



- Board of Directors
Legislation Committee

9/13/2011 Board Meeting

8-6

Subject

Express support for SB 250 (Rubio, D-Bakersfield) – Sacramento-San Joaquin Delta: Delta Plan: conveyance facility

Description

On August 29, 2011, State Senator Michael Rubio (D-Bakersfield) introduced amendments to his bill, SB 250 ([Attachment 1](#)), to establish a deadline for completion of the planning process for Delta conveyance improvements through completion of construction. SB 250 specifically requires the California Department of Water Resources to complete the planning process to develop new Delta conveyance facilities by February 15, 2013, and for construction to be completed by December 31, 2025.

The Bay Delta Conservation Plan (BDCP) is a voluntary effort to obtain long-term, incidental take permits for the operations of the State Water Project (SWP) and the Central Valley Project through development of a comprehensive Habitat Conservation Plan under the federal Endangered Species Act and a Natural Community Conservation Plan 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 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 deadlines in SB 250 are consistent with the timetable for the Bay Delta Conservation Plan that the Brown and Obama Administrations, in an exchange of letters, released on August 9 and 10, and that Metropolitan supported ([Attachment 2](#) and [Attachment 3](#)). Senator Rubio intends to make SB 250 a two-year effort and will pursue informational hearings during the Legislature's interim recess to lay the foundation for deliberations on his bill in 2012.

The timely completion of the BDCP is a crucial step toward ensuring a healthy Delta environment, as well as long-term water supply reliability for all Californians. State and federal water contractors are being asked to invest another \$100 million to complete the work of BDCP. On August 16, 2011, Metropolitan approved \$25 million in increased funds to finish the BDCP; other federal and state water contractors will be deciding on their funding commitment in the coming weeks. In excess of \$150 million of ratepayer dollars already invested, SB 250 will help keep the BDCP on track and demonstrate the state's commitment to completing the BDCP consistent with the timelines advanced by the Brown and Obama Administrations.

Policy

Board-adopted Policy Principle on Delta Action Plan (M.I. 47135-June 12, 2007)

California Environmental Quality Act (CEQA)

CEQA determination for Option #1:

The proposed action is not defined as a project under CEQA because it involves continuing administrative activities, such as general policy and procedure making (Section 15378(b)(2) of the State CEQA Guidelines). In

addition, where it can be seen with certainty that there is no possibility that the proposed action in question may have a significant effect on the environment, the proposed action is not subject to CEQA (Section 15061(b)(3) of the State CEQA Guidelines).

The CEQA determination is: Determine that the proposed action is not subject to CEQA pursuant to Sections 15378(b)(2) and 15061(b)(3) of the State CEQA Guidelines.

CEQA determination for Option #2:

None required

Board Options

Option #1

Adopt the CEQA determination and express support for SB 250 (Rubio) consistent with Metropolitan’s board-adopted Delta Action Plan.

Fiscal Impact: None

Business Analysis: Timely completion of the BDCP is critical to ensuring a healthy Delta environment and long-term water supply reliability for all Californians, which is essential to the fiscal health of the state economy.

Option #2

Adopt the CEQA determination and take no position on SB 250 (Rubio).

Fiscal Impact: None

Business Analysis: Delayed completion of the BDCP could have significant adverse impacts on the Delta environment, long-term water supply reliability for all Californians, and the state economy.

Staff Recommendation

Option #1


Linda Waade
Deputy General Manager, External Affairs

9/6/2011
Date


Jeffrey Lightlinger
General Manager

9/7/2011
Date

Attachment 1 – SB 250 as amended August 29, 2011

Attachment 2 – August 9, 2011 letter from California Resources Secretary John Laird

Attachment 3 – August 10, 2011 letter from Deputy Secretary of the Interior David Hayes

AMENDED IN ASSEMBLY AUGUST 29, 2011

AMENDED IN SENATE APRIL 25, 2011

AMENDED IN SENATE MARCH 15, 2011

SENATE BILL

No. 250

Introduced by Senator Rubio

February 10, 2011

~~An act to amend Section 21086 of the Public Resources Code, relating to environmental quality. An act to add Section 85320.5 to the Water Code, relating to the Sacramento-San Joaquin Delta.~~

LEGISLATIVE COUNSEL'S DIGEST

SB 250, as amended, Rubio. ~~Environment quality: CEQA: categorical exemptions: addition and deletion. Sacramento-San Joaquin Delta: Delta Plan: conveyance facility.~~

Existing law imposes requirements on the Department of Water Resources in connection with the preparation of a Bay Delta Conservation Plan (BDCP).

