

## ● Bay-Delta Management Report

### Summary

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

### Detailed Report

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#### Delta Vision

The Delta Vision Blue Ribbon Task Force (BRTF) has completed its process to develop a Vision for the Delta and a Strategic Plan for implementing that Vision. The final Delta Vision Strategic Plan document was released to the public on November 3. The response from the water user community has been generally positive. However, water users remain concerned about the development of ecosystem flow proposals, and the form and function of the proposed governance and finance structure, which creates another regulatory layer and additional processes that could delay action on the Strategic Plan. The physical vision of the strategic plan, which includes the need for new dual conveyance, new storage, and increased efforts on local supply development and conservation, is conceptually sound. However, the details regarding the means to achieve these components have yet to be developed.

The next step in the process is the Delta Vision Committee (comprised of the Secretaries for Resources, Environmental Protection, Food and Agriculture, Business, Transportation and Housing, and the President of the California Public Utilities Commission) will review the Blue Ribbon Task Force Strategic Plan report and develop and forward their recommendations to the Governor and the Legislature. The first draft of these recommendations is due for release in late November. Staff coordinated participation with its member agencies and the Public Water Coalition of California at the November 21 Delta Vision Committee workshop in Long Beach. The second Delta Vision Committee workshop is scheduled for December 5 in Sacramento. A subsequent Delta Vision Committee meeting to finalize its recommendations will be held on December 16 in Sacramento.

#### Bay Delta Conservation Plan

Throughout this past year, the Bay-Delta Conservation Plan (BDCP) process has focused significant effort on the identification of a comprehensive suite of potential actions to mitigate project-related impacts to sensitive species and contribute to their recovery. In November, efforts focused on the identification of actions that maximize the potential benefits of new water conveyance facilities and operations with ecosystem restoration opportunities. As a result of an Independent Science Workshop, twenty-seven new species were identified as potential species to be included as BDCP covered species. The draft conservation strategy currently does not address impacts to, or mitigation measures for, the newly identified terrestrial species. To what extent inclusion of these new non-aquatic species will expand the scope of the plan is currently being considered. Metropolitan is continuing to actively engage in all BDCP-related workgroup efforts. Staff's work over the next month will focus on meeting the December 2008 target for a draft comprehensive Conservation Strategy and continuing the development of a governance structure for the implementation of the BDCP.

#### Near-term Delta Actions

##### Two-Gates Project

As a part of the interim remedy order of December 14, 2007, Judge Wanger imposed restrictions on reverse flows in the south Delta toward the export pumps to ensure protection of the Delta smelt from entrainment. These restrictions remain in effect until a revised biological opinion is certified, currently expected from the U.S. Fish and Wildlife Service in December 2008. The Two-Gates Project includes the installation of new temporary gates in central Delta channels that will be operated in real time to reduce fish take, relax water supply restrictions at the State and Federal export facilities, and improve Delta water quality. A combined project team with expertise from the State Water Contractors (SWC), Central Valley Project contractors (CVP) and the Contra Costa Water

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District (CCWD) was formed to expedite the implementation process for the Two-Gates Project. On November 7, the project team briefed the Department of Water Resources (DWR) and the US Bureau of Reclamation (USBR), on the Administrative Draft Mitigated Negative Declaration/Environmental Assessment to prepare them to file the documents as CEQA and NEPA leads for the project. The project team is also preparing a draft Biological Assessment by mid-December 2008. At this time, the primary role for DWR in implementing the Two-Gates Project is to respond to the project team with any comments on the Administrative Draft environmental documents, and file the CEQA documents and submit the necessary permit applications for the project in a timely manner.

The SWC has managed the design process under the technical direction and review of MWD, and the CCWD has agreed in principle to manage the construction phase. The parties have jointly developed draft principles of agreement to define management of design, construction, operations and other institutional responsibilities. Through operational protocols developed by DWR and USBR, it is anticipated that the Two-Gates Project would operate together with additional San Joaquin River flows creating both a flow and physical barrier to smelt movement toward the export pumps. Metropolitan and the other contractors have pursued funding for the project, through remaining Category III funds from the 1995 Bay-Delta Accord, Proposition 13 funding, and Proposition 84 funding through the Governor's recent enactment of SBXX 1 (Perata). The total estimated first cost of the Two-Gates Project is approximately \$29 million.

