

The California Bay-Delta Authority and Bay Delta Conservation Plan

The California Bay-Delta Authority Act (“Act”) was created by the Legislature in 2002 and was repealed in January 2010. The major feature of the Act was the creation of a new government agency, the California Bay-Delta Authority (“Authority”), which had, among its responsibilities, the duty to provide oversight and report about the progress of the implementation of the California Bay-Delta Program or CALFED Program. The Program consisted of eleven different goals (water supply reliability, ecosystem restoration, etc.) carried out by twenty-five participating federal and state agencies, called the CALFED agencies.

The CALFED agencies first agreed to work together as part of the CALFED Program in 1994 through the “Framework Agreement between the Governor’s Water Policy Council of the State of California and the Federal System Directorate” or “Framework Agreement.” The purpose of the Framework Agreement was to establish a comprehensive program for coordination and communication between state and federal agencies with respect to environmental protection and water supply dependability for the Bay-Delta. Included in the program was a water quality standard setting process (which was completed), a program for coordination of water operations (now called the “Water Operations Management Team” or “WOMT”), and a long-term planning process, which ultimately became the CALFED Program. The Natural Resources Agency, Department of Water Resources, and Department of Fish and Game were among the signatories to the Framework Agreement.

In January 2010, as part of the 2009 California water legislative package, the Act was repealed. Simultaneously, the legislation transferred the responsibilities and authorities of the Authority to the newly created Delta Stewardship Council (“Council”). The Council was given the authority to “administer all contracts, grants, easements, and agreements made or entered into by the California Bay-Delta Authority.” It further provided that all contracts entered into by the Authority were not void or voidable, but would continue until the end of the term. Finally, the Council was given “all of the administrative rights, abilities, obligations, and duties of the Authority.” The Council should be consulted as to whether any contractual or other obligations assumed by the Council are still in effect.

The Act expressly did not modify the program authority of participating agencies, like the Department of Water Resources or Department of Fish and Game, as those departments retained all of their existing powers. Nor did the Act mandate that these departments carry out any specific activity, as those remained under the existing authorities of each department. Thus any obligations agreed to by the CALFED agencies participating in the Framework Agreement were unaffected by the passage of the Act in 2002 or its repeal in 2010.