

1 Chapter 7. Implementation Structure

2 This chapter describes the institutional structure and organizational arrangements that will be
3 established to govern and implement the BDCP (plan), and sets out the roles, functions,
4 authorities, and responsibilities of the various entities that will participate in plan
5 implementation. The implementation structure for the BDCP is designed to ensure that
6 sufficient institutional expertise, capacity, resources, and focus are brought to bear to accomplish
7 the goals and objectives of the plan. It is further designed to promote dynamic and creative
8 administration of the BDCP, while advancing the goals of continuity, accountability, and
9 transparency in decision-making processes. Through this implementation structure, the BDCP is
10 expected to become increasingly effective at furthering the goals and objectives of the plan.

11 The well-defined implementation structure developed for the BDCP will help ensure effective
12 and efficient plan implementation and ongoing conformance with the terms and conditions of the
13 plan and its associated regulatory authorizations. It will provide for centralized decision-making
14 and oversight regarding the actions and programs that comprise the BDCP conservation strategy,
15 a feature of plan governance that will be essential to addressing the complexities and challenges
16 presented by the Delta. The approach to implementation described in this chapter will also
17 facilitate the clear delineation of roles and responsibilities among the range of public and private
18 entities participating in the process and help define the nature of their engagement. This
19 approach further reflects the commitment by the Department of Water Resources (DWR) and the
20 U.S. Bureau of Reclamation (USBR) to maintain and encourage ongoing collaboration among
21 the range of public and private parties with interest in the Delta, and to embrace adaptive and
22 responsive plan implementation, guided by new information and scientific understanding.¹

23 The implementation structure for the BDCP will be organized around a new “BDCP
24 Management Entity,” jointly created by DWR, USBR, and the contractor Joint Powers
25 Authority, that will have responsibility for plan implementation, each as specified in the
26 regulatory authorizations.² The fish and wildlife agencies will have oversight to assure that such
27 implementation is consistent with the regulatory authorizations they issued, and to approve
28 certain changes in implementation of conservation measures as described in Section 7.3.5. In
29 addition, an Implementation Council will be established as a forum where other public agencies,
30 non-governmental organizations, interested parties and the public may offer recommendations on
31 plan implementation, subject to dispute resolution procedures. To facilitate such engagement,
32 the BDCP implementation structure formally incorporates these entities into the implementation
33 process, designating specific roles and forums to facilitate and reinforce their participation.

34 In the event that a Delta-wide governance structure is established by the California Legislature,
35 the Management Entity will coordinate with the newly-created entity to ensure appropriate

¹ The BDCP implementing agreement provides further explanation of specific roles and responsibilities regarding plan implementation and sets out the legal rights and obligations of the entities with responsibilities for BDCP implementation.

² DWR, USBR, and the JPA continue discussions about the JPA’s appropriate role in implementing conservation measures. This draft does not make any assumption as to which of such measures will fall within that role. Chapter 3 (not Chapter 7), along with the Implementing Agreement and regulatory authorizations, will specify the responsibilities for implementation of conservation measures.

1 engagement and collaboration on matters of common interest and responsibility. [*Note to*
2 *Reviewers: Details TBD based on action by Legislature.*]

3 **7.1 Roles and Responsibilities of Entities Involved in BDCP** 4 **Implementation**

5 This section provides descriptions of the roles and responsibilities of the BDCP Management
6 Entity, authorized entities, supporting entities, BDCP Implementation Council, and other
7 stakeholders. [*Note to Reviewers: addition intro text may be added here*]

8 **7.1.1 The BDCP Management Entity**

9 The primary purpose of the BDCP Management Entity is to centralize and unify responsibility
10 for and oversight of BDCP implementation. The Management Entity will oversee all aspects of
11 plan implementation, including the actions set out in the conservation measures, the monitoring
12 and research program, the adaptive management program, and the public outreach process. In
13 some cases, the Management Entity will undertake implementation actions directly; in other
14 cases, it may designate other entities to conduct certain actions. Its primary task, however, will
15 be to ensure that the terms and conditions of the BDCP and its associated regulatory
16 authorizations are properly and fully implemented. As part of that responsibility, the
17 Management Entity will coordinate and engage the various entities that will have significant
18 involvement in aspects of plan implementation. These entities, and their expected roles and
19 responsibilities in the implementation of the BDCP, are described later in this chapter. The
20 organizational framework for the involvement of these entities is depicted in [Figure 7.1](#).

21 The Management Entity will be jointly established by DWR, USBR, and the contractor Joint
22 Powers Authority, and will have the responsibility, capacity, and the resources sufficient to carry
23 out all aspects of BDCP implementation, each as specified in the regulatory authorizations. The
24 Management Entity will function with a significant level of independence and autonomy from
25 DWR, USBR, and the contractors. To assure focus, continuity of effort, and strong working
26 relationships, the Management Entity will be housed at a location separate and apart from the
27 offices of DWR, USBR, and other public agencies. The Management Entity, however, will work
28 closely with these agencies on a range of matters, particularly with respect to actions that affect
29 water operations.

