CHAPTER 7. IMPLEMENTATION STRUCTURE

Table of Contents

7.1 Roles and Responsibilities of Entities Involved in BDCP Implementation....7-2
- 7.1.1 The BDCP Program Manager and Implementation Office....7-2
- 7.1.2 Entities to Receive Regulatory Authorizations - Authorized Entities and Other Authorized Entities....7-9
- 7.1.3 Implementation Board....7-12
- 7.1.4 DWR and Reclamation: Operation of the SWP and CVP....7-14
- 7.1.5 Permit Oversight Group: Fish and Wildlife Agencies....7-15
- 7.1.6 Other Regulatory Agencies....7-17
- 7.1.7 Supporting Entities....7-18
- 7.1.8 BDCP Stakeholder Council....7-19
- 7.1.9 The General Public....7-22

7.2 Implementation Office Administration....7-22
- 7.2.1 Establishing Administrative Capacity....7-23
- 7.2.2 Preparing Budgets and Managing Expenditures....7-23
- 7.2.3 Contracting for Services....7-23
- 7.2.4 Securing, Holding, and Managing Funds to Support Implementation Actions....7-24
- 7.2.5 Coordinating with the Authorized Entities, the Implementation Board, and Supporting Entities....7-24
- 7.2.6 Coordinating with Regulatory Agencies....7-24
- 7.2.7 Coordinating with the Delta Stewardship Council, Delta Science Program, and Delta Conservancy....7-25
- 7.2.8 Coordinating with Local Governments, Delta Protection Commission, and Other Public Agencies....7-25
- 7.2.9 Coordinating with Flood Control Agencies....7-26
- 7.2.10 Protecting and Defending Against Legal Challenges....7-26
- 7.2.11 Overseeing Plan Amendments....7-26
- 7.2.12 Implementing Mitigation Measures Identified in BDCP-related Environmental Documentation under NEPA and CEQA....7-26

7.3 Implementation of the Conservation Strategy....7-27
- 7.3.1 Implementation of the Habitat Protection and Restoration Conservation Measures....7-27
- 7.3.2 Implementation of Water Operations Conservation Measures....7-29
- 7.3.3 Implementation of Other Conservation Measures....7-30
- 7.3.4 Management of Biological Monitoring, Scientific Research, and Reporting Programs....7-30
- 7.3.5 Management of the Adaptive Management Program....7-31

DRAFT

ED_000733_DD_NSF_00012362-00001

7.3.6 Implementation of Measures in Response to Changed Circumstances7-32
7.4 Regulatory Compliance Related to BDCP Implementation.....7-32
7.4.1 Maintaining Permits/Authorizations and Obtaining Amendments..... 7-32
7.4.2 Obtaining Additional Regulatory Authorizations..... 7-32
7.5 Public Outreach..... 7-33

List of Figures

Figure 7-1 BDCP Implementation Structure.....7-8

DRAFT

ED_000733_DD_NSF_00012362-00002

CHAPTER 7. IMPLEMENTATION STRUCTURE

This chapter describes the institutional structure and organizational arrangements that will be established to govern and implement the BDCP, and sets out the roles, functions, authorities, and responsibilities of the various entities that will participate in plan implementation. The implementation structure is designed to ensure that sufficient institutional expertise, capacity, resources, and focus are brought to bear to accomplish the goals and objectives of the BDCP, that the entities receiving regulatory authorizations are accountable to those agencies granting the regulatory authorizations, and that the decision-making process regarding the implementation of the Plan is transparent and understandable to the public

The BDCP implementation structure will help ensure effective and efficient plan implementation and ongoing compliance with the terms and conditions of the Plan and its associated regulatory authorizations. This implementation approach will also facilitate the clear delineation of roles and responsibilities among the range of public and private entities participating in the process and help define the nature of their engagement. This approach further reflects the commitment to maintain and encourage ongoing collaboration among the range of public and private parties with interest in the Delta, and to facilitate adaptive and responsive plan implementation, guided by new information and scientific understanding.[1]

DRAFT

The approaches to plan governance set out in this chapter have been designed solely to facilitate the implementation of BDCP actions. If over the course of plan implementation matters arise that are outside the scope of the BDCP, any proposed actions related to those new matters may be implemented through the BDCP only upon appropriate modifications and/or amendments to the Plan.

DWR, Reclamation, and certain other agencies, such as the State and federal water contractors, that receive take authorizations for activities covered under the BDCP will have ultimate responsibility for compliance with the terms and conditions of the BDCP and regulatory authorizations. However, the BDCP Program Manager, through the Implementation Office (IO) and assisted by the Implementation Board, will manage the implementation of the BDCP and ensure that such implementation proceeds in compliance with the Plan, the Implementing Agreement, and the associated regulatory authorizations. The State and federal fish and wildlife agencies will maintain an ongoing role in plan implementation, including participation on a "Agency-Stakeholder Review and Coordination Team' to ensure that such implementation is consistent with the BDCP and its associated regulatory authorizations. In addition, a "BDCP Stakeholder Council" will be created and regularly convened to enable public agencies, non-governmental organizations, interested parties, and the public to provide ongoing input into the BDCP implementation process and to effectively discuss and resolve issues in dispute.

[1]The BDCP Implementing Agreement includes additional detail regarding the roles and responsibilities of the Authorized Entities, the Implementation Office, and the fish and wildlife agencies regarding the implementation of the Plan.

ED_000733_DD_NSF_00012362-00003

The Implementation Office will also coordinate with the Delta Stewardship Council, Delta Science Program, Sacramento-San Joaquin Delta Conservancy (Delta Conservancy), and Delta Protection Commission to ensure appropriate engagement and collaboration on matters of common interest. This approach to plan implementation is expected to ensure the timely, efficient, and proper implementation of the commitments reflected in the BDCP.

7.1 Roles and Responsibilities of Entities Involved in BDCP Implementation

The BDCP Program Manager, through the Implementation Office (IO) and under the direction of the Implementation Board, will manage the implementation of the BDCP and ensure that such implementation proceeds in compliance with the Plan, the Implementing Agreement, and the associated regulatory authorizations. Various other parties, including the State and federal fish and wildlife agencies, other public agencies, non-governmental organizations, interested parties, and the public, will be integral to the process of shaping decisions and effectuating actions set out in the BDCP. This section describes the roles and responsibilities of these parties in the implementation process.

7.1.1 The BDCP Program Manager and Implementation Office

7.1.1.1 Program Manager: Selection and Designation of Staff

DRAFT

A single BDCP Program Manager will be responsible for BDCP implementation and will direct and oversee the IO. The "Authorized Entities" will each designate a lead representative from their respective agencies to assist the Program Manager with plan implementation. (The Authorized Entities are identified in Section 7.1.2 *Entities to Receive Regulatory Authorizations – Authorized Entities and Other Authorized Entities*). The Program Manager will fulfill the staffing needs of the IO primarily from existing personnel at DWR and USBR and State and federal agencies, or other sources if appropriate, if such personnel possess the expertise and experience necessary to carry out the tasks associated with BDCP implementation. The specific staffing needs of the Implementation Office will be determined by the directors of DWR and USBR and the Program Manager, with input from the Implementation Board and the state and federal fish and wildlife agencies. Employees of the IO will act under the direction of the Program Manager. The engagement of personnel from DWR, Reclamation, and other entities in the IO, however, will not affect or modify the existing authorities of federal, state, and local agencies or non-governmental organizations that pertain to personnel matters. The Program Manager and other personnel may be retained under the Intergovernmental Personnel Act [*appropriate citations to be added*]; through personal services contracts, or other appropriate mechanisms.

The Implementation Board will solicit candidates for the Program Manager position and, by mutual agreement, select the Program Manager after consulting with the federal and State fish

ED_000733_DD_NSF_00012362-00004

and wildlife agencies and the Stakeholder Council. The general qualifications of the Program Manager will be as follows:

- A minimum of 10 years of experience in the field of natural resources management;
- Experience with complex natural resources issues, including water resources issues;
- Experience with State and federal regulatory processes that affect water and other natural resources that fall within the scope of the BDCP;
- Experience with multi-stakeholder processes;
- Experience with the administration or management of large-scale programs or projects, including experience with budget management; and
- Excellent communication skills.

The specific roles and responsibilities of the Program Manager are described in further detail in Section 7.2, *Implementation Office Administration*, Section 7.3, *Implementation of the Conservation Strategy*, and Section 7.4, *Regulatory Compliance Related to BDCP Implementation*, and Section 7.5, *Public Outreach*.

7.1.1.2 Science Manager: Selection and Function

DRAFT

The Program Manager, with the concurrence of the Implementation Board and federal and State fish and wildlife agencies, will select a Science Manager to assist with the implementation of the BDCP and to ensure that such implementation decisions are guided by the best available scientific information. The Program Manager will also consult with the Stakeholder Council in the selection of the Science Manager. The Science Manager will report to the Program Manager. Specifically, the responsibilities of the Science Manager include:

- Assist in the administration and implementation of the adaptive management program;
- Oversee the implementation of the BDCP monitoring and research program in coordination with the Interagency Ecological Program (IEP) Coordinators and Management, Analysis, and Synthesis Team (MAST),;
- Oversee the implementation of the BDCP adaptive management program including chairing an "Adaptive Management Group";
- Will serve as a member of the IEP Coordinators;
- Engage in regular communication and coordination with the Delta Science Program and coordinate with the Independent Science Board, in a manner consistent with Water Code section 85820, as well as other outside scientists to gather independent scientific information and solicit input and review, as needed, through contract with the Independent Science Board or Delta Science Program, as needed;

ED_000733_DD_NSF_00012362-00005

- Support the Program Manager in the preparation of reports and other technical documents; and
- Assist in building sufficient scientific capacity and resources within the IO to advance the goals and objectives of the BDCP by coordinating with, at a minimum, the Delta Science Program and IEP to identify issues that may benefit from independent science advice; consider potential adaptive management actions that may be indicated by the results of monitoring and research efforts; and identify research that may be useful to effectively address uncertainties.
- Utilize the Adaptive Management Group and/or the IEP MAST to support the synthesis and presentation of current scientific knowledge on relevant Delta resources to the Program Manager and the Agency-Stakeholder Review and Coordination Team.