The Sacramento-San Joaquin Delta Reform Act of 2009 requires the Delta Stewardship Council to consider the BDCP for inclusion in a specified Delta Plan, and requires the incorporation of the BDCP into the Delta Plan if the BDCP meets certain requirements, including a requirement that the BDCP include a comprehensive review and analysis of a range of Delta conveyance alternatives, including through-Delta, dual conveyance, and isolated conveyance alternatives and capacity and design options of specified canals and pipelines.

This bill would require that the department's development of certain Delta conveyance facilities be completed on or before February 15,

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2013, and would require that the construction of those facilities be completed by December 31, 2025.

~~The California Environmental Quality Act requires the Office of Planning and Research to adopt guidelines that include criteria for public agencies to follow in determining whether or not a proposed project may have a significant effect on the environment and a list of classes of projects that are exempted from the act's requirements. The act establishes procedures for the certification and adoption of the guidelines. The act authorizes a public agency to request, in writing, the addition or deletion of a class of projects to the list. The office is required to review each request and, as soon as possible, submit its recommendation to the Secretary of the Natural Resources Agency.~~

~~This bill would make technical, nonsubstantive changes to the provision regarding the addition or deletion of a class of projects.~~

Vote: majority. Appropriation: no. Fiscal committee: ~~no~~yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

- 1 SECTION 1. The Legislature finds and declares all of the
- 2 following:
- 3 (a) California's water system is antiquated and straining to
- 4 meet the needs of its residents, farms, businesses, and environment.
- 5 Designed more than 50 years ago to serve a population of 16
- 6 million residents, the state's major water infrastructure now serves
- 7 more than 36 million residents. California must upgrade the way
- 8 it moves its water while making the necessary investment to
- 9 improve habitat in the Sacramento-San Joaquin Delta.
- 10 (b) The Department of Water Resources is authorized to
- 11 construct, operate, and maintain the State Water Resources
- 12 Development System and the Feather River Project, commonly
- 13 known as the State Water Project.
- 14 (c) Seismologists predict a 66-percent probability of an
- 15 earthquake of greater than 6.5 magnitude by 2032. Experts have
- 16 concluded that a major earthquake in the Delta could cause
- 17 multiple levee failures, destroy local habitat and the economy, and
- 18 cut off water supplies to the 25 million Californians that live in
- 19 areas served with water conveyed through the Delta. Improving
- 20 conveyance in the Delta would protect against these possible
- 21 disasters.

1 (d) Existing state policy is to improve the water conveyance
2 system in the Sacramento-San Joaquin Delta. The Sacramento-San
3 Joaquin Delta Reform Act of 2009 requires the Delta Stewardship
4 Council to incorporate the Bay Delta Conservation Plan (BDCP)
5 into the Delta Plan if the BDCP meets certain requirements,
6 including a requirement that the BDCP include a comprehensive
7 review and analysis of a range of Delta conveyance alternatives,
8 including through-Delta, dual conveyance, and isolated conveyance
9 alternatives and capacity and design options of specified canals
10 and pipelines.

11 SEC. 2. Section 85320.5 is added to the Water Code, to read:
12 85320.5. The department's development of Delta conveyance
13 facilities, including facilities developed as part of the Bay Delta
14 Conservation Plan process or any other appropriate planning
15 process, and pursuant to this chapter, shall be completed on or
16 before February 15, 2013, and the construction of the facilities
17 shall be completed by December 31, 2025.

18 SECTION 1. ~~Section 21086 of the Public Resources Code is~~
19 ~~amended to read:~~

20 21086. ~~(a) A public agency may, at any time, request the~~
21 ~~addition or deletion of a class of projects, to the list designated~~
22 ~~pursuant to Section 21084. That request shall be made in writing~~
23 ~~to the Office of Planning and Research and shall include~~
24 ~~information supporting the public agency's position that the class~~
25 ~~of projects does, or does not, have a significant effect on the~~
26 ~~environment.~~

27 ~~(b) The Office of Planning and Research shall review each~~
28 ~~request and, as soon as possible, shall submit its recommendation~~
29 ~~to the Secretary of the Natural Resources Agency pursuant to~~
30 ~~Sections 21083 and 21084. Following the receipt of that~~
31 ~~recommendation, the Secretary of the Natural Resources Agency~~
32 ~~may add or delete the class of projects to the list of classes of~~
33 ~~projects designated pursuant to Section 21084 that are exempt~~
34 ~~from the requirements of this division.~~

35 ~~(c) The addition or deletion of a class of projects, as provided~~
36 ~~in this section, to the list specified in Section 21084 shall constitute~~
37 ~~an amendment to the guidelines adopted pursuant to Section 21083~~

