

Bay Delta Conservation Plan (BDCP)

Steering Committee (SC) Meeting

January 7, 2010, 1:00 p.m. to 4:00 p.m.

California Farm Bureau Federation Conference Room

2300 River Plaza Ave, Sacramento, CA

Draft Meeting Notes

Associated documents/handouts:

- *Agenda*
- *Draft BDCP SC Meeting Notes July 16, 2009*
- *Draft BDCP SC Meeting Notes September 24, 2009*
- *Draft BDCP SC Meeting Notes October 8, 2009*
- *Draft BDCP SC Meeting Notes October 22, 2009*
- *Draft BDCP SC Meeting Notes November 5, 2009*
- *Draft BDCP SC Meeting Notes November 19, 2009*
- *Draft Steering Committee Meeting Agendas*
- *Draft BDCP Key Decisions/Products Schedule*
- *Proposed Changes to the BDCP Covered Species List*
- *Table 1.2 BDCP Proposed Covered Species and Critical Habitat*
- *Proposed BDCP Site-Specific Near-Term Habitat Restoration Projects*
- *Draft Section 6.3 Regulatory Assurances and Changed Circumstance and Unforeseen Circumstances*
- *Letter from Bureau of Reclamation to San Luis & Delta-Mendota Water Authority on 2-Gates Fish Protection Demonstration Project*

Action Items and Key Decisions

- Approved *Draft BDCP SC Meeting Notes July 16, 2009*
- Approved *Draft BDCP SC Meeting Notes September 24, 2009*
- Approved *Draft BDCP SC Meeting Notes October 8, 2009* with corrections
- Approved *Draft BDCP SC Meeting Notes October 22, 2009*
- Approved *Draft BDCP SC Meeting Notes November 5, 2009*
- Approved *Draft BDCP SC Meeting Notes November 19, 2009*
- An offline meeting will be held to go over the mini-effects analysis physical modeling results in more depth (“modeling-for-modelers” meeting)
- The Public Outreach Workgroup plans to have a draft public response proposal ready for the January 21, 2010, Steering Committee meeting
- SAIC will produce a document for the January 14 meeting that identifies the pros and cons of including site-specific restoration projects in the BDCP Conservation Strategy

Updates

- Lester Snow has been appointed the Secretary of the California Natural Resources Agency
- The Interim Federal Action Plan for the California Bay-Delta has been published. It is available on the Department of the Interior website. By February 2010, a Coordinated Federal-State Work Plan on California water issues will be developed that will focus on near-term actions to be taken in 2010 and will complement the Interim Federal Action Plan.
- John McCamman has been appointed Director of the California Department of Fish and Game

- Tina Cannon Leahy (DFG) will be moving from DFG to a staff position in the California State Assembly
- Fall mid-water trawl survey data on Delta fish species will be posted today on the DFG website
- DWR reports that the California snowpack index was at 85% of average as of December 30, 2009
- Kevin Hunting has been appointed chief deputy director of the DFG, and Sandy Morey (Region 2) is now acting deputy director of the Ecosystem Conservation Division
- Mark Cowin has been appointed Director of the California Department of Water Resources
- DFG has a new General Counsel – Tom Gibson
- DWR recommends that a new alternate be named for the DWR seat on the BDCP Steering Committee.
- Westlands Water District distributed to the SC a letter from the Bureau of Reclamation to the San Luis & Delta-Mendota Water Authority regarding the status of the 2-Gates Fish Protection Demonstration Project
- The Bay Institute, Environmental Defense Fund, and Defenders of Wildlife have submitted to Karen Scarborough (Steering Committee Chair) a 29-page comment letter on BDCP Draft Chapter 3 (Conservation Strategy)

Process and Schedule

Karen Scarborough went over the *Draft Steering Committee Meeting Agendas* and *Draft BDCP Key Decisions/Products Schedule* handouts that outline when specific topics will be teed-up for discussion and when decisions will be made. Decisions made in January will inform the full Effects Analysis that will begin in February. Other issues such as monitoring/metrics, adaptive management, and funding mechanisms will be addressed in the coming months. The goal is to have the public draft of the BDCP ready in September 2010, concurrent with the draft EIR/EIS release. There was discussion about the implications of decisions regarding goals and objectives in regards to the upcoming full effects analysis. This is an iterative process and they may be further modified. The decisions allow the process to move forward to the next step, and the decided issues will be revisited. Discussion followed regarding development of conservation measures in relation to obtaining full agreement and closure on goals and objectives. American Rivers expressed a concern that the proposed release of the draft EIR/EIS in Fall 2010 may be too soon.