Matters relating to the conduct of scientific reviews and the solicitation of independent scientific advice to assist in the implementation of the BDCP, including independent science review of adaptive management decisions affecting water operations, will be conducted by the Science Manager in coordination with the Delta Science Program, the IEP and the Five Agency Group. The Science Manager will ensure that any proposed adaptive management change is subject to independent scientific input and /or review (facilitated by the Delta Science Program) before adaptive management decisions are made. In addition, independent scientific input may be sought on specific implementation and adaptive management-related issues. The Science Manager will consult the Five Agency Group regarding the selection of scientists to provide advice on such topics, outside and in addition to the independent scientific review process facilitated by the Delta Science Program. When an independent peer review is determined to be appropriate, the Five Agency Group will reach agreement on the charge to reviewers and the initial package of information to be provided to the Delta Science Program as review convenor.

DRAFT

Minimum requirements for the Science Manager will be:

- Educational and professional background in relevant scientific disciplines,
- At least 10 years of experience in the management of large programs,
- Substantial experience and involvement in the management of large-scale research or monitoring programs,
- Familiarity with water management and ecological issues related to the Delta; and
- Excellent communication skills.

ED_000733_DD_NSF_00012362-00006

7.1.1.3 Implementation Office: Establishment, Organization, and Functions

The BDCP Implementation Office, under the direction of the Program Manager, will implement, coordinate, oversee, and report on all aspects of plan implementation, subject to the limitations set out in section 7.1.4 of this chapter (*see* Figure 7-1) and sections 3.7.2 and 3.7.3 of chapter 3. The Program Manager, with the assistance of the IO staff, will ensure that the BDCP, including the conservation measures related to protection and restoration of habitat; reduction of ecological stressors; management of conserved habitat; and operation of the water projects, including the development of infrastructure (in its oversight role to ensure plan compliance), are properly implemented throughout the life of the Plan. The Program Manager will also work closely with the Agency-Stakeholder Review and Coordination Team and the Five Agency Group to effectuate the adaptive management program; monitoring, data collection, and scientific research efforts; annual and five-year work plans, budget, and report preparation; and the public outreach process.

To ensure that the commitments reflected in the BDCP are carried out in a timely and efficient manner, the Program Manager, through the IO, will institute processes and procedures to adequately address planning, budgeting, sequencing, and scheduling needs related to plan implementation. The IO will function with a significant level of independence from its member entities. However, the Program Manager and the IO staff will work closely with these entities on a range of matters, particularly with respect to actions that affect water operations, and will be responsive to all of the Authorized Entities, regardless of the entity through which the Program Manager and the IO staff have established employment relationships.

The IO may enlist other entities to carry out actions associated BDCP implementation, including implementation of the conservation measures, on behalf of the IO (see "Supporting Entities," below). Notwithstanding the assignment of such responsibilities, the IO will be responsible for ensuring that the work is performed in a manner that complies with the terms and conditions of the BDCP and its associated regulatory authorizations and are properly and fully implemented. As part of that responsibility, the IO will engage and monitor those entities that become involved in aspects of plan implementation. The Program Manager will oversee and coordinate the management of contracts with these other entities to assist in the implementation of the BDCP. Those entities, and the roles and responsibilities they are likely to assume, are generally identified in this chapter and depicted in the organizational framework in Figure 7-1.

The IO will not be involved in the development or operation of SWP and/or CVP facilities; instead, it will monitor water operations to assemble the information necessary to evaluate and report on compliance with the terms and conditions of the Plan and the authorizations/permits, as described in Chapter 6 (see Section 6.2, *Compliance and Progress Reporting*). The BDCP sets out the parameters within which DWR and the Reclamation will carry out CVP and SWP operations and infrastructure development. DWR and Reclamation may choose to operate the projects and develop new infrastructure using their current organizational capacity or by contract with other entities.

ED_000733_DD_NSF_00012362-00007

The IO will budget for and oversee and coordinate management of the funds and other resources needed to carry out its responsibilities for plan implementation. The IO will seek to ensure that the funding commitments set out in the BDCP and its Implementing Agreement are being met. Consistent with its respective funding commitment, each of the parties to the Implementing Agreement will dedicate, hold, and release funds and resources necessary for plan implementation; will not commingle these funds with other funds or resources of the agencies; and will be responsible for all appropriated funds and other funds entrusted to them.

The IO will assume responsibility for the implementation of a broad range of actions, including:

- Oversight and coordination of administration of program funding and resources;
- Preparation of annual budgets and work plans;
- Establishment of procedures to implement plan actions;
- Oversight of and engagement in the implementation of conservation measures;
- Management of the monitoring and research and adaptive management programs;
- Implementation of public outreach program; and
- Fulfillment of compliance monitoring and reporting requirements.

DRAFT

The IO, through its Program Manager, will coordinate with the Delta-wide governance entities (Section 7.2.7. *Coordination with the Delta Stewardship Council, the Delta Science Program, and the Delta Conservancy*) and managers of upstream operations.

The specific roles and responsibilities of the IO are described in further detail in Sections 7.2 *Implementation Office Administration*, 7.3 *Implementation of the Conservation Strategy*, and 7.4 *Regulatory Compliance Related to BDCP Implementation*, and 7.5 *Public Outreach*.

ED_000733_DD_NSF_00012362-00008

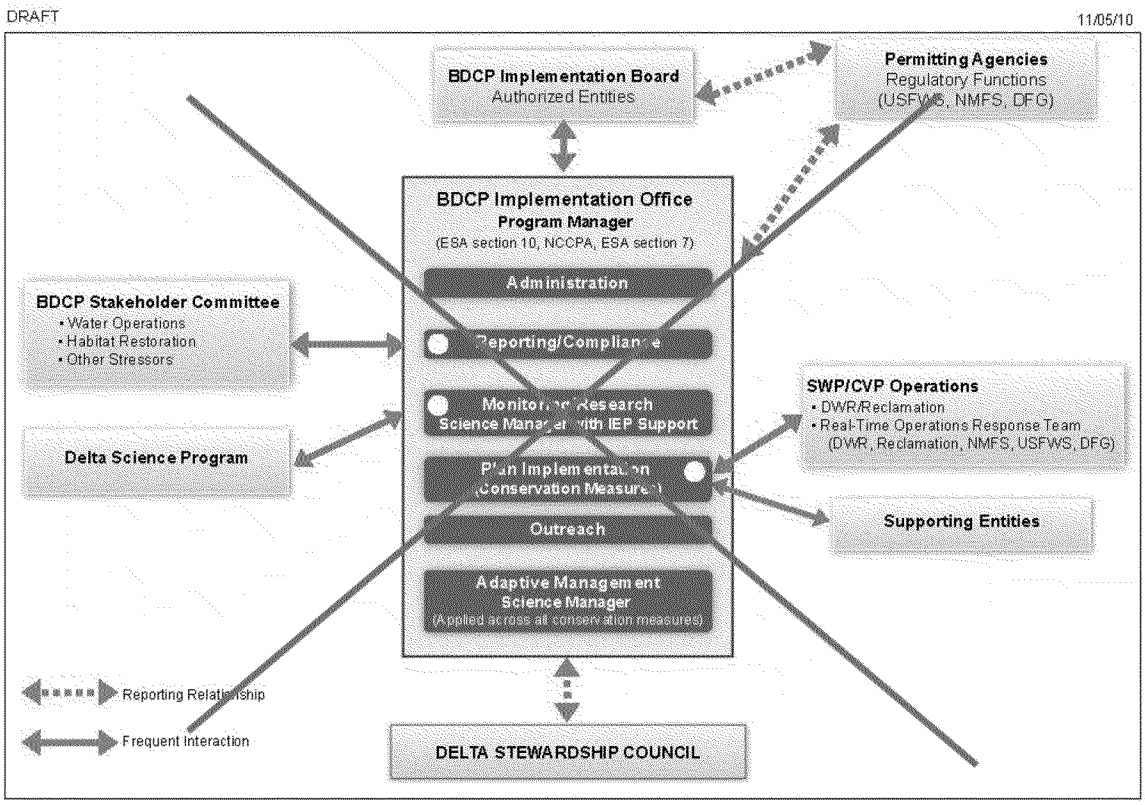
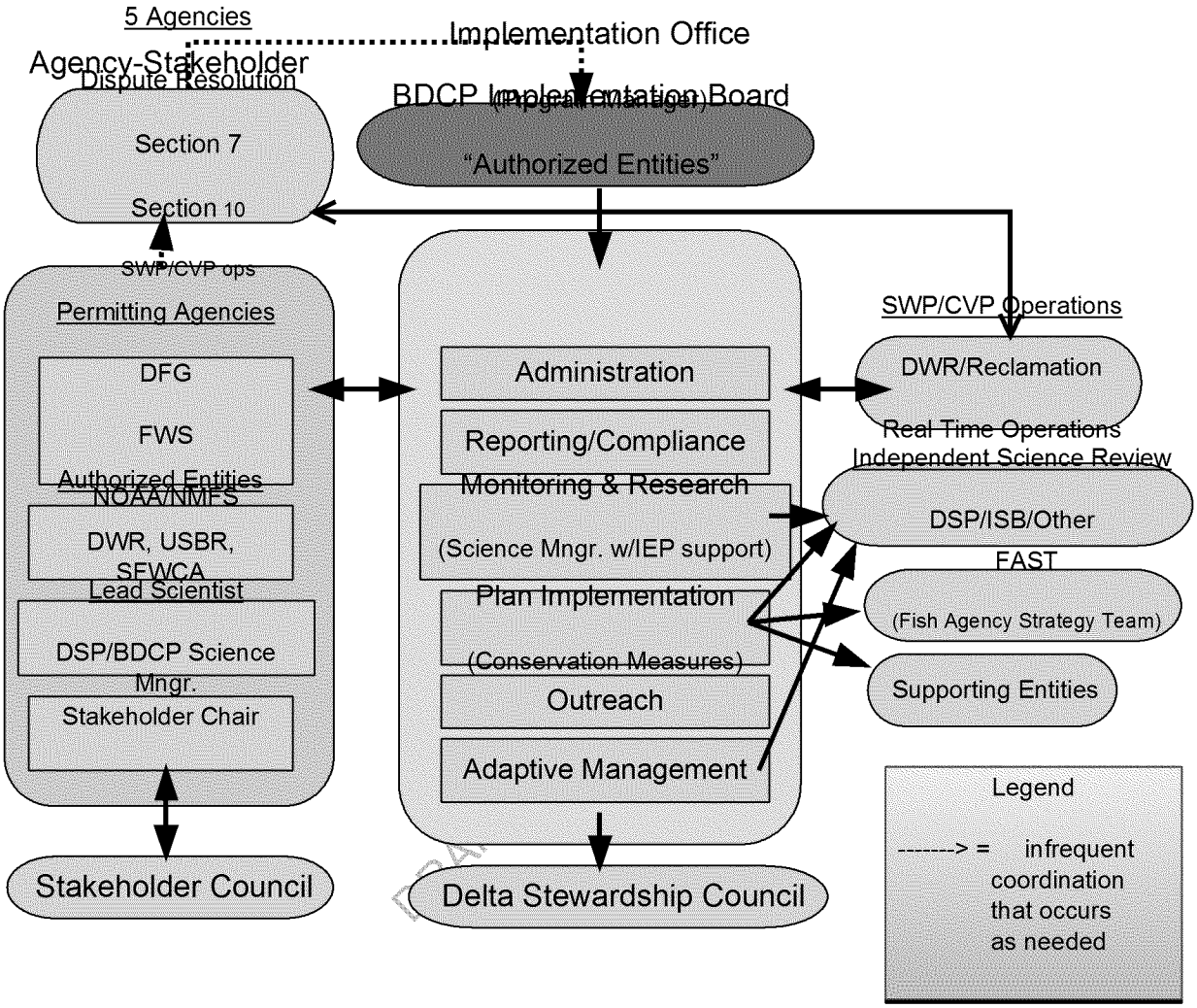