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- 1 ~~and shall be adopted in the manner prescribed in Sections 21083~~
- 2 ~~and 21084.~~

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August 9, 2011

EDMUND G. BROWN JR., Governor
JOHN LAIRD, Secretary for Natural Resources

David Hayes
 US Department of the Interior
 1849 C Street, NW, MS-7229
 Washington, DC 20240

Jane Lubchenco
 1401 Constitution Avenue, NW
 Room 7316
 Washington, DC 20230

Dear *David* Mr. Hayes and Ms. *Jane* Lubchenco,

I am writing to express the importance of renewing our commitment to meeting the milestones that will lead to the timely completion of the Bay Delta Conservation Plan (BDCP). First, I would like to thank you for your leadership and the exceptional work of your agencies in helping to develop BDCP. While we have made significant progress, there is still more work to be done. To that end, I have attached the most current schedule for completing the Environmental Impact Report/Environmental Impact Statement (EIR/EIS) for the BDCP, as well as a more detailed schedule for completing the Effects Analysis (Chapter 5 of the BDCP).

After much discussion amongst the state and federal agency representatives they have agreed to the attached schedule. I acknowledge that these schedules are aggressive. I believe that it will be most productive for us to focus immediately on completing the Effects Analysis by March 2012 and a draft EIR/EIS by June 2012 if not sooner. To achieve these goals, we must advance the decisions necessary to direct the work of our consulting team, and have key staff available from each of our agencies to review each deliverable as it is produced within the timeframe provided.

Adhering to this schedule will be challenging. We cannot allow expanded scope, revisiting of issues or uncertainty drive us to delay. Rather, we must be mindful of the great value of timely completion of a draft EIR/EIS to substantively engage the public on issues so vital California's environment and economy.

I look forward to our continued work together in successfully completing the BDCP.

Sincerely,

A handwritten signature in black ink, appearing to read "John Laird".

John Laird
 Secretary for Natural Resources

1416 Ninth Street, Suite 1311, Sacramento, CA 95814 Ph. 916.653.5656 Fax 916.653.8102 <http://resources.ca.gov>



BDCP EIR/EIS Schedule
8/9/11

Task	Date to Agencies	Review Complete
BDCP: EIR/EIS Work Plan and Section Review		
Prepare Work Plan and Schedule	12-Aug-11	26-Aug-11
BDCP: Alternatives Descriptions		
Prepare Alternatives Description	2-Sep-11	16-Sep-11
BDCP: Admin Draft EIR/EIS		
Prepare Batch A Chapters (e.g., Social Environment)	11-Nov-11	9-Dec-11
Prepare Batch B Chapters (e.g., Physical Environment)	7-Dec-11	4-Jan-12
Prepare Batch C Chapters (e.g., Aquatics, Terrestrial, Surface Water, Water Quality, and Supply)	27-Feb-12	27-Mar-12
1st Admin Draft and Review (Includes comments on batches A & B)	27-Feb-12	26-Apr-12
2nd Admin Draft and Review	9-May-12	4-Jun-12
Check Copy	11-Jun-12	17-Jun-12
File Public Draft EIR/EIS with EPA	22-Jun-12	28-Jun-12
EPA Publishes Draft EIS	29-Jun-12	
BDCP: Draft Public Review Period		
Public Review and Conduct Hearings (90 days)	29-Jun-12	26-Sep-12
BDCP: Response to Comments on Draft EIR/EIS		
Prepare Responses to Comments	12-Oct-12	26-Oct-12
Initiate Formal Consultation	2-Oct-12	
BDCP: Prepare Final EIR/EIS		
Prepare Admin Draft Final EIR/EIS	15-Nov-12	29-Nov-12
Prepare Final EIR/EIS	20-Dec-12	20-Dec-12
BDCP: Final EIR/EIS Review		
Public Review and Conduct Hearings (30 days)	20-Dec-12	18-Jan-13
Prepare Responses to Comments	4-Feb-13	15-Feb-13
Prepare ROD (Final EIR/EIS Complete)	15-Feb-13	

