

DFG Comments on Governance Chapter (Version 06/03/11)

p.7-3, line 12: Science Manager: Selection and Function

Comment: The Department believes that the fishery agencies should be involved in the selection of the Science Manager. In addition, the Department is concerned that there is no mandatory requirement for independent scientific review of any decisions. The current language specifies that gathering of independent scientific information will occur “as needed.” Addressing these concerns is particularly important given the broad array of important tasks to be overseen by the science manager including overseeing the implementation of the adaptive management program and the monitoring and research program. The Department has repeatedly made these same comments on prior versions of this chapter.

p. 7-4, line 11: Role of Program Manager

Comment: The Department is concerned that the Program Manager (and the Implementation Office) has extensive authority over the implementation of the plan (including implementation of conservation measures and adaptive management). This is concerning given the fact that the fishery agencies have an extremely limited role in these processes.

p. 7-7, line 2: Assignment of Responsibilities

Comment: “Authorized Entities” should be replaced by “Implementation Board” throughout this section (7.1.1.4).

p.7-7, line 18: Entities to Receive Regulatory Authorizations

Comment: Remove statement within parentheses that begins (and potentially...). It is not anticipated that Incidental Take Permits pursuant to CESA will be issued.

p.7-8, line 2:

Comment: Remove reference to CESA section 2081 (see statement above.)

p. 7-8, line 24:

Comment: Unclear why sentence beginning with “Reclamation will...” is included here. It seems that the agreement should be made prior to approval of the plan so that the effects can be properly analyzed. If that is the case, this language would need to change.

p. 7-9, line 5: Other Authorized Entities

Comment: Do not believe the decision should be made that any “other authorized entities” will not be members of the Implementation Board given that all those entities are not known at this time.

p. 7-9, line 14: Other Entities

Comment: Language begins “the following entities” without specifying any entities.

p. 7-9, line 19: Implementation Board

Comment: The Department believes that either: (1) the fishery agencies should be members of the Implementation Board or (2) it needs to be recognized that the operational range for the projects will substantially restricted. This concern has been raised by the Department previously in earlier versions of Chapter 7. The role of the fishery agencies is a continuing concern throughout the document. See page. 7-12, line 7. The Department believes that it needs to be more involved in plan decisions beyond the ability to revoke the permit in instances where jeopardy is implicated. To be clear, the Department believes its role should be expanded beyond providing “input” and “coordination.”

p. 7-11, line 21: Dispute Resolution

Comment: The Department is concerned that SFCWA has the “locus of responsibility” for actions that will result in changes to cost in conservation measures. Given that the Implementation Board is responsible for approving the annual workplan and budget, it appears that in the event of a dispute, SFCWA may have the final say over whether the annual budget gets approved. The Department believes that this is inappropriate.

p. 7-12, line 3: Operation of SWP and CVP

Comment: The Department believes there are multiple references throughout the document that suggest that real-time operations are more than “icing” measures. See the line beginning with “Decisions related...” and p. 7-26, line 34 “regarding the implementation of water operations *conservation measures*....” Also discussion on page 7-26, line 1 discussing that operational changes must be within criteria established by CM 1.

p. 7-15, line 10:

Comment: “Implementation Board” should be replaced by “Program Manager” as the PM will technically be contracting with the supporting entity and should be responsible for termination of that entity’s contract.

p.7-15, line 15:

Comment: This language states that additional take authorizations are not needed for supporting entities taking action to implement the Plan. By this logic, it appears that SFWCA does not require individual take authorization (permittee status), because it will be properly covered by the authorizations issued to DWR and BOR.

p. 7-16, line 16:

Comment: The Department suggests that members of Stakeholder committee serve at request of Secretary, not a defined term of four years.

p. 7-17, line 18:

Comment: The Department questions the benefit to the IO of the “technical facilitation” subcommittee as it will have the benefit of its own scientific team, independent outside scientific review, IEP etc.

p. 7-19, line 19:

Comment: The Department suggests that the Program Manager contract with employees not affiliated with Permittee/Other Authorized entities. The current language is too limiting.

p. 7-21, line 2: Facilitation Team

Comment: It appears that this section should be removed as the Facilitation Team has been deemed unnecessary.

p. 7-22, line 13: Legal Challenges

Comment: It is inappropriate for the IO to coordinate the legal defense regarding challenges to BDCP approval etc. The IO is not a separate entity. Affected entities should coordinate the defense amongst themselves if appropriate.

p. 7-25, line 16: Real Time Operations Response Team

Comment: It is unclear why real-time operations are necessary/not necessary or how they are related to compliance. Suggest the following change to sentence on 7-25, line 28 “The Response Team will be responsible for making real time operations decisions *made for the purpose of providing benefits to fish species that are beyond those required by the Plan.*“

p. 7-26, line 19 and 7-27, line 3

Comment: Fish actions must consider water that could have been exported if not for fish action. This appears to be headed towards development of a water balance ledger and

requirement for make-up pumping that has already been rejected by the Fisheries Agencies.

p. 7-29, line 18, Implementation of Other Conservation Measures

Comment: Unclear why funds provided to supporting entities “will likely be” for implementing conservation measures that address other stressors.