Figure 7-1. BDCP Implementation Structure

7.1.1.3

ED_000733_DD_NSF_00012362-00009



ED_000733_DD_NSF_00012362-00010

7.1.1.4 Assignment of Responsibilities

To effectively implement the BDCP, the Program Manager will be assigned certain responsibilities by the Implementation Board. The Implementation Board will provide the Program Manager with sufficient capacity and capability to effectively implement the BDCP and will explicitly define the scope of responsibilities assigned to the Program Manager.

7.1.1.5 No Delegation of Authority

The assignment of responsibility to the Program Manager and the IO will not alter or modify existing authorities, mandates, and obligations of the Authorized Entities or any other participating State and federal agency participating in plan implementation. No general delegation of authority by the Authorized Entities to the IO, including the Program Manager or to any employee assigned to the IO will occur, although specific delegation may occur in the event that it is considered by the delegating Authorized Entity to be beneficial to the efficient operation of the IO. Any such delegation will be conferred, in writing, by the delegating Authorized Entity to the Program Manager, and will be reviewed by that agency from time to time.

7.1.2 Entities to Receive Regulatory Authorizations - Authorized Entities and Other Authorized Entities

DRAFT

The BDCP provides the basis for the issuance of regulatory authorizations, under the federal Endangered Species Act (ESA) and the California Natural Community Conservation Planning Act (NCCPA), for the take of certain fish and wildlife species that result from the implementation of covered activities and associated federal actions (Chapter 4, *Covered Activities, Section 4.2)*. DWR, Reclamation, and certain other agencies, such as the State and federal water contractors, that receive take authorizations for activities covered under the BDCP will be referred to collectively as the "Authorized Entities."

The Authorized Entities will have responsibility for compliance with the terms and conditions of the BDCP and regulatory authorizations, regardless of whether another entity is tasked with the responsibility for carrying out a required action. Consistent with their roles and responsibilities under the Plan, the Authorized Entities and the Program Manager may enter into agreements individually, amongst themselves, or with other entities, for the purpose of facilitating the implementation of the BDCP by the IO. Such agreements will not affect or diminish an Authorized Entity's established authority and control over a covered activity, such as the operation of the SWP and the CVP, or any other plan action, as provided by law or pursuant to the BDCP and its implementing agreement.

Certain other entities, such as Mirant LLC, may also obtain take authorizations under the Plan for covered activities other than Delta water operations, as specified in Chapter 4.1.2.2. Such other entities will be known as "Other Authorized Entities."

ED_000733_DD_NSF_00012362-00011

Take authorizations will be sought by federal and non-federal entities under the following authorities:

- Non-federal entities will seek regulatory coverage pursuant to ESA section 10(a)(1)(B) and NCCPA section 2835, and
- Federal agencies will seek regulatory coverage under ESA section 7(a)(2) for federally-listed species

7.1.2.1 Authorized Entities

The entities identified below are anticipated to be "Authorized Entities" for the purpose of the BDCP and its associated regulatory authorizations. The activities that will be covered under the regulatory authorizations issued to the Authorized Entities are identified and described in Chapter 4, *Covered Activities*. Those activities specifically identified in Chapter 4 as "Covered Activities" will be covered under take authorizations issued the Authorized Entities pursuant to ESA section 10(a)(1)(B) and section 2835 of the Fish and Game Code. Activities that are addressed by the BDCP and carried out by Reclamation are referred to in Chapter 4 as "Associated Federal Actions." Those actions are subject to the consultation requirements of ESA section 7. Reclamation will seek take authorizations under ESA section 7 for those actions, as well as actions outside the scope of the BDCP related to the coordinated operations of the CVP and SWP.

DRAFT

7.1.2.1.1 California Department of Water Resources

The State of California owns, and DWR manages and operates, the State Water Project's (SWP) existing Delta facilities, including the Clifton Court Forebay and the Banks Pumping Plant. Pursuant to the BDCP, DWR seeks State and federal regulatory authorizations to continue to operate such facilities. The State of California, through DWR, will construct, own, and operate any new diversion and conveyance facilities described in this plan.

7.1.2.1.2 United States Bureau of Reclamation

The United States owns, and Reclamation operates, the Central Valley Project's (CVP) existing Delta facilities, including the Jones Pumping Plant and the Delta Cross Channel. The BDCP will provide the basis for Reclamation to seek federal regulatory authorizations through section 7 for the incidental take of listed species from project operations in and upstream of the Delta. Reclamation will likely enter into an agreement with DWR to wheel CVP water through a new conveyance facility.

7.1.2.1.3 SWP and CVP Contractors

The SWP and CVP water contractors receive water under contract from the projects. They will participate in various aspects of the implementation of the BDCP, including the implementation of certain conservation measures. Pursuant to the BDCP, the SWP and CVP contractors will

ED_000733_DD_NSF_00012362-00012

seek permits under section 10(a)(1)(B) of the ESA and section 2835 under the NCCPA for Covered Activities, as set out in Chapter 4. The water contractors are expected, on an individual basis or through SFWCA, to be Authorized Entities under the Plan. However, the decision whether to grant permits under section 10 of the ESA resides with the USFWS and NMFS and under NCCPA with DFG. The status of the water contractors as Authorized Entities would not provide them with any new authority over water project operational decisions or result in the delegation of authority from any state or federal agency. The water contractors may choose to carry out their responsibilities under the BDCP through SFWCA or other appropriate entities.

7.1.2.2 Other Authorized Entities

The Other Authorized Entities identified below may seek take authorizations pursuant to the BDCP. However, these entities will not be members of the Implementation Board nor will they have a specific role in the governance of the BDCP, other than as potential members of the Stakeholder Council.

7.1.2.2.1 Mirant Corporation

Mirant owns and operates the Pittsburg and Contra Costa Power Plants located in Pittsburg and Antioch. Mirant may obtain regulatory permits under ESA section 10 and Fish and Game Code section 2835 for the take of listed species from operation of those plants pursuant to the BDCP. In the event it does so, it will be considered an Other Authorized Entity.

DRAFT

7.1.2.2.2 Other Entities

The BDCP covers certain activities that are carried out by [*description of those parties will be added*] (see Chapter 4, *Covered Activities*). Take of covered species associated with these activities will be authorized through the State and federal permits issued to DWR under the Plan. The entities that receive such regulatory coverage will be considered Other Authorized Entities. [***Note to Reviewers**: Once these Other Entities have been identified, they will be listed in this section*]

7.1.3 Implementation Board

A BDCP Implementation Board, consisting of the Authorized Entities, will be established to provide program oversight and general guidance to the IO regarding the implementation of the Plan. The Implementation Board will ensure that the implementation of the BDCP is carried out consistent with its terms and conditions, its Implementing Agreement, and its associated regulatory authorizations. Specifically, the Board will provide input to the Program Manager on broad, program-level and policy-related issues and on more specific matters, such as ensuring that adaptive management actions are implemented consistent with the direction provided by the Agency-Stakeholder Review and Coordination Team and/or Five Agency Group and under the accepted timetable. The involvement of the Board in plan implementation is not intended to

ED_000733_DD_NSF_00012362-00013

constrain the Program Manager in day-to-day decision making necessary to carry out the Annual Work Plan and to otherwise properly implement the BDCP.