BDCP Chapter 5 (Effects Analysis) Schedule
8/9/11

Task	Date to Agencies	Review Complete
BDCP: Chapter 5: Conceptual Foundation & Analytical Framework		
Technical Appendix (Conceptual Foundation)	8-Aug-11	24-Aug-11
Technical Appendix (Analytical Framework)	8-Aug-11	24-Aug-11
BDCP: Chapter 5: Entrainment		
Technical Appendix (Entrainment)	24-Aug-11	14-Sep-11
Delta Science Review (C. Foundation, A. Framework, Entrainment)	15-Sep-11	14-Oct-11
BDCP: Chapter 5: Flow, Passage, & Salinity		
Technical Appendix (Flow, Passage & Salinity)	30-Sep-11	21-Oct-11
BDCP: Chapter 5: Water Quality		
Technical Appendix (Water Quality)	14-Oct-11	4-Nov-11
BDCP: Chapter 5: Fish Population Analysis		
Technical Appendix (Fish Population Analysis)	25-Nov-11	16-Dec-11
BDCP: Chapter 5: Habitat Restoration		
Technical Appendix (Habitat Restoration)	16-Dec-11	6-Jan-12
BDCP: Chapter 5: Ecological Effects		
Technical Appendix (Ecological Effects)	16-Dec-11	20-Jan-12
BDCP: Chapter 5: Appendix - Analysis Not Used		
Technical Appendix (Analysis Not Used)	16-Dec-11	6-Jan-12
BDCP: Chapter 5: Terrestrial Species Analysis		
Technical Appendix (Terrestrial Species Analysis)	16-Nov-11	16-Jan-12
BDCP Chapter 5 (Roll-up)		
Agency and Delta Science Review	27-Feb-12	27-Mar-12
BDCP Chapter 5 (Effects Analysis)		
Chapter 5 Complete	9-Apr-12	



THE DEPUTY SECRETARY OF THE INTERIOR
WASHINGTON

AUG 10 2011

The Honorable John Laird
Secretary for Natural Resources
State of California
Sacramento, California 95814

Dear Secretary Laird:

Thank you for your letter of August 9, 2011, addressed to Dr. Jane Lubchenco and me, setting forth the revised schedule for completing the environmental work associated with the Bay-Delta Conservation Plan (BDCP). I have been in close communication with Dr. Lubchenco on these matters, and this letter shall serve as our joint response.

As we have highlighted in numerous contexts over the past two years, the Obama Administration is committed to a strong partnership with the State of California in addressing the longstanding conflicts associated with operation of the Federal and State water projects in the Bay Delta. The Federal Government is also committed to assisting the State in achieving the coequal goals that are mandated by the State's comprehensive water legislation: (1) Providing a more reliable water supply for California, and (2) enhancing the overall quality of the Bay-Delta environment. We believe the BDCP should and will play a key role in meeting these dual goals, and we share the State's sense of urgency in moving forward with the BDCP in an expeditious fashion.

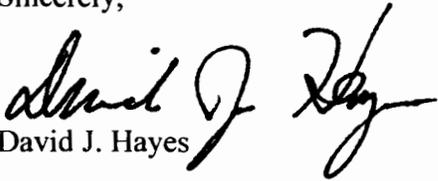
The schedule attached to your letter was developed by our State and Federal agencies, working in consultation with ICF, a new consultant retained recently to prepare the effects analysis and EIS/EIR. As you point out, the new schedule includes an aggressive time line. In our view, that is appropriate given the importance that we place on the BDCP and our commitment to move it forward as quickly as possible. We note, however, that it will be challenging to meet the new schedule, and it will require the cooperation of all parties to do so. In particular, in order to develop a sound effects analysis and draft EIS/EIR by June 2012, we agree that it is critical for the consultant team to produce high quality documents on schedule and for agency reviews to be focused and expeditious. In that regard, we must establish a reliable system for the prompt resolution of outstanding issues that have continued to linger unresolved and that impair essential progress—particularly with respect to effects methodologies.

Applying sound scientific principles is fundamental to this effort and its importance cannot be overstated. A key measure of the overall viability of the schedule will be our collective ability to work through and incorporate into the effects analysis and draft EIS/EIR the various scientific views that exist on the range of subjects covered so that these documents are scientifically sound and legally defensible. This has been a fundamental concern of the Federal agencies for some time. The Federal agencies are responsible for the content of the NEPA documents, the records

of decision, and other affiliated regulatory materials and therefore need to ensure that these documents are scientifically and legally sufficient. The process for reviewing work product and revising as appropriate is critical. We believe that the current schedule, coupled with the involvement of the new consultants, provides the opportunity to chart a new path in working through the remaining technical and scientific issues involved in the analysis. In addition, the commitment to public input and broad participation in the various technical workgroups is both helpful and essential to completing a sound draft EIS/EIR. We have the opportunity to meet or even improve on the current schedule if we are successful in establishing an effective process to work through ongoing issues.

The Administration looks forward to the opportunity to develop the BDCP in partnership with the State of California. California's complex water problems require thoughtful, science-based solutions developed with the support of the Federal and State government, as well as all key stakeholders. We intend to do our part to make the BDCP effort a successful one.

Sincerely,



David J. Hayes

cc: Dr. Jane Lubchenco
Under Secretary of Commerce for Oceans and Atmosphere