

CHAPTER 7. IMPLEMENTATION STRUCTURE

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CHAPTER 7. IMPLEMENTATION STRUCTURE

1 This chapter describes the institutional structure and organizational arrangements that will be
2 established to govern and implement the BDCP, and sets out the roles, functions, authorities, and
3 responsibilities of the various entities that will participate in plan implementation. The
4 implementation structure is designed to ensure that sufficient institutional expertise, capacity,
5 resources, and focus are brought to bear to accomplish the goals and objectives of the BDCP,
6 that ~~the entities receiving regulatory authorizations~~ Authorized Entities, as defined in section XX,
7 are accountable to those agencies granting the regulatory authorizations, and that the decision-
8 making process regarding the implementation of the Plan is transparent and understandable to
9 the public

10 The BDCP implementation structure will help ensure effective and efficient plan implementation
11 and ongoing compliance with the terms and conditions of the ~~p~~Plan and its associated regulatory
12 authorizations. This implementation approach will also facilitate the clear delineation of roles
13 and responsibilities among the range of public and private entities participating in the process
14 and help define the nature of their engagement. This approach further reflects the commitment
15 to maintain and encourage ongoing collaboration among the range of public and private parties
16 with interest in the Delta, and to facilitate adaptive and responsive plan implementation, guided
17 by new information and scientific understanding.¹

18 The approaches to plan governance set out in this chapter have been designed solely to facilitate
19 the implementation of BDCP actions. If over the course of plan implementation matters arise
20 that are outside the scope of the BDCP, any proposed actions related to those new matters may
21 be implemented through the BDCP only upon appropriate modifications and/or amendments to
22 the Plan.

23 The BDCP implementation structure will be organized around a Program Manager who will
24 direct a new “BDCP Implementation Office” (IO), and have responsibility for plan
25 implementation and oversight (Figure 7-1). The BDCP Program Manager will coordinate
26 implementation actions with the ~~“a~~Authorized ~~e~~Entities” (i.e., certain of the ~~all~~ entities receiving
27 permits or other authorizations under ESA, NCCPA, and/or CESA, as defined in section 7.1.2,
28 Entities to Receive Regulatory Authorizations – Authorized Entities and Other Authorized
29 Entities), ~~the State and federal contractors,~~ the fish and wildlife agencies, and a range of
30 stakeholders and other interests. The State and federal fish and wildlife agencies will maintain
31 the roles described in this chapter to assure that such implementation is consistent with
32 regulatory authorizations issued pursuant to the BDCP. In addition, a “BDCP Implementation
33 Board,” consisting of the Authorized Entities, will be established to implement BDCP, ~~and will~~
34 ~~consist of the Authorized Entities.~~ Additionally, a “BDCP Stakeholder Committee” will be

¹The BDCP implementing agreement includes additional detail regarding the roles and responsibilities of the authorized entities, the Implementation Office, and the fish and wildlife agencies regarding the implementation of the Plan.

1 created to ~~serve as a forum in which~~enable public agencies, non-governmental organizations,
2 interested parties, and the public ~~to provide input into the~~ ~~may offer recommendations regarding~~
3 BDCP implementation ~~process~~. The Implementation Office will also coordinate with the Delta
4 Stewardship Council, Delta Science Program, Sacramento-San Joaquin Delta Conservancy
5 (Delta Conservancy), and Delta Protection Commission to ensure appropriate engagement and
6 collaboration on matters of common interest. This approach to plan implementation is expected
7 to ensure the timely, efficient, and proper implementation of the commitments reflected in the
8 BDCP.

9 **7.1 ROLES AND RESPONSIBILITIES OF ENTITIES INVOLVED IN** 10 **BDCP IMPLEMENTATION**

11 The BDCP Program Manager will be selected to oversee and manage the implementation of the
12 BDCP, and to ensure that implementation proceeds in compliance with the Plan, the
13 Implementing Agreement, and the associated regulatory authorizations. The Program Manager
14 will manage the Implementation Office (IO). Various other parties will be integral to the process
15 of shaping decisions and effectuating actions set out in the BDCP. This section describes the
16 roles and responsibilities of the Program Manager, the IO, and of the various other participants in
17 the implementation process.

18 **7.1.1 The BDCP Program Manager and Implementation Office**

19 **7.1.1.1 Program Manager: Selection and Designation of Staff**

20 A single BDCP Program Manager will be responsible for BDCP implementation and will direct
21 and oversee the IO. The “Authorized Entities” will each designate a lead representative from
22 their respective agencies to assist the Program Manager with plan implementation. The Program
23 Manager may fulfill the staffing needs of the IO by drawing from existing personnel at DWR,
24 Reclamation, SFCWA, and other sources, as appropriate. Staff of the IO, many of whom will be
25 assigned to the IO by DWR, Reclamation, or other entities, will act under the direction of the
26 Program Manager. The engagement of personnel from DWR, Reclamation, and other entities in
27 the IO, however, will not affect or modify the existing authorities of federal, state, and local
28 agencies or non-governmental organizations that pertain to personnel matters

29 The Authorized Entities for the BDCP will solicit candidates for the Program Manager position.
30 A definition of “Authorized Entities” is provided in Section 7.1.2 *Entities to Receive Regulatory*
31 *Authorizations – Authorized Entities and Other Authorized Entities*. The Authorized Entities
32 will, by consensus, select the Program Manager after consulting with the federal and State fish
33 and wildlife agencies. The general qualifications of the Program Manager will be as follows:

- 34 • A minimum 10 years experience in the field of natural resources management;
- 35 • Familiarity with complex natural resources issues, including water resources issues;

- 1 • Experience with State and federal regulatory processes that affect water and other natural
2 resources that fall within the scope of the BDCP;
- 3 • Experience with multi-stakeholder processes;
- 4 • Experience with the administration or management of large-scale programs or projects;
5 and
- 6 • Excellent communication skills.

7 The specific roles and responsibilities of the Program Manager are described in further detail in
8 Section 7.2, *Implementation Office Administration*, Section 7.3, *Implementation of the*
9 *Conservation Strategy*, and Section 7.4, *Regulatory Compliance Related to BDCP*
10 *Implementation*, and Section 7.5, *Public Outreach*.

11 **7.1.1.2 Science Manager: Selection and Function**

12 The Program Manager will select a Science Manager to assist in the implementation of the
13 BDCP and to ensure that such implementation decisions are guided by the best available
14 scientific information. The Program Manager will consult with the Implementation Board in the
15 selection of the Science Manager. The Science Manager will report to the Program Manager.
16 Specifically, the responsibilities of the Science Manager include:

- 17 • Assist in the administration and implementation of the adaptive management program;
- 18 • Oversee the implementation of the BDCP monitoring and research program, with the
19 assistance of the IEP;
- 20 • Oversee the implementation of the BDCP adaptive management program;
- 21 • Engage in regular communication and coordination with the Delta Science Program and
22 coordinate with the Independent Science Board as well as other outside scientists to
23 gather independent scientific information and solicit input and review, as needed;
- 24 • Support the Program Manager in the preparation of reports and other technical
25 documents; and
- 26 • Assist in building sufficient scientific capacity and resources within the IO.

27 Matters relating to the conduct of scientific reviews and the solicitation of independent scientific
28 advice to assist in the implementation of the BDCP will be conducted by the Science Manager in
29 a manner that ensures their independence and scientific integrity.

30 Minimum requirements for the Science Manager will be:

- 31 • Educational and professional background in relevant scientific discipline,
- 32 • At least 10 years experience in the management of large programs,

- 1 • Experience managing or senior involvement in large scale research or monitoring
2 programs, and
3 • Knowledge of issues related to the Delta.

4 **7.1.1.3 Implementation Office: Establishment, Organization, and Functions**

5 The BDCP IO, under the direction of the Program Manager (Section 7.1.1.1), will implement,
6 coordinate, oversee, and report on all aspects of plan implementation. (Figure 7-1). The Program
7 Manager will use the IO staff to assure that the BDCP conservation measures, including those
8 related to protection and restoration of habitat; reduction of ecological stressors; management of
9 conserved habitat; and operation of the water projects, including the development of
10 infrastructure (in its oversight role to ensure plan compliance), are properly implemented
11 throughout the life of the Plan. The Program Manager will use the IO staff to oversee and
12 effectuate the adaptive management program; monitoring, data collection, and scientific research
13 efforts; annual and five-year work plans, budget, and report preparation; and the public outreach
14 process. To ensure that the commitments reflected in the BDCP are carried out in a timely and
15 efficient manner, the Program Manager, through the IO, will institute processes and procedures
16 to adequately address planning, budgeting, sequencing, and scheduling needs related to plan
17 implementation. The IO will function with a significant level of independence from its member
18 entities. However, the staff of the IO will work closely with these agencies on a range of
19 matters, particularly with respect to actions that affect water operations.

20 The IO may enlist other entities to carry out actions associated with conservation measures or
21 other implementation tasks on behalf of the IO (see “Supporting Entities,” below).
22 Notwithstanding the assignment of such responsibilities to other entities to implement projects or
23 actions, the IO will be responsible for ensuring that the work is performed in a manner that
24 complies with the terms and conditions of the BDCP and its associated regulatory authorizations
25 and are properly and fully implemented. As part of that responsibility, the IO will engage and
26 monitor those entities that become involved in aspects of plan implementation. The Program
27 Manager will oversee and coordinate the management of contracts with these other entities to
28 assist in the implementation of the BDCP. Those entities, and the roles and responsibilities they
29 are likely to assume, are generally identified in this chapter and depicted in the organizational
30 framework in Figure 7-1.