### **Delta Operations**

#### Endangered Species Act Consultations Regarding SWP and CVP Operations

Metropolitan continues, in partnership with other SWP and CVP contractors (Contractors), to monitor the progress of the Operations Criteria and Plan (OCAP) process. On November 19, the State Water Contractors (SWC) and the San Lewis Delta Mendota Water Agency (SLDMWA), on behalf of the SWP and CVP contractors (Contractors) submitted a letter to the U.S. Fish and Wildlife Service (USFWS) commenting on the draft Effects chapter in the Delta smelt Biological Opinion (BiOp) and on the peer review report from independent scientists on the Effects analysis chapter. The Effects chapter and peer review report were released by the Department of Justice to participants in the *Natural Resources Defense Council v. Kempthorne* (Wanger case) which provided the Contractors an opportunity to critique the USFWS's assessment of the impacts of CVP and SWP (Project) operations on Delta smelt. The Contractors' comment letter highlighted significant failings of the Effects analysis to consider relevant data, to present analysis in a comprehensive manner, and to properly demonstrate the effects of Project operations on Delta smelt abundance. Beyond the Effects chapter, concern has been raised regarding how water allocations are being addressed within the BiOp, potential restrictions on water operations, and other measures that might be imposed on the Contractors to offset impacts to fish and associated critical habitat.

The USFWS is expected to finalize the BiOp with an expected public release date timed to meet the court mandated completion date of December 15, 2008. The release of the draft BiOp by the National Marine Fishery Service (NMFS) for protection of salmon and steelhead is expected on December 9 with a final due in March 2009. The Contractors are working closely with DWR and Reclamation on both BiOps.

### **Endangered Species Issues**

On November 14, the California State Fish and Game Commission (Commission) adopted emergency regulations (Regulations) that will extend the take authorization for longfin smelt (a fish species that is a candidate for listing under the California Endangered Species Act) through February 2009. The Regulations contain criteria for operating the State Water Project and Central Valley Project (SWP/CVP) ostensibly aimed at reducing entrainment of longfin smelt. The Department of Water Resources has conducted a "worst-case-scenario" analysis of the impact on water supplies from the proposed December-February restrictions on SWP/CVP project operations. Based on DWR's analysis, the Regulations could result in a maximum loss of an additional 1 million acre-feet of supply in an "average" runoff year, or an additional 500,000 acre-feet of supply in a dry year. However, impacts to water supplies could be lower if the hydrologic and biological conditions triggering the restriction are not met. The SWP/CVP Contractors submitted an extensive comment letter to the Commission which outlined the factual inconsistencies in the Regulations and highlighted the potentially significant impact on

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critical water supplies. Since adoption of the Regulations, the SWP/CVP Contractors are evaluating various recourse, including legal action.

### **State Water Resources Control Board Issues**

Metropolitan staff has closely tracked the State Water Resources Control Board (SWRCB) process related to the Strategic Workplan for Activities in the Bay-Delta, which was adopted in July 2008, and has coordinated with the SWP contractors to submit comments on the process. The Strategic Workplan requires the SWRCB to conduct a comprehensive review of the 2006 Bay-Delta Water Quality Control Plan (WQCP) and its implementation. As part of the WQCP review, the SWRCB planned to conduct an informational fact-finding proceeding on critical factual issues concerning the Bay-Delta ecology, and SWRCB staff prepared a draft public notice for conducting the informational proceeding beginning in April 2009. The SWP contractors expressed concern with the proposed procedures for the informational proceeding because cross examination of witnesses presenting information would not be allowed. On November 18, the SWRCB considered the draft notice and voted not to proceed with the informational fact-finding proceeding. Instead, SWRCB staff will proceed with preparation of the periodic review staff report supported by facts recommending which issues the SWRCB should consider for potential modifications to the Bay-Delta WQCP. A draft staff report is expected to be released for public review in February 2009. Metropolitan staff will continue to work with the SWP contractors to provide input to the review of the Bay-Delta WQCP and participate jointly in future SWRCB workshops.