7.1.3.1 Function

The Implementation Board will provide oversight and direction to the Program Manager on matters concerning the implementation of the BDCP, provide input and direction on general policy matters, and monitor and assess the effectiveness of the IO in implementing the Plan. To support the role of the Implementation Board, the Program Manager will organize, convene, and provide support for the Implementation Board and its proceedings,[2] and will ensure that the Implementation Board receives and is allowed to provide input on work plans, reports, budgets and other relevant information generated by the IO. The Program Manager will further ensure that the Implementation Board has sufficient opportunity to provide input regarding these documents. The Implementation Board will also encourage and support the efforts of the IO to foster and maintain collaborative and constructive relationships with the State and federal fish and wildlife agencies, other public agencies, stakeholders and other interested parties, and local government throughout the implementation of the BDCP.

The participation of the Authorized Entities on the Implementation Board will not trigger or otherwise cause a delegation of authority or responsibility for any of the implementation actions described in the BDCP from one Authorized Entity to another. Rather, the specific roles and level of involvement in BDCP implementation actions are defined either by existing statutory and regulatory mandates or by provisions set out in this Plan and its associated Implementing Agreement. For many of the BDCP actions and commitments, a specific Authorized Entity will have the sole responsibility for implementation; for other actions and commitments established by the Plan, the Authorized Entities may be jointly and severally responsible for their implementation. For instance, the operation of the SWP will remain under the control and responsibility solely of DWR; likewise, the operation of the CVP will continue to be under the control and responsibility of Reclamation.

DRAFT

A primary function of the Implementation Board will be to oversee the initial drafting of the Annual Work Plan and Budget as prepared by the Program Manager. The content of the Annual Work Plan and Budget and the timing of preparation and submission of the document to the Agency-Stakeholder Review and Coordination Team are described in Section 6.2 *Compliance and Progress Reporting*. The Annual Work Plan and Budget will be deemed to be "final" once (i) accepted by the Agency-Stakeholder Review and Coordination Team, or the Five Agency Group if the Coordination Team cannot achieve consensus; however the Annual Water Operations Strategy shall be incorporated into the Annual Work Plan and deemed "accepted" if approved in accordance with the process described in Section 6.2.2. or (ii) objections raised in the Five Agency Group to the work plan and budget, excepting the portion that comprises the Annual Water Operations Strategy, are resolved through the Five Agency Dispute Resolution Process as described in Section 3.7.3.3 of Chapter 3.

[2] If the Program Manager position is vacant, then DWR and Reclamation will serve this role.

ED_000733_DD_NSF_00012362-00014

The Implementation Board will meet, at a minimum, on a quarterly basis. The Board may also be convened by the Program Manager, as needed, to review issues that arise in regard to the implementation of the Annual Work Plan. The Program Manager may further request that the Board reconvene to consider proposed amendments to the Annual Work Plan and Budget. The date, time, and location of Implementation Board meetings will be posted on the BDCP website at least 10 days prior to such meeting. A majority of the Implementation Board meetings will be held at locations within the City of Sacramento or the legal Delta. All meetings of the Implementation Board will be open to the public, as provided by applicable law.

7.1.3.2 Dispute Resolution

With respect to those matters that are considered by the Implementation Board, it is expected that reasonable efforts will be made to provide input to the Program Manager that reflects acceptance by the members. A board member, however, will have the right to object to any proposal of the Program Manager that requires Implementation Board direction and/or approval. Any objections will be made on the basis that the proposal (i) will not adequately contribute to achievement of the goals and objectives of the BDCP or (ii) is inconsistent with the requirements of the Plan, its Implementing Agreement, or associated regulatory authorizations.

The board member may elevate the matter to the regional director(s) of the relevant federal agency, to the director(s) of the relevant state agency, or to other appropriate authorities, as determined by the locus of responsibility for the matter in dispute. For this purpose, "locus of responsibility" means primary responsibility to decide the matter, after which the matter will be ripe for implementation, while recognizing that multiple entities may have some relevant responsibility. A simplified process for considering and responding to such objections in an orderly and timely manner will be established, including a process to elevate appropriate matters for decision to the responsible official, be it a federal or State cabinet-level official or their designee, or another corresponding authority. As required by existing law, final responsibility for plan implementation and compliance with regulatory authorizations will remain with the Authorized Entities. The objection procedures and dispute resolution process may not be used to delay the completion and/or implementation of the Annual Work Plan and Budget. Implementation Board dispute resolution procedures will be set out in the Implementing Agreement.

DRAFT

7.1.4 DWR and Reclamation: Operation of the SWP and CVP

Implementation of the conservation measures related to water facilities and water operations, as described in Chapter 3 *Conservation Strategy*, will be the responsibility of DWR and Reclamation or entities with whom they may contract. DWR and Reclamation will retain their authority to operate the SWP and the CVP within the parameters of the BDCP and other applicable laws and regulations.

ED_000733_DD_NSF_00012362-00015

The federal and state operators of the CVP and the SWP will prepare coordinated operation strategies for the federal and state Projects with the concurrence of the other members of the Five Agency Group when appropriate, including the Annual Water Operations Strategy as described in as described in Section 6.2, *Compliance and Progress Reporting*. The IO will incorporate the Annual Water Operations Strategy into the BDCP Annual Work Plan and Budget if it is approved by all relevant parties as described in section 6.2.2.

Decisions related to "real time" water operations will be the responsibility of the Real Time Response Team, as described in Section 7.3.2, *Implementation of Water Operations Conservation Measures*.

7.1.5 Agency-Stakeholder Review and Coordination Team

The Agency-Stakeholder Review and Coordination Team, consisting of the Authorized Entities, fish and wildlife agencies, stakeholder chair, Interagency Ecological Program Lead Scientist, BDCP Science Manager and Delta Science Program Lead Scientist will be established to provide guidance to the IO regarding the implementation of certain aspects of the Plan and to foster communication between involved parties.

7.1.5.1 Function

The Agency-Stakeholder Review and Coordination Team shall be responsible for reviewing, providing input, to all significant deliverables and proposals developed by the Program Manager. Such items shall include but are not limited to: (1) adaptive management changes and decisions not related to water operations excluding any changes deemed "minor" by the Five Agency Group; (2) the Annual Workplan and Budget excluding the Annual Water Operations Strategy section, (3) the Annual Implementation Report, (4) the Five-Year Comprehensive Review, (5) the Five-Year Implemenation Plan and (6) scientific research plans. If the Coordination Team achieves complete consensus, then the proposal/product being reviewed shall be deemed "final" and the Program Manager shall move forward according to the direction provided by the Coordination Team.

DRAFT

7.1.5.2 Dispute Resolution

The Agency-Stakeholder Review and Coordination Team shall attempt to achieve consensus on all decisions put before it for consideration. However, if consensus cannot be achieved, the decision at issue shall be elevated to the Five-Agency Group for final resolution.

7.1.6 Five Agency Group

The Five Agency Group shall be comprised of the California Department of Fish and Game, National Marine Fisheries Service, United States Fish and Wildlife Service, California Department of Water Resources and the United States Bureau of Reclamation. This group shall have final approval authority over any action in which the Agency-Stakeholder Review and

ED_000733_DD_NSF_00012362-00016

Coordination Team cannot achieve consensus. In addition, this group shall be responsible for overseeing implementation of conservation measures and adaptive management actions related to water operations.

This group will not be a separate legal entity, and the participating agencies will not delegate any of their respective authorities to the group. DWR and Reclamation will retain their authority to operate the SWP and the CVP within the parameters of the BDCP and other applicable laws and regulations. The fish and wildlife agencies retain full responsibility to: (i) determine whether implementation of the BDCP is proceeding in compliance with the terms and conditions of their respective regulatory authorizations, (ii) enforce the terms and conditions of the regulatory authorizations, and (iii) modify, suspend, or revoke regulatory authorizations, consistent with the terms and conditions of the Plan, the Implementing Agreement, and applicable State and/or federal law.

7.1.6.1 Function

The Five Agency Group shall be responsible for considering and approving any decision elevated to it by the Agency-Stakeholder Review and Coordination Team. In addition, the Five Agency Group is responsible for: providing input and approval of implementation actions and adaptive management changes related to water operations; drafting the Annual Water Operations Strategy; developing the charge to independent science reviewers and the initial package of information to be provided to the Delta Science Program as review convenor; providing input to the Program Manager regarding the selection of scientists to provide advice on such topics, outside and in addition to the independent scientific review process facilitated by the Delta Science Program.

DRAFT

In addition, designated management level representatives of DFG, FWS and NMFS shall comprise the Real-Time Operations Response Team (Response Team) as a subset of the Five-Agency Group. The Response Team shall continuously monitor conditions in the Delta and upstream tributaries and, with input from DWR and Reclamation, provide real-time operating criteria to DWR and Reclamation within the discretionary boundaries established by the BDCP water operation conservation measures (see Chapter 3 *Conservation Strategy*), for the primary purpose of maximizing benefits to covered fish species and their habitat. Need to add language from Sect 3.7.3.3 … while recognizing the importance of meeting statutory water supply obligations and other operational requirements…

7.1.6.2 Dispute Resolution Process

With respect to matters that are considered by the Five Agencies, all reasonable efforts will be made to obtain consensus regarding all proposals. Any agency, however, will have the right to object to any proposal that requires Five Agency consensus, including adaptive management actions and approval of annual strategies and plans, including scientific research plans. Any objections will be made on the basis that the proposal (i) will not adequately contribute to

ED_000733_DD_NSF_00012362-00017

achievement of the goals and objectives of the BDCP or (ii) is inconsistent with the requirements of the Plan, its Implementing Agreement, or associated regulatory authorizations.