31 ~~The IO will function with a significant level of independence and autonomy from its member~~
32 ~~entities.—The staff of the IO will work closely with these agencies on a range of matters;~~
33 ~~particularly with respect to actions that affect water operations.~~

34 The IO will not be involved in the development or operation of SWP and/or CVP facilities;
35 instead, it will monitor water operations to assemble the information necessary to evaluate and
36 report on compliance with the terms and conditions of the Plan and the authorizations/permits.
37 The BDCP sets out the parameters within which DWR and the Reclamation will carry out CVP

1 and SWP operations and infrastructure development. DWR and Reclamation may chose to
2 operate the projects and develop new infrastructure using their current organizational capacity or
3 by contract with other entities.

4 The IO will budget for and oversee and coordinate management of the funds and other resources
5 | needed to carry out its responsibilities for plan implementation. The ~~a~~Authorized ~~e~~Entities will
6 | dedicate, hold, and release funds and resources necessary for plan implementation, and will not
7 | comingle these funds with other funds or resources of the agencies. The ~~a~~Authorized ~~e~~Entities
8 | will be responsible for all appropriated funds and other funds entrusted to them.

9 The IO will assume responsibility for the implementation of a broad range of actions, including:

- 10 • Oversight and coordination of administration of program funding and resources;
- 11 • Preparation of annual budgets and work plans;
- 12 • Establishment of procedures to implement plan actions;
- 13 • Oversight of and engagement in the implementation of conservation measures;
- 14 • Management of the monitoring and research and adaptive management programs;
- 15 • Implementation of public outreach program; and
- 16 • Fulfillment of compliance monitoring and reporting requirements.

17 The Program Manager will also have responsibility for coordinating with the Delta-wide
18 governance entities (Section 7.2.7. *Coordination with the Delta Stewardship Council, the Delta*
19 *Science Program, and the Delta Conservancy*) and managers of upstream operations.

20 The specific roles and responsibilities of the IO are described in further detail in Sections 7.2
21 *Implementation Office Administration*, 7.3 *Implementation of the Conservation Strategy*, and 7.4
22 *Regulatory Compliance Related to BDCP Implementation*, and 7.5 *Public Outreach*.

23

1

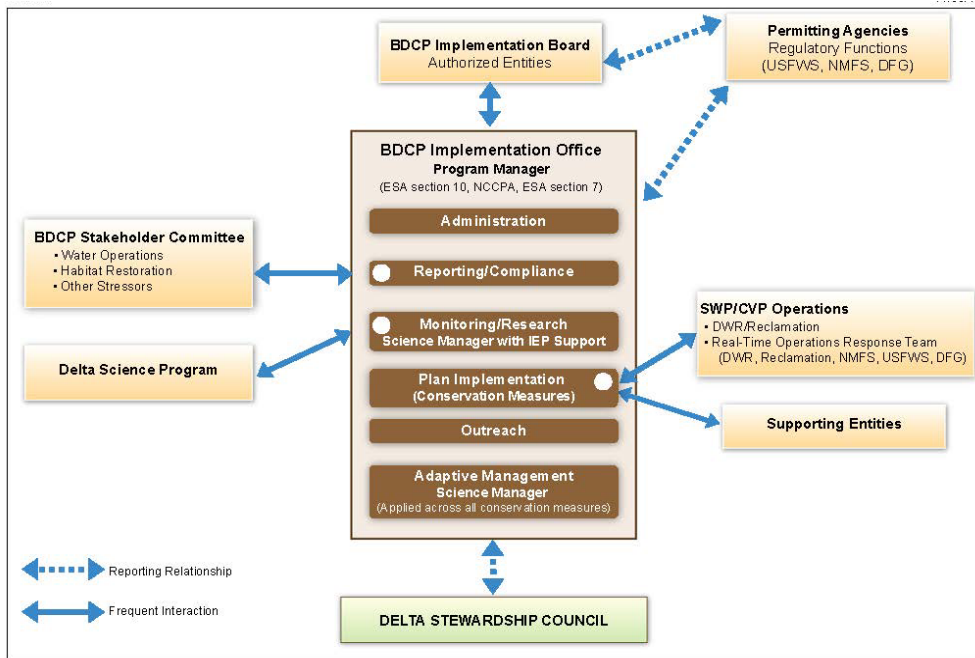


Figure 7-1. BDCP Implementation Structure

2

1 **7.1.1.4 Assignment of Responsibilities**

2 To effectively implement the BDCP, the Program Manager will be assigned certain
3 responsibilities by the Authorized Entities. The Authorized Entities will provide the Program
4 Manager with sufficient capacity and capability to effectively implement the BDCP and will
5 explicitly define the scope of responsibilities assigned to the Program Manager.

6 **7.1.1.5 No Delegation of Authority**

7 The assignment of responsibility to the Program Manger will not alter or modify existing
8 authorities, mandates, and obligations of the participating State and federal agencies. No general
9 delegation of authority by DWR and/or Reclamation to the Program Manager or one of their
10 employees assigned to the IO will occur, although specific delegation may occur in the event that
11 it is considered by the delegating agency to be beneficial to the efficient operation of the IO.
12 Any such delegation will be conferred, in writing, by the appropriate delegating agency to the
13 appropriate individual within the IO, and will be reviewed by that agency from time to time.

14 **7.1.2 Entities to Receive Regulatory Authorizations - Authorized** 15 **Entities and Other Authorized Entities**

16 The BDCP provides the basis for the issuance of regulatory authorizations, under the federal
17 Endangered Species Act (ESA), the California Natural Community Conservation Planning Act
18 (NCCPA) (and potentially the California Endangered Species Act [CESA]), for the incidental
19 take of listed fish and wildlife species that result from delta water operations and other covered
20 activities (Chapter 4, *Covered Activities, Section 4.2*). DWR, Reclamation, and certain other
21 agencies that receive incidental take authorizations for activities covered under the BDCP will be
22 referred to collectively as the “Authorized Entities.”

23 The Authorized Entities will have responsibility for compliance with the terms and conditions of
24 the regulatory authorizations associated with Delta water operations and other covered activities,
25 regardless of whether another entity is tasked with the responsibility for carrying out a required
26 action. Consistent with their roles and responsibilities under the Plan, the Authorized Entities and
27 the Program Manager may enter into agreements individually, amongst themselves, or with other
28 entities, for the purpose of facilitating the implementation of certain BDCP actions. Such
29 agreements will not affect or diminish an Authorized Entity’s established authority and control
30 over a covered activity, such as the operation of the SWP and the CVP, or any other plan action,
31 as provided by law or pursuant to the BDCP and its implementing agreement.

32 Certain other entities, such as Mirant LLC, may also obtain take authorizations under the Plan
33 for covered activities other than Delta water operations, as specified in Chapter 4.1.2.2. Such
34 other entities will be known as Other Authorized Entities. Other Authorized Entities will have a
35 limited role in the implementation and governance of the BDCP as specified in the Plan.
36 Incidental take authorizations will be sought by federal and non-federal entities under the
37 following authorities:

- 1 • Non-federal entities will seek regulatory coverage pursuant to ESA section 10(a)(1)(B),
- 2 NCCPA section 2835, and potentially CESA section 2081 or 2080.1 (if applicable), and
- 3 • Federal agencies will seek regulatory coverage under ESA section 7(a)(2) for federally-
- 4 listed species

5 **7.1.2.1 Authorized Entities**

6 The entities identified below are “Authorized Entities” for the purpose of the BDCP and its
7 regulatory authorizations. Descriptions of the activities that will be covered under the regulatory
8 authorizations issued to the Authorized Entities are set out in Chapter 4, *Covered Activities*. The
9 activities identified or described in this document for Federal actions by Reclamation are not
10 “covered activities” for the purposes of the ESA section 10(a)(1)(b) permit. Reclamation’s
11 activities are subject to ESA section 7 and Reclamation is seeking authorization under ESA
12 section 7 for their actions.

13 *7.1.2.1.1 California Department of Water Resources*

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

19 *7.1.2.1.2 United States Bureau of Reclamation*

20 The United States owns, and Reclamation operates, the Central Valley Project’s (CVP) existing
21 Delta facilities, including the Jones Pumping Plant and the Delta Cross Channel. Consistent with
22 the BDCP, Reclamation seeks federal regulatory authorizations through section 7 consultation
23 for incidental take of listed species from project operations in and upstream of the Delta.
24 Reclamation will likely enter into an agreement with DWR to wheel CVP water through a new
25 conveyance facility.

26 *7.1.2.1.3 SWP and CVP Contractors*

27 The SWP and CVP water contractors receive water under contract from the projects. They will
28 also participate in various aspects of the implementation of the BDCP, including the
29 implementation of certain conservation measures. Pursuant to the BDCP, the SWP and CVP
30 contractors will seek State and federal regulatory authorizations for covered activities, as set out
31 in Chapter 4. The SWP and CVP water contractors, individually, will be considered Authorized
32 Entities under the Plan. However, the water contractors may choose to carry out their
33 responsibilities through SFWCA or other appropriate entities.

34 [*Note to Reviewers: This section is still in development. Its final form will depend on ongoing*
35 *discussions between the contractors and the fish and wildlife agencies regarding the proper role*

1 of the contractors with respect to this section. Discussion of this section will be deferred until
2 those discussions are complete.]

