

**Bay Delta Conservation Plan
Review Document Comment Form**

Document: CHAPTER 7. IMPLEMENTATION STRUCTURE, JUNE 3, 2011, VERSION
DISCUSSED AT THE JUNE 9, 2011 BDCP GOVERNANCE WORK GROUP

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Please use this form to document your comments to the above document. Please number your comments in the first column and indicate the page, section, and line number (if provided) that reference the comment’s location in the review document in the next three columns.

To be of the greatest value to the document development process, please make your comments as specific as possible (e.g., rather than stating that more current information is available regarding a topic, provide the additional information [or indicate where it may be acquired]; rather than indicating that you disagree with a statement, indicate why you disagree with the statement and recommend alternative text for the statement). Do not enter information in the **Disposition** column. This column will be used by SAIC to record how each comment was addressed during the document revision process.

No.	Page #	Section #	Line #	Comment	Disposition
		General Com- ments		<p>Issues/Items not addressed in this document that need to be for it to be considered adequate:</p> <ol style="list-style-type: none"> 1) Declare policy of “willing seller” for habitat restoration acres, except when requested by the landowner. 2) Needs to include process for considering and paying for third party impacts resulting in plan implementation 3) Include responsibility for implementing and enforcing EIR/EIS conditions. <p><u>Willing Seller</u> – Willing Seller is the foundation of trust for environmental land acquisition. It is inappropriate for the BDCP to use police powers to condemn land not just for its massive pump, canal-tunnel, and power line infrastructure, but to take 80,000 + acres of “habitat,” privately owned lands that have been managed for productive agriculture for generations. Most of the terrestrial and wetland habitat in the Central Valley is protected by private landowners, waterfowl clubs, land trusts and local HCPs. The remaining local state and federal wildlife refuges suffer from a lack of adequate funding and increasing responsibilities. In contrast, the state and federally managed water projects are partially</p>	

			<p>responsible for the decline of threatened and endangered species as documented by the recent biological opinions. The aquatic habitat being proposed in the Delta under the BDCP is so the existing and new water pumps can operate with ESA take authority. The burdens of the water projects can't fairly be placed on the backs of the very people who have protected the habitat and managed sustainable agriculture for the past 130 years. Taking private land for habitat projects that benefit regions outside of the Delta sends exactly the wrong message to Delta communities.</p> <p>The Delta Conservancy has been designated by statute as a primary State agency to implement ecosystem restoration in the Delta. Under PRC 32366, the Delta Conservancy is required to follow policy of "willing seller", so this should be recognized and committed to in Chapter 7. Failure to require "willing seller" for acquirement of lands for enhancement and restoration of habitat within the identified restoration opportunity areas (ROAs), conservation zones, and other areas in Plan Area will set a precedent that likely will have a chilling effect on public acceptance of HCPs proposed in future. "Willing sellers" is universally accepted as the policy to be followed in HCPs for acreage needed for habitat, therefore it would be a misuse of eminent domain powers to acquire land for habitat in such a hostile way. This is NOT good business for implementation of BDCP as it will increase confrontation with Delta residents and public agencies instead of cooperation.</p> <p>We urge the BDCP to formally recognize willing seller as policy in Chapter 7.</p> <p><u>Third Party Compensation</u> – According to a letter dated September 27, 2010 by Congressmen Dennis Cardoza and Jim Costa and recent newspaper articles, the implementation of the San Joaquin River Restoration Program has resulted in adverse impacts to landowners and water users that need to be redressed. NDWA anticipates similar adverse</p>	
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			<p>impacts to our landowners and water users, therefore, we request the Governance Chapter 7 include a claims process to compensate for damages caused by BDCP implementation.</p> <p>EIR/EIS – Enforcement of mitigations and standards in EIR/EIS should be done by same entity charged with responsibility for implementing/enforcing HCP/NCCP which is the Implementation Board.</p> <p>This is necessary component of accountability that the statutory co-equal goal of protecting “Delta as a Place” is in fact done.</p>	
	1		<p>9-16 <u>EIR/EIS Oversight</u> - This section says the implementation structure is intended to ensure the terms and conditions of the plan and its associated regulatory authorizations, however there is nothing in this governance structure or Implementation Office or the Implementation Board that indicates how the requirements, conditions, and mitigations in the EIR/EIS will be implemented and enforced. This is a fatal flaw as issues related to protecting Delta as a Place: economic considerations, flood protections, water elevations, consolidation of in-Delta intakes, etc are all issues that will be in EIR/EIS and need to have oversight of Governance Entity, and the Implementation Board appears to be the appropriate entity in the structure provided in this document. You CANNOT separate the implementation of mitigation in the EIR/EIS as they are mitigating the impacts of the Conservation Measures, so the governance entity will have to oversee implementation of all of the CMs <u>and</u> their associated mitigation and impacts to neighboring properties.</p>	
	2		<p>16-34 We are concerned that Authorized Entities are the only ones given authority to assist the Program Manager with plan implementation. The Delta residents also have a lot at stake in terms of Plan Implementation and Delta residents are required to pay for Plan’s Conservation Measures by giving up land, livelihoods, and economic revenues.</p> <p>There are other entities such as NDWA, CCWD, City of Antioch and Brentwood that are also water contractors with SWP/DWR and should be added to the Implementation Board. NDWA Contract states:</p>	

