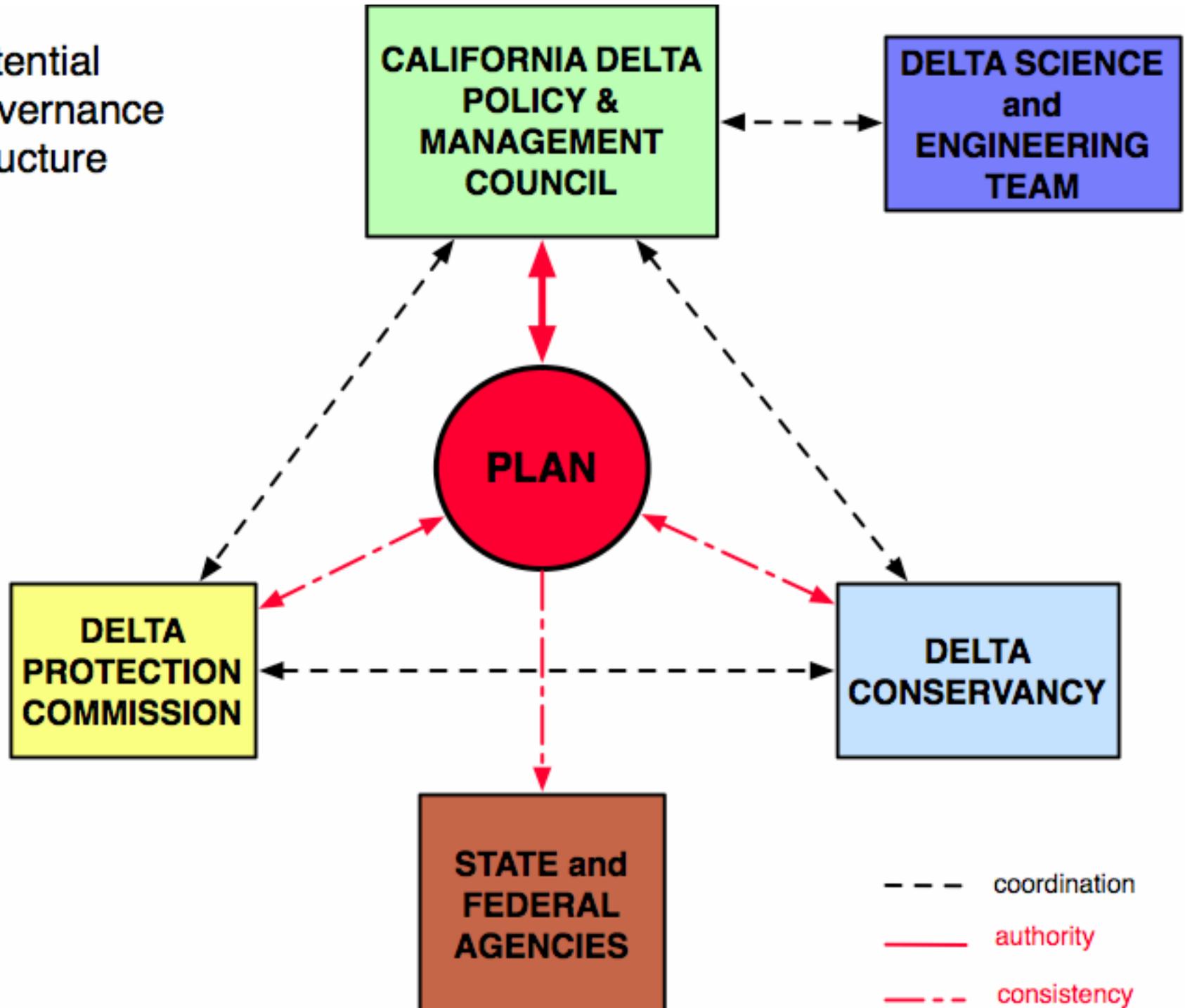


Potential
Governance
Structure





CONCEPTUAL STRATEGIES FROM THE GOVERNANCE AND FINANCE WORK GROUP

The following pages are a collection of conceptual strategies developed by the Governance and Finance Work Group in response to recommendations contained in the Blue Ribbon Task Force Vision for the Delta.