3 **7.1.2.2 Other Authorized Entities**

4 The Other Authorized Entities identified below may seek incidental take authorizations pursuant
5 to the BDCP. However, these entities will not be members of the Implementation Board nor will
6 they have a specific role in the governance of the BDCP, other than as potential members of the
7 Stakeholder Committee.

8 **7.1.2.2.1 Mirant Corporation**

9 Mirant owns and operates the Pittsburg and Contra Costa Power Plants located in Pittsburg and
10 Antioch. Mirant may obtain regulatory permits under ESA section 10 and Fish and Game Code
11 section 2835 for incidental take of listed species from operation of those plants pursuant to the
12 BDCP. In the event it does so, it will be considered an Other Authorized Entity.

13 **7.1.2.2.2 Other Entities**

14 The following entities are engaged in activities that are covered by the BDCP. In the event these
15 entities obtain incidental take authorizations under the BDCP for those activities, they will be
16 considered Other Authorized Entities.

17 **7.1.3 Implementation Board**

18 A BDCP Implementation Board will be established to help guide the IO in the implementation of
19 the Plan. The Implementation Board will be composed of the Authorized Entities. Specifically,
20 the Board will provide input to the IO on the proposed Annual Work Plan and Budget, including
21 the anticipated IO actions associated with the adaptive management program and the proposed
22 habitat acquisition and restoration targets. The Board's review of the work plan and budget will
23 focus primarily on the programmatic aspects of the proposed actions. The involvement of the
24 Board in plan implementation is not intended to constrain the Program Manager in day-to-day
25 decision making.

26 **7.1.3.1 Function**

27 The Program Manager will organize, convene, and provide support for the Implementation
28 Board and its proceedings.² The Implementation Board will receive information from the
29 Program Manager, [the State and federal fish and wildlife agencies](#), and other sources on the
30 implementation of the BDCP generally, and will have the opportunity to review the proposed
31 Annual Work Plan and Budget [\(as described in Chapter 6\)](#), including the targeted acquisitions of
32 land and water interests and the major aspects of anticipated adaptive management actions. [The](#)

² If the Program Manager position is vacant, then DWR and Reclamation will serve this role.

1 Implementation Board will also work to ensure that the board and the IO foster and maintain a
2 collaborative and constructive relationship with the State and federal fish and wildlife agencies
3 throughout the implementation of the BDCP.

4 The participation of the Authorized Entities on the Implementation Board will not trigger or
5 otherwise cause a delegation of authority or responsibility for any of the implementation actions
6 described in the BDCP from one Authorized Entity to another. Rather, the specific roles and
7 level of involvement in BDCP implementation actions are defined either by existing statutory
8 and regulatory mandates or by provisions set out in this Plan and its associated Implementing
9 Agreement. For many of the BDCP actions and commitments, a specific Authorized Entity will
10 have the sole responsibility for implementation; for other actions and commitments established
11 by the Plan, the Authorized Entities may be jointly and severally responsible for their
12 implementation. For instance, the operation of the SWP will remain under the control and
13 responsibility solely of DWR; likewise, the operation of the CVP will continue to be under the
14 control and responsibility of Reclamation.

15 The primary function of the Implementation Board will be to review and concur with the Annual
16 Work Plan and Budget as proposed by the Program Manager. The content of the Annual Work
17 Plan and Budget and the timing of preparation and submission of the document to the
18 Implementation Board are described in Section 6.2 *Compliance and Progress Reporting*. The
19 Annual Work Plan and Budget will be deemed to be “final” once (i) accepted by the Board or (ii)
20 objections to the work plan and budget are resolved through the final decisional authorities (see
21 *Dispute Resolution*, below). The Board will be convened by the Program Manager
22 periodically through the year, as needed, to review issues that arise in the implementation of the
23 annual plan. The Program Manager may request that the Board reconvene to consider proposed
24 amendments to the Annual Work Plan and Budget.

25 The Implementation Board will consider such matters as:

- 26 • Candidates for the Program Manager position;
- 27 • Annual work plans and budgets; and
- 28 • Adaptive management changes.

29 The Implementation Board will meet at a minimum, on a quarterly basis. The date, time, and
30 location of Implementation Board meetings will be posted on the BDCP website at least [] days
31 prior to such meeting. Implementation Board meetings will be open to the public, as provided by
32 applicable law.

33 **7.1.3.2 Dispute Resolution**

34 With respect to those matters that are considered by the Implementation Board, it is expected that
35 reasonable efforts will be made to provide input to the Program Manager that reflects acceptance
36 by the members. A board member, however, will have the right to object to any proposal of the

1 Program Manager concerning the annual work plans, budgets, the acquisition of land and water
2 interests, and the major elements of the adaptive management program. Any objections will be
3 made solely on the basis that the proposal (i) will not adequately contribute to achievement of the
4 goals and objectives of the BDCP or (ii) is inconsistent with the requirements of the Plan and/or
5 the permits/authorizations.

6 The board member may elevate the matter to the regional director(s) of the relevant federal
7 agency, to the director(s) of the relevant state agency, or to other appropriate authorities, as
8 determined by the locus of responsibility for the action (see examples below). A simplified
9 process for considering and responding to such objections in an orderly and timely manner will
10 be established, including a process to elevate appropriate matters for decision to the responsible
11 official, be it a federal or State cabinet-level official or their designee, or another corresponding
12 authority for other locus of responsibility entities, such as a Delta Conservancy, the SFWCA, or
13 a State or federal water contractor. As required by existing law, final responsibility for plan
14 implementation and permit compliance will remain with the Authorized Entities. The objection
15 procedures and dispute resolution process may not be used to delay the completion and/or
16 implementation of the Annual Work Plan and Budget.

17 Examples of locus of responsibility:

- 18 • DWR would be responsible for actions that affect facilities or operations of the SWP;
- 19 • Reclamation would be responsible for actions that affect facilities or operations of the
20 CVP;
- 21 • SFCWA would be responsible for actions that would result in changes to costs of
22 conservation measures for which they have provided funding;
- 23 • Delta Conservancy would be responsible for projects charged to the Delta Conservancy
24 through future specific State legislation or bond requirements.

25 Implementation Board dispute resolution procedures will be developed for the Plan in the
26 Implementing Agreement.

27 **7.1.4 DWR and Reclamation: Operation of the SWP and CVP**

28 Implementation of the conservation measures related to water facilities and water operations, as
29 described in Chapter 3 *Conservation Strategy*, will be the responsibility of DWR and
30 Reclamation or entities with whom they may contract. DWR and Reclamation will retain their
31 authority to operate the SWP and the CVP within the parameters of the BDCP and other
32 applicable laws and regulations.

33 The federal and state operators of the CVP and the SWP will prepare coordinated operation
34 strategies for the federal and state Projects, including the Annual Water Operations Strategy as
35 described in as described in Section 6.2, *Compliance and Progress Reporting*. The IO will

1 incorporate the Annual Water Operations Strategy into the BDCP Annual Work Plan and Budget
2 (as described in Section 6.2, *Compliance and Progress Reporting*).

3 Decisions related to “real time” water operations will be the responsibility of the Real Time
4 Response Team, as described in Section 7.3.2, *Implementation of Water Operations*
5 *Conservation Measures*.

6 **7.1.5 Permitting Agencies: Fish and Wildlife Agencies**

7 On the basis of the BDCP, the State and federal fish and wildlife agencies (USFWS, NMFS, and
8 DFG) will issue regulatory authorizations to the ~~authorized entities~~ and Other Authorized
9 Entities pursuant to the federal ESA and the NCCPA, as applicable. Consistent with their
10 authorities under these laws, the fish and wildlife agencies will retain responsibility for enforcing
11 the terms and conditions of the permits and regulatory authorizations. The fish and wildlife
12 agencies retain full responsibility to: (i) determine whether implementation of the BDCP is
13 proceeding in compliance with the terms and conditions of the regulatory authorizations, (ii)
14 enforce the terms and conditions of the regulatory authorizations, and (iii) modify, suspend, or
15 revoke regulatory authorizations, consistent with the terms and conditions of the Plan, the
16 Implementing Agreement, and applicable State and/or federal law.

17 In addition to fulfilling the foregoing regulatory responsibilities, the State and federal fish and
18 wildlife agencies will ~~These agencies will~~ also provide input on a range of implementation
19 actions that will be carried out by the IO and overseen by the Implementation Board. The parties
20 that will be engaged in the implementation of the BDCP recognize that substantial coordination
21 and cooperation between the fish and wildlife agencies, the Implementation Board, and
22 Implementation Office will be necessary to ensure the overall success of the Plan. As such, these
23 parties will, on an ongoing basis, collaborate on various elements of plan implementation. ~~The IO~~
24 will work closely with these agencies to ensure ongoing compliance with the permits and
25 authorizations. The IO will work with the fish and wildlife agencies and the Implementation
26 Board to institute mutually-agreeable processes to enhance opportunities for such collaboration
27 and engagement.