			<p>1) The State will operate the SWP to provide water qualities at least equal to the better of: SWRCB standards or the Contract criteria, Article 2; 2) The State agrees not to alter the Delta hydraulics in such a manner as to cause a measurable adverse change in the ocean salinity gradient or relationship among the various monitoring locations; 3) the State shall NOT convey SWP water so as to cause a decrease or increase in the natural flow, or reversal of the natural flow direction, or to cause the water surface elevation in Delta channels to be altered, to the detriment of Delta channels or water users within the Agency; 4) if diversion facilities must be modified as a result of water surface elevations as a result of the conveyance of water from the SWP, the State shall repair or alleviate the damage, shall improve the channels as necessary, and shall be responsible for all diversions facility modifications required. These are certainly “implementation issues” and warrant representation on the Implementing Board since failure of the SWP to meet these criteria results in the mandatory ceasing of all diversions, storage, and export of SWP from Delta channels pursuant to Article 12 of the 1981 Contract.</p>	
	4		<p>1-2 This sentence is clear that the Implementing Office will oversee and implement <u>all</u> aspects of plan implementation. We agree that Plan Implementation means oversight for <u>ALL</u> issues in regards to implementation of Conservation Measures and CANNOT be selective and only want oversight for water ops or how many acres of habitat built. Consequently, either the Implementation Board or another Implementation entity needs to be created to deal with EIR/EIS mitigation implementation as well as third party impacts caused by implementation of any BDCP Conservation Measures.</p>	
	4		<p>34-35 We are concerned with this language to allow DWR and Reclamation to contract with “other entities” to operate the projects. The Authorized Entities should NOT be allowed to operate the water operations as this is a serious conflict of interest. If the AEs are not happy with DWR or Reclamation operating the projects, then a new “independent” third party government entity such as the PUC should be</p>	

				<p>created and put in charge of project operations to prevent undue influence or outright violation of the operating rules. This arms length seems particularly important in light of many entities that are AEs supporting HR 1837 (Nunes) to eviscerate significant Delta protections found in the CVPIA, San Joaquin River Settlement Agreement, and Biological Opinions, as well as some of the AEs filing a recent lawsuit to override a key provision on the current coordinated operations of the CVP and SWP, and the CVPIA. Do their current water contracts give them operational decision making authority? If not, then why should the BDCP provide this new authority for new facilities? Will this operational authority extend to the South Delta Pumps as well, since it will be a dual-operation scenario? Again, this is not appropriate. There is no separation of powers and an unacceptable conflict of interest to allow State and Federal Water Contractors to operate the SWP or CVP. If these are State facilities, then they should be operated by the State. Turning over operation of the SWP to State and Federal Water Contractors is not compatible with the interests of the NDWA and our 1981 Contract.</p>	
7 8	7.1.2	14- 37 1-4	<p>This draft is a step backwards because it is defaulting to the water contractors receiving regulatory take authority as individual entities <i>and</i> being on the Implementation Board. This is far more authority and power than they currently have over operation of the SWP and CVP, and is a line that should not be crossed. This is same problem as assuming a 15,000 cfs conveyance around the Delta is a given fact, rather than a controversial option to be analyzed. This issue was unresolved last year, and received much debate in the Principal Group meetings. Therefore, it is inappropriate to automatically add it into this newly revised version. It should not be added in until a final decision is made. If the Resources Agency and Reclamation are asserting such a final decision already as the preference based on inserting this placeholder language, then that should be disclosed to stakeholders and the general public.</p>		
9	7.1.3	18-	<p>This section needs to include responsibility for</p>		

