

SENATE NATURAL RESOURCES & WATER COMMITTEE

California WaterFix: Status of the Project

Committee Background

Over the years this committee has held numerous oversight and informational hearings regarding the Sacramento-San Joaquin River Delta. These include hearings on Delta plans, governance issues, financing challenges, water supply reliability and exports, environmental problems, and various proposed projects and programs intended to resolve one or more of those problems.

Most recently, on February 25, 2014, this committee held a joint hearing with the Assembly Water, Parks, and Wildlife Committee titled “The Bay Delta Conservation Plan Update.”

At the time of the hearing, the Bay Delta Conservation Plan (BDCP) was intended to be a multi-species conservation plan, intended to comply with the federal Endangered Species Act (ESA) and the California Natural Community Conservation Planning Act (NCCPA), for a range of activities related to the operation of the State Water Project (SWP) and Central Valley Project (CVP). The intent was to address the ecosystem improvements in such a way as to provide 50 years of permitted operating authority for the diversion and export of water from the Delta and its tributaries, without the threat of reduced operations due to endangered species or other environmental conflicts. The proposed diversion and conveyance facility was the most controversial feature of BDCP – a proposed set of screened diversions on the Sacramento River upstream of the Delta, conveyed to the SWP and CVP pumping plants at the south end of the Delta via two 40’ diameter tunnels running approximately 30 miles under the Delta.

The purpose of the hearing was twofold:

1. Provide the administration an opportunity to describe the project, provide an update on progress towards developing the project, and answer questions from the members. Testifying that day were Secretary of Natural Resources John Laird, Department of Fish and Wildlife Director Chuck Bonham, and Department of Water Resources Director Mark Cowin.
2. Provide key stakeholder groups an opportunity to share their perspectives on the project. Testifying on this second panel were Steve Arakawa, manager of Bay Delta Program for Metropolitan Water District; David Guy, president of the Northern California Water Association; Doug Obegi with the Natural Resources Defense Council; Marguerite Patil

with Contra Costa Water District; Jason Peltier with Westlands Water District, and Larry Ruhstaller, San Joaquin County supervisor and chair of the Delta Protection Commission.

A recap of that hearing is attached under Tabs 2 & 3.*

A little over a year later, on April 30, 2015, Governor Brown issued a press release stating:

After months of public comment and exhaustive review, Governor Edmund G. Brown Jr. today joined top federal officials to unveil plans that accelerate restoration of the Delta's ecosystem and fix the state's aging water infrastructure.

"We can't just cross our fingers, hoping for the best in the Delta," said Governor Brown. "Fish populations are at an all-time low. Bold action is imperative. We've listened to the public and carefully studied the science. This revised plan is the absolute best path forward."[†]

In essence, the BDCP was split into two separate programs:

1. California WaterFix – the preferred alternative for which consisted of three new diversion points in the north Delta, tunnel conveyance and ancillary facilities, operational elements, and required environmental mitigations for the project.
2. California EcoRestore – which was to the restoration of at least 30,000 acres of Sacramento-San Joaquin Delta (Delta) habitat by 2020. Driven by world-class science and guided by adaptive management, California EcoRestore is designed to pursue habitat restoration projects with clearly defined goals, measurable objectives, and financial resources to help ensure success. The types of habitat targeted include tidal wetlands, floodplain, upland, riparian, fish passage improvements and others.

Also, instead of creating a 50 year multi-species conservation plan, California WaterFix would instead seek traditional incidental take permits from state and federal fish and wildlife agencies.

A description of the changes from BDCP to California WaterFix is attached under Tab 4.[‡]

Recently, California WaterFix reached a key milestone, with the release of the Final Environmental Impact Report/Environmental Impact Statement (EIR/EIS) on December 22, 2016.[§]

* Also available at <https://mavensnotebook.com/2014/03/03/joint-informational-hearing-on-the-bdcp-part-1-secretary-laird-directors-bonham-and-cowin-on-the-bay-delta-conservation-plan/> and <https://mavensnotebook.com/2014/03/04/joint-informational-hearing-on-the-bdcp-part-2-delta-stakeholders-give-their-perspective/>

[†] <https://www.gov.ca.gov/news.php?id=18940>

[‡] Also available at http://cms.capitoltechsolutions.com/ClientData/CaliforniaWaterFix/uploads/r1acu_pivot_QA_FINAL_revised.pdf

[§] Available at: <http://baydeltaconservationplan.com/FinalEIREIS.aspx>

In announcing the release of the final EIR/EIS, Governor Jerry Brown sent out the following message via Twitter:



“Last year, I received the draft #CAWaterFix EIR. Now, 30,000 comments later, the final report is out. <http://bit.ly/2hdLkqg>”

This is the first of two hearings on California WaterFix. This first hearing is intended to focus on the details of the status of the proposed project:

- What are the proposed facilities and operations, purported benefits, estimated costs, proposed management, outstanding necessary approvals, and plans for moving forward?
- What permits and other approvals must other state agencies issue and what are the issues they must take into consideration in issuing those permits and approvals?
- Given the ongoing controversy of the proposal, is there framework for a compromise?

