



- Board of Directors  
*Water Planning and Stewardship Committee*

8/16/2011 Board Meeting

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**8-8**

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## **Subject**

Authorize execution of Amendment to the Delta Habitat Conservation and Conveyance Program Memorandum of Agreement and Agreement for Supplemental Funding to prepare and complete the planning, environmental documentation, and associated preliminary engineering design for the Bay Delta Conservation Plan

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## **Description**

### **Summary**

The proposed amendment to the Delta Habitat Conservation and Conveyance Program (DHCCP) Memorandum of Agreement (MOA) is an update to the DHCCP MOA authorized by Metropolitan's Board in December 2008, and the subsequent Supplemental Funding Agreement approved by the Board in July 2010 (staff did not execute the Supplemental Funding Agreement because of issues needing resolution). The 2008 MOA established a collaborative effort among state/federal agencies and water users to manage and fund the development of the DHCCP. This amendment updates the MOA by integrating into a single set of agreements the program management functions and funding mechanisms of the Bay Delta Conservation Plan (BDCP) planning phase and the development of the DHCCP environmental documentation and preliminary engineering design. The MOA also defines management and decision-making processes, budget expenditures, cost sharing among agreement parties, and the schedule for the remainder of the BDCP-DHCCP Planning Phase. The MOA also outlines the roles and responsibilities of the Department of Water Resources (DWR) as the state lead agency, in collaboration with other MOA parties, for the completion of the BDCP and joint Environmental Impact Report/Environmental Impact Statement (EIR/EIS).

The parties to this MOA are DWR, the U.S. Department of the Interior's Bureau of Reclamation (Reclamation), the State and Federal Contractors Water Agency (SFCWA), Metropolitan, Kern County Water Agency, State Water Contractors (SWC), San Luis and Delta-Mendota Water Authority, Westlands Water District, and Santa Clara Valley Water District.

The parties to the Agreement for Supplemental Funding are DWR and each of the participating state water contractors. The federal contractors have authorized their share of the supplemental funding under a separate agreement with DWR.

Under the proposed Agreement for Supplemental Funding totaling \$100 million, DWR would charge Metropolitan for its share of BDCP and DHCCP costs (approximately \$25 million) based on Metropolitan's Table A contract amount. The proposed charges will be contingent on the performance measures identified in the MOA and the written agreement of the participating water agencies. Metropolitan's total cost share for the BDCP-DHCCP Planning Phase since 2007 is projected at up to \$63.375 million (25 percent of \$253.5 million of total program cost).

### **Background**

The BDCP is a voluntary effort to obtain long-term, incidental take permits for the operations of the SWP and the Central Valley Project (CVP) through development of a comprehensive Habitat Conservation Plan (HCP) under the federal Endangered Species Act, and a Natural Community Conservation Plan (NCCP) under the California

Natural Community Conservation Planning Act. The BDCP is a mechanism for improving the ecological conditions to provide multi-species regulatory protection in the Delta. Metropolitan's interest is securing the regulatory protection for SWP operations and restoring water supply lost to recent regulation and court action through a long-term multi-species habitat conservation agreement. The BDCP is being developed in an open and inclusive process.

The DHCCP is the effort to analyze the proposed actions in the BDCP under the federal National Environmental Policy Act (NEPA) and the California Environmental Quality Act (CEQA) and prepare environmental impact documents. This effort also includes development of preliminary engineering designs, geotechnical field studies and analysis, and other necessary feasibility information for Delta water conveyance and related habitat conservation measures under the BDCP.

Since 2006, a series of agreements and amendments have been executed with regard to the preparation and funding of the BDCP and the DHCCP. This MOA and associated Agreements for Supplemental Funding will combine the BDCP and DHCCP into a single process (BDCP-DHCCP Planning Phase) under a uniform set of agreements, which will facilitate the completion of the planning process. The BDCP-DHCCP Planning Phase would accomplish the following objectives:

- Analyze potential responses to multiple threats to the state's water supply and economic health posed by the current conveyance system's vulnerability to seismic risk, climate change, and regulation;
- Facilitate the assessment, planning and environmental analysis of likely conservation measures or elements of the BDCP, particularly the Delta water conveyance options;
- Provide for the coordination and exchange of information among the Parties as preparation of the BDCP and DHCCP continues;
- Support a plan that can adapt to the evolving Delta environmental conditions; and
- Consider prudent funding of species conservation and improved Delta water conveyance facilities in order to achieve improvements to water supply, water supply reliability, and ecosystem health and resiliency.