			25	implementing, coordinating, overseeing, and reporting on all aspects of EIR/EIS implementation/mitigation and third party impacts, to ensure it is properly and fully implemented. As the entity responsible for implementation of all of the Conservation Measures, including ‘habitat acquisition and restoration targets’ mentioned on line 22, the IB must be responsible for <u>all</u> facets and impacts that result from the CMs, including third party impacts. This duty needs to be clearly spelled out and a process for applying for impact compensation set up in the Governance <u>prior</u> to implementation of any CMs. Based upon the experience of farmers dealing with crop damages from seepage due to the release of water under the San Joaquin River Settlement and past problems with seepage for Ryer Island when Prospect Island had water on it, these are issues that need to be figured out in Governance <u>before</u> creation of any new aquatic habitat.	
	9	7.1.3	17-32	Are they required to hold their meetings in the Delta or anywhere in the State? Since many of the Conservation Measures use or affect major components of the Sacramento Flood Control System, the Implementation Board should include a board member from the Central Valley Flood Protection Board and at least three representatives from Delta Reclamation Districts.	
	10	7.1.3.1	9-11	This sentence says that the SWP will remain under the control and responsibility of DWR, however this sentence and commitment is in conflict with other sections that indicate other entities may be allowed to operate the SWP, such as page 4, lines 34-35 and page 11, lines 25-28, which says water facilities and water operations may be contracted out by DWR to other ‘entities.’ This is more authority than State and Federal Water Contractors currently have over the operations of the SWP or CVP and seems to be a line that should not be crossed, otherwise the Governance is specifically creating a conflict of interest.	
	10-11	7.1.3.2	31-36 and 3-13	Pages 10-11, Lines 33-36 and 1-2 respectively, the limitations on the two criteria for objections seems too narrow, subjective, and it is not clear <u>who</u> makes the decision on whether either of those criteria have been met. Determined by who??	

				Page 11, Lines 9-10 includes SFWCA and the State or federal water contractors individually, which seems to make them both judge and jury for decision making since they also are on the Implementation Board who's decision is being sent to dispute resolution.	
	11	7.1.4	25-29	Do not think it is appropriate for DWR or Reclamation to contract with or designate other 'entities' to operate the SWP or CVP facilities. This goes far beyond existing authorities and creates conflicts of interests if the operation of these facilities is turned over to State or Federal Water Contractors.	
	10	7.1.3.2	31-36	What will the disposition process be for input provided by the Stakeholder Committee to the IO? It is meaningless if they offer input and suggestions, but there is no process or requirement for them being acted on by IO.	
	12	7.1.5	5-14	ESA/CESA take authority should also be shared with local flood control agencies to allow for maintenance and improvement of levees necessary for the conveyance of SWP or CVP water through the Delta.	
	12 and 13	7.1.5.1 And 7.1.5.2	23-26 And 1-23	It is one thing to have DFG consulting with authorized entities, but it is inappropriate to have their "participation" in real-time operations. The word "participation" should be deleted from page 12, line 25; page 13, line 3; and page 13, line 16.	
	12	7.1.5.1	28-32	Creating agreements for DFG to operate and maintain habitat areas, <i>MUST</i> include a requirement it is only if the agreement includes a funded and securitized endowment to pay for the ongoing maintenance and local taxes/assessments prior to construction and implementation. DFG does not receive sufficient funding in the State Budget to cover these costs, so they <i>must</i> be included in the Agreement.	
	13	7.1.5.3	19-23	There is no mechanism for local government agencies to make federal government pay their local assessments, so any Agreement for the USFWS to operate and maintain habitat areas <i>must</i> include a funded and securitized endowment fund prior to construction and implementation.	
	13	7.1.6	25-	Since most of the Conservation Measures in the	

			34	BDCP are in fact flood control projects that propose modification of Project Levees and or flood Bypasses, how will agencies such as the U.S. Army Corps of Engineers and the CA Central Valley Flood Protection Board ‘participate in the governance of plan implementation’ mentioned on line 30?	
	14	7.1.6	3-10	Should include the Delta Protection Act and PRC Section 32322, 32364.5, 32366, and 32370.	
	14	7.1.7	19-21	This section should either specifically identify which Conservation Measures the State and Federal Water Contractors will have responsibility for implementing or which CMs they will <i>not</i> have responsibility for, such as water operations of SWP and CVP. It is unclear why State and Federal Water Contractors should have a role in implementation of habitat measures the General Public will be paying for??	
	15	7.1.8	9-11	Having the Stakeholder Committee simply be a ‘forum’ for the ‘discussion’ of matters is not sufficient. This group will include landowners and Delta entities that are directly impacted and burdened by CMs that benefit other areas of the state, so they need to be able to make recommendations for changes to CMs that are detrimental to the Delta’s regional economy and Delta as a place as defined in PRC Sectoin 32322. Also needs to define how their input will be dealt with by the Implementation Board and IO.	
	15	7.1.8.1	12-33	How many total members? How will membership be divided between the different categories on lines 17-33? Not sure why there is cross-over on entities that serve on the Implementation Board ALSO get to serve on the Stakeholder Committee. If they get to cross-over to the Stakeholder Committee, then the locals on the Stakeholder Committee should also cross-over and have representation on the Implementation Board. Since most of the CMs are flood projects, the Central Valley Flood Protection Board and at least six representatives of Delta Reclamation Districts should be included. Since significant agriculture acres will either be converted or have ESA/CESA and detrimental impacts such as seepage, the Committee should include representatives from either the County Ag Commissioners or County Farm Bureaus for each of the five Delta Counties (five reps total). Also	