30 A single individual, designated by the director of DWR and the regional director of USBR after
31 consultation with the contractor Joint Powers Agency, fish and wildlife agencies, and
32 Implementation Council (see section 7.1.4 *BDCP Implementation Council*), will serve as
33 program manager and will report directly to both directors. The Management Entity will be
34 staffed primarily by employees of these agencies, as well as other State and federal agencies and
35 the contractor JPA, who possess the expertise and experience necessary to carry out the tasks
36 associated with BDCP implementation. The program manager and staff will be dedicated, on a
37 full-time basis, to matters related to the BDCP. The specific staffing needs of the Management
38 Entity will be determined by the directors of DWR and USBR and the program manager, with
39 input from the contractor JPA, fish and wildlife agencies, and Implementation Council. A

- 1 dedicated position at the level of “deputy program manager” will be established, and will be
- 2 filled by an individual selected by the contractor JPA.
- 3 The Management Entity will assume responsibility for the implementation of a broad range of
- 4 actions, including:
 - 5 • administration of program resources
 - 6 • establishment of programs and procedures

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Figure 7.1.

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- 1 • implementation of conservation measures
- 2 • management of the monitoring and research and adaptive management programs
- 3 • implementation of public outreach program
- 4 • fulfillment of compliance monitoring and reporting requirements

5 Specific roles and responsibilities of the BDCP Management Entity are described in further
6 detail in sections 7.2 , 7.3, and 7.4.

7 7.1.2 Authorized Entities

8 The BDCP provides the basis for the issuance of regulatory authorizations, under the federal
9 Endangered Species Act (ESA), the California Natural Community Conservation Planning Act
10 (NCCPA) (and potentially the California Endangered Species Act (CESA)), for the incidental
11 take of listed and unlisted fish and wildlife species that result from Delta water operations and
12 other covered activities (see Chapter 4 *Covered Activities*). The entities that receive incidental
13 take authorizations for activities covered under the BDCP are referred to collectively as the
14 “authorized entities.” Incidental take authorizations will be sought by federal and non-federal
15 entities under the following authorities:

- 16 • non-federal entities will seek regulatory coverage pursuant to ESA section 10(a)(1)(B),
17 NCCPA section 2835, and potentially CESA section 2081 or 2080.1 (if applicable), and
- 18 • federal agencies will seek regulatory coverage under ESA section 7(a)(2) for species
19 listed under the Act.

20 Each authorized entity will retain full responsibility for proper implementation of the BDCP and
21 compliance with the terms and conditions of the associated regulatory authorizations, regardless
22 of whether another entity is tasked with responsibility for carrying out a required action.
23 However, the authorized entities and the Management Entity may enter into agreements amongst
24 themselves or with other entities to designate responsibility for carrying out certain actions under
25 the plan.

26 Each authorized entity has demonstrated its legal and financial capacity to:

- 27 • Carry out responsibilities and actions required by the BDCP and its associated regulatory
28 authorizations. For those responsibilities jointly assumed by two or more authorized
29 entities, the authorized entities have demonstrated their individual capacities to carry out
30 those commitments.
- 31 • Remedy deficiencies in the implementation of the plan (including untimely performance
32 or under-funded actions).
- 33 • Respond to changed circumstances, as identified in the BDCP, which affect plan
34 implementation.
- 35 • Modify covered activities as may be necessary for continuing compliance with applicable
36 laws.

1 The following entities are “authorized entities” for the purpose of the BDCP and its regulatory
2 authorizations. Descriptions of the activities that will be covered under the regulatory
3 authorizations issued to the authorized entities are set out in Chapter 4 *Covered Activities*.

4 **California Department of Water Resources**

5 The State of California owns, and DWR manages and operates, the State Water Project’s (SWP)
6 existing Delta facilities, including the Clifton Court Forebay and the Banks Pumping Plant.
7 Pursuant to the BDCP, DWR seeks State and federal regulatory authorizations to continue to
8 operate such facilities. The State of California, through DWR, will construct, own, and operate
9 any new diversion and conveyance facilities described in this plan.

10 **United States Bureau of Reclamation**

11 The United States owns, and USBR operates, the Central Valley Project’s (CVP) existing Delta
12 facilities, including the Jones Pumping Plant and the Delta Cross Channel. Consistent with the
13 BDCP, USBR seeks federal regulatory authorizations to continue to operate these facilities.
14 USBR will likely enter into an agreement with DWR to wheel CVP water through a new
15 conveyance facility.

16 **Federal and State Water Contractors**

17 SWP and CVP contractors will, to the extent necessary, receive coverage under the incidental
18 take authorizations obtained by DWR and USBR for covered activities addressed by the BDCP.
19 Any covered activity conducted by the federal contractors will be authorized through section 7
20 biological opinions issued to USBR by the federal fish and wildlife agencies. Similarly, any
21 covered activity undertaken by the State contractors will be authorized under the ESA through
22 certificates of inclusion provided pursuant to the permits issued to DWR under section 10(a) of
23 the Act. In addition, take authorizations issued by the CDFG to DWR under Fish and Game
24 Code section 2835 will extend to SWP contractors for those activities covered under the permit.

25 **Mirant Corporation**

26 Mirant owns and operates power plants in Pittsburg and Antioch. Mirant seeks regulatory
27 permits under ESA section 10 and Fish and Game Code section 2835 for the continued operation
28 of those plants.

29 **Other Authorizations**

30 To the extent necessary and applicable, the authorized entities will also seek and obtain
31 authorizations or permits under other applicable State and federal laws that are necessary for the
32 implementation of the BDCP. Such authorizations, for instance, may be required pursuant to:
33 California Water Code sections 1000 et seq. (water rights), Water Code sections 13000 et seq.
34 (water quality), California Fish and Game Code sections 1600 and 5900 et seq. (fish screens,
35 channel modification), and Clean Water Act section 404 (fill of waters of the United States).

1 7.1.3 Supporting Entities

2 “Supporting entities” are those agencies, organizations, or individuals that are not authorized
3 entities, but that are contracted or otherwise engaged by the Management Entity to implement
4 one or more plan actions.