The Five Agencies will work together in good faith to resolve any objections. Any unresolved objections may be elevated to the agencies' appropriate delegated officials. These officials will meet at their earliest opportunity and attempt to achieve consensus on the matter at issue. The specific procedures for resolving disputes will be explained in more detail in the Implementing Agreement.

7.1.6.3 Participants

7.1.6.3.1 California Department of Fish and Game

DFG is the agency of the State of California authorized to act as trustee for the state's wildlife. DFG administers and enforces CESA, the NCCPA and other provisions of the Fish and Game Code. DFG is authorized to enter into agreements with federal and local governments and other entities for the conservation of species and habitats, to authorize take under CESA and the NCCPA, and to provide regulatory assurances under NCCPA. On an ongoing basis, as a member of the Five Agency Group and Agency-Stakeholder Review and Coordination Team, DFG will consult with the IO, the Implementation Board, and the Authorized Entities on various aspects of plan implementation, including participation in operations decisions, the adaptive management process, and the monitoring and science programs. DFG will also maintain responsibility for plan enforcement, consistent with the NCCPA and other authorities. DFG owns and manages land within the Plan Area, and may, at the request of the IO, enter into agreements whereby it operates and maintains certain habitat areas that are developed through BDCP habitat preservation and restoration actions. DFG is jointly responsible for implementation of the Ecosystem Restoration Program, which was established to advance ecosystem restoration projects in the San Francisco Bay Delta and its tributaries.

DRAFT

7.1.6.3.2 National Marine Fisheries Service

NMFS is an agency of the United States Department of Commerce authorized by Congress to administer and enforce the ESA with respect to marine mammals and certain fish species (including anadromous fish); to enter into agreements with states, local governments, and other entities to conserve federally threatened, endangered, and other species of concern; to authorize incidental take under ESA; and to provide regulatory assurances in accordance with 50 C.F.R. section 222.307(g). On an ongoing basis, as a member of the Five Agency Group and Agency-Stakeholder Review and Coordination Team, NMFS will consult with the IO, the Implementation Board, and the Authorized Entities on BDCP implementation, including participation in the operations decisions and adaptive management processes and the monitoring and science programs. NMFS will also maintain responsibility, jointly with USFWS, for plan enforcement consistent with the ESA and other authorities. NMFS is jointly responsible for implementation of the Ecosystem Restoration Program, which was established to advance ecosystem restoration projects in the San Francisco Bay Delta and its tributaries.

ED_000733_DD_NSF_00012362-00018

7.1.6.3.3 United States Fish and Wildlife Service

The USFWS is an agency of the United States Department of the Interior authorized by Congress to administer and enforce the ESA with respect to terrestrial wildlife, certain fish species, insects and plants, to enter into agreements with states, local governments, and other entities to conserve threatened, endangered, and other species of concern, to authorize incidental take under ESA, and to provide regulatory assurances in accordance with 50 CFR section 17.22(b)(5) and section 17.32(b)(5). On an ongoing basis, as a member of the Five Agency Group and Agency-Stakeholder Review and Coordination Team, USFWS will consult with the IO, the Implementation Board, and the Authorized Entities on various aspects of plan implementation, including participation in operations decisions, the adaptive management process, and the monitoring and science programs. USFWS will also maintain responsibility, jointly with NMFS, for plan enforcement consistent with the ESA and other authorities. USFWS may also, at the request of the IO, enter into agreements whereby it operates and maintains certain habitat areas that are developed through BDCP habitat preservation and restoration actions. USFWS is jointly responsible for implementation of the Ecosystem Restoration Program, which was established to advance ecosystem restoration projects in the San Francisco Bay Delta and its tributaries

7.1.6.3.4 Department of Water Resources

As noted in Section 7.1.2.1.1, the State of California owns, and DWR manages and operates, the State Water Project's (SWP) existing Delta facilities, including the Clifton Court Forebay and the Banks Pumping Plant.

DRAFT

7.1.6.3.5 United States Bureau of Reclamation

As noted in Section 7.1.2.1.2, the United States owns, and Reclamation operates, the Central Valley Project's (CVP) existing Delta facilities, including the Jones Pumping Plant and the Delta Cross Channel.

7.1.7 Other Regulatory Agencies

The BDCP has been developed as a conservation plan pursuant to the ESA and the NCCPA. To implement the BDCP, certain conservation actions will need to conform to the requirements of various other State and federal laws and regulations not specifically addressed by the Plan. Prior to the implementation of many of the conservation actions set out in the BDCP, regulatory authorizations and approvals will need to be obtained from State and federal agencies under applicable laws. These other agencies will participate in the governance of plan implementation as provided in their regulatory authorizations and approvals related to the Plan. To facilitate compliance with these laws and regulations, the IO will work closely with the appropriate regulatory agencies to plan in advance of future permitting needs and establish processes to expedite such authorizations.

ED_000733_DD_NSF_00012362-00019

In addition, certain "Potential Conservation Measures to Address Other Stressors", as described in Chapter 3, have been identified that fall within the jurisdictional responsibility of other State and/or federal regulatory agencies. The State and federal fish and wildlife agencies and the IO will work with these regulatory agencies to encourage the implementation of the Potential Conservation Measures. To the extent appropriate, through the adaptive management process, the IO will seek to integrate Potential Conservation Measures into the BDCP Conservation Strategy.

It is expected that the actions set out in the BDCP are likely to require the involvement of State and federal agencies that administer regulatory programs under the following statutes: California Water Code sections 1000 *et seq*. (water rights), Water Code sections 13000 *et seq*. (water quality), California Fish and Game Code sections 1600 and 5900 *et seq*. (channel modification, fish screens), Clean Water Act section 401 (water quality) and section 404 (placement of dredge and fill), Rivers and Harbors Act section 408 (work on levees), Rivers and Harbors Act section 10 (navigation), the Migratory Bird Treaty Act (migratory birds), and the Federal Energy Regulatory Act implemented by the Federal Energy Regulatory Commission.

7.1.8 Supporting Entities

The IO, through the Program Manager, may assign specific implementation tasks to other entities, referred to as "Supporting Entities," that have the authority, resources, expertise, and willingness to successfully and timely undertake and complete the task. Where specific tasks are so assigned, the Program Manager will ensure that that tasks and associated responsibilities are carried out properly and in coordination with other BDCP actions. The Authorized Entities may also be Supporting Entities. Other Supporting Entities may include, among others:

- The Delta Conservancy. The Delta Conservancy has been designated by statute as a primary State agency to implement ecosystem restoration in the Delta.
- Sponsors of regional conservation planning programs, including those engaged in NCCP and/or HCP development or implementation, or of other similar conservation programs, that overlap or are adjacent to the Plan Area.
- State and federal regulatory agencies, including USFWS, NMFS, and DFG.
- Other public agencies and private entities that have authority, capacity, or expertise to implement actions described in the conservation strategy in a cost-effective, reliable, and timely manner.

The Program Manager will oversee each Supporting Entity's performance of its responsibility for carrying out a specific task. Decisions by the Program Manager to engage another entity in the implementation of specific plan elements or actions will be accomplished by written contract and will be based on the entity's jurisdictional authority, level of expertise, and its capacity to carry out the element or action in a timely and successful manner. The Program Manager, with the concurrence of the Implementation Board, may terminate a Supporting Entity's role in plan implementation in the event that the Supporting Entity does not perform a task adequately.

ED_000733_DD_NSF_00012362-00020

The take authorizations that will be issued pursuant to the BDCP will provide regulatory coverage under the ESA and the NCCPA for all activities covered by the Plan. As such, no additional take authorizations will be required to implement these activities, regardless of whether the action is carried out by the IO or a supporting entity.

7.1.9 BDCP Stakeholder Council

A BDCP Stakeholder Council will be organized and convened by the Program Manager. The Stakeholder Council will consider and discuss matters related to plan implementation, and provide input on such matters to the Agency-Stakeholder Coordination Team through its Stakeholder Chair or the IO. The primary purpose of the council is to provide ongoing opportunities for the BDCP stakeholders to assess the implementation of the Plan, and to propose ways in which plan implementation may be improved or enhanced.

7.1.9.1 Membership

The Stakeholder Council will consist of representatives from a range of entities and organizations with an interest in BDCP-related issues or otherwise engaged in BDCP matters. At a minimum, the IO will invite the participation of the following entities:

- The Program Manager for the BDCP Implementation Office
- Representatives of DWR and the Bureau of Reclamation
- Representatives of the SFCWA
- Representatives of Other Authorized Entities
- Representatives of FWS, NMFS, and DFG
- Representatives of other State and federal regulatory agencies, including the Army Corps of Engineers, the U.S. Environmental Protection Agency, and State Water Resources Control Board.
- A representative of the Delta Stewardship Council
- A representative of the Delta Protection Commission
- A representative of the Delta Conservancy
- A representative of the Central Valley Flood Protection Board
- Representatives of the counties of San Joaquin, Sacramento, Solano, Yolo, and Contra Costa

Additional members will be selected from the following categories by the Secretary of the California Natural Resources Agency, in consultation with the directors of the relevant departments comprising the Agency, such as DWR and DFG. The public may submit nominations to the Secretary for these additional members. Each member will serve a term

DRAFT

ED_000733_DD_NSF_00012362-00021

of four years, and may be reappointed without limit and may serve until such time as they are replaced.

- At least three representatives from conservation groups with expertise in fish and wildlife management and/or the management of aquatic habitats and other natural lands
- At least three representatives of local government agencies within the Delta.
- At least one representative of fishing organizations
- At least one representative of hunting organizations
- At least one representative of recreational organizations
- At least two representatives of delta reclamation districts
- At least two representatives of Delta agriculture
- At least three scientists with expertise in the management of natural lands, and native plant and animals species
- At least one representative of water agencies located in the Sacramento valley
- At least one representative of water agencies in the San Joaquin River watershed
- Other stakeholders whose assistance will increase the likelihood of the success of plan implementation, including delta civic organizations and members of the general public.

