

- Bay-Delta Management Report

Summary

This report provides the status of various processes and activities related to the Bay-Delta.

Detailed Report

Delta Vision

The Delta Vision Blue Ribbon Task Force (BRTF) released the fourth staff draft of the Delta Vision Strategic Plan on September 12, and discussed the draft at their September 18-19 meeting. The fourth draft includes minor refinements over the earlier versions. However, staff is concerned that overly-specific and weakly supported components in Volume 2: Strategy Descriptions of the Strategic Plan threaten to undermine execution and progress on the Vision (adopted in January 2008) as this process moves before the Governor and the Legislature. In particular, staff is concerned with proposed flow objectives for the Sacramento and San Joaquin Rivers that have no substantive biological basis and have not been evaluated to determine potential water supply impacts. Staff is also concerned that the proposed governance structure creates another regulatory layer and additional processes that would delay action on the Strategic Plan. The Metropolitan positions and principles related to Delta Vision that are articulated in the Board-approved Delta Action Plan and Delta governance principles are being conveyed in public comments at BRTF and Delta Vision Committee meetings and in written comment letters submitted to the BRTF. In September, Metropolitan staff worked with the Governor's Delta Vision Stakeholder Coordination Group (which is a coalition of water and business interests) to submit comments on the fourth draft strategic plan on September 30.

The next two months will be critical for the development of the Delta Vision Strategic Plan. The next Delta Vision BRTF meeting is scheduled for October 16-17, to seek final public comment on the fifth and final staff draft of the Delta Vision Strategic Plan. The fifth staff draft will be released prior to the meeting. The Governor's cabinet level Delta Vision Committee is anticipated to meet mid-November to review and discuss the recommendations identified in the final draft. Staff is planning direct communications with the Governor's Delta Vision Committee, in coordination with other water user groups, regarding critique of the Delta Vision reports, as they prepare their report to the Governor and Legislature.

Bay Delta Conservation Plan

The Bay Delta Conservation Plan (BDCP) process is developing conservation measures that consider a variety of key stressors to sensitive fish species and the Delta ecosystem. The BDCP Steering Committee continued to evaluate various conservation options, which focus on the restoration of various Delta habitat types and actions that address other stressors to the covered aquatic species. Because of the experience gained through our participation in the Lower Colorado River Multi-Species Conservation Program, Metropolitan is attempting to help shape the development of the BDCP. In addition to our participation on the BDCP Steering Committee, Metropolitan staff is engaged in all work teams and often acts as the focal point for review of technical materials and ensuring consistency with the appropriate regulatory processes. Metropolitan worked with other State Water Project (SWP) contractors and the Central Valley Project (CVP) contractors to define and analyze an operations scenario under a dual intake and conveyance system that meets the BDCP planning goals of "restoring and protecting water supplies". Metropolitan and other SWP and CVP contractors have also engaged the NGO community to participate in consensus building sessions that are aimed at addressing key areas of concern and working toward mutual resolution.

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Near-term Delta Actions

Two-Gates Fisheries Protection Plan

As a part of the interim remedy order of December 14, 2007, Judge Wanger imposed restrictions on reverse flows in the south Delta to ensure protection of the delta smelt from entrainment. The interim remedy order details specific flow requirements for Delta smelt protection until a revised biological opinion is certified. The Two-Gate Fisheries Protection Plan involves the installation of new temporary gates in central Delta channels that will be operated in real time to reduce fish salvage and water supply restrictions at the State and Federal export facilities. The Two-Gates Plan also improves water quality for in-Delta urban and agricultural interests. Metropolitan has been working with a team focusing the combined expertise of the State Water Contractors (SWC), Central Valley Project contractors (CVP) and the Contra Costa Water District (CCWD) to expedite the implementation process. The SWC and CVP are supplying staff expertise and consulting resources to CCWD who is assembling CEQA and NEPA documents and permitting materials for submittal to the Department of Water Resources (DWR). It is anticipated that DWR and the US Bureau of Reclamation (USBR) would be the respective CEQA and NEPA leads for the project. The SWC has managed the design process to date and the Contra Costa Water District has committed to manage construction of the project. The parties are working on principles and potential cooperation agreements to define management of design completion, construction, and other responsibilities. As such, the project team is completing necessary work for in-service operation of the gates as early as 2009. With operational protocols being developed by DWR in consultation with USBR, it is anticipated that the Two-Gate Project would operate in combination with additional San Joaquin River flows creating both a flow and physical barrier to smelt movement toward the export pumps.