### **Key Agreement Provisions**

The key provisions of the agreements include:

- DWR, the federal government, and the state and federal water contractors (Public Water Agencies) will work cooperatively to develop the HCP-NCCP and joint EIR/EIS;
- The Public Water Agencies' funding approval for the \$100 million in supplemental funding is linked to the success of each of three phases within the BDCP-DHCCP planning process:
  - Administrative Draft EIR
  - Public Draft EIR
  - Final EIR/EIS Record of Decision/Notice of Determination
- DWR must receive written approval from the Public Water Agencies before DWR may dedicate subsequent installments of the of the Public Water Agencies' supplemental funds to phases 2 and 3 (the public draft EIR/S and the final EIR/S);
- DWR, the federal government and the Public Water Agencies commit to taking action necessary to maintain the schedule and budget established for the completion of the BDCP-DHCCP Planning Phase;
- DWR's internal decision-making structure is clarified, establishing program leads and direct accountability to the Director of DWR; and

- If DWR or all of the Public Water Agencies withdraw from the amended MOA or Agreement for Supplemental Funding, the agreements terminate. If Reclamation or only some of the Public Water Agencies withdraw, the remaining Parties may decide to continue. Any party may withdraw within 30 days' written notice, subject to reasonable termination costs. Withdrawing parties will be responsible for their share of program costs approved within 60 days prior to the notice of withdrawal.

### **Financial Commitment**

The estimated total cost of the BDCP and DHCCP is \$253.5 million. This includes expenditures of \$13.5 million for initial BDCP planning and administrative costs (authorized under Board Minute Item 46878 in November 2006) and \$240 million for the BDCP-DHCCP Planning Phase (authorized under Board Minute Item 47735 in December 2008 and Minute Item 48333 in July 2010). The estimated budget in Table 1 provides funds to complete the BDCP-DHCCP Planning Phase, including the necessary preliminary engineering design, geotechnical analyses, environmental field surveys and documentation, hydrodynamic and operational modeling analyses, and to obtain the regulatory approvals necessary for implementation.

**Table 1 -- BDCP-DHCCP Planning Phase**

<b>Program</b>	<b>Original (\$ millions)</b>	<b>Supplemental (\$ millions)</b>	<b>Total (\$ millions)</b>
Initial BDCP	\$ 13.5 M	-----	\$ 13.5 M
BDCP-DHCCP Planning Phase <sup>(1) (2)</sup>	\$ 140.0 M	\$ 100.0 M	\$ 240.0 M
<b>Total</b>	<b>\$ 153.5 M</b>	<b>\$ 100.0 M</b>	<b>\$ 253.5 M</b>

<sup>(1)</sup> Program costs would be equally shared between SWP and CVP contractors.

<sup>(2)</sup> Costs for the SWP share of the initial BDCP & Supplemental BDCP-DHCCP Planning Phase costs would be collected from SWP contractors through the SWP Annual Statement of Charges.

Under the proposed Agreement for Supplemental Funding totaling \$100 million, DWR would charge Metropolitan for its share of DHCCP and BDCP costs based on Metropolitan's Table A contract amount. The proposed charges will be contingent on the performance measures identified in the MOA and the written agreement of the participating water agencies.

The funding authorization for the BDCP-DHCCP charges is incorporated into the annual board request for payment of the SWP charges. Metropolitan's total cost share for the BDCP-DHCCP Planning Phase since 2007 is projected at up to \$63.375 million (25 percent of \$253.5 million of total program cost).

### **Program Status**

The BDCP has developed a working draft BDCP, initiated development of the associated EIR/EIS, developed a reasonable range of EIR/EIS alternatives, initiated feasibility analyses of conveyance alignments, and initiated conceptual engineering design of facilities. The California Natural Resources Agency is currently holding public workgroup meetings to provide input into the BDCP planning process.

Metropolitan staff is continuing to directly engage in all BDCP-DHCCP development efforts. Staff will update the Board on a monthly basis on progress in the key issue areas.