DRAFT

7.1.9.2 Function

The Program Manager will convene and facilitate the Stakeholder Council on at least a quarterly basis to exchange information and provide input to the Program Manager concerning the current significant issues at hand. Stakeholders will have opportunity to inquire about implementation matters, be apprised by the Program Manager of issues of interest, and make recommendations concerning pending decisions and other implementation matters. Stakeholder Council meetings will be open to the public.

For the benefit of the Stakeholder Council members and the general public, the Program Manager will provide information and conduct briefings regarding plan implementation. Briefings will include presentations of drafts of the Annual Report, Annual Work Plan, Annual Water Operation Strategy, the Annual Water Operations Report, and the Five Year Implementation Plan, as described in Chapter 6. In addition, to further facilitate access to information and promote transparency in decision-making, the IO will maintain a public, on-line data base of key documents and information, such as annual implementation reports, work plans, and budgets (Section 6.2, *Compliance and Progress Reporting*).

The Stakeholder Council will develop its own internal organization and process to consider the various aspects of BDCP implementation. A "Technical Facilitation" subgroup will be established to provide input to the Program Manager on technical and scientific matters. The

ED_000733_DD_NSF_00012362-00022

Stakeholder Council process will complement, but not substitute for, ongoing collaboration and communication between stakeholders and the IO, Authorized Entities, the Implementation Board, and the fish and wildlife agencies. The IO will organize, help convene, and provide support to the Stakeholder Council and its proceedings.

The Stakeholder Council shall nominate one member to be designated as the "Stakeholder Chair." The Chair will be a permanent member of the Agency-Stakeholder Coordination Team and shall be responsible for communicating the concerns of the Stakeholder Council to the Coordination Team. The Chair shall also be responsible for providing updates to the Council related to the discussions, products and decisions of the Coordination Team.

7.1.9.3 Dispute Resolution

With respect to those matters that are considered by the Stakeholder Council, it is expected that the council will make reasonable efforts to provide input to the Program Manager and/or Stakeholder Chair that reflects the general agreement of the members. Any member of the council, however, will have the right to object to any proposal of the Program Manager concerning the annual work plans, annual reports, budgets, the acquisition of land and water interests, or the major elements of the adaptive management program, as set out in Chapters 3 and 6. Any member may also object to any prior implementation action taken by the Program Manager. Any such objections will be made on the basis that the proposal (i) will not adequately contribute to achievement of the goals and objectives of the BDCP or (ii) is inconsistent with the requirements of the Plan and/or the permits/authorizations.

DRAFT

In consultation with the Implementation Office, the Stakeholder Council will establish a process for efficient consideration and resolution of any objections that may arise within the council related to the implementation of the plan. Under that process, a member of the Stakeholder Council may, at its discretion, object to a proposal or prior action related to such implementation. The member may object on behalf of itself or an entity it represents. The council will make reasonable efforts to resolve the dispute by general agreement. The Stakeholder Council will take action on a dispute within 60 days. If the dispute is not resolved within the 60 day period, the issue in dispute will be elevated to the Implementation Board for its consideration.

A dispute (and any generally agreed upon recommendation for resolution) will be elevated: (i) to the Implementation Board; and (ii) if unresolved as between the Implementation Board and objecting member(s) of the Stakeholder Council for over 90 days, for decision by the entity with the locus of responsibility for the matter in dispute. For this purpose, "locus of responsibility" means primary responsibility to decide the matter, after which the matter will be ripe for implementation, while recognizing that multiple entities may have some relevant responsibility. As required by existing law, final responsibility for plan implementation and compliance with

ED_000733_DD_NSF_00012362-00023

the regulatory authorizations will remain with the Authorized Entities, as defined within the BDCP and its Implementing Agreement.

The objection procedures and dispute resolution process above may not be used to delay the completion and/or implementation of the Annual Work Plan and Budget. This process does not substitute for any right or claim which a member of the Stakeholder Council or other entity may have under existing law or contract (e.g., with respect to claims related to private property damage associated with plan implementation). The process does not create a new right or claim which does not arise under existing law.

7.1.10 The General Public

The BDCP implementation process will provide for ongoing and frequent engagement and participation of the public. Other entities that have interests in the conservation of Delta resources, may participate in BDCP implementation through the public outreach process coordinated by the IO (Section 7.5 *Public Outreach*) or through the BDCP Stakeholder Council, if eligible for membership. Stakeholder Council meetings will be noticed in advance and open to the public, and will be conducted in a manner that provides adequate opportunity for public comment.

7.2 IMPLEMENTATION OFFICE ADMINISTRATION

DRAFT

The Program Manager will direct, oversee, and select staff for the IO. The IO, which will not be a legal entity authorized to enter into contracts directly or hold property in its own name, will administer the implementation of the BDCP under the existing authorities of the Authorized Entities. By relying on the legal authorities of the Authorized Entities, the IO will be equipped with the resources and capacity necessary to carry out BDCP implementation tasks for which it will be responsible. This structure also contemplates that DWR and the Reclamation will maintain their historic roles as owners and operators of the SWP and CVP, but provides flexibility for changing those roles if so directed by Congress, the California Legislature, or through administrative processes.

Proper implementation of the Plan will require a skilled and expert team consisting of administrators, policy-makers, scientists, engineers, data analysts, and regulatory specialists, capable of working together in a cohesive and unified manner. In addition, effective implementation will necessitate adequate financing of and support for the IO. The BDCP includes funding assurances (Chapter 8 *Implementation Cost and Funding*) that the IO will have such capacity and resources to carry out the responsibilities described in this chapter.

The Program Manager may assign specific implementation tasks to other entities that have the authority, resources, and expertise to successfully complete the task in a timely manner. These Supporting Entities may include, at the discretion of the Program Manager, water agencies, water contractors, regulatory agencies, non-governmental organizations, or other appropriate

ED_000733_DD_NSF_00012362-00024

entities. Where specific tasks are so assigned, the Program Manager will ensure that that tasks and associated responsibilities are carried out properly and in coordination with other BDCP actions. The Supporting Entity will be responsible, subject to oversight by the Program Manager, for entering into the necessary contracts and acquiring title to interests in real and personal property, acquiring permits, and taking all other steps needed to complete the implementation task.

The primary functions and responsibilities of the IO are as follows:

7.2.1 Establishing Administrative Capacity

The Program Manager will manage the IO. The Program Manager will arrange for and equip the IO office space, hire a staff of sufficient size, and enter into contracts (through the authorities of DWR, Reclamation, other State and federal agencies, and/or the SWP/CVP contractors) to build capacity to become fully functional and operational.

The Program Manager, with the consent of and pursuant to agreements with any affected agencies, may enlist current employees of the Authorized Entities, as well as employees of other State, federal, or local agencies, who possess the expertise and experience necessary to carry out the tasks associated with BDCP implementation. The specific staffing needs of the IO will be determined by the Program Manager. All IO staff, including staff from entities that are members of the Implementation Board will work at the direction of the Program Manager.

DRAFT

7.2.2 Preparing Budgets and Managing Expenditures

The Program Manager will develop, propose, and administer budgets for general program administration for acceptance by the Implementation Board, pursuant to the dispute resolution process set out in this chapter (Section 7.1.3.2, *Dispute Resolution*). The Program Manager will establish systems and processes to centralize oversight of implementation budgets and related expenditures. The Program Manager will also generally review and oversee budgets and expenditures related to implementation actions carried out by Authorized Entities or Supporting Entities.

7.2.3 Contracting for Services

The IO, through the appropriate entity, may contract for services as necessary to implement the BDCP and in a manner consistent with State and/or federal law governing such contracts, including for professional services related to:

- Acquisition and protection of habitat;
- Habitat restoration and management;
- Monitoring and scientific research;

ED_000733_DD_NSF_00012362-00025

- Legal and regulatory matters;
- Environmental and technical services;
- Engineering and construction (e.g., conservation facilities, water facilities, levees);
- Funding and grant agreements pertaining to state and federal programs and executing sub-grants to third-parties to conduct specific actions; and
- Operations and maintenance.

The Program Manager shall administer such contracts.

7.2.4 Securing, Holding, and Managing Funds to Support Implementation Actions

The IO will coordinate the expenditure of funds from State, federal, and other sources that have been dedicated to the implementation of the BDCP. At least one State and one federal agency member of the Implementation Board will serve as the fiscal agents, consistent with existing agency authorities, for the expenditure of funds by the IO, from both public and private sources, to support implementation actions. The IO will not be authorized to manage the expenditure of funds related to design, construction, operation and maintenance of water diversion and conveyance facilities which are or will be elements of the SWP or CVP.

DRAFT

7.2.5 Coordinating with the Authorized Entities, the Implementation Board, and Supporting Entities

The Program Manager will convene meetings and facilitate communication with the Authorized Entities, Implementation Board, and Supporting Entities. The Program Manager will maintain frequent contact with these entities and provide regular updates concerning implementation matters, including progress in meeting BDCP timetables, dissemination of information, and maintenance and availability of BDCP records and reports.

7.2.6 Coordinating with Regulatory Agencies

The IO will coordinate and collaborate with the State and federal fish and wildlife agencies,; U.S. Army Corps of Engineers; U.S. Environmental Protection Agency; the State Water Resources Control Board; and other appropriate regulatory agencies on matters potentially affecting compliance with the terms and conditions of the BDCP, its associated regulatory authorizations, and other regulatory authorizations required to implement BDCP actions. The specific roles of the State and federal fish and wildlife agencies in various plan implementation actions are described primarily in Chapters 3 and 6. The Program Manager will coordinate and lead meetings convened for such purposes.

