

**Bay Delta Conservation Plan  
Governance Working Group  
Preliminary Recommendations for Governance Structure  
January 21, 2009**

**Permittees**

1. California Department of Water Resources (DWR) will be a permittee<sup>1</sup> under Endangered Species Act (ESA) section 10(a)(1)(B) and NCCPA section 2835.
  - 1.1. DWR will construct and own the new conveyance facility.
  - 1.2. DWR will continue to own existing State Water Project (SWP) Delta facilities, including the Banks Pumping Plant.
2. U.S. Bureau of Reclamation (USBR) will be authorized for take under ESA section 7(a)(2).
  - 2.1. USBR will enter into an agreement with DWR to obtain capacity and other rights in the new conveyance facility.
  - 2.2. USBR will continue to own existing Central Valley Project (CVP) facilities, including the Jones Pumping Plant.
3. A Joint Powers Authority (JPA) will be established by the SWP and CVP Contractors. *[The State Water Contractors and the CVP Contractors will discuss with DWR whether DWR would become a member of the JPA.]*
  - 3.1. The JPA could assist in implementing habitat conservation measures and other plan elements.
  - 3.2. The JPA could be a permittee under ESA section 10(a)(1)(B), or it may enter into a contract or other form of agreement with DWR and/or USBR for that purpose. *[DWR and the contractors will discuss further and report back to the Governance WG.]*

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<sup>1</sup> We use the term “permittee” to refer to the entity authorized by a particular statute to implement the plan, including water supply operations and other activities. Different terms may be used under any given statute.

**Implementing Entities**

4. At minimum, DWR and USBR will be implementing entities for the purpose of NCCPA section 2820(b)<sup>2</sup> and counterpart ESA requirements.
5. The Contractor JPA may be an implementing entity. The implementing agreement will specify its responsibilities.
6. If established, the Delta Conservancy will either be an implementing entity or a contractor to permittees, for purpose of implementing habitat conservation measures. *[The Governance WG continues discussion of the comparative merits of these alternative relationships.]*
  - 6.1. In any event, Delta Conservancy will be able to accept public funds directly or through another State or Federal agency for implementation of specified measures in BDCP.
  - 6.2. Permittees will have authority to terminate Delta Conservancy's responsibilities under the implementing agreement, if they conclude that its performance does not comply with the plan or otherwise is insufficient. *[Governance WG will discuss further consequence of non-performance related to portions of the plan funded by the State or Federal governments.]*
7. Other public agencies and private entities may also be implementing entity or contractor under the same logic described in point 6.

**BDCP Implementation Oversight and Advisory Council**

8. Stakeholders will participate in an Oversight and Advisory Council to assist the permittees in the implementation of the plan.
9. As specified in the plan and implementing agreement, members will include: (i) members of the existing Steering Committee who support the plan, (ii) the Delta Counties, and (iii) other stakeholders whose assistance will increase the likelihood of success in implementation.
10. The Oversight and Advisory Council will have two functions: oversight and dispute resolution.
  - 10.1. The implementing entity(ies) will periodically report to council members on past activities and upcoming plans. They will consider member's comments and recommendations. The plan will establish, and the Advisory Council will use,

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<sup>2</sup> This section provides: "A natural community conservation plan approved pursuant to this section shall include an implementation agreement that contains [specified elements]."

reporting (including meeting) procedures which are timely and efficient. Such procedures may vary by plan element.

- 10.2. The plan will establish, and the Oversight and Advisory Council will use, non-binding procedures for dispute resolution between the permittees and council members. Such disputes will concern sufficiency of plan implementation, including the performance of adaptive management. The plan will specify such procedures, and the Oversight and Advisory Council will use them, to minimize the risk and scope of litigation related to plan implementation.
- 10.3. Such procedures will fully preserve the existing authorities of any member, including regulatory agencies, to act as required by such authorities.
- 10.4. Such procedures will comply with applicable requirements of open meeting laws, including the Federal Advisory Committee Act.