28 **7.1.5.1 California Department of Fish and Game**

29 DFG is the agency of the State of California authorized to act as trustee for the state’s wildlife.
30 DFG administers and enforces CESA, the NCCPA and other provisions of the Fish and Game
31 Code. DFG is authorized to enter into agreements with federal and local governments and other
32 entities for the conservation of species and habitats, to authorize take under CESA and the
33 NCCPA, and to provide statutory assurances under NCCPA. On an ongoing basis, DFG will
34 consult with the IO and the *authorized entities* on various aspects of plan implementation,
35 including participation in real-time operations decisions, the adaptive management process, and
36 the monitoring and science programs. DFG will also maintain responsibility for plan
37 enforcement, consistent with the NCCPA and other authorities. DFG owns and manages land
38 within the Plan Area, and may, at the request of the IO, enter into agreements whereby it

1 operates and maintains certain habitat areas that are developed through BDCP habitat
2 preservation and restoration actions. DFG is jointly responsible for implementation of the
3 Ecosystem Restoration Program, which was established to advance ecosystem restoration
4 projects in the San Francisco Bay Delta and its tributaries.

5 **7.1.5.2 National Marine Fisheries Service**

6 NMFS is an agency of the United States Department of Commerce authorized by Congress to
7 administer and enforce the ESA with respect to marine mammals and certain fish species
8 (including anadromous fish); to enter into agreements with states, local governments, and other
9 entities to conserve federally threatened, endangered, and other species of concern; to authorize
10 incidental take under ESA; and to provide regulatory assurances in accordance with 50 C.F.R.
11 section 222.307(g). On an ongoing basis, NMFS will consult with the IO and the *authorized*
12 *entities* on BDCP implementation, including participation in the real-time operation and adaptive
13 management processes and the monitoring and science programs. NMFS will also maintain
14 responsibility, jointly with USFWS, for plan enforcement consistent with the ESA and other
15 authorities. NMFS is jointly responsible for implementation of the Ecosystem Restoration
16 Program, which was established to advance ecosystem restoration projects in the San Francisco
17 Bay Delta and its tributaries.

18 **7.1.5.3 United States Fish and Wildlife Service**

19 The USFWS is an agency of the United States Department of the Interior authorized by Congress
20 to administer and enforce the ESA with respect to terrestrial wildlife, certain fish species, insects
21 and plants, to enter into agreements with states, local governments, and other entities to conserve
22 threatened, endangered, and other species of concern, to authorize incidental take under ESA,
23 and to provide regulatory assurances in accordance with 50 CFR section 17.22(b)(5) and section
24 17.32(b)(5). On an ongoing basis, USFWS will consult with the IO and the *authorized entities*
25 on various aspects of plan implementation, including participation in real-time operations
26 decisions, the adaptive management process, and the monitoring and science programs. USFWS
27 will also maintain responsibility, jointly with NMFS, for plan enforcement consistent with the
28 ESA and other authorities. USFWS may also, at the request of the IO, enter into agreements
29 whereby it operates and maintains certain habitat areas that are developed through BDCP habitat
30 preservation and restoration actions. USFWS is jointly responsible for implementation of the
31 Ecosystem Restoration Program, which was established to advance ecosystem restoration
32 projects in the San Francisco Bay Delta and its tributaries

33 **7.1.6 Other Regulatory Agencies**

34 The BDCP has been developed as a conservation plan pursuant to the ESA and the NCCPA. To
35 implement the BDCP, certain conservation actions will need to conform to the requirements of
36 various other State and federal laws and regulations not specifically addressed by the Plan. Prior
37 to the implementation of many of the conservation actions set out in the BDCP, regulatory
38 authorizations and approvals will need to be obtained from State and federal agencies under

1 applicable laws. These other agencies will participate in the governance of plan implementation
2 as provided in their regulatory authorizations and approvals related to the Plan. To facilitate
3 compliance with these laws and regulations, the IO will work closely with the appropriate
4 regulatory agencies to plan in advance of future permitting needs and establish processes to
5 expedite such authorizations.

6 In addition, certain Potential Conservation Measures to Address Other Stressors, as described in
7 Chapter 3, have been identified that fall within the jurisdictional responsibility of other State
8 and/or federal regulatory agencies. The USFWS, NMFS, DFG, and the IO will work with these
9 regulatory agencies to encourage the implementation of the Potential Conservation Measures. To
10 the extent appropriate, the IO will seek to integrate Potential Conservation Measures into the
11 BDCP Conservation Strategy.

12 It is expected that the actions set out in the BDCP are likely to involve some or all of the
13 following statutes: California Water Code sections 1000 *et seq.* (water rights), Water Code
14 sections 13000 *et seq.* (water quality), California Fish and Game Code sections 1600 and 5900 *et*
15 *seq.* (channel modification, fish screens), Clean Water Act section 401 (water quality) and
16 section 404 (placement of dredge and fill), Rivers and Harbors Act section 408 (work on levees),
17 Rivers and Harbors Act section 10 (navigation), the Migratory Bird Treaty Act (migratory birds),
18 and the Federal Energy Regulatory Act implemented by the Federal Energy Regulatory
19 Commission.

20 7.1.7 Supporting Entities

21 The Program Manager may assign specific implementation tasks to other entities, referred to as
22 “Supporting Entities,” that have the authority, resources, ~~and~~ expertise, and willingness to
23 successfully and timely undertake and complete the task. Where specific tasks are so assigned,
24 the Program Manager will ensure that that tasks and associated responsibilities are carried out
25 properly and in coordination with other BDCP actions. Supporting entities may include, among
26 others:

- 27 • DWR.
- 28 • Reclamation.
- 29 • SFCWA or individual SWP and CVP contractors. It is anticipated that the SFCWA will
30 be substantially involved in the implementation of the BDCP, and will likely assume
31 responsibility for implementing a number of BDCP actions.
- 32 • The Delta Conservancy. The Delta Conservancy has been designated by statute as a
33 primary State agency to implement ecosystem restoration in the Delta.
- 34 • Sponsors of regional conservation planning programs, including those engaged in NCCP
35 and/or HCP development or implementation, or of other similar conservation programs,
36 that overlap or are adjacent to the Plan Area.

- 1 • State and federal regulatory agencies, including USFWS, NMFS, and DFG. In addition
- 2 to acting in their regulatory roles, these entities may act as supporting entities.
- 3 • Other public agencies and private entities that have authority, capacity, or expertise to
- 4 implement actions described in the conservation strategy in a cost-effective, reliable, and
- 5 timely manner.

6 The Program Manager will oversee each supporting entity's performance of its responsibility for
7 carrying out a specific task. Decisions by the Program Manager to engage another entity in the
8 implementation of specific plan elements or actions will be accomplished by written contract and
9 will be based on the entity's jurisdictional authority, level of expertise, and its capacity to carry
10 out the element or action in a timely and successful manner. The Implementation Board may
11 terminate a supporting entity's role in plan implementation in the event that the supporting entity
12 does not perform a task adequately.

13 The take authorizations that will be issued pursuant to the BDCP will provide regulatory
14 coverage under the ESA and the NCCPA for all activities covered by the Plan. As such, no
15 additional take authorizations will be required to implement these activities, regardless of
16 whether the action is carried out by the IO or a Supporting Entity.

17 7.1.8 BDCP Stakeholder Committee

18 A BDCP Stakeholder Committee will be ~~established and established-convened~~ by the Program
19 Manager. ~~The Stakeholder Committee will to provide a forum through which interested public~~
20 ~~and private entities will consider and-and~~ discuss matters related to ~~P~~plan implementation, ~~and~~
21 ~~provide input on such matters to the IO. The primary purpose of the committee is to provide~~
22 ~~ongoing opportunities for the BDCP stakeholders to assess the implementation of the Plan, and~~
23 ~~to propose to the IO ways in which plan implementation may be improved or enhanced.~~

24 7.1.8.1 Membership

25 The Stakeholder Committee will consist of ~~representatives from~~ a range of entities and
26 organizations with an interest in BDCP-related issues or ~~otherwise~~ engaged in BDCP matters.
27 ~~Representatives of the last five categories will be selected by the Secretary of the California~~
28 ~~Natural Resources Agency.~~

29 Members of the ~~-~~Committee will at a minimum include, but not be limited to:

- 30 • The Program Manager for the BDCP Implementation Office
- 31 • Representatives of DWR and the Bureau of Reclamation
- 32 • Representatives of the SFCWA
- 33 • ~~Representatives of FWS, NMFS, and DFG~~
- 34 • ~~Representatives from water agencies located in the central valley and upstream of the delta~~

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- 1 • Representatives of other State and federal regulatory agencies, including FWS, NMFS,
2 DFG, the Army Corps of Engineers, the U.S. Environmental Protection Agency, and
3 State Water Resources Control Board.
- 4 • A representative of the Delta Stewardship Council
- 5 • A representative of the Delta Protection Commission
- 6 • A representative of the Delta Conservancy
- 7 ~~• Representatives of conservation groups with expertise in fish and wildlife management,~~
8 ~~management of wetlands and other natural lands, and fishing and hunting organizations~~
- 9 ~~• A representative of Delta agriculture~~
- 10 ~~• Scientists with expertise in the management of natural lands, and native plant and animals~~
11 ~~species.~~
- 12 • Representatives of the counties of San Joaquin, Sacramento, Solano, Yolo, and Contra
13 Costa each Delta County and other local Delta government agencies; and,

Comment [ME1]: Further discussions are planned with the SWRCB to determine appropriate role of the regional boards

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Additional members will be selected from the following categories by the Secretary of the California Natural Resources Agency. Each member will serve a term of four years, and may be reappointed without limit and may serve until such time as they are replaced.