ED_000733_DD_NSF_00012362-00026

7.2.7 Coordinating with the Delta Stewardship Council, Delta Science Program, and Delta Conservancy

The Program Manager will facilitate and monitor the effective and efficient incorporation of the BDCP into the Delta Stewardship Council's Delta Plan (Delta Plan).[3] The Program Manager will report regularly to the Delta Stewardship Council on the progress of BDCP implementation, including the status of monitoring programs and adaptive management, as required by Water Code section 85320(f). The IO will also respond to questions or concerns raised by the Delta Stewardship Council regarding the implementation of the BDCP.

The IO, through the Science Manager, will coordinate with the Delta Science Program, IEP Coordinators and the MAST and, as necessary, the Delta Independent Science Board, [4] on matters regarding the formulation and implementation of monitoring activities and research efforts to support the BDCP adaptive management process.

The IO will coordinate with the Delta Conservancy as it initiates planning and implementation of ecosystem restoration projects carried out pursuant to the BDCP Conservation Strategy. The IO and the Delta Conservancy will also maintain close coordination on other programs being carried out by the Delta Conservancy that potentially affect BDCP implementation actions.

7.2.8 Coordinating with Local Governments, Delta Protection Commission, and Other Public Agencies

DRAFT

The Program Manager will serve as the main point of contact for local, State, and federal agencies interested or engaged in BDCP implementation issues. The Program Manager will prepare, publish, and distribute general information about the BDCP to those agencies and represent the BDCP at public meetings convened by cities, counties, water and reclamation districts, and other public agencies with jurisdiction within the Delta. The Program Manager will encourage local government participation on the BDCP Stakeholder Council.

Where regional conservation plans overlap with or adjoin the Plan Area, the IO will collaborate and coordinate with the sponsors of those regional conservation plans on the acquisition and management of habitat lands to be preserved and/or restored within areas common to both plans. The Program Manager will, as appropriate, enlist sponsors of those regional conservation plans and local governments to serve as BDCP Supporting Entities to assist in the acquisition and/or management of conservation lands. Where mutually beneficial, the IO will encourage joint acquisitions of land with local government plan sponsors to realize economies-of-scale and to secure large, contiguous blocks of habitat. The IO will explore opportunities to fund early conservation actions (i.e., habitat acquisition and/or restoration) that may benefit both the BDCP and other regional conservation plans.

[3] Water Code § 85320.

[4] Water Code § 85280

ED_000733_DD_NSF_00012362-00027

7.2.9 Coordinating with Flood Control Agencies

In the design and implementation of conservation actions that could directly or indirectly affect flood control capabilities, the IO will coordinate with agencies responsible for flood control in the Plan Area, including USACE, DWR, Central Valley Flood Protection Board, reclamation districts in the delta, local flood control agencies and water districts.

7.2.10 Protecting and Defending Against Legal Challenges

The IO, in coordination with the Implementation Board, Supporting Entities, fish and wildlife agencies, and other appropriate public agencies, will, if appropriate, help coordinate efforts to defend against legal challenges to the BDCP or its associated State and federal authorizations. As necessary, the IO may also provide funding for legal counsel to address the range of legal issues associated with implementation, including: defense against litigation related to the BDCP, liability associated with land acquisition and related matters, disputes arising out of contractual agreements, and general, routine in-house legal matters.

7.2.11 Overseeing Plan Amendments

In the event that an amendment to the BDCP and its authorizations is necessary, the IO will compile information and prepare documentation necessary to support such an amendment and will seek to obtain approvals from the applicable fish and wildlife agencies.

DRAFT

7.2.12 Implementing Mitigation Measures Identified in BDCP-related Environmental Documentation under NEPA and CEQA

Subject to the approval of the lead agencies conducting the environmental review of the BDCP under NEPA and/or CEQA and the concurrence of the Implementation Board, the IO will assume responsibility for the implementation of the adopted mitigation measures identified in the environmental documents prepared for the Plan. Similarly, the IO may assume, subject to lead agency approval, responsibility for the implementation of adopted mitigation measures set out in NEPA and/or CEQA documents prepared for the purpose of implementing specific BDCP actions. The role of the IO in implementing such mitigation measures will be limited to those measures associated with either the BDCP EIS/EIR or other environmental review documentation required for the implementation of BDCP actions.

7.3 IMPLEMENTATION OF THE CONSERVATION STRATEGY

The IO, through the Program Manager, will be responsible for planning, overseeing, and conducting actions set out in the BDCP Conservation Strategy (Chapter 3, *Conservation Strategy* and Chapter 6, *Plan Implementation*). The Program Manager will be afforded sufficient flexibility to use supporting entities, including the Authorized Entities and the federal and State fish and wildlife agencies, to undertake certain actions that will enhance the overall effectiveness

ED_000733_DD_NSF_00012362-00028

of the Conservation Strategy and yield greater efficiencies in plan implementation. The following sets out the tasks and responsibilities of the IO regarding the implementation of the Conservation Strategy.

7.3.1 Implementation of the Habitat Protection and Restoration Conservation Measures

The IO will take actions, either directly or through Supporting Entities, to implement conservation measures related to the protection of existing habitat and the enhancement and restoration of habitat within the identified restoration opportunity areas (ROAs) and conservation zones, as well as within other areas in the Plan Area, as described in Chapter 3, *Conservation Strategy*. These measures will largely involve the acquisition of habitat lands, the restoration or enhancement of habitat conditions, and the management and maintenance of habitat lands. The IO will work with, and may contract with, the Delta Conservancy or other Supporting Entities to carry out the conservation measures associated with habitat protection and restoration.

7.3.1.1 Acquisition and/or Lease of Property Interests

Pursuant to the authorities of the Authorized Entities, the IO may acquire interests in real property to facilitate the implementation of a habitat protection and/or restoration conservation measure. Similarly, under the direction of the IO, Supporting Entities that have been selected to help implement such conservation measures may also acquire interests in real property, as described in Chapter 3 *Conservation Strategy*. The tasks related to the acquisition of fee interest and/or conservation easements, for the purpose of habitat protection, restoration, and creation, will include, among other things:

- Routine "due diligence" review of real property;
- Biological "due diligence" to assess habitat/restoration values;
- Appraisal of property, including oversight of the appraisal process;
- Negotiation and execution of the transaction; and
- Receipt of title or easement to lands.
- Select appropriate mechanism or instrument to ensure the protection of conservation lands.

The IO may, through an Authorized Entity or other Supporting Entity, acquire or lease lands or facilities for the purpose of conducting scientific research and monitoring, housing administrative offices and equipment, or undertaking other activities as necessary to administer and implement the measure. Interests in land acquired pursuant to the BDCP may be conveyed to the Delta Conservancy, DFG, FWS, or other Supporting Entities, as appropriate.

ED_000733_DD_NSF_00012362-00029

7.3.1.2 Management of Land

The IO will oversee the management and maintenance of lands acquired for conservation purposes, as described in Chapter 3 *Conservation Strategy*. The IO may select Supporting Entities to carry out such management and maintenance activities. Tasks associated with land management will generally include:

- Habitat management;
- Invasive species control;
- Security patrol;
- Liaison with neighboring landowners;
- Payment of [description of appropriate in lieu payments, e.g., property taxes]
- Enforcement of easement terms and conditions;
- Mosquito abatement;
- Management of vegetation on flood control facilities to maintain flood flow capacity;
- Species and habitat monitoring;
- Public access management;
- Emergency response;
- Safety of nearby aircraft operations;
- Research activities;
- Educational services; and
- Agricultural lease management.

DRAFT

7.3.1.3 Maintenance of Facilities and Improvements

The IO will oversee the maintenance and operation of all facilities and improvements associated with lands acquired for any BDCP purpose, including for the conservation of habitat, as described in Chapter 3, *Conservation Strategy*. At the direction of the Implementation Board, the IO may also oversee the maintenance of facilities and improvements on lands acquired for the purpose of satisfying mitigation obligations adopted through the environmental review process for the BDCP.

7.3.1.4 Funding of Activities of Other Entities

The IO may direct funds to other entities (such as local governments engaged in regional conservation planning processes), subject to appropriate conditions and oversight, to implement habitat and species conservation efforts, both inside and outside the Plan Area, that help advance

ED_000733_DD_NSF_00012362-00030

the biological goals and objectives of the BDCP, as described in Chapter 3, *Conservation Strategy*.

7.3.2 Implementation of Water Operations Conservation Measures

7.3.2.1 Implementation of Water Operations Conservation Measures and the Operation of Water Facilities

Implementation of water facilities and water operations conservation measures as described in Chapter 3 *Conservation Strategy* will be the responsibility of DWR and Reclamation, or entities with whom they may contract, consistent with their existing responsibilities and authorities.

7.3.2.2 Annual Reporting and Planning for Water Operations

Planning and reporting requirements related to water operations are set out in Section 6.2, *Compliance and Progress Reporting*. The Program Manager will post on the BDCP website all plans and reports, including subsequent revisions to those plans or reports, required under Section 6.2, including the Annual Water Operations Strategy and the Annual Water Operations Report. As part of those postings, the Program Manager will include information, on a daily basis, about planned and actual water diversions, including updates on revisions to the Annual Water Operation Strategy that are made through the Seasonal Operations Strategy process. An accounting of actual diversions, including daily, weekly, monthly, and yearly operational levels, will also be posted. The Program Manager will describe and explain operational changes, including departures from planned or anticipated diversion levels, in terms that are understandable to the general public.

DRAFT

7.3.3 Implementation of Other Conservation Measures

The IO will be responsible for the implementation of other conservation measures, including conservation measures designed to address other stressors, as described in Chapter 3, *Conservation Strategy*. The IO may implement these other conservation measures either directly or through Supporting Entities, which may receive funds through the IO to carry out such actions. Supporting Entities, for instance, may help implement other stressor conservation measures that reduce the adverse effects toxic contaminants, nonnative predatory species, low dissolved oxygen zones, and entrainment unrelated to covered activities.