A request was made to have an offline meeting on physical (hydrodynamic) modeling results from the mini-effects analysis that would provide an opportunity for more in-depth questions and discussion of outputs (i.e., “modeling-for-modelers” meeting). It was agreed that such a meeting would be scheduled. A request was made to have further discussion on conveyance options before the proposed February 11, 2010 decision date. SC members would like to make sure they have enough time between tee-ups and decision days to discuss all issues with their constituents. A request was made to have handouts a week before SC meetings. Ms. Scarborough replied that this would be quite a challenge given State furloughs, but that every attempt will be made to have handouts ready at least two days before SC meetings.

Public Comments:

Osha Meserve (Reclamation District 999 and Stone Lakes NWR Association) asked when the proposed capacity of the new intake and conveyance facilities would be decided. Paul Cylinder and Ms. Scarborough responded that this decision relates to and would be determined by water operational needs (both supply and biological).

Justin Frederickson (California Farm Bureau) stated that in regards to modeling, they would like to see more detail in the presentations before giving a nod on proposed near- and long-term operational criteria.

Public Outreach

There has been a hiatus in meetings of the Public Outreach Workgroup; however, the Workgroup co-chairs are putting together additional information for the public regarding decisions that are to be made. A smaller group met to discuss ways to respond to issues being raised by local interests. The expectation is that this small group

will meet again next week and will have a proposal for that public response ready for the Steering Committee on January 21, 2010.

The County of Sacramento is offering to give Steering Committee members a tour of the new Freeport intake project on January 13 or 14, 2010.

In addition to the BDCP Public Outreach Workgroup's efforts, there are many other developments occurring in regards to the Delta such as the creation of the Delta Stewardship Council and the Delta Conservancy, and the reconfiguration of the Delta Protection Commission under the recent state legislation. There will soon be an RFQ (request for qualification) from the Council for work developing the Delta Plan. A suggestion was made to expand our informational outreach program to engage agencies that could be affected by BDCP actions (e.g., California Department of Transportation, and Department of Boating and Waterways).

Discussion: Proposed Changes to Covered Species List

Pete Rawlings, SAIC, presented two handouts (*Proposed Changes to the BDCP Covered Species List* and *Table 1.2 BDCP Proposed Covered Species and Critical Habitat*) and gave a summary of how the current list of 55 covered species was created. In Fall 2009, USFWS and DFG suggested adding several species to the covered species list: western yellow-billed cuckoo, least Bell's vireo, California least tern, California linderiella, dwarf downingia, and side-flowering skullcap. USFWS and DFG also suggested removing lesser saltscale from the BDCP proposed covered species list.

Adding the western yellow-billed cuckoo and least Bell's vireo would not require an increase in the extent of habitat restoration in the BDCP Conservation Strategy because of the benefits provided by habitat conservation measures for other species. Neither of these bird species are resident in the Delta at this time; however, a male western yellow-billed cuckoo was observed in the Delta during surveys conducted in the spring of 2009, and the observation was made within the species' breeding period (though no females or breeding/nesting were observed). The BDCP Conservation Strategy includes restoration of 5,000 acres of riparian habitat that could provide substantial habitat function for western yellow-billed cuckoo.

The Least Bell's vireo has been expanding back into its historical range up the San Joaquin Valley. Breeding of this species has been observed at the San Joaquin River National Wildlife Refuge. It is reasonable to assume that this species will continue to expand northward in the San Joaquin Valley and could become established in restored riparian habitat in the BDCP Plan Area.