5 The Management Entity may enter into agreements with supporting entities for implementation
6 of specific plan elements or actions. The relevant take authorizations held by an authorized
7 entity will cover each supporting entity for take of species or for other environmental impacts
8 associated with the specific element or action. The Management Entity or authorized entity will
9 oversee each supporting entity’s performance of its responsibilities for plan implementation.
10 The Management Entity or authorized entity may terminate a supporting entity’s responsibility
11 for tasks which the supporting entity does not perform adequately.

12 Decisions by the Management Entity to engage another entity in the implementation of an
13 element of the BDCP will be based on the entity’s jurisdictional authority, level of expertise, and
14 its capacity to carry out the action in a timely and successful manner. Supporting entities may
15 include, among others:

- 16 • A Delta Conservancy, if established by legislative actions, to carry out certain functions
17 related to land acquisition, habitat restoration, and management. The Delta Conservancy
18 would likely accept public funds directly or through State or federal agencies for the
19 purpose of carrying out such actions.
- 20 • Other public agencies and private entities that have jurisdiction, capacity, and expertise to
21 implement actions described in the conservation strategy in a cost-effective, reliable, and
22 timely manner.
- 23 • Sponsors of regional conservation planning programs, including those engaged in NCCPs
24 and/or HCPs development or implementation, or of other similar conservation programs,
25 that overlap or are adjacent to the BDCP Plan Area to collaborate or carry out actions that
26 advance BDCP goals and objectives.
- 27 • State and federal regulatory agencies, including USFWS, NMFS, and CDFG, to assist in
28 technical matters and participate in decisions regarding the implementation of certain
29 conservation measures, particularly related to non-routine adaptive management changes
30 such as modification or cessation of conservation measures.

31 *[Note to Reviewers: additional text will be included to discuss roles of other regulatory*
32 *agencies, such as the SWRCB and the ACOE]*

33 7.1.4 BDCP Implementation Council

34 An “Implementation Council” will be formed to provide a forum in which participating public
35 agencies and private entities consider and discuss matters related to plan implementation. The
36 Implementation Council, which will consist of the participating entities and representatives of
37 stakeholder organizations, will convene on a regular basis to exchange information and provide
38 input concerning the current significant issues at hand. Stakeholders, in particular, will have
39 opportunity to inquire about implementation matters, be apprised by the Management Entity of
40 issues of interest, and make recommendations concerning pending decisions.

1 Membership on the Council will include, but not be limited to:

- 2 • program manager of the Management Entity
- 3 • director of DWR
- 4 • regional director of USBR;
- 5 • representative of the contractor JPA
- 6 • director of the California Department of Fish and Game;
- 7 • regional director of the U.S. Fish and Wildlife Service;
- 8 • regional administrator of the National Marine Fisheries Service;
- 9 • other members of the BDCP Steering Committee, serving as of the effective date of the
- 10 BDCP;
- 11 • representatives of Delta counties and other local Delta government agencies; and
- 12 • other stakeholders whose assistance will increase the likelihood of the success of plan
- 13 implementation.

14 The Management Entity will meet with the Implementation Council on a regular and frequent
15 basis, and will submit key documents and information, such as annual implementation reports,
16 work plans, and budgets, to the council for review and input,. The Management Entity and
17 authorized entities will periodically coordinate with council members on past activities and
18 upcoming plans related to water supply operations, actions associated with conservation
19 measures, and adaptive management and monitoring. The purpose of this coordination will be to
20 maximize transparency regarding the decision-making process and facilitate the exchange of
21 information and analysis; provide opportunity for comment, input, and recommendations; ensure
22 meaningful discussions regarding the rationale for decisions and the outcomes that result. This
23 coordination will complement, but not substitute for, ongoing collaboration and communication
24 between the Management Entity, authorized entities and the regulatory agencies concerning
25 oversight of plan implementation and the regulatory authorizations. The Management Entity will
26 organize, help convene, and provide support for the Implementation Council and its proceedings.

27 The BDCP Implementing Agreement provides additional detail regarding the roles and
28 responsibilities of the Implementation Council, including:

- 29 • the eligibility criteria for membership on the Implementation Council, and the means by
30 which members will be selected.
- 31 • the Implementation Council's organizational structure, procedures, and voting processes;
32 and
- 33 • the Implementation Council's non-binding process to resolve disputes among council
34 members related to the adequacy of plan implementation, including the efficacy of the
35 adaptive management program.

36 The dispute resolution procedure is designed and will be implemented to minimize the risk and
37 scope of legal challenges related to plan implementation. The agreement of council members to
38 engage in the dispute resolution process, however, will not compromise or otherwise affect their
39 existing legal rights. The dispute resolution procedure is generally intended to address matters

1 prospectively, such as periodic review of plan implementation to improve going-forward
2 performance.

3 **7.1.5 Other Stakeholders**

4 The BDCP implementation process will also provide for ongoing and frequent engagement and
5 participation of the public. Other entities that have interests in such matters as the export of
6 Delta water or the conservation of Delta resources, may participate in BDCP implementation
7 through the public outreach process (see section 7.4 *Public Outreach*) or through the BDCP
8 Implementation Council, if eligible for membership.