7.3.4 Management of Biological Monitoring, Scientific Research, and Reporting Programs

At the direction of the Program Manager, the Science Manager, in coordination with the IEP Coordinators and the MAST, will be responsible for the overall development, management and oversight of the BDCP biological monitoring and research program, including the implementation of monitoring-related activities, as described in Chapter 3 *Conservation Strategy* (Section 3.6 *Monitoring and Research Program*).

ED_000733_DD_NSF_00012362-00031

The Science Manager will identify technical staffing needs and requirements necessary to adequately implement the biological monitoring program. The Science Manager will enlist the assistance of the Interagency Ecological Program (IEP) in carrying out the monitoring program. The IO, through the Science Manager, will establish the framework for the monitoring program (*e.g.*, scope, methodologies, and protocols), in coordination with IEP and the fish and wildlife agencies, Delta Science Program, and Supporting Entities, as appropriate. The Science Manager, in coordination with the IEP and in collaboration with the Adaptive Management Group (as described in Chapter 3) will assemble, synthesize, and analyze the results of BDCP monitoring and targeted research efforts and integrate the results of new and relevant scientific research and studies conducted by other parties.

The Science Manager will also manage the BDCP research program, as described in Chapter 3 *Conservation Strategy* (Section 3.6 *Monitoring and Research Program*), in coordination with the IEP agencies and the Delta Science Program (DSP). The BDCP Science Manager, with the support of the IEP MAST and DSP and concurrence of the federal and State fish and wildlife agencies, will identify research priorities to address specific uncertainties, and will administer a process to select and coordinate researchers who will be involved in the program. In addition, the Science Manager, in coordination with the IEP and in collaboration with the Adaptive Management Group, will be responsible for the compilation and synthesis of the results of studies and analysis undertaken by other entities and organizations that are assisting in the implementation of the Plan. The Science Manager, through the IEP, will also coordinate BDCP funding for research by other entities and organizations, as described in Section 3.6 *Monitoring and Research Program*.

DRAFT

The Program Manager will look to the Delta Science Program and Independent Science Board for science support and review. As appropriate, the Science Manager will seek and obtain input and advice from independent scientists through the Delta Science Program and other science programs. The Science Manager will ensure that all proposed adaptive management changes are subject to independent scientific input and/or review prior to approval and implementation in accordance with Section **3.7.2.1.1**. Matters relating to the conduct of scientific reviews, and the acquisition of independent scientific advice to assist in the implementation of the BDCP, shall be conducted in a manner that ensures their independence and scientific integrity. The Science Manager will work with the Lead Scientist for the Delta Science Program and IEP Lead Scientist to ensure that BDCP science activities, reporting, and reviews are coordinated with other science activities being conducted in the Delta.

The Program Manager will track plan implementation actions and carry out the reporting requirements of the Plan, as described in Section 6.2 *Compliance and Progress Reporting*. Reports prepared by the IO will include, among other things, the results of monitoring and research, assessments of overall plan performance, and an accounting of the distribution and expenditures of funding associated with the various entities engaged in plan implementation activities. See Section 6.2 *Compliance and Progress Reporting* for specifics on reporting

ED_000733_DD_NSF_00012362-00032

requirements. The Program Manager will ensure that all such reports are posted in a timely manner on the BDCP website.

The Program Manager may enlist one or more of the Authorized Entities, Supporting Entities, or consultants, as appropriate, to assist in monitoring activities, data analysis, and scientific research.

7.3.5 Management of the Adaptive Management Program

The Science Manager will manage the BDCP adaptive management program, as described in Chapter 3 *Conservation Strategy* (Section 3.7 *Adaptive Management Program*). The Science Manager will establish and chair an Adaptive Management Group that will work with the IEP MAST to assemble, synthesize, and analyze the results of BDCP monitoring efforts and integrate the results of new and relevant scientific research and studies conducted by other parties, including the Delta Science Program. Based on this information, the Science Manager will facilitate and coordinate discussion and consideration of adaptive management issues among the IO, Agency-Stakeholder Review and Coordination Team, Five Agency Group and the Stakeholder Council, and others, as part of the process of making decisions based on the adaptive management program.

The decision-making process for adaptive management changes, including the roles and responsibilities of the various entities in the BDCP implementation structure, is described in Section 3.7 *Adaptive Management Program*

DRAFT

7.3.6 Implementation of Measures in Response to Changed Circumstances

The IO will be responsible for identifying and responding to changed circumstances, as described in the BDCP, and for implementing the responses set out in the Plan to address those changed circumstances, as described in Section 6.3 *Regulatory Assurances and Changed Circumstances and Unforeseen Circumstances*. The Program Manager will establish a process to ensure timely engagement of the Implementation Board, Agency-Stakeholder Review and Coordination Team, Five Agency Group, and the Stakeholder Council when a changed circumstance has been identified and a response to such changed circumstances is required.

7.4 REGULATORY COMPLIANCE RELATED TO BDCP IMPLEMENTATION

The Program Manager, through the IO, will be responsible for ensuring that the BDCP is properly implemented, including ongoing compliance with the elements of the Plan and the terms and conditions of the associated regulatory authorizations. The IO will also identify, seek, and obtain from State and federal agencies any other regulatory permits or authorizations that are

ED_000733_DD_NSF_00012362-00033

necessary to effectuate Plan implementation. To further ensure that the BDCP is being properly implemented over time, the IO will maintain regular contact with fish and wildlife agencies.

7.4.1 Maintaining Permits/Authorizations and Obtaining Amendments

The IO will establish a process to ensure compliance with the terms and conditions of the BDCP and its associated regulatory authorizations. If amendments or modifications to any of these regulatory authorizations become necessary, the IO and the relevant Authorized Entities will work with the applicable agency(ies) to develop the necessary documentation to support such amendments.

7.4.2 Obtaining Additional Regulatory Authorizations

In addition to take authorizations issued under the ESA and the NCCPA, other State and federal regulatory authorizations (e.g. water rights) will be required to implement certain BDCP actions. The IO will oversee efforts to obtain any such regulatory authorizations that are necessary for the implementation of BDCP actions. The IO will generally assume responsibility for identifying and seeking such regulatory authorizations, unless the applicable Authorized Entity chooses to do so.

DRAFT

The EIR/EIS for the BDCP will provide sufficient environmental review and analysis of the proposed adoption of the Plan by DWR, CVP-related actions undertaken by Reclamation, and the proposed issuance of take authorizations by the State and federal fish and wildlife agencies pursuant to the Plan. The EIR/EIS may also provide sufficient environmental review to support other anticipated federal and State regulatory authorizations. However, additional NEPA and CEQA review, as well as compliance with other environmental laws, will be necessary for a number of BDCP-related actions.

The IO will oversee, monitor, and secure State and/or federal authorizations and conduct appropriate environmental review necessary for the purpose of implementing BDCP conservations measures. In the event that a Supporting Entity assumes responsibility for obtaining such authorizations, the IO will assist that entity in its efforts. Compliance with the following laws and regulatory processes will likely be necessary for certain BDCP actions:

- Sections 404 and 401 of the Clean Water Act;
- Sections 10 (33 USC 403) and 14 (33 USC 408) of the Rivers & Harbors Act of 1899;
- Section 1602 of the California Fish and Game Code (Streambed and Lakebed Alteration Agreements);
- Section 106 of the National Historic Preservation Act;
- Encroachment permits from the Central Valley Flood Protection Board and reclamation districts to conduct work on levees;

ED_000733_DD_NSF_00012362-00034

- Federal Energy Regulatory Act compliance through the Federal Energy Regulatory Commission; and
- The National Environmental Policy Act and the California Environmental Quality Act, as necessary for certain project-related actions.

This list is not intended to be comprehensive and the Program Manager will be responsible for compliance with any additional regulations necessary for Plan implementation.

7.5 PUBLIC OUTREACH

The IO will implement a public outreach and education program to promote public awareness and provide opportunities for public input on matters concerning plan implementation. General objectives of the outreach program will be to:

- Promote public awareness of and understanding about the plan's purpose, specific conservation measures and their implementation;
- Provide streamlined and timely access to information;
- Provide opportunities to engage with decision-makers; and
- Maintain a transparent process for understanding, clarifying and addressing public input and comments.

DRAFT

Particular emphasis will be placed on outreach efforts focused on the following stakeholders: Delta residents, including landowners, farmers, and business owners; environmental community; agricultural community; boaters; commercial fishing interests; recreational anglers; local governments; reclamation districts; irrigation districts; public utilities; public and private landowners adjacent to BDCP conservation areas; and Native American tribes.

The public outreach and education program will include, at a minimum:

- **Informational Material.** The preparation and distribution of general information materials such as reports, quarterly electronic newsletters, and issue-specific fact sheets in timely manner so as to facilitate public understanding and meaningful public input.
- **Interactive Website.** Development and maintenance of an interactive website that provides real-time access to information, updates regarding implementation activities, and expanded opportunities for public engagement and input. Visual elements such as maps and webcasts will be used to further aid information sharing and public understanding.
- **Speakers Bureau.** Presentation of BDCP implementation information to various groups and at public meetings that occur throughout the state, as well as targeted audiences including Delta communities, Tribes, and specific statewide stakeholder interests.

ED_000733_DD_NSF_00012362-00035

- **Annual Public Workshops.** Commitment to annual public workshops and others as needed to provide timely opportunities for public dialogue, input and comment regarding a wide range of implementation issues.
- **Environmental Justice.** An environmental justice outreach program will be integrated into overall outreach activities described above to provide minority and low-income communities in and near the Delta with access to information about the plan's implementation and opportunities for input. Outreach techniques include creating and maintaining a dedicated multilingual web page, providing translation services at public workshops and community presentations, and contacting ethnic media outlets.

DRAFT

ED_000733_DD_NSF_00012362-00036