- 18 • At least three representatives from conservation groups with expertise in fish and wildlife
19 management and/or the management of aquatic habitats and other natural lands
- 20 • At least three representatives of local government agencies within the Delta.
- 21 • At least one representative of fishing organizations
- 22 • At least one representative of hunting organizations
- 23 • At least one representative of reclamation districts
- 24 • At least two representatives of Delta agriculture
- 25 • At least three scientists with expertise in the management of natural lands, and native
26 plant and animals species
- 27 • At least one representative of water agencies located in the Sacramento valley
- 28 • At least one representative of water agencies in the San Joaquin River watershed
- 29 • Other stakeholders whose assistance will increase the likelihood of the success of plan
30 implementation.

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1 ~~7.1.8.2~~ **Other stakeholders whose assistance will increase the likelihood of the**
2 **success of plan implementation.**

3 ~~7.1.8.3~~ **7.1.8.2 Function**

4 The Program Manager will convene and facilitate the Stakeholder Committee on a quarterly
5 basis to exchange information and provide input to the Program Manager concerning the current
6 significant issues at hand. Stakeholders will have opportunity to inquire about implementation
7 matters, be apprised by the Program Manager of issues of interest, and make recommendations
8 concerning pending decisions. Stakeholder Committee meetings will be open to the public.

9 For the benefit of the Stakeholder Committee members and the general public, the Program
10 Manager will provide information and conduct briefings regarding plan implementation.
11 Briefings will include presentations of drafts of the Annual Water Operation Strategy, the
12 Annual Water Operations Report, and the Five Year Implementation Plan, as described in
13 Chapter 6. In addition, to further facilitate access to information and promote transparency in
14 decision-making, the IO will maintain a public, on-line data base of key documents and
15 information, such as annual implementation reports, work plans, and budgets (Section 6.2,
16 *Compliance and Progress Reporting*).

17 The Stakeholder Committee will develop its own internal organization and process by committee
18 consensus to best coordinate with the various aspects of BDCP implementation. A “Technical
19 Facilitation” subcommittee will be established to provide input to the Program Manager on
20 technical and scientific matters. The Stakeholder Committee process will complement, but not
21 substitute for, ongoing collaboration and communication between stakeholders and the IO,
22 authorized entities, the Implementation Board, and the fish and wildlife agencies. The IO will
23 organize, help convene, and provide support for the Stakeholder Committee and its proceedings.

24 ~~7.1.8.4~~ **7.1.8.3 Dispute Resolution**

25 With respect to those matters that are considered by the Stakeholder Committee, it is expected
26 that reasonable efforts will be made to provide input to the Program Manager and
27 Implementation Board that reflects acceptance by the members. Any member of the committee,
28 however, will have the right to object to any proposal of the Program Manager concerning the
29 annual work plans, budgets, the acquisition of land and water interests, or the major elements of
30 the adaptive management program. Any such objections will be made solely on the basis that
31 the proposal (i) will not adequately contribute to achievement of the goals and objectives of the
32 BDCP or (ii) is inconsistent with the requirements of the Plan and/or the permits/authorizations.

33 In consultation with the Implementation Office, the Stakeholder Committee will establish a
34 process for efficient consideration and resolution of any objections that may arise within the
35 committee related to the implementation of the plan. Under that process, a member of the
36 Stakeholder Committee may, at its discretion, object to a proposal related to such
37 implementation. The member may object on behalf of itself or an entity it represents. The

1 committee will make reasonable efforts to resolve the dispute by consensus. Consistent with
2 section 7.1.3.2, a dispute (and any consensus recommendation for resolution) will be elevated:~~A~~
3 ~~Stakeholder Committee member may elevate a matter in dispute to the Implementation Board for~~
4 ~~further consideration. A simplified process for considering and responding to such objections in~~
5 ~~an orderly and timely manner will be established. Consistent with Section 7.1.3.2, this process~~
6 ~~will elevate appropriate matters:~~ (i) to the Implementation Board; and (ii) if unresolved as
7 between the Implementation Board and objecting member(s) of the Stakeholder Committee, for
8 decision by the entity with ultimate authority over the matter. As required by existing law, final
9 responsibility for plan implementation and compliance will remain with the ~~holders of those~~
10 ~~permits and authorizations~~ Authorized Entities, as defined within the BDCP and its
11 implementing agreement.

12 The objection procedures and dispute resolution process above may not be used to delay the
13 completion and/or implementation of the Annual Work Plan and Budget. This process does not
14 substitute for any right or claim which a member of the Stakeholder Committee or other entity
15 may have under existing law (e.g., with respect to private property damages caused by plan
16 implementation). The process does not create a new right or claim which does not arise under
17 existing law.

19 7.1.9 The General Public

20 The BDCP implementation process will provide for ongoing and frequent engagement and
21 participation of the public. Other entities that have interests in the conservation of Delta
22 resources, may participate in BDCP implementation through the public outreach process
23 coordinated by the IO (Section 7.5 *Public Outreach*) or through the BDCP Stakeholder
24 Committee, if eligible for membership. Stakeholder Committee meetings will be open to the
25 public and specific times made available for public comment.

26 7.2 IMPLEMENTATION OFFICE ADMINISTRATION

27 The Program Manager direct, oversee, and select staff for the IO. The IO, which will not be a
28 legal entity authorized to enter into contracts directly or hold property in its own name, but will
29 instead administer the implementation of the BDCP under the existing authorities of the
30 authorized entities. By relying on the legal authorities of the authorized entities, the IO will be
31 equipped with the resources and capacity necessary to carry out BDCP implementation tasks for
32 which it will be responsible. This structure also contemplates that DWR and the Reclamation
33 will maintain their historic roles as owners and operators of the SWP and CVP, but provides
34 flexibility for changing those roles if so directed by Congress, the California Legislature, or
35 through administrative processes.

1 Proper implementation of the Plan will require a skilled and expert team consisting of
2 administrators, policy-makers, scientists, engineers, data analysts, and regulatory specialists,
3 capable of working together in a cohesive and unified manner. In addition, effective
4 implementation will necessitate adequate financing of and support for the IO. The BDCP
5 includes funding assurances (Chapter 8 *Implementation Cost and Funding*) that the IO will have
6 such capacity to carry out the responsibilities described in this chapter.

7 The Program Manager may assign specific implementation tasks to other entities that have the
8 authority, resources, and expertise to successfully complete the task in a timely manner. These
9 other entities can, at the discretion of the Program Manager, include an authorized entity, a
10 regulatory agency, a supporting entity, or any combination thereof. Where specific tasks are so
11 assigned, the Program Manager will ensure that that tasks and associated responsibilities are
12 carried out properly and in coordination with other BDCP actions. The entity selected will be
13 responsible, subject to oversight by the Program Manager, for entering into the necessary
14 contracts and acquiring title to interests in real and personal property, acquiring permits, and
15 taking all other steps needed to complete the implementation task.

16 The IO's primary functions and responsibilities are described in the following subsections.

17 **7.2.1 Establishing Administrative Capacity**

18 The Program Manager will manage the IO. The Program Manager will enter into an
19 employment relationship with one of the *authorized entities*. However, the Program Manager
20 will be responsive to all of the *authorized entities*.

21 The Program Manager will arrange for and equip the IO office space, hire a staff of sufficient
22 size, and enter into contracts (through the authorities of DWR, Reclamation, and/or other
23 *authorized entities*) to build capacity to become fully functional and operational.

24 The Program Manager, with the consent of and pursuant to agreements with any affected
25 agencies, may enlist current employees of the Implementation Board's member agencies, as well
26 as employees of other State, federal, or local agencies, who possess the expertise and experience
27 necessary to carry out the tasks associated with BDCP implementation. The specific staffing
28 needs of the IO will be determined by the Program Manager. All IO staff, including staff from
29 entities that are members of the Implementation Board will work at the direction of the Program
30 Manager.

31 **7.2.2 Preparing Budgets and Managing Expenditures**

32 The Program Manager will develop, propose, and administer budgets for general program
33 administration for acceptance by the Implementation Board pursuant to the dispute resolution
34 process (Section 7.1.3.2, *Dispute Resolution*). The Program Manager will establish systems and
35 processes to centralize oversight of implementation budgets and related expenditures. The

1 Program Manager will also generally oversee budgets and expenditures related to
2 implementation actions carried out by authorized or supporting entities.

3 **7.2.3 Contracting for Services**

4 The IO, through the appropriate entity, may contract for services as necessary to implement the
5 BDCP, including for professional services related to:

- 6 • Acquisition and protection of habitat;
- 7 • Habitat restoration and management;
- 8 • Monitoring and scientific research;
- 9 • Legal and regulatory matters;
- 10 • Environmental and technical services;
- 11 • Engineering and construction (e.g., conservation facilities, water facilities, levees);
- 12 • Funding and grant agreements pertaining to state and federal programs and executing
13 sub-grants to third-parties to conduct specific actions; and
- 14 • Operations and maintenance.

15 The Program Manager shall administer such contracts.

16 **7.2.4 Securing, Holding, and Managing Funds to Support** 17 **Implementation Actions**

18 The IO will coordinate the expenditure of funds from State, federal, and other sources that have
19 been dedicated to the implementation of the BDCP. At least one State and one federal agency
20 member of the Implementation Board will serve as the fiscal agents, consistent with existing
21 agency authorities, for the expenditure of funds by the IO, from both public and private sources,
22 to support implementation actions. The IO will not be authorized to manage the expenditure of
23 funds related to design, construction, operation and maintenance of water diversion and
24 conveyance facilities which are or will be elements of the SWP or CVP.

