the CEQA/NEPA process. We also urge you to ensure that this broad range of alternatives receives a similar level of analysis, in order to inform the development of the BDCP and the Delta Plan.

Project Purpose: The BDCP project purpose, included in the February 13, 2009 NOI for the BDCP EIS, states that it is the purpose of the BDCP to “restore and protect the ability of the SWP and CVP to deliver up to full contract amounts.” This project purpose will be used to shape the alternatives considered in the BDCP process. Some may argue that this project purpose should be used to eliminate from analysis alternatives that would maintain or strengthen current environmental protections. Although we do not agree with this simplistic reading, nevertheless the project purpose is confusing at best and is potentially in direct conflict with the state policy to “reduce reliance on the Delta in meeting California’s future water supply needs through a statewide strategy of investing in improved regional supplies” (85021). It is important to note that the project purpose was released prior to the passage of SB 7X 7. This project purpose heightens our concerns regarding the development of an appropriate range of alternatives. We urge the Council to support the issuance of a new project purpose that is consistent with the requirements of state law. Specifically, with regard to water supply, the project purpose should focus on reducing the physical vulnerability of the projects rather than increasing total diversions.

May 27, 2010

Page 3

Integrating State Board and Fish and Game Products in to BDCP: The legislature provided the State Board and Fish and Game with responsibilities to develop flow criteria and biological objectives. We urge the Council to ensure that the BDCP process and timeline provide for the full integration of these work products into the draft plan.

For your convenience, I have attached a fact sheet prepared by NRDC and several other organizations regarding high priority unresolved issues in the BDCP process. Our recommendations to the Council are designed to assist in the resolution of these issues.

Thank you for your consideration of these recommendations.

Sincerely,

Barry Nelson
Senior Policy Analyst



May 10, 2010

**Correspondence Received Prior to May 27-28, 2010
Meeting of the
Delta Stewardship Council
(3rd Batch)**

Correspondence is posted on the Delta Stewardship Council Web Page
http://www.deltacouncil.ca.gov/public_involvement/correspondence.html

Letter No.	From	Date	Subject
2010-00016	Barbara Davison	04-15-10	Request to Schedule a Council Meeting in Clarksburg
2010-00017	Barry Nelson, Senior Policy Analyst Natural Resources Defense Council	04-27-10	Packet of Information on Delta Issues
2010-00018	Barry Nelson, Senior Policy Analyst Natural Resources Defense Council	04-27-10	Packet of Information on Delta Issues
2010-00019	Barry Nelson, Senior Policy Analyst Natural Resources Defense Council	03-23-10	BDCP Fact Sheet
2010-00020	Barry Nelson, Senior Policy Analyst Natural Resources Defense Council	03-23-10	Near-Term DSC Priorities
2010-00021	Peter Wijsman, Program Manager and Dr. Robert Pyke, Vice President ARCADIS	05-06-10	Interest in Serving as Independent Consultant the Prime Consultant on Preparation of the Delta Plan

"Coequal goals" means the two goals of providing a more reliable water supply for California and protecting, restoring, and enhancing the Delta ecosystem. The coequal goals shall be achieved in a manner that protects and enhances the unique cultural, recreational, natural resource, and agricultural values of the Delta as an evolving place."

- State Water Code §85054



May 25, 2010

**Correspondence Received Prior to May 27-28, 2010
Meeting of the
Delta Stewardship Council
(4th Batch)**

Correspondence is posted on the Delta Stewardship Council Web Page
http://www.deltacouncil.ca.gov/public_involvement/correspondence.html

Letter No.	From	Date	Subject
2010-00027	Jerry Davis, President Mosquito and Vector Control Association of California	05-11-10	Request to Meet with Chair Regarding Mosquito Abatement and Control Issues Related to Sacramento Delta
2010-00031	Tim Quinn, Executive Director Association of California Water Agencies	05-12-10	ACWA as a Resource on Water

"Coequal goals" means the two goals of providing a more reliable water supply for California and protecting, restoring, and enhancing the Delta ecosystem. The coequal goals shall be achieved in a manner that protects and enhances the unique cultural, recreational, natural resource, and agricultural values of the Delta as an evolving place."

- State Water Code §85054



DELTA STEWARDSHIP COUNCIL

650 CAPITOL MALL, FIFTH FLOOR
SACRAMENTO, CALIFORNIA 95814
WWW.DELTACOUNCIL.CA.GOV
(916) 445-5511

Public comments are posted on the Delta Stewardship Council
Web Page:

http://www.deltacouncil.ca.gov/public_involvement/public_comments.html

"Coequal goals" means the two goals of providing a more reliable water supply for California and protecting, restoring, and enhancing the Delta ecosystem. The coequal goals shall be achieved in a manner that protects and enhances the unique cultural, recreational, natural resource, and agricultural values of the Delta as an evolving place."

– State Water Code §85054