9 **7.2 Administration of the BDCP Implementation Process**

10 Upon its creation, the Management Entity will be provided with sufficient resources, authority,
11 and capacity to carry out BDCP implementation tasks for which it is given responsibility. Proper
12 implementation of the plan will require a skilled and expert team consisting of administrators,
13 policy-makers, scientists, engineers, and regulatory specialists, capable of working together in a
14 cohesive and unified manner. In addition, effective implementation will necessitate adequate
15 financing of and support for the Management Entity. The BDCP assures that the new
16 Management Entity will have such capacity to carry out the responsibilities set out in this
17 chapter. The following sets out the primary administrative functions of the Management Entity.

18 As part of its administrative responsibilities, the Management Entity may assign implementation
19 tasks to other entities, including the authorized entities and supporting entities. Where specific
20 responsibilities are designated to another entity, the Management Entity will ensure that that
21 entity's tasks and responsibilities are carried out properly and in coordination with other BDCP
22 actions.

23 *[Note to Reviewers – the following proposed functions and roles of the Management Entity will*
24 *require further review to determine their feasibility and/or legality in light of the proposed make-*
25 *up of the entity]*

26 The Management Entity's responsibilities will include:

27 **Establishing Administrative Capacity.** The Management Entity will arrange for and equip its
28 own office space, hire a staff, and enter into contracts to build its capacity to become fully
29 functional and operational.

30 **Preparing Budgets and Managing Expenditures.** The Management Entity will develop,
31 propose, and administer budgets for general program administration. It will establish systems
32 and processes to centralize oversight of implementation budgets and related expenditures. The
33 Management Entity will also generally oversee budgets and expenditures related to
34 implementation actions carried out by authorized or supporting entities.

35 **Contracting for Services.** The Management Entity may contract for services as necessary to
36 implement the BDCP, including for professional services related to:

- 37 • Habitat restoration and management

- 1 • Monitoring and scientific research
- 2 • Technical and legal services (e.g., regulatory compliance)
- 3 • Funding and grant agreements pertaining to state and federal programs and executing
- 4 sub-grants to third-parties to conduct specific actions

5 **Securing, Holding, and Managing Funds to Support Implementation Actions.** The
6 Management Entity will coordinate the expenditure of State and federal funding. To the extent
7 allowable by law, the Management Entity will serve as the fiscal agent for the expenditure of
8 funds, from both public and private sources, to support implementation actions.

9 **Coordinating with Authorized Entities, Supporting Entities, and the Implementation**
10 **Council.** The Management Entity will convene meetings and facilitate communication among
11 the authorized and supporting entities and the Implementation Council. The Management Entity
12 will maintain frequent contact with these entities and the Implementation Council and provide
13 regular updates concerning implementation matters, including progress in meeting BDCP
14 timetables, dissemination of information, and maintenance and availability of BDCP records and
15 reports.

16 **Coordinating with Authorizing Agencies.** The Management Entity will coordinate and
17 collaborate with the USFWS, NMFS, and CDFG on implementation matters. The Management
18 Entity will also work with these agencies regarding matters potentially affecting compliance with
19 the terms and conditions of the BDCP and its regulatory authorizations. As part of the
20 compliance monitoring process, the Management Entity will prepare all related reports and
21 ensure that those reports are accurate, complete, and timely. The Management Entity will
22 facilitate appropriate and sufficient input from the authorized entities and the Implementation
23 Council regarding compliance-related reports and documents.

24 **Coordinating with Delta-wide Governance Entity.** In the event that the State of California
25 establishes a Delta-wide governance entity, the BDCP Management Entity will serve as main
26 point of contact for the entity regarding BDCP-related matters. To ensure sufficient coordination
27 with the Delta-wide governance entity, the Management Entity will prepare, on an ongoing basis,
28 general and specific information concerning the BDCP, serve as the BDCP representative at any
29 public meetings convened by the governance entity, and function as a liaison and representative
30 of the BDCP.

31 **Coordinating with Other Local, State, and Federal Agencies.** The Management Entity will
32 also serve as the main point of contact for local, state, and federal agencies interested or engaged
33 in BDCP implementation issues. The Management Entity will prepare, publish, and distribute
34 general information about the BDCP to those agencies and serve as representative of the BDCP
35 in public meetings convened by cities, counties, and other public agencies with jurisdiction
36 within the Delta. With respect to ongoing input by and participation of interested public and
37 private entities in BDCP implementation matters, the Management Entity will facilitate the
38 establishment of forums to further such engagement.

39 *[Note to Reviewers: Additional text to be provided regarding role of other state and federal*
40 *agencies that provide regulatory authorizations to implement BDCP, including SWRCB and*
41 *ACOE]*

1 **Protecting and Defending Against Legal Challenges.** The Management Entity, in coordination
2 with the authorized entities, authorizing agencies, and other appropriate public agencies, will
3 help direct efforts to defend against legal challenges to the BDCP or its associated State and
4 federal authorizations. As necessary, the Management Entity may also engage legal counsel to
5 address the range of legal issues associated with implementation, including: defense against
6 litigation related to the BDCP, liability associated with land acquisition and related matters,
7 disputes arising out of contractual agreements, and general, routine in-house legal matters. In
8 addition, to minimize the potential for litigation to arise, the Management Entity will provide
9 resources to the Implementation Council to support and advance its dispute resolution process.
10 The Management Entity will obtain and maintain, as appropriate, insurance (or may self-insure)
11 to protect against any liability.

12 **Overseeing Plan Amendments.** In the event that the BDCP requires amendment to maintain
13 ongoing compliance with ESA and/or the NCCPA (or potentially CESA), the Management
14 Entity will compile information and prepare documentation necessary to support such an
15 amendment and obtain the necessary approvals from the applicable fish and wildlife agency.