25 **7.2.5 Coordinating with the Authorized Entities and Supporting** 26 **Entities**

27 The Program Manager will convene meetings and facilitate communication with the authorized
28 entities and supporting entities. The Program Manager will maintain frequent contact with these
29 entities and provide regular updates concerning implementation matters, including progress in
30 meeting BDCP timetables, dissemination of information, and maintenance and availability of
31 BDCP records and reports.

1 **7.2.6 Coordinating with Regulatory Agencies – Facilitation Team**

2 The USFWS, NMFS, DFG, and other regulatory agencies will coordinate and collaborate
3 through the Facilitation Team with the IO on matters potentially affecting compliance with the
4 terms and conditions of the BDCP and its regulatory authorizations. The Program Manager will
5 coordinate and lead Facilitation Team meetings.

6 **7.2.7 Coordinating with the Delta Stewardship Council, Delta Science 7 Program, and Delta Conservancy**

8 The Program Manager will facilitate and monitor the effective and efficient incorporation of the
9 BDCP into the Delta Stewardship Council's Delta Plan (Delta Plan).³ The Program Manager
10 will report, at least annually, to the Delta Stewardship Council on the progress of BDCP
11 implementation, including the status of monitoring programs and adaptive management, as
12 required by Water Code section 85320(f). The IO will also respond to questions or concerns
13 raised by the Delta Stewardship Council regarding the implementation of the BDCP.

14 The IO, lead by the Science Manager, will coordinate with the Delta Science Program and, as
15 necessary, the Delta Independent Science Board,⁴ regarding scientific assistance in the
16 formulation and implementation of monitoring activities and research efforts to support the
17 BDCP adaptive management process.

18 The IO will coordinate with the Delta Conservancy concerning implementation of ecosystem
19 restoration projects carried out pursuant to the BDCP Conservation Strategy and other programs
20 being carried out by the Delta Conservancy.

21 **7.2.8 Coordinating with Local Governments, Delta Protection 22 Commission, and Other Public Agencies**

23 The Program Manager will serve as the main point of contact for local, State, and federal
24 agencies interested or engaged in BDCP implementation issues. The Program Manager will
25 prepare, publish, and distribute general information about the BDCP to those agencies and serve
26 as representative of the BDCP in public meetings convened by cities, counties, and other public
27 agencies with jurisdiction within the Delta. The Program Manager will encourage local
28 government participation on the BDCP Stakeholder Committee.

29 Where regional conservation plans overlap with or adjoin the Plan Area, the IO will collaborate
30 and coordinate with the sponsors of those regional conservation plans on the acquisition and
31 management of habitat lands to be preserved and/or restored within areas common to both plans.
32 The Program Manager will, as appropriate, enlist sponsors of those regional conservation plans

³ Water Code § 85320.

⁴ Water Code § 85280

1 and local governments to serve as BDCP supporting entities to assist in the acquisition and/or
2 management of conservation lands. Where mutually beneficial, the IO will encourage joint
3 acquisitions of land with local government plan sponsors to realize economies-of-scale and to
4 secure large, contiguous blocks of habitat. The IO will explore opportunities to fund early
5 conservation actions (i.e., habitat acquisition and/or restoration) that may benefit both the BDCP
6 and other regional conservation plans.

7 **7.2.9 Coordinating with Flood Control Agencies**

8 In the design and implementation of conservation actions that could affect flood control
9 capabilities, the IO will coordinate with agencies responsible for flood control in the Plan Area,
10 including USACE, DWR, Central Valley Flood Protection Board, and local flood control
11 agencies.

12 **7.2.10 Protecting and Defending Against Legal Challenges**

13 The IO, in coordination with the Implementation Board, supporting entities, fish and wildlife
14 agencies, and other appropriate public agencies, will help direct efforts to defend against legal
15 challenges to the BDCP or its associated State and federal authorizations. As necessary, the IO
16 may also provide funding for legal counsel to address the range of legal issues associated with
17 implementation, including: defense against litigation related to the BDCP, liability associated
18 with land acquisition and related matters, disputes arising out of contractual agreements, and
19 general, routine in-house legal matters.

20 **7.2.11 Overseeing Plan Amendments**

21 In the event that an amendment to the BDCP and its authorizations is necessary, the IO will
22 compile information and prepare documentation necessary to support such an amendment and
23 will seek to obtain approvals from the applicable fish and wildlife agencies.

24 **7.2.12 Implementing Mitigation Measures Identified in BDCP-related 25 Environmental Documentation under NEPA and CEQA**

26 Subject to the approval of the NEPA and CEQA lead agencies conducting the environmental
27 review under NEPA and/or CEQA and the Program Manager, the IO will implement the
28 mitigation measures identified in the final environmental documents on behalf of the lead
29 agencies). Such mitigation measures must be associated with either the EIS/EIR prepared for the
30 BDCP or environmental documents necessary for the implementation of an action set out in the
31 BDCP.

32 **7.2.13 Undertaking Other Responsibilities**

33 The IO will institute a program to monitor compliance with the BDCP and the BDCP EIR/EIS
34 (as per agreements with NEPA/CEQA lead agencies) and provide the fish and wildlife agencies,

1 on a mutually-agreed upon time-frame, with reports on the results of the monitoring program
2 (Section 6.2 *Compliance and Progress Reporting* and Section 7.3, *Implementation of the*
3 *Conservation Strategy*). The IO will also obtain other regulatory authorizations and permits
4 necessary to implement BDCP conservation actions (Section 7.4, *Regulatory Compliance*
5 *Related to BDCP Implementation*) and will engage in public outreach and education (Section
6 7.5, *Public Outreach*)

7 7.3 IMPLEMENTATION OF THE CONSERVATION STRATEGY

8 The Program Manager will be responsible for planning, overseeing, and conducting actions set
9 out in the BDCP Conservation Strategy (Chapter 3, *Conservation Strategy* and Chapter 6, *Plan*
10 *Implementation*). The Program Manager will be afforded sufficient flexibility to use supporting
11 entities and the fish and wildlife agencies to undertake certain actions that will enhance the
12 overall effectiveness of the Conservation Strategy and yield greater efficiencies in plan
13 implementation. The following sets out the tasks and responsibilities of the IO regarding the
14 implementation of the Conservation Strategy.

15 7.3.1 Implementation of the Habitat Protection and Restoration 16 Conservation Measures

17 The IO will take actions directly or through the supporting entities to implement conservation
18 measures related to the protection of existing habitat and the enhancement and restoration of
19 habitat within the identified restoration opportunity areas (ROAs) and conservation zones, as
20 well as within other areas in the Plan Area, as described in Chapter 3, *Conservation Strategy*.
21 These measures will primarily involve actions to acquire lands, restore or improve habitat
22 conditions, and manage and maintain conservation lands. The IO will work with, and may
23 contract with the Delta Conservancy or the supporting entities to carry out the conservation
24 measures associated with habitat protection and restoration.

25 7.3.1.1 Acquisition and/or Lease of Property Interests

26 Pursuant to the authorities of DWR, Reclamation, and/or other *authorized entities*, the IO may
27 acquire interests in real property to facilitate the implementation of a habitat protection and/or
28 restoration conservation measure. Similarly, under the direction of the IO, other entities that
29 have been selected to implement such conservation measures may also acquire interests in real
30 property, as described in Chapter 3 *Conservation Strategy*. The tasks related to the acquisition of
31 fee interest and/or conservation easements, for the purpose of habitat protection, restoration, and
32 creation, will include, among other things:

- 33 • Routine “due diligence” review of real property;
- 34 • Biological “due diligence” to assess habitat/restoration values;
- 35 • Appraisal of property, including oversight of the appraisal process;

- 1 • Negotiation and execution of the transaction; and
2 • Receipt of title or easement to lands.
3 • Select appropriate mechanism or instrument to ensure the protection of conservation
4 lands.

5 The selected entity will also acquire or lease lands or facilities, or, with the consent of the
6 Program Manager, contract with the Delta Conservancy or other appropriate entities to do so, for
7 the purpose of conducting scientific research and monitoring, housing administrative offices and
8 equipment, and undertaking other activities as necessary to administer and implement the
9 measure. Interests in land acquired pursuant to the BDCP may be conveyed to the Delta
10 Conservancy, DFG, FWS, or other entities, as appropriate.

11 **7.3.1.2 Management of Land**

12 The IO will oversee the management and maintenance of lands acquired for conservation, as
13 described in Chapter 3 *Conservation Strategy*, and will select entities that will be responsible for
14 carrying out such management and maintenance. Tasks associated with land management will
15 generally include:

- 16 • Habitat management;
17 • Invasive species control;
18 • Security patrol;
19 • Liaison with neighboring landowners;
20 • Mosquito abatement;
21 • Management of vegetation on flood control facilities to maintain flood flow capacity;
22 • Species and habitat monitoring;
23 • Public access management;
24 • Emergency response
25 • Safety of nearby aircraft operations
26 • Research activities;
27 • Educational services; and
28 • Agricultural lease management.