				missing representatives from sport and recreational fishing, boating and marinas, Delta Chambers of Commerce, and Delta Conservancy.	
	16	7.1.8.2	1-21	Will the meetings convened pursuant to this section be open to the public? Will the communication and regular update documents required in this section be made available to the public? Will the recommendations of the Stakeholder Committee be made available to the public?	
	16	7.1.8.3	23-38	<p>Lines 28-30, the limitations of these two criteria is too narrow, subjective, and it is not clear <u>who</u> makes the decision on whether either of those criteria have even been met.</p> <p>Lines 31-32, it is confusing how elevating an objection to the IB will result in an objective decision, since an element of their work plan is what is being elevated for objection. This extra process seems to add time to how long it will take to resolve dispute. The time period the IB has to act on an objection needs to be defined. How long does IB have to deal with the dispute before it can be elevated to the ‘entity with the ultimate authority over the matter?’ Failure of the IB to act on dispute in a timely manner will lead to lawsuits. “Entity with the ultimate authority over the matter” needs to be better defined.</p> <p>Lines 35-36, the ‘decision by the entity with ultimate authority over the matter’ must also have a time limit, otherwise complainants will go to court due to unnecessary delays.</p> <p>Lines 36-38, should be amended to clarify the State and Federal Water Contractors have final say over responsibility for plan implementation and compliance <u>with permit conditions</u> as holders of the permits pursuant to Section 7.1.2.</p>	
	20	7.2.9	26-30	As mentioned before, most of the BDCP’s Conservation Measures are in fact flood control projects proposing the alteration of Project Levees and flood Bypasses for habitat purposes. These coordinating agencies should be on the Implementation Board due to their significant role in permitting these projects and for monitoring their maintenance.	

22	7.3.1 and 7.3.1.1	3-18	<p>Willing seller policy should be added in this section as follows:</p> <ol style="list-style-type: none"> 1) Line 7, “These measures will primarily involve actions to acquire lands <u>from willing sellers except when requested by the landowner</u>, restore . . .” 2) Line 10, . . . measures associated with habitat protection and restoration, <u>based on a willing seller except when requested by the landowner.</u>” 3) Line 13, “. . . acquire interests in real property <u>based on a willing seller except when requested by the landowner . . .</u>” 4) Line 15-16, “. . . also may acquire interests in real property <u>based on a willing seller except when requested by the landowner.</u>”
22	7.3.1.1	25	<p>Add two new bullets: *</p> <ul style="list-style-type: none"> • <u>A funded and securitized endowment for the payment of ongoing maintenance, monitoring, and local taxes/assessments.</u> • <u>Be consistent with PRC Section 32322</u>
22	7.3.1.1	30-31	<p>This language should specifically prohibit the conveyance of any lands to the Delta Conservancy, DFG, FWS, or other entities, <u>UNLESS</u> the property includes a funded and securitized endowment fund to pay for ongoing maintenance, monitoring, and local taxes/assessments as well as required to be consistent with PRC Section 32322.</p>
23	7.3.1.2	15	<p>Need to add several more bullets:</p> <ul style="list-style-type: none"> • <u>Enforcement of easements</u> • <u>Monitoring of third party impacts, including seepage, erosion, and levee failures</u> • <u>Enforcement of Safe Harbor or Good Neighbor policies and agreements</u>
24	7.3.2.2	2-4	<p>Page 12, line 25; page 13, line 3, and page 13 line 16 provide “<i>participation</i> in real-time operations to Authorized Entities which seems inconsistent with the section on the “Real Time Operations Response Team.”</p>
24	7.3.2.2	17-21	<p>Since page 4, lines 34-35 and page 11, lines 25-28 are just two of several places which say water facilities and water operations may be contracted out by DWR to other ‘entities’ such as the State and Federal Water Contractors, then as operators of the water facilities, this section will require the water</p>