16 **Undertaking Additional Responsibilities.** The Management Entity will institute a program to
17 monitor compliance with the BDCP and provide the fish and wildlife agencies with an annual
18 report on the results of the monitoring program (see section 7.3 *Implementation of the*
19 *Conservation Strategy*). The Management Entity will also obtain other regulatory authorizations
20 and permits necessary to implement BDCP conservation actions (see section 7.4) and will
21 engage in public outreach and education (see section 7.5)

22 **7.3 Implementation of the Conservation Strategy**

23 The Management Entity will be responsible for the implementation of the BDCP conservation
24 strategy (see chapter 3 *Conservation Strategy*). However, the Management Entity may exercise
25 its discretion to either rely on its own capacity to carry out an action or assign the task to another
26 entity. It is anticipated that the flexibility to use authorized and supporting entities to undertake
27 certain actions will enhance the overall effectiveness of the conservation strategy and yield
28 greater efficiencies in plan implementation. The following sets out the tasks and responsibilities
29 of the Management Entity regarding the implementation of the conservation strategy.

30 **7.3.1 Implementing Habitat Protection and Restoration Conservation** 31 **Measures**

32 The Management Entity will implement conservation measures related to the protection of
33 existing habitat and the enhancement and restoration of habitat within the identified restoration
34 opportunity areas (ROAs), as well as within other areas of the Delta and areas outside of the
35 Delta (e.g., Suisun Marsh and upper Yolo Bypass), as described in chapter 3 *Conservation*
36 *Strategy*. These measures will primarily involve actions to acquire lands, restore or improve
37 habitat conditions, and manage and maintain habitat preserves. In the event that the State creates
38 by legislative action a “Delta Conservancy,” many of the conservation measures associated with
39 habitat protection and restoration will likely be undertaken by the new entity.

1 **Acquiring and/or leasing property interests.** The Management Entity will acquire or lease
2 interests in real property, as described in chapter 3 *Conservation Strategy*. The tasks related
3 to the acquisition of fee interest and/or conservation easement, for the purpose of habitat
4 protection, restoration, and creation, will include, among other things:

- 5 • routine “due diligence” review of real property
- 6 • biological “due diligence” to assess habitat/restoration values
- 7 • appraisal of property, including oversight of the appraisal process
- 8 • negotiation and execution of the transaction
- 9 • receipt of title or easement to lands

10 The Management Entity will also lease lands or facilities for the purpose of conducting scientific
11 research and monitoring, housing administrative offices and equipment, and undertaking other
12 activities as necessary to administer and implement the plan.

13 **Managing Land.** The Management Entity will manage and maintain lands acquired for
14 conservation, as described in chapter 3 *Conservation Strategy*. Tasks associated with land
15 management will generally include:

- 16 • Habitat management,
- 17 • Invasive species control,
- 18 • Security patrol
- 19 • Liaison with neighboring landowners
- 20 • Species and habitat monitoring
- 21 • Public access management
- 22 • Educational services
- 23 • Agricultural lease management

24 **Maintaining Property, Facilities, and Improvements.** The Management Entity will maintain
25 lands acquired for conservation, including all related facilities and improvements, such as
26 buildings, fences, levees, roads, as described in chapter 3 *Conservation Strategy*.

27 **Funding Activities of Other Entities.** The Management Entity will provide funding to other
28 entities (such as local governments engaged in regional conservation planning processes) to
29 implement habitat and species conservation efforts, both inside and outside the Delta, that
30 help advance the biological goals and objectives of the BDCP, as described in chapter 3
31 *Conservation Strategy*.

32 **7.3.2 Implementing Water Operations Conservation Measures**

33 The Management Entity will coordinate with DWR, USBR, the fish and wildlife agencies, and
34 the Implementation Council on the implementation of BDCP conservation measures that relate to
35 the operation of the SWP and the CVP. Although the Management Entity will not have direct
36 responsibility for the operation the two water systems, it will be designated with the authority to

1 direct, track, and monitor operations of both DWR and USBR to implement the water operation
2 conservation measures set out in the BDCP. As part of the task of ensuring the proper
3 implementation of those measures, the Management Entity will house the “Fishmaster,” who will
4 be designated with the authority to make real-time operational decisions, within discretionary
5 boundaries set out in the BDCP, for the purpose of maximizing benefits to covered fish species
6 and their habitat.

7 ***Real-Time Operations for Conservation of Protected Species.*** The fish and wildlife agencies
8 will select the Fishmaster, after consultation with the Management Entity and Implementation
9 Council. The Fishmaster will be more than one individual, as so designated. The primary
10 criteria for such designation will be expertise and experience in the management of water
11 operations for conservation purposes. The Fishmaster will coordinate closely with the
12 Management Entity.

13 The Fishmaster will, on a day-to-day basis, make determinations regarding real-time operations
14 of the SWP and the CVP facilities within the parameters of the BDCP conservation measures.³
15 The Fishmaster will make such discretionary judgments on the basis of the needs of covered fish
16 species and the aquatic ecosystem generally. The Fishmaster will confer with, and seek input
17 from, staff of the Management Entity responsible for other aspects of authorized operations of
18 covered facilities. The specific protocols for real-time operations, which will establish the
19 authorized limits of the Fishmaster’s discretion, are described in Chapter 3 and will be reflected
20 in authorizations issued pursuant to this plan.