These strategies fall into the following categories:

- ◆ The Plan
- ◆ Consistency with the Plan
- ◆ Adaptive Management
- ◆ California Delta Policy and Management Council
- ◆ Council Membership
- ◆ Delta Protection Commission
- ◆ Delta Conservancy
- ◆ Delta Science and Engineering Team
- ◆ Principles of Financing
- ◆ Environmental Justice

THE PLAN

Objectives:

- ◆ Identify State Interests relevant to the Delta Vision to include in the Plan.
- ◆ Establish targets and mechanisms to manage for the Delta ecosystem as part of a healthy estuary
- ◆ Establish targets and mechanisms to manage for water supply reliability in concert with other statewide initiatives
- ◆ Establish State land use interests in and around the Delta, especially those which impact the ecosystem, water reliability, and flood concerns
- ◆ Provide a mechanism to ensure adaptability and resiliency in governing the Delta
- ◆ Tier from the Strategic Plan

Vision Recommendations:

Proposed Approach:

The proposed approach is to develop a Plan which provides details on how to manage towards attainment of the co-equal goals as well as identified land use issues in the Delta region. The California Delta Policy and Management Council (Council) will draft the Plan – tiering from the BRTF’s Strategic Plan – and oversee the Plan and its implementation. The Council will ensure compliance with the Plan, resolve conflicts in Plan implementation, and revise the Plan as conditions warrant. To ensure implementation of the Plan, all Federal, state, and local entities that impact the proposed Plan will be required to govern consistently with the Plan.

The Plan will address the following to ensure coordination, cooperation, consistency and transparency in decision making:

- Flows into and out of the Delta, including upstream reservoir operations
- Ecosystem restoration and management targets
- Water quality for urban and agriculture use
- Watershed management
- Flood control and management
- Floodplain protection
- Water transfers and exchanges
- Storage issues, both groundwater and surface
- Conservation and recycling
- Regional cooperation in achieving both state and local land use objectives
- Preserve local land use jurisdiction over matters of local concern
- Federal and state consistency with the Plan
- Adaptive Management Planning issues

Some of the elements described above are already addressed in plans, legal requirements, contracts and other mechanisms. The Plan will borrow from those where possible, and recommend changes needed to ensure consistency and achieve the objectives of the Vision and Strategic Plan. The Plan will also

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provide guidance and a framework for the functions of the DMC, DPC, and Delta Conservancy (as proposed), and provide an institutional framework that requires cooperation and collaboration among State and Federal entities to achieve the Plan objectives.

The Council will provide an annual report to the Governor and the Legislature on the effectiveness of the Plan in meeting objectives in the Delta.

Basis in the Vision:

Insert language from the Vision

Basis for Proposed Strategy(ies) and Outstanding Issues:

Establishment of the Plan is considered the best vehicle for ensuring adaptability, resilience and clarity on how to manage for the attainment of Delta Vision co-equal goals

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CONSISTENCY WITH THE PLAN

Objectives:

- ◆ Give the Plan a strong and robust legal foundation to drive consistency and ensure resiliency.
- ◆ Establish a legal mechanism to ensure that federal, state, and local actions are consistent with the plan

Vision Recommendations:

Proposed Approach:

The proposed approach is adopt a legal mechanism that gives the Plan legal significance so as to require governance actions among all levels of government to be consistent with the Plan. The methods to obtain legal consistency are:

- a) develop the Plan in the context of the Coastal Zone Management Act (CZMA) which would require the federal government to approve of the Plan in order to obtain federal agency consistency in the context of the Plan;
- b) adopt state legislation that gives the Plan legal significance for State and local agencies and directs agencies to take actions consistent with the Plan.
- c) Adopt federal legislation that give the plan legal significance and directs agencies to take actions consistent with the Plan; and
- d) adopt a contract between state and federal agencies that gives the plan legal significance and ensures that agency action will be consistent with the Plan.