The second hearing will be on February 28, where the committee will hear from key interest groups regarding their perspectives on California WaterFix. There will also be a significant amount of time for public comment.

To provide a context for members of the Senate Natural Resources and Water Committee, the balance of this paper:

- Briefly introduces each panel for the hearing,
- Directs the reader to any supporting materials in the briefing packet, and
- Poses questions for the panelists the members may wish to explore.

Overview of California WaterFix

The first panel consists of Secretary of the Natural Resources Agency John Laird and Chief Deputy Director of DWR Cindy Messer. They will provide an overview of the proposed project. This will include topics such as why it is necessary, what it is intended to do, what the facilities are, what the expected benefits/costs are, the plan for moving forward etc.

A Final EIR/EIS Fact Sheet is attached under Tab 5.*

A Delta Dependency Map is attached under Tab 6.†

A description a presentation to the Metropolitan Water District of Southern California of the facilities and other issues is attached under Tab 7.‡

Questions The Members May Wish To Explore:

- *What is the projected yield of the project?*
- *What are the anticipated environmental and other benefits of the project?*
- *Who will own the facility? Will it be a part of the State Water Project?*
- *Who will operate the facility? How will operational compliance with various permit conditions be ensured?*
- *How is the project expected be financed? How will costs from CVP and SWP project contractors be recovered?*
- *Will financing require federal appropriations or other congressional actions?*

* Also available at http://cms.capitoltechsolutions.com/ClientData/CaliforniaWaterFix/uploads/CWF_FS_FinalEIREIS.pdf

† Also available at http://cms.capitoltechsolutions.com/ClientData/CaliforniaWaterFix/uploads/DeltaDependencyMap_WaterFixFinal.pdf

‡ Also available at <https://mavensnotebook.com/2017/02/08/metropolitan-special-committee-on-the-bay-delta-project-implementation-considerations-for-california-water-fix-dr-jacob-katz-on-managing-floodplain-productivity-for-multiple-benefits/>

- *When will the final decision regarding whether or not to construct the project be made? Who will make that decision? What has to happen before that decision is made?*

Pending State Actions

The second panel consists of the Director of Department of Fish and Wildlife, Charlton H. Bonham, Tom Howard, Executive Director of the State Water Resources Control Board, and Randy Fiorini, Chair of the Delta Stewardship Council. Each of these agencies will have to issue permits or otherwise authorize aspects of California WaterFix. The witnesses will describe what findings, permits, and/or actions their agencies need to take to approve the project going forward, and the expected timeline for those actions.

Questions The Members May Wish To Explore:

For Director Bonham:

- *How does your department's pending decisions regarding authorizing "take" under the California Endangered Species Act relate to similar pending decisions by federal fish and wildlife agencies? Is your analysis independent of the federal agencies'? What if there is a difference of opinion?*
- *Will the take authorization look significantly different than that under current operations?*
- *How will state permit conditions be enforced?*

For Executive Director Howard:

- *You are currently in the water rights hearing process for regarding a change in point of diversion associated with California WaterFix. What is the expected timeline for completion?*
- *What are the types of issues the Board must take into consideration in granting such a change?*
- *Does the Board grant a strict "yes" or "no"? Or can/does it issue a "yes, but with conditions"? If with conditions, what kinds of conditions are typical?*
- *Will the Board likely be asked to grant any other types of permits or authorizations for California WaterFix? If so, what kinds of permits/authorizations and when would those likely come before the board.*

For Chair Fiorini:

- *The Sacramento-San Joaquin Delta Reform Act requires the Delta Stewardship Council to develop a Delta Plan, and determine if "covered actions" are consistent with that plan. The Act was also written presuming BDCP was going to address the conveyance*

part of the plan, and provided specific requirements for BDCP to be considered part of the Delta Plan. Now that BDCP is no longer under consideration, how is the Council planning to address consistency for California WaterFix?

- *What time line is the Council anticipating for conducting its review?*

A Potential Compromise?

On December 2, 2016, the director and two senior fellows of the Public Policy Institute of California's Water Policy Center wrote an Op Ed in the Sacramento Bee titled "A Grand Compromise For The Delta Outlined." A co-author of that Op-Ed, Jeff Mount, will describe their thought process for developing the proposed compromise and key elements of that compromise.

"A Grand Compromise for the Delta Outlined" is attached under Tab 8.*

A PPIC report "California's Water: The Sacramento-San Joaquin Delta" is attached under Tab 9.†

Questions The Members May Wish To Explore:

- *What are the benefits/disadvantages of the proposed compromise?*
- *What has been the reaction to the Op Ed?*

* Also available at
http://cms.capitoltechsolutions.com/ClientData/CaliforniaWaterFix/uploads/CWF_FS_FinalEIREIS.pdf

† Also available at
http://cms.capitoltechsolutions.com/ClientData/CaliforniaWaterFix/uploads/DeltaDependencyMap_WaterFixFinal.pdf