21 The Fishmaster will not have authority to make routine or non-routine changes associated with
22 adaptive management of operations. Such changes will be the responsibility of the Management
23 Entity and regulatory agencies, based on adaptive management per the procedure described in
24 [Figure 3.12 BDCP Adaptive Management Decision Making Process](#). Once a change that affects
25 real-time operations for conservation purposes has been approved, the Fishmaster will be
26 responsible for implementation of the new or modified conservation measure.

27 For the purpose of illustration, a specific conservation measure may require by-pass flows at a
28 particular location in year 2012, and may specifically allow flexibility to operate between 6 and 8
29 units at a given time. Further assume that by-pass flows of less than 6 or greater than 8 are
30 within the adaptive management range and subject to either routine or non-routine changes. The
31 Fishmaster may exercise discretion to direct operations between 6 and 8 units of by-pass flows.
32 If, as a result of adaptive management per [Tables 3.4 and 3.5](#) and [Figure 3.12](#), the discretionary
33 range of bypass flows is changed to 6 to 7 units, the Fishmaster will thereafter operate between 6
34 and 7 units.

35 Notwithstanding the role of the Fishmaster, the authorized entities will retain ultimate legal
36 responsibility for compliance with the plan and the regulatory authorizations. Similarly, the fish
37 and wildlife agencies will retain legal authority to oversee, enforce, modify, or revoke such
38 authorizations.

³ This draft assumes that Chapter 3 will specify operational criteria for real-time operations that the Fishmaster will implement without further approvals from the regulatory agencies. Under the adaptive management procedure in Chapter 3, the Management Entity (not the Fishmaster) will be responsible for routine and non-routine changes to those operational criteria. The Management Entity will confer with, and obtain any necessary approvals from the regulatory agencies to undertake such changes.

1 *Role of the Fish and Wildlife Agencies in the Implementation of Water Operations*
2 *Conservation Measures*

3 In making real-time decisions regarding the implementation of operations-related conservation
4 measures, the Fishmaster will confer with the fish and wildlife agencies and utilize data,
5 information, and analysis generated from currently established fisheries and operational technical
6 teams. Specifically, the Fishmaster will take into account real-time data derived from work
7 conducted by the following teams, including current fish surveys, flow and temperature
8 information, and determinations regarding salvage or loss at the project facilities; and information
9 about public health, safety, and water supply reliability:

- 10 • **The Sacramento River Temperature Task Group (SRTTG):** The SRTTG is a
11 multiagency group that meets initially in the spring to discuss biological, hydrologic, and
12 operational information, objectives, and alternative operations plans for temperature
13 control to assist with improving and stabilizing Chinook population in the Sacramento
14 River.
- 15 • **Smelt Working Group (Working Group):** FWS chairs the working group, which
16 consists of one representative each from FWS, DFG, DWR, EPA, and Reclamation. The
17 group compiles and interprets real-time biological and technical issues (such as stages of
18 development, distribution, and salvage) regarding delta smelt and develops
19 recommendations for consideration by the FWS. The working group has also developed
20 for DFG recommendations to minimize adverse effects to longfin smelt. The working
21 group employs the Delta Smelt Risk Assessment Matrix (DSRAM) to assist in evaluating
22 the need for operational modifications of SWP and CVP to protect delta smelt.
- 23 • **Salmon Decision Process:** This process is used by the fishery agencies and project
24 operators to coordinate DCC gate operations and the purposes of fishery protection
25 closures, Delta water quality, and/or export reductions. Inputs such as fish life stage and
26 size development, current hydrologic events, fish indicators (such as catch indices),
27 salvage at the export facilities, and current and projected Delta water quality conditions
28 will be used to make recommendations regarding potential DCC closures and/or export
29 reductions.
- 30 • **American River Group (ARG):** The ARG convenes monthly or more frequently if
31 needed, to provide fishery updates and reports to USBR to help manage Folsom
32 Reservoir for fish resources in the Lower American River. Although open to the public,
33 the formal members of the ARG are Reclamation, FWS, NMFS, and DFG, and generally
34 include representatives from several agencies and organizations with on-going concerns
35 and interests regarding management of the Lower American River.
- 36 • **San Joaquin River Technical Committee (SJRTC):** The SJRTC meets to plan and
37 implement VAMP each year, and oversees the Biology and the Hydrology subgroups.
38 These two subgroups are charged with certain responsibilities, and must also coordinate
39 their activities within the San Joaquin River Agreement (SJRA) Technical Committee.
- 40 • **DCC Project Work Team:** A multiagency group under CALFED, its purpose is to
41 determine and evaluate the affects of DCC gate operations on Delta hydrodynamics,
42 water quality, and fish migration. The work team coordinates with the DAT and OFF

1 groups to conduct gate experiments and members may be used as a resource to estimate
2 impacts from real time gate operations.

- 3 • **Gate Operations Review Team (GORT):** When the gates proposed under SDIP Stage 1
4 are in place and operational, the interagency team consisting of representatives from
5 DWR, USBR, FWS, NMFS, and DFG, and possibly others as needs change, will be
6 convened to make recommendations for the operations of the fish control and flow
7 control gates to minimize impacts on resident threatened and endangered species and to
8 meet water level and water quality requirements for south Delta water users. DWR will
9 be responsible for providing predictive modeling, and SWP Operations Control Office
10 will provide operations forecasts. USBR will be responsible for providing CVP
11 operations forecasts, including San Joaquin River flow, and data on current water quality
12 conditions. Other members will provide the team with the latest information related to
13 south Delta fish species and conditions for crop irrigation.