The addition of two vernal pool species - California linderiella (a fairy shrimp) and dwarf downingia (a small plant) - would not require an increase in habitat restoration under the BDCP Conservation Strategy, as vernal pool habitat restoration that addresses all impacts and contributes to conservation is already provided for in the BDCP Conservation Strategy. Side-flowering skullcap (a wet meadow species) is widespread nationally, but rare in California. Whether this species is native to California or a recently introduced species remains in question; therefore, this species will be further investigated for coverage under BDCP.

The California least tern was not known to nest in the BDCP Plan Area and associated impacts areas; however, DFG has indicated that least terns are now nesting at the Montezuma Wetlands restoration project site in Suisun Marsh. Nesting substrate was inadvertently created as a result of placing disposed dredge material to raise elevations to create marsh (an action that could be implemented by BDCP where feasible with habitat restoration areas). Currently, proposed BDCP tidal habitat restoration actions would benefit the least tern through the creation of subtidal aquatic foraging habitat, but is not presently proposed to create nesting habitat.

Lesser saltscale is recommended for removal from the BDCP covered species list. As per an expert's opinion, a single known occurrence in the Delta appears to have been misidentified and is more likely to be brittle scale (a related species proposed for coverage under BDCP).

A question was raised about obtaining state take permits for state “fully protected” species. DFG responded that it depends on the action for which the take is authorized; take can be authorized for fully protected species as part of recovery actions.

NMFS reminded the SC that BDCP could result in indirect effects to federal-listed Southern Resident Killer Whale (also known as “Orca”) because Chinook salmon from the Sacramento and San Joaquin River systems are a major food source; however, since BDCP actions are not likely to result in direct effects on Killer Whale, it is not recommended to be a BDCP covered species. Indirect effects on Killer Whale will be addressed in the BDCP full Effects Analysis as required under Section 7 of the Endangered Species Act.

The decisions on additions/deletion will be made at the next Steering Committee meeting.

Presentation: Overview of Proposed BDCP Site-Specific Near-Term Habitat Restoration Projects

Paul Cylinder gave an overview of the issue. “Phase 1” projects are those which would be ready for implementation (completed designs and permits) at issuance of the BDCP ROD/NOD (i.e., “shovel ready”). “Phase 2” projects are those which could be permitted early in the near-term period.

Pete Rawlings began the presentation by describing the restoration project selection criteria. These projects are those that would contribute towards achieving BDCP habitat restoration objectives, could be implemented in the near-term implementation period, involve sites that are available to BDCP for implementing habitat restoration, and are feasible and practicable projects.

A list of phase 1 and 2 projects are provided in the handout and the presentation slides.

The question for the BDCP Steering Committee to consider is whether to include these specific projects designs in the BDCP Conservation Strategy (Chapter 3) or address in more general restoration opportunity area evaluations. If they are specifically described in Chapter 3, these projects and their effects will be specifically addressed in the BDCP EIR/EIS at the project level. If these actions are carried out as part of BDCP restoration activities, but are not specifically described in Chapter 3, they would have EIR/EIS documents separate from the BDCP EIR/EIS. The BDCP EIR/EIS would still encompass the range of effects that could result from these projects but would not identify or analyze them specifically on a project-level basis.

Discussion followed regarding the pros and cons of including these specific projects in the BDCP Conservation Strategy. Separate projects with separate EIR/EIS processes could hold up doing these projects. Conversely, having specific projects listed in the BDCP, requiring additional and more detailed review, could hold up the BDCP EIR/EIS if one more of these projects generated project specific schedule delay causing issues. A number of these projects may complete their environmental review, and possibly have permits issued, or underway before the BDCP is authorized. Others do not have enough specificity at this time to begin the EIR/EIS process. All of these projects can be implemented parting support of achieving BDCP goals while preparing separate NEPA/CEQA compliance documents.

A question was raised about where these project proposals came from. Mr. Rawlings responded that teams for each Restoration Opportunity Area (ROA) looked at possible projects within the ROA’s. These were projects proposed within agencies or opportunities identified by the BDCP Habitat Restoration Technical Team. It was decided that the BDCP consultant would prepare a handout of pros and cons on this subject which would be discussed at the next Steering Committee meeting.