### **Program Schedule**

The current schedule for the completion of the BDCP-DHCCP Planning Phase is as follows:

<u>Environmental Documents</u>	<u>Date</u>
Administrative Draft HCP/NCCP and EIR/EIS	Feb 2012
Public Draft HCP/NCCP and EIR/EIS	June 2012
Final HCP/NCCP and EIR/EIS	Dec 2012
Record of Decision	Feb 2013

### **Policy**

By Minute Item 46843, dated October 10, 2006, the Board authorized execution of the Planning Agreement for the Bay Delta conservation Plan.

By Minute Item 46878, dated November 14, 2006, the Board authorized execution of the Bay Delta Conservation Plan Cooperation Cost-Share Agreement.

By Minute Item 47135, dated June 12, 2007, the Board adopted the proposed Delta Action Plan.

By Minute Item 47735, dated December 9, 2008, the Board authorized execution of the Delta Habitat Conservation and Conveyance Program Memorandum of Agreement and three related funding and management agreements.

By Minute Item 48117, dated December 8, 2009, the Board authorized execution of amendments to the Planning Agreement for the Bay Delta Conservation Plan and the Cooperation Agreement Among Potentially Regulated Entities for Preparation of the Bay Delta Conservation Plan.

By Minute Item 48333, dated July 13, 2010, the Board authorized execution of an amendment to the Delta Habitat Conservation and Conveyance Plan Funding Agreement to commit up to an additional \$21.5 million for Metropolitan's share of costs to prepare the environmental documentation and associated preliminary engineering design for the Bay Delta Conservation Plan.

### **California Environmental Quality Act (CEQA)**

CEQA determination for Option #1:

The proposed action is exempt under the provisions of CEQA and the State CEQA Guidelines, since it involves only feasibility and planning studies for possible future actions, as well as basic data collection and resource evaluation activities which do not result in a serious or major disturbance to an environmental resource. These activities may be strictly for information gathering purposes, or as part of a study leading to actions which a public agency has not yet approved, adopted, or funded. Accordingly, this proposed action qualifies both as a feasibility and planning studies exemption (Section 15262 of the State CEQA Guidelines) and as a categorical exemption (Class 6, Section 15306 of the State CEQA Guidelines). Additionally, the proposed action is not subject to CEQA because (1) it involves continuing administrative activities, such as general policy and procedure making (Section 15378(b)(2) of the State CEQA Guidelines), and (2) it also involves government fiscal activities, which do not involve any commitment to any specific project which may result in a potentially significant physical impact on the environment (Section 15378(b)(4) of the State CEQA Guidelines).

The CEQA determination is: Determine that the proposed action is exempt from CEQA pursuant to Sections 15262, 15306, 15378(b)(2) and 15378(b)(4) of the State CEQA Guidelines.

CEQA determination for Option #2:

None required

**Board Options**

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**Option #1**

Adopt the CEQA determination and authorize the General Manager to execute the first amendment to the Delta Habitat Conservation and Conveyance Plan (DHCCP) Memorandum of Agreement (MOA) and Agreement for Supplemental Funding to prepare and complete the planning, environmental documentation and associated preliminary engineering design for the Bay Delta Conservation Plan (BDCP).

**Fiscal Impact:** Execution of the agreement amendment will not result in additional fiscal impact of the authorized July 2010 supplemental funding, which was authorized by board action in July 2010 and included in the approved FY 2011/12 budget.

**Business Analysis:** The proposed agreement amendment provides the necessary funding to complete plans for a long-term Delta solution to restore Metropolitan’s SWP water supply reliability

**Option #2**

Do not authorize the General Manager to execute the proposed MOA amendment and funding agreement.

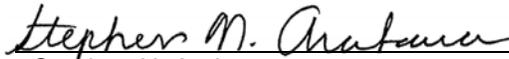
**Fiscal Impact:** No immediate direct financial impact; however, failure to complete and implement the DHCCP, including a multispecies habitat conservation plan and new Delta water conveyance, would likely result in higher water supply costs in the future.

**Business Analysis:** The lack of sufficient funding will impair the ability to complete the necessary preliminary engineering designs and final environmental documents for the DHCCP, compromising the achievement of anticipated water supply reliability benefits for Metropolitan.

**Staff Recommendation**

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Option #1

  
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Stephen N. Arakawa  
Manager, Bay-Delta Initiatives

8/8/2011  
Date

  
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Jeffrey Knightlinger  
General Manager

8/9/2011  
Date