14 **7.3.3 Implementing Other Stressors Conservation Measures**

15 The Management Entity will be responsible for the implementation of the other stressor
16 conservation measures. The role of the Management Entity will include both direct involvement
17 in the implementation of measures and the funding and monitoring of actions that will be
18 undertaken by supporting entities, as described in chapter 3 *Conservation Strategy*. The funds
19 directed to supporting entities will likely target efforts focused on addressing the adverse effects
20 of such stressors as toxic contaminants, non-native predatory species, low dissolved oxygen
21 zones, and entrainment unrelated to covered activities.

22 **7.3.4 Overseeing Biological Monitoring, Scientific Research, and Reporting**

23 The Management Entity will be responsible for the overall management and oversight of the
24 BDCP monitoring and research program and for the implementation of monitoring-related
25 activities, as described in chapter 3 *Conservation Strategy*. The Management Entity will
26 establish the framework for the monitoring program (*e.g.*, scope, methodologies, and protocols),
27 and will coordinate the efforts of the authorized entities, fish and wildlife agencies, and
28 supporting entities to help implement the monitoring program. The Management Entity will
29 further assemble and synthesize the results of monitoring activities, and will maintain databases
30 and the results of data analysis, obtained through the monitoring program. As appropriate, the
31 Management Entity will seek and obtain input and advice from independent scientists.

32 The Management Entity will also manage the BDCP research program, as described in chapter 3
33 *Conservation Strategy*, which will include establishing research goals and priorities and
34 administering a process to select and coordinate researchers who will be involved in the
35 program. The Management Entity will compile and synthesize the results of studies and analysis
36 undertaken by other entities and organizations that are of interest and assistance to BDCP
37 implementation. The Management Entity will also coordinate BDCP funding for research by
38 other entities and organizations, as described in chapter 3 *Conservation Strategy*.

39 In addition, the Management Entity will track a variety of plan implementation actions and
40 comply with the reporting requirements of the plan, as described in chapter 3 *Conservation*
41 *Strategy* and chapter 6 *Implementation Plan*. Reports prepared by the Management Entity will
42 include, among other things, the results of monitoring and research, an assessment of overall

1 plan performance, and an accounting of the distribution and expenditures of funding by the
2 various entities engaged in plan implementation activities.

3 **7.3.5 Overseeing the Adaptive Management Program**

4 The Management Entity will manage the BDCP adaptive management program, as described in
5 chapter 3 *Conservation Strategy*. Among other things, the Management Entity will assemble,
6 synthesize, and analyze the results of BDCP monitoring efforts and gather, evaluate, and
7 integrate the results of new and relevant scientific research and studies conducted by other
8 parties. The Management Entity will facilitate and coordinate discussion and consideration of
9 adaptive management issues among the various participating entities, including the authorized
10 entities, fish and wildlife agencies, and the Implementation Council as part of its decision-
11 making process regarding routine and non-routine adaptive management matters. As adaptive
12 management changes are considered, input will be sought from the various existing fisheries and
13 operational teams that were previously assembled by the authorized agencies and the fish and
14 wildlife agencies. The role and function of these teams are described in section xx of this
15 chapter.

16 The BDCP categorizes potential changes to conservation measures made through the adaptive
17 management program as either “routine” and “non-routine.” These terms are not found in the
18 ESA or the NCCPA, or any regulations or guidance associated with these laws, but were
19 developed for the BDCP in an effort to streamline coordination processes between the
20 Management Entity and other entities when the adaptive management change is minor, and to
21 recognize the need for a formal coordination process when the adaptive management change is
22 more than minor.

23 **WHAT IS ROUTINE? WHAT IS NON-ROUTINE?**

24 The definition of a minor or routine adaptive management response defies precise measurement
25 and is influenced by context. It is recognized that the environmental baseline and the status of
26 covered species at the outset of the BDCP are such that few adaptive management responses will
27 be considered to be routine by the Management Entity, the authorized entities, or the fish and
28 wildlife agencies. However, as conservation measures are implemented over time, it is likely
29 that actions will be characterized as routine with increasing frequency. The concept behind the
30 routine adaptive management response category is that the Management Entity must be able to
31 undertake minor adjustments to conservation measures, without the need for extensive
32 coordination with the other entities, thereby encouraging efficiency and timeliness to the
33 adaptive management process. Adaptive management responses that are likely to be considered
34 routine at the outset of plan implementation include small adjustments to techniques used for the
35 restoration of habitat and for the removal of invasive species.

36 All adaptive management responses that are not categorized as routine at the beginning of plan
37 implementation will be considered non-routine. Adaptive management responses expected to be
38 categorized as non-routine at the outset include: any change in the water operating criteria,
39 discontinuation of a conservation measure, expansion of a conservation measure, and the
40 addition of a new conservation measure. Certain non-routine adaptive management changes will
41 be made at the discretion of the Management Entity, in consultation with the fish and wildlife
42 agencies; other non-routine changes will require the approval of the fish agencies. Further

1 details regarding the decision-making process for adaptive changes to the BDCP conservation
2 strategy are provided in section 3.6 *Adaptive Management Plan*.

3 PROCESS FOR DECIDING UPON THE ROUTINE AND NON-ROUTINE CATEGORIZATION

4 At the start of plan implementation, the Management Entity, authorized entities, fish and wildlife
5 agencies, and the Implementation Council will agree upon the adaptive management responses,
6 or categories of responses, that should initially be labeled routine. If an adaptive management
7 response is not determined to be routine, it will be considered to be non-routine. Because of the
8 uncertainties associated with making these judgments, the Management Entity will develop a
9 streamlined process to confirm with the fish and wildlife agencies that a particular response is
10 considered routine.