Discussion: Draft Chapter 6 Plan Implementation – new text - Regulatory Assurances

Marc Ebbin presented new text prepared for Chapter 6. The new text addresses regulatory assurances and unforeseen circumstances. Also included in the handout is previously distributed text on changed circumstances. Mr. Ebbin explained that “regulatory assurances” is a risk-shifting concept that ensures a permittee isn’t required to do more than is required under the terms and conditions of the permit in the event of “unforeseen circumstances.” Regulators are limited to asking for changes to a plan that are within the four corners of the document. The regulatory assurance under the Endangered Species Act (“No Surprises Rule”)

establishes that once an incidental take permit has been issued pursuant to a Habitat Conservation Plan, and its terms and conditions are being fully implemented, the federal government will not require additional conservation or mitigation measures. If the status of a species addressed under a Habitat Conservation Plan unexpectedly declines, the primary obligation for undertaking additional conservation measures rests with the federal government, other government agencies, or other non-federal landowners who have not yet developed HCPs. However, if a permitted action is leading a species towards jeopardy, then the no surprises assurances may cease to remain in effect. In this instance, the permit may be suspended or revoked, though the permittee can work on modifying the plan to promote conservation of the species and possibly avoid permit revocation/suspension. Mr. Ebbin also explained that the No Surprises rule does not extend to federal actions addressed through section 7 of the ESA.

Under the California Natural Community Conservation Planning Act, there is similar provision for regulatory assurances, with the exception that DFG retains more discretion to shape assurances under the specific plan whereas the federal rule is a one-size-fits-all approach.

It was expressed that the responses to changed circumstances would be in the adaptive range of the BDCP, but in the case of big changes (e.g., multiple Delta levee failures) it's questionable that the adaptive management range will be broad enough to encompass the kind of responses necessary. Mr. Ebbin responded that large-scale catastrophes could occur, and it is specified in Chapter 6, the BDCP would not be the primary mechanism to address the effects of such events.

A question was raised about whether "emergency provisions" are outside the adaptive range. Mr. Ebbin responded that "emergency provisions" come into play when the BDCP must respond to an emergency under a timeframe that does not allow going through all the prescribed actions to avoid or minimize the effects of covered activities on covered species and habitats or if a remedy in response to an emergency could adversely affect a species (without time or opportunity to consult with permitting agencies on how best to do that). A process will be set out in the BDCP to address such emergency responses.

A request was made to amend lines 24-26 on page 6-5 in section 6.3.2 *Changed Circumstances* which read "The Management Entity will seek to obtain funding from the party responsible for the levee failure for the actions necessary to restore habitat functions provided by the tidal marsh." A discussion followed regarding financial responsibility for damage to habitat caused by levee failures. It is agreed that the language is draft and will be further refined.

Attendees

Management and Representatives

Karen Scarborough (Chair, The Natural Resources Agency)

Marc Ebbin (DWR, The Natural Resources Agency)

Laura King Moon (State Water Contractors)

Karla Nemeth (The Natural Resources Agency)

Keith Coolidge (California Bay-Delta Authority)

Jerry Johns (DWR)

Paul Robershotte (USACE)

Jason Peltier (Westlands)

Brent Walthall (Kern County)

Greg Zlotnick (Santa Clara Valley)

Ann Hayden (Environmental Defense Fund)

Anthony Saracino (The Nature Conservancy)

Melinda Terry (North Delta Water Agency)

Greg Thomas (National Heritage Institute)

Gary Bobker (The Bay Institute)

Steve Ottemoeller (Friant Water Authority)

Carl Wilcox (DFG)

Kurt Arends (Zone 7)
Patti Idlof (USBR)
Kenny Watkins (CA Farm Bureau)
Greg Gartrell (Contra Costa Water)
Dan Castleberry (USFWS)
Michael Tucker (NOAA/NMFS)
Paul Cylinder (SAIC)
Pete Rawlings (SAIC)

On phone
John Cain (American Rivers)