Two-Gates Funding

Metropolitan and the other contractors have been pursuing potential available funding for construction of the project, including remaining "Category III" funds and Proposition 13 fish protective facilities funding. The total estimated cost of the Two-Gates project is approximately \$29 million. The "Category III" account resulted from Metropolitan's commitment to make \$30 million available in 1994 for non-flow measures in the Bay-Delta watershed and made the 1995 Bay-Delta Accord possible. The CALFED agencies in turn committed to Metropolitan that it would receive a credit for these funds against Metropolitan's share of Bay-Delta mitigation responsibilities. Approximately \$7 million remains in the account on deposit with and managed by Metropolitan, available for expenditure (and credit to Metropolitan) on approval by CALFED. Metropolitan's Board authorized the General Manager to expend the funds in August 1997 upon issuance of appropriate credit by CALFED. In a September 15, 2008 letter Joe Grindstaff, the CALFED Director, recognized the proposed project's potential benefit to listed species and promised expedited review of Metropolitan's request to use the remaining Category III funds for the Two-Gate Project. Mr. Grindstaff also recognized that expenditures for the project may need to occur before CALFED can complete its review of the Category III funding application. In order to protect Metropolitan's credit for expenditure of the Category funds III, Mr. Grindstaff's letter provides that Metropolitan will either get credit if the application is approved, or if the project is not approved for credit, Metropolitan may redeposit any funds expended on the Two-Gate Project and those funds will remain available for credit on a future project. Staff anticipates CALFED will approve the project for Category III funding, but if not, staff will return to the Board for authorization for future needed actions.

Delta Operations

Endangered Species Act Consultations Regarding SWP and CVP Operations

On September 24, 2008, the CVP and SWP Contractors submitted a joint letter to the United States Fish and Wildlife Service (USFWS) and National Marine Fisheries Service (NMFS) evaluating the Biological Assessment (BA) prepared by the US Bureau of Reclamation (USBR). The BA describes the intended operation of the Central Valley Project and State Water Project, and the impacts of those operations on certain fish species listed under the Federal Endangered Species Act (ESA). In the joint letter, the contractors raised concerns regarding the BA's inclusion of unsubstantiated or misrepresented scientific data and stressed the requirement for the Biological Opinions (BiOps) to be based on the best scientific and commercial data available.

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Metropolitan, along with other SWP and CVP contractors, is coordinating with DWR and USBR to address project operations and other measures that might be necessary to offset the Project's effects on covered species. The Contractors have identified several measures that will benefit sensitive fish species while protecting water supply. These measures have been provided to DWR and USBR to aid in their negotiations with the federal fishery agencies.

The deadline for completion of the OCAP reconsultation with the USFWS and the issuance of the new Delta smelt BiOp has been extended by the federal court until December 15, 2008. The salmon BiOp to be issued by NMFS is scheduled for completion in March 2009.

State Water Resources Control Board Issues

The State Water Resources Control Board (SWRCB) held a workshop on San Joaquin River flow objectives and salinity in the southern Delta on September 17 and another workshop on comprehensive review of all the objectives in its Bay-Delta Water Quality Control Plan on October 8. The workshops were intended to provide the Board with background information and updates on the flow objectives and on the Vernalis Adaptive Management Plan salmon experiment, and to consider which elements of the Bay-Delta Plan should be reviewed. However, a significant portion of the September 17 workshop was devoted to procedural issues regarding the Board's review of the Bay-Delta Plan. In particular, the Board had proposed a "fact-finding" hearing to begin in November. However, many parties raised questions regarding the proposed fact-finding process such as what the Board intended to do with the "facts;" what issues would be considered in the process; what procedural rules would apply; and whether these facts would have some type of preclusive effect or be "better" facts than those established through the Board's usual rules of practice. It became clear at the workshop that the Board and its staff were still thinking through these issues. The Board committed to develop and distribute a better description of the potential process and perhaps consider input at one of its already scheduled workshops. While it is not yet clear, it appears the Board will suggest a scoping workshop on these procedural issues in place of the proposed fact-finding hearings in November, and that any additional hearings will not occur until early 2009 at the soonest. Metropolitan staff and other SWP contractors, along with CVP contractors, have been coordinating their efforts on SWRCB, BDCP, OCAP and other issues affecting State Water Project operations. The contractors collaborated on written comments for these SWRCB workshops and will continue to participate jointly in future workshops and in submitting technical and legal information as appropriate.