7.3.1.3 Maintenance of Facilities and Improvements

The IO will oversee the maintenance of all related facilities and improvements, such as buildings, fences, levees, roads, as described in Chapter 3, *Conservation Strategy* and necessary for support and protection conservation lands

7.3.1.4 Funding of Activities of Other Entities

The IO may provide funding to other entities (such as local governments engaged in regional conservation planning processes), subject to appropriate conditions and oversight, to implement habitat and species conservation efforts, both inside and outside the Plan Area, that help advance the biological goals and objectives of the BDCP, as described in Chapter 3, *Conservation Strategy*.

7.3.2 Implementation of Water Operations Conservation Measures

7.3.2.1 Operations of Water Facilities

Implementation of water facilities and water operations conservation measures as described in Chapter 3 *Conservation Strategy* will be the responsibility of DWR and Reclamation, or entities with whom they may contract, consistent with their existing responsibilities and authorities.

7.3.2.2 Real Time Operations Response Team

To enhance the effectiveness of the water operations conservation measures, a “Real Time Operations Response Team” (Response Team) will be established. The Response Team will consist of representatives from DFG, USFWS, NMFS, DWR, and Reclamation. The function of this team will relate to real-time operations, which are not necessary for or related to compliance with (i) the underlying regulatory authorizations issued pursuant to the Plan, (ii) the adaptive management process for water operations or other conservation actions, pursuant to Section 3.7.3, or (iii) the Annual Water Operations Plan pursuant to Section 6.2.2.⁵ Operations for the purpose of such conservation requirements will be administered as provided in the applicable chapters of the BDCP, the Implementing Agreement, and the associated regulatory authorizations.

7.3.2.2.1 Role of the Real Time Operations Response Team

The Response Team will ~~be assigned be responsible for making the responsibility to make~~ real-time operation~~nsal recommendations~~decisions. ~~based on covered fish species needs~~These real time operations decisions will be made for the purpose of providing additional benefits to fish species covered by the Plan. Any operational changes that are directed by the Response Team

⁵ The water operations conservation measure (CM1) and the adaptive management program provide for adjustments to be made to water operations on an ongoing basis. The operational flexibility of CM1 and the process by which adaptive changes may be made to that measure are set out in detail in Chapters 3 and 6.

1 | ~~will be limited to those actions that fall~~ within the ~~boundaries~~criteria established by the BDCP
2 | CM1 *Water Facilities and Operations* (Chapter 3, *Conservation Strategy*), other applicable
3 | regulatory constraints, and the Annual Water Operations Strategy (Section 6.2, *Compliance and*
4 | *Progress Reporting*). The fish and wildlife agencies will be responsible for determining
5 | whether proposed real time operational actions are likely to benefit ~~consistent with the biological~~
6 | ~~needs of the~~ covered fish species. The Response Team will ensure that any proposed real time
7 | operational action is consistent with the ~~is consistent with the~~ requirements of BDCP CM1 *Water*
8 | *Facilities and Operations* (Chapter 3, *Conservation Strategy*), other applicable regulatory
9 | constraints, ~~and and~~ the Annual Water Operations Strategy (Section 6.2, *Compliance and*
10 | *Progress Reporting*). DWR and Reclamation will implement the real time action.

11 | Any member of the Response Team may ~~recommend, propose,~~ in real time (e.g.,
12 | hourly/daily/weekly), an operational action intended to achieve the purposes specified above. A
13 | ~~recommended-proposed~~ action will be adopted by the Response Team and implemented by
14 | DWR and/or Reclamation only if the fish and wildlife agencies and the operator of the affected
15 | project (e.g., DWR and/or Reclamation) jointly agree to the proposed operational change.

16 | Real-time water operations actions will be ~~designed to~~ designed to increase/enhance fish benefits
17 | without compromising ~~while recognizing the importance of meeting~~ the water supply targets
18 | established in the Annual Water Operations Strategy, as revised in the Seasonal Operations
19 | Strategies ~~as well as to meet other operational requirements~~. The Response Team's ~~decisions's~~
20 | ~~recommendations~~ will take into account upstream reservoir operations and other SWP and CVP
21 | operational requirements, as well as the allocation, amount, and timing of water delivered,
22 | including surplus water that may be available through Article 21 of the State water contracts or
23 | section 215 of the CVP contracts, to the CVP or SWP customers within any water year.
24 | Notwithstanding the role of the Response Team, ~~the Authorized Entities~~DWR and Reclamation
25 | will retain ultimate legal responsibility for the implementation of water operations conservation
26 | measures and for compliance with the Plan and ~~theits associated~~ regulatory authorizations.
27 | Similarly, the fish and wildlife agencies will retain legal authority to oversee, enforce, modify, or
28 | revoke such authorizations, as described in Chapter 6, *Plan Implementation*, under applicable
29 | laws and regulations.

30 | 7.3.2.2.2 *Coordination between the Program Manager and the Response Team*

31 | The Program Manager will coordinate with the Response Team and retain responsibility for
32 | overseeing, monitoring, and reporting on the implementation of the water operation conservation
33 | measures. The Program Manager will also establish processes to ensure that the
34 | recommendations of the Response Team regarding the implementation of water operations
35 | conservations measures are transparent and understandable. Water operations will be described
36 | each year in a water operations report. Review and reporting requirements on water operations
37 | are described in Section 6.2, *Compliance and Progress Reporting*.

7.3.2.2.3 Responsibility of the Response Team to Balance Conservation and Water Supply Goals

The Response Team will be required to take into account the effect of its operational **recommendationsdecisions** on water supply. While the Response Team's primary role will be to enhance the effectiveness of the water operations conservation measures, it will make real time **recommendationsdecisions** in a manner that considers water supply and timing of delivery from that which would have occurred without variations from the expected operations set forth in the Annual Water Operations Strategy.

In making real-time **recommendationsdecisions** regarding the implementation of operations-related conservation measures, the Response Team will utilize data, information, and analysis generated from fisheries and operational technical groups and, where appropriate, outside scientific experts. Specifically, the Response Team will take into account real-time data derived from work conducted by the following groups (or their successors or equivalents, if any), including current fish surveys, flow and temperature information, and determinations regarding salvage or loss at the project facilities; and information about public health, safety, and water supply reliability:⁶

- **The Sacramento River Temperature Task Group (SRTTG):** The SRTTG is a multiagency group formed pursuant to SWRCB Water Rights Orders 90-5 and 91-1, and the NMFS biological opinion, to assist with improving and stabilizing Chinook populations in the Sacramento River. Annually, Reclamation develops temperature operation plans for the Shasta and Trinity divisions of the CVP. Reclamation considers impacts on winter-run and other ESUs of Chinook salmon, and associated project operations. The SRTTG meets initially in the spring to discuss biological, hydrologic, and operational information, objectives, and alternative operations plans for temperature control. Once the SRTTG has recommended an operation plan for temperature control, Reclamation then submits a report to the SWRCB, generally on or before June 1st each year. After implementation of the operation plan, the SRTTG may perform additional studies and commonly holds monthly meetings, as needed through the summer and into fall, to develop revisions based on updated biological data, reservoir temperature profiles and operations data. Updated plans may be needed for summer operations protecting winter-run, or in fall for fall-run spawning season. If there are any changes in the plan, Reclamation submits a supplemental report to SWRCB and to NMFS for review and concurrence.
- **Smelt Working Group (SWG):** The SWG evaluates biological and technical issues regarding delta smelt and develops recommendations for consideration by the USFWS. Since the longfin smelt became a state candidate species in 2008, the Working Group has

⁶ Additional working groups have been created and governed by SWRCB orders and NMFS and USFWS biological opinions. These work groups are listed here for informational purposes and are not necessary to the implementation of the BDCP

1 also developed for DFG recommendations to minimize adverse effects to longfin smelt.
2 USFWS chairs the group which consists of representatives from USFWS, DFG, DWR,
3 EPA, and Reclamation. The SWG compiles and interprets the latest near real-time
4 information regarding state- and federally-listed smelt, such as stages of development,
5 distribution, and salvage. If they agree that a protection action is warranted, the SWG
6 submits their recommendations in writing to USFWS and DFG. The Delta Smelt Risk
7 Assessment Matrix (DSRAM) outlines the conditions when the Working Group will
8 convene to evaluate the necessity of protective actions and provide FWS with a
9 recommendation. This generally occurs weekly during the months of January through
10 June, when smelt salvage at CVP and SWP has occurred historically. However, the
11 SWG may meet at any time at the request of USFWS. Further, with the State listing of
12 longfin smelt, the group will also convene based on longfin salvage history at the request
13 of DFG.

- 14 • **Delta Operations for Salmon and Sturgeon (DOSS) Group:** NMFS chairs this
15 working group, which consists of biologists, hydrologists and other staff with relevant
16 expertise from Reclamation, DWR, DFG, and USFWS and may include USGS, EPA, and
17 Regional Water Quality Control Board participation. The DOSS provides
18 recommendations for real-time management measures to reduce adverse effects to
19 salmonids and green sturgeon by coordinating Delta Cross Channel (DCC) gate
20 operations, fishery protection closures, water releases, and/or export reductions. Inputs
21 such as fish life stage and size development, current hydrologic events, fish indicators
22 (such as catch indices), salvage at the export facilities, and current and projected Delta
23 water quality conditions are some of the factors used to make recommendations. The
24 DOSS will coordinate with the SWG and other technical teams to maximize benefits to
25 all listed species.
- 26 • **American River Group (ARG):** In 1996, Reclamation established a working group for
27 the Lower American River, known as ARG. Although open to the public, the ARG
28 meetings generally include representatives from several agencies and organizations with
29 on-going concerns and interests regarding management of the Lower American River.
30 The formal members of the group are Reclamation, USFWS, NMFS, and DFG. The ARG
31 convenes monthly or more frequently if needed, with the purpose of providing fishery
32 updates and reports for Reclamation and NMFS to help manage Folsom Reservoir for
33 fish resources in the Lower American River.
- 34 • **San Joaquin River Technical Committee (SJRTC):** The SJRTC meets to plan and
35 implement the Vernalis Adaptive Management Plan (VAMP) each year, and oversees
36 two subgroups: Biology and Hydrology. These two subgroups are charged with certain
37 responsibilities, and must also coordinate their activities within the San Joaquin River
38 Agreement (SJRA) Technical Committee. VAMP was officially initiated in 2000 as a
39 12-year experimental/management program under the SJRA and SWRCB Decision-1641.

