



The Planning Agreement Regarding The Bay Delta Conservation Plan Completed

By Kari E. Fisher

The Steering Committee for the Bay Delta Conservation Plan (BDCP) recently completed the proposed Planning Agreement for the BDCP. The BDCP is an applicant-driven effort to provide for the conservation and management of aquatic species and regulatory assurances related to water supply reliability and water quality for the Sacramento-San Joaquin River Delta. The goal of the Planning Agreement is to establish a mutually agreeable process for preparing the BDCP.

Factual Background: The Delta and CALFED

Located 45 miles east of San Francisco, the Sacramento-San Joaquin River Delta region is the West Coast's largest estuary. The Delta is vital to the entire state. Composed of nearly 750,000 acres of land, the Delta supplies drinking water to 23 million people and irrigates 7 million acres of agricultural land in the San Joaquin Valley. The Delta's unique ecosystem also provides a rich and productive habitat for more than 750 species of plants and wildlife, including 20 endangered species. Over the past couple of decades, competing uses for water supply and habitat have jeopardized the Delta. Despite billions of dollars spent since 2000 through programs aimed to aid the Delta, the Delta's ecosystem is in danger of collapse, its levees continue to deteriorate, and water quality and water supplies have not significantly improved.

In 1994, in response to a persistent drought and collapsing fisheries, state and federal resource agencies signed an agreement that led to the formation of the CALFED Bay-Delta Program. CALFED is a joint planning effort by 25 state and federal agencies to develop long-term cooperative solutions to improve ecosystem health, water quality, water sup-

ply, and flood protection problems affecting the San Francisco Bay and the Delta and its watershed (Bay-Delta system). CALFED aims to resolve longstanding differences over the Delta as both an ecological treasure and the major source of the state's water supply.

A cornerstone of the CALFED Bay-Delta Program is the development of voluntary habitat conservation plans (HCPs) and Natural Community Conservation Plans (NCCPs) to restore populations of endangered and threatened species living in the Bay-Delta watershed.

Key Aspects of the BDCP Planning Agreement

The purpose of the BDCP Planning Agreement is to define planning goals and preliminary conservation objectives, provide an initial focus of the conservation plan, and identify natural communities and endangered, threatened, candidate, and other species that occur, or have the potential to occur in the statutory Delta. The BDCP Planning Agreement also sets forth the goals and commitments regarding development of the BDCP, establishes a process for the inclusion of independent scientific input into the planning process, and establishes a process to ensure public participation and outreach throughout the development of the BDCP. Participation in the Planning Agreement, and the subsequent BDCP, is voluntary for all water uses and other interested entities whose on-going activities and operations may cause incidental take of threatened or endangered species, and therefore would need to comply with the FESA and CESA. The execution of the Planning Agreement does not bind parties to participate in future planning phases of the BDCP or related agreements or actions; rather, the Planning Agreement is solely an

agreement between those parties participating on how to proceed with the development of a the BDCP.

The Bay Delta Conservation Plan

The Bay Delta Conservation Plan is intended to be a conservation plan prepared to meet the requirements of the FESA, CESA, and/or NCCPA. The BDCP is intended to result in take permits from state and federal agencies for BDCP covered activities (e.g. water operations, storage, conveyances, and management in the Delta). The BDCP may also serve as a Biological Assessment providing a basis for relevant consultations with federal agencies pursuant to Section 7 of the federal Endangered Species Act. The BDCP is intended to satisfy the requirements of the federal habitat conservation plan and result in permits under Section 10 of the FESA. Additionally, the BDCP is intended to comply with requirements necessary to obtain a take authorization provided by the California Fish and Game Code or the NCCPA. The BDCP will focus primarily on aquatic ecosystems and associated natural communities located within the statutory Delta. Although the BDCP's covered activities will be primarily situated within the statutory Delta, the BDCP contemplates that it may be necessary to include conservation actions outside of the statutory Delta that advance the goals and objectives of the BDCP. Thus, the geographic scope of the BDCP may be expanded to include conservation actions within the Suisun Marsh, Suisun Bay, and areas upstream of the Delta, as appropriate. The goal of the BDCP, as expressed in the Planning Agreement, is to provide for the conservation and management of "covered species." Covered species include both listed and non-listed species whose conservation



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and management are provided for in the BDCP, and which may be authorized for take under State and/or federal law once the BDCP is approved. The initial focus of the BDCP will be on aquatic species, such as the Central Valley steelhead, Central Valley Chinook salmon, Sacramento River Chinook salmon, Delta smelt, green sturgeon, white sturgeon, splittail, and longfin smelt. Additional species, including birds, snakes, and insects, will also be considered for inclusion. The BDCP aims to ensure the implementation of measures that will contribute to the recovery of these covered species and their habitat. In addition, the BDCP will establish species-specific minimization, mitigation, conservation and management measures where appropriate.

Conclusion and Implications

The Planning Agreement, once approved by all entities that are signatories, will remain in effect until the BDCP is approved and permitted by the California Department of Fish and Game, the United States Fish & Wildlife Services, and the National Marine Fisheries Service. However, the Planning Agreement shall not be in effect for more than three years following its effective date, unless extended by amendment. Currently, the Steering Committee is moving forward by beginning selection of consultants and preparation of the BDCP. Since the proposed BDCP is only in the planning stages, there are many unknowns. Until conservation strategies are developed

for the covered species and their habitats, and conservation partnerships formed, the cost and feasibility of achieving the goals laid out in the Planning Agreement will not be known. In addition, the potential regulated entities, those identified federal and non-federal entities that export, divert, or otherwise benefit from diversions of water from the Delta and which may seek take authorizations, have not yet determined whether it would be feasible or even practicable to implement the BDCP.