11 PROCESS FOR ADJUSTING THE ROUTINE AND NON-ROUTINE DETERMINATIONS

12 As the Management Entity implements the conservation strategy over time and coordinates with
13 the fish and wildlife agencies and Implementation Council, the confidence level in the adaptive
14 management process will increase and adaptive management actions will increasingly be viewed
15 as routine. The Management Entity will establish at the outset of plan implementation a process
16 for annually reviewing the categorization of routine and non-routine responses. Routine adaptive
17 management responses that are carried out by the Management Entity will be identified in the
18 annual report submitted to the fish and wildlife agencies, providing the opportunity for review
19 and input regarding those responses.

20 **7.3.6 Implementing Measures in Response to Changed Circumstances**

21 The Management Entity will be responsible for recognizing and responding to those changed
22 circumstances identified in the plan, and for implementing those measures set out in the BDCP to
23 address those changed circumstances, as described in chapter 6 *Implementation Plan*. The
24 Management Entity will establish a process to ensure timely engagement of the authorized
25 entities, fish and wildlife agencies, and the Implementation Council in the identification and
26 response to such changed circumstances.

27 **7.4 Regulatory Compliance Related to the Implementation of** 28 **the BDCP**

29 The Management Entity will be responsible for ensuring that the BDCP is properly implemented,
30 including ongoing compliance with the terms and conditions of the plan and its associated
31 authorizations. The Management Entity will also identify, seek, and obtain from State and
32 federal agencies any other regulatory permits or authorizations that are necessary to effectuate
33 plan implementation.

34 **7.4.1 Maintaining Permits/Authorizations and Obtaining Amendments**

35 The Management Entity will establish a process to ensure compliance with all permits and
36 authorizations related to BDCP implementation. If amendments or modifications to any of these
37 permits or authorizations become necessary, the Management Entity and the authorized entities

1 will work with the applicable agency to develop the necessary documentation and obtain the
2 amendment.

3 **7.4.2 Obtaining Additional Regulatory Authorizations**

4 The Management Entity will identify and obtain regulatory authorizations necessary to
5 implement BDCP actions. The EIR/EIS for the BDCP will provide sufficient environmental
6 review and analysis of the proposed adoption of the plan by DWR, and of the proposed issuance
7 of take authorizations by the State and federal fish and wildlife agencies pursuant to the Plan, as
8 well as of other anticipated federal and State regulatory authorizations. However, additional
9 NEPA and CEQA review, as well as compliance with other environmental laws, will be
10 necessary for a number of BDCP-related actions.

11 The Management Entity will likely need to obtain permits or authorizations, or conduct
12 environmental review, under the following State and federal laws, regulations, or processes prior
13 to the implementation of certain conservations measures:

- 14 • Sections 404 and 401 of the Clean Water Act
- 15 • Sections 10 (33 USC 403) and 14 (33 USC 408) of the Rivers & Harbors Act of 1899
- 16 • Section 1602 of the California Fish and Game Code (Streambed and Lakebed Alteration
17 Agreements)
- 18 • Section 106 of the National Historic Preservation Act
- 19 • Encroachment permits from the Central Valley Flood Protection Board and reclamation
20 districts to conduct work on levees
- 21 • The National Environmental Policy Act and the California Environmental Quality Act, as
22 necessary for certain project-related actions

23 **7.5 Public Outreach**

24 The Management Entity will implement a public outreach and education program to promote
25 public awareness and provide opportunities for public input on matters concerning plan
26 implementation. General objectives of the outreach program will be to:

- 27 • Promote public awareness of and understanding about the plan's purpose, specific
28 conservation measures and their implementation
- 29 • Provide streamlined and timely access to information
- 30 • Provide contact with decision-makers
- 31 • Maintain a transparent process for understanding, clarifying and addressing public input
32 and comments

33 Particular emphasis will be placed on outreach efforts focused on the following stakeholders:

- 34 • Environmental community

- 1 • Agricultural community
- 2 • Boaters
- 3 • Commercial fishing interests
- 4 • Recreational anglers
- 5 • Local governments
- 6 • Reclamation districts
- 7 • Irrigation districts
- 8 • Public utilities
- 9 • Public and private landowners adjacent to BDCP conservation areas
- 10 • Native American Tribes

11 The public outreach and education program will include, at a minimum:

- 12 • **Informational Material.** The preparation and distribution of general information
13 materials such as annual reports, quarterly electronic newsletters, and issue-specific fact
14 sheets in timely manner so as to facilitate public understanding and meaningful public
15 input.
- 16 • **Interactive Website.** Development and maintenance of an interactive website that
17 provides real-time access to information, updates regarding implementation activities,
18 and expanded opportunities for public engagement and input. Visual elements such as
19 maps and webcasts will be used to further aid information sharing and public
20 understanding.
- 21 • **Speakers Bureau.** Presentation of BDCP implementation information to various groups
22 and at public meetings that occur throughout the state, as well as targeted audiences
23 including Delta communities, Tribes, and specific statewide stakeholder interests.
- 24 • **Annual Public Workshops.** Commitment to annual public workshops and others as
25 needed to provide timely opportunities for public dialogue, input and comment regarding
26 a wide range of implementation issues.
- 27 • **Environmental Justice.** An environmental justice outreach program will be integrated
28 into overall outreach activities described above to provide minority and low-income
29 communities with access to information about the plan's implementation and
30 opportunities for input. Outreach techniques include dedicated multilingual web page,
31 availability of translation services at public workshops and community presentations, and
32 outreach to ethnic media outlets.