7.3.2.3 Annual Reporting and Planning for Water Operations

Planning and reporting requirements for the IO, DWR, Reclamation, and the Response Team are set out in Section 6.2, *Compliance and Progress Reporting*. The Program Manager will post on the BDCP website all plans and reports, including subsequent revisions to those plans or reports, required under Section 6.2, including the Annual Water Operations Strategy and the Annual Water Operations Report. As part of those postings, the Program Manager will include information, on a daily basis, about planned and actual water diversions, including updates on revisions to the Annual Water Operation Strategy that are made through the Seasonal Operations Strategy process. An accounting of actual diversions, including daily, weekly, monthly, and yearly operational levels, will also be posted. The Program Manager will ~~strive to~~ describe and explain operational changes, including departures from planned or anticipated diversion levels, in terms that are understandable to the general public.

7.3.3 Implementation of All Other Conservation Measures

The Program Manager, through the IO, will be responsible for the implementation of the other conservation measures described in Chapter 3, *Conservation Strategy*. The IO may undertake conservation actions directly or arrange for funding to support actions carried out by supporting entities, as described in chapter 3 *Conservation Strategy*. The funds provided to supporting entities will likely be for the purpose of implementing conservation measures that address the adverse effects of other stressors, such as toxic contaminants, nonnative predatory species, low dissolved oxygen zones, and entrainment unrelated to covered activities.

7.3.4 Management of Biological Monitoring, Scientific Research, and Reporting Programs

The Science Manager will be responsible for the overall management and oversight of the BDCP biological monitoring and research program, including the implementation of monitoring-related activities, as described in Chapter 3 *Conservation Strategy* (Section 3.6 *Monitoring and Research Program*).

The Science Manager will identify technical staffing needs and requirements necessary to adequately implement the biological monitoring program. The Science Manager will utilize the Interagency Ecological Program (IEP) to assist in the monitoring program. The Science Manager will oversee the development and implementation of the monitoring program and related scientific activities, with the assistance of the IEP agencies and in coordination with the Delta Science Program. The Science Manager will establish the framework for the monitoring program (*e.g.*, scope, methodologies, and protocols), in coordination with IEP and the fish and wildlife agencies, Delta Science Program, and supporting entities. The Science Manager, in collaboration with these entities, will develop and implement a process for compiling, evaluating, and synthesizing the results of monitoring activities, and will maintain databases and

1 the results of data analysis, obtained through the monitoring program and expand on that
2 currently developed by IEP.

3 The Science Manager will also manage the BDCP research program, as described in Chapter 3
4 *Conservation Strategy* (Section 3.6 *Monitoring and Research Program*), in coordination with the
5 IEP agencies and the Delta Science Program. The research program will include establishing
6 research goals and priorities and administering a process to select and coordinate researchers
7 who will be involved in the program. The Science Manager will be responsible for the
8 compilation and synthesis of the results of studies and analysis undertaken by other entities and
9 organizations that are of interest and assistance to BDCP implementation. The Science Manager
10 will also coordinate BDCP funding for research by other entities and organizations, as described
11 in Section 3.6 *Monitoring and Research Program*.

12 The Program Manager will look to the Delta Science Program and Independent Science Board
13 for science support and review. As appropriate, the Science Manager will seek and obtain input
14 and advice from independent scientists through the Delta Science Program. Matters relating to
15 the conduct of scientific reviews, and the acquisition of independent scientific advice to assist in
16 the implementation of the BDCP, shall be conducted in a manner that ensures their independence
17 and scientific integrity. The Science Manager will work with the Chief Scientist for the Delta
18 Science Program and IEP Lead Scientist in making sure BDCP science activities, reporting, and
19 reviews are coordinated with other science activities being conducted in the Delta.

20 The Program Manager will track plan implementation actions and comply with the reporting
21 requirements of the Plan, as described in Section 6.2 *Compliance and Progress Reporting*.
22 Reports prepared by the IO will include, among other things, the results of monitoring and
23 research, an assessment of overall plan performance, and an accounting of the distribution and
24 expenditures of funding by the various entities engaged in plan implementation activities. See
25 Section 6.2 *Compliance and Progress Reporting* for specifics on reporting requirements.

26 The Program Manager may contract with one or more of the authorized entities, supporting
27 entities, or consultants when appropriate to ensure completion of required monitoring, data
28 analysis, and scientific research.

29 **7.3.5 Management of the Adaptive Management Program**

30 The Science Manager will manage the BDCP adaptive management program, as described in
31 Chapter 3 *Conservation Strategy* (Section 3.7 *Adaptive Management Program*). The Science
32 Manager will establish and chair an Adaptive Management Team to assemble, synthesize, and
33 analyze the results of BDCP monitoring efforts and integrate the results of new and relevant
34 scientific research and studies conducted by other parties, including the Delta Science Program.
35 Based on this information, the Science Manager will facilitate and coordinate discussion and
36 consideration of adaptive management issues among the various participating entities, including

1 the Implementation Board, the fish and wildlife agencies, and the Stakeholder Committee as part
2 of the process of making decisions based on the adaptive management program.

3 The decision-making process for adaptive management changes, including the roles and
4 responsibilities of the various entities in the BDCP implementation structure, is described in
5 Section 3.7 *Adaptive Management Program*

6 **7.3.6 Implementation of Measures in Response to Changed** 7 **Circumstances**

8 The Program Manager, through the IO, will be responsible for recognizing and responding to
9 those changed circumstances identified in the plan, and for implementing those responses set out
10 in the BDCP to address those changed circumstances, as described in Section 6.3 *Regulatory*
11 *Assurances and Changed Circumstances and Unforeseen Circumstances*. The Program Manager
12 will establish a process to ensure timely engagement of the Implementation Board, authorized
13 entities, fish and wildlife agencies, and the Stakeholder Committee in the identification and
14 response to such changed circumstances.

15 **7.4 REGULATORY COMPLIANCE RELATED TO BDCP** 16 **IMPLEMENTATION**

17 The Program Manager, through the IO, will be responsible for ensuring that the BDCP is
18 properly implemented, including ongoing compliance with the elements of the Plan and the
19 terms and conditions of the associated regulatory authorizations. The IO will also identify, seek,
20 and obtain from State and federal agencies any other regulatory permits or authorizations that are
21 necessary to effectuate Plan implementation.

22 **7.4.1 Maintaining Permits/Authorizations and Obtaining Amendments**

23 The Program Manager will establish a process to ensure compliance with all permits and
24 authorizations related to BDCP implementation. If amendments or modifications to any of these
25 permits or authorizations become necessary, the Program Manager and the authorized entities
26 will work with the applicable agency to develop the necessary documentation and obtain the
27 amendment.

28 **7.4.2 Obtaining Additional Regulatory Authorizations**

29 Certain specific regulatory authorizations (e.g. water rights) will need to be completed prior to
30 implementation of the BDCP. Other regulatory authorizations will be acquired as necessary
31 during BDCP implementation. This section describes those authorizations that happen during
32 BDCP implementation.

33 The Program Manager will identify and seek regulatory authorizations necessary to implement
34 BDCP actions. The EIR/EIS for the BDCP will provide sufficient environmental review and

1 analysis of the proposed adoption of the Plan by DWR, CVP-related actions undertaken by
2 Reclamation, and of the proposed issuance of take authorizations by the State and federal fish
3 and wildlife agencies pursuant to the Plan, and may provide sufficient environmental review to
4 support other anticipated federal and State regulatory authorizations. However, additional NEPA
5 and CEQA review, as well as compliance with other environmental laws, will be necessary for a
6 number of BDCP-related actions.

7 The IO will oversee the likely need of supporting entities to obtain permits or authorizations, or
8 conduct environmental review, under the following State and federal laws, regulations, or
9 processes prior to the implementation of certain conservations measures:

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

21 This list is not intended to be comprehensive and the Program Manager would be responsible for
22 compliance with any additional regulations necessary for Plan implementation.

23 **7.5 PUBLIC OUTREACH**

24 The Program Manager, through the IO, will implement a public outreach and education program
25 to promote public awareness and provide opportunities for public input on matters concerning
26 plan 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; and
- 31 • Maintain a transparent process for understanding, clarifying and addressing public input
32 and comments.

1 Particular emphasis will be placed on outreach efforts focused on the following stakeholders:
2 Delta residents, including landowners, farmers, and business owners; environmental community;
3 agricultural community; boaters; commercial fishing interests; recreational anglers; local
4 governments; reclamation districts; irrigation districts; public utilities; public and private
5 landowners adjacent to BDCP conservation areas; and Native American tribes.

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

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