These consistency mechanisms could be combined in some ways to give the Plan legal significance among various governing entities. For example, state legislation could be used to ensure state and local consistency with the Plan while a contract mechanism could be used to obtain federal consistency with the Plan.

Basis in the Vision:

Insert language from the Vision

Basis for Proposed Strategy(ies) and Outstanding Issues:

- Establishment of a legal mechanism to ensure federal, state, and local consistency with the Plan is key component to ensure that the components of the Plan will be carried out in a logical and coordinated fashion
- For the Plan to succeed, all agencies charge with implementation must act in ways that support the Plan rather than undermine the Plan or actions of other agencies.

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ADAPTIVE MANAGEMENT

Objectives:

- ◆ Develop a program that allows for flexible management actions to meet State Interests in the Delta.
- ◆ Develop a governance structure that allows an adaptive management to thrive in the context of well defined State interests.
- ◆ Establish targets, goals, and performance measures that guide implementation actions that are in line with identified State Interests.
- ◆ Adaptive Management actions would be overseen by the California Delta Policy Council
- ◆ Provide a forum for collaborative adaptive management

Vision Recommendations:

Proposed Approach:

The proposed approach is to develop an Adaptive Management program that will provide the implementation actions needed to achieve identified State Interests in the Plan. Adaptive management explicitly recognizes the existence of uncertainty, documents hypotheses about the response of systems to management intervention, monitors actual responses, and adjusts management actions over time.¹ Successful adaptive management must function in the context of a consistent management structure where regulatory constraints (such as permitting), resource utilization (staffing and funding) and monitoring efforts (scientific analysis) are easily manipulated in the context of a the adaptive management plan. Some components of a large-scale adaptive management plan may be best addressed in *active* adaptive management while other components may be best addressed in *passive* adaptive management. The adaptive management plan is effective only in the context that federal, state, and local consistency with the plan is ensured. The Council will approve and oversee adaptive management efforts.

Basis in the Vision:

Insert language from the Vision

Basis for Proposed Strategy(ies) and Outstanding Issues:

- Adaptive management provides an approach to managing resources in systems characterized by complex interactions, limited knowledge, high uncertainty, and rapid change.
- An adaptive management plan is the key component to manage a system with numerous variables and limited understanding of the effect of each variable.
- Adaptive management is an accepted scientific mechanism for managing a complex ecosystem

¹ Failing, L., et al. (2004). "Using expert judgment and stakeholder values to evaluate adaptive management options." *Ecology and Society* 9(1): 13.

CALIFORNIA DELTA POLICY AND MANAGEMENT COUNCIL

Objectives:

- ◆ Establish a governing body charged with carrying out the Delta Vision’s co-equal goals of ecosystem restoration and water supply reliability.
- ◆ Establish a governing body charged with overseeing the development and implementation of the Plan.
- ◆ Establish a governing body that has the authority to ensure federal, state, and local consistency with the Plan.

Vision Recommendations:

Proposed Approach:

The proposed approach is to develop a governing body that is the custodian of the Plan. As custodian, the Council will develop the plan, ensure implementation of the Plan, and ensure that the plan succeeds. The Council is charged with balancing the co-equal objectives in the Plan. The Council will meet on a regular basis (to be determined) to assess the effectiveness of the Plan, will have a staff to conduct day to day oversight of the Plan, and will have the authority to modify the Plan, as needed, to reflect changed conditions and changed management goals. Where federal, state, or local agencies fail to implement the plan as required or act consistent with the Plan, the Council will take appropriate action, including legal action.

Two primary options exist for day to day implementation of the Plan. One is for the Council to subsume those authorities from other State agencies considered necessary to achieve the co-equal goals. The second is to leave those responsibilities with existing State agencies, identifying where the resources and/or authorities of those agencies need to be augmented to successfully support achievement of the co-equal goals. The recommendation from the Governance and Finance Work Group is the latter, with provisions in the Plan for the Council to take over these responsibilities if an agency is not adequately fulfilling its obligations.

Another key issue is how water will be managed to meet co-equal goals. This responsibility should rest with the Council. Regardless of decisions about the best approach to operating the State and Federal projects, decisions will be required to determine how much water goes through the Delta conveyance system(s), when and in what locations. It is likely that during some periods decisions will be weighted towards the ecosystem and in other times weighted towards water supply in the process of meeting the co-equal goals.

There are at least two major approaches to these issues:

- (1) Water supply is made available for ecosystem function (mechanisms to make the supply available are numerous). The supply is then managed by the Council. The Council would direct the operating agencies (currently DWR and USBR, but could be a JPA or some other variation) to release its water assets upon request for ecosystem function purposes. Existing operating agencies (or its variant) would continue to manage water for legal compliance (assuming these can be aligned with the Plan’s goals) and for water use throughout the state

(including exports). This concept would be part of the Plan so the operating agencies would be required to comply.

- (2) Again assuming some water supply made available for ecosystem function, under this approach the supply for both the ecosystem function *and* other water components in the Delta (including in Delta use and exports) is managed by either (a) the Council; or (b) some derivative of the Council that is subject to Council oversight.

Basis in the Vision:

Insert language from the Vision

Basis for Proposed Strategy(ies) and Outstanding Issues:

- The Vision calls for a new entity to manage and achieve the co-equal goals
- The extent to which the proposed entity (Council) should subsume or simply oversee all authorities need to ensure attainment of co-equal goals needs to be resolved
- Removing existing authorities to carry-out the plan from existing agencies and vesting them in the Council may be difficult but should be anticipated if agencies are not fulfilling obligations to help achieve the co-equal goals.

CALIFORNIA DELTA POLICY AND MANAGEMENT COUNCIL MEMBERSHIP

Objectives:

1. Ability to reflect broad public and state interests
2. Ability to work together on complex policy issues
3. Ability to work with various state and federal agencies to achieve the co-equal goals

Vision Recommendations:

Proposed Approach:

The proposed approach to establishing Council membership is to follow the model of the Blue Ribbon Task Force. The Council should be comprised of individuals with extensive public policy experience who have no major interests in the outcomes and have the ability to work together to identify solutions in the best interests of the State. Members must be capable of making hard decisions and demonstrate independence from undue influence from special interests. Members must display the capacity to understand and balance the broad interests involved in achieving the co-equal goals.

To achieve the objectives noted above, the California Delta Policy Council Membership should be:

- A small body numbering between five and seven members
- Appointed by the Governor with Senate confirmation
- Ex officio (non voting) State agency members would include designated appointments from the Delta Protection Commission and proposed Delta Conservancy, as well as the Department of Fish and Game, Department of Water Resources and the State Water Resources Control Board
- Ex officio (non voting) Federal agency members would include designated appointments from the Department of Interior, Environmental Protection Agency, Corps of Engineers and National Oceanic and Atmospheric Agency
- Desired skills include legal, science and engineering, policy and governance
- Transparent and democratic appointment process
- Rotating term limits (five years) and balanced appointments
- Designation of the Chair through the appointment process
- Direct link with a Stakeholder/Public Advisory Group

Basis in the Vision:

Insert language from the Vision

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DELTA PROTECTION COMMISSION

Objectives:

Vision Recommendations:

- ◆ Protect State interests related to land use, economics and in-Delta natural resources
- ◆ Ensure consistency of local and regional land use plans with the Plan
- ◆ Ensure consistency of the Delta Management Plan with the Plan
- ◆ Ensure consistency of potential other regional plans (such as a National Heritage Area Plan) with the Plan
- ◆ Ensure consistency of HCPs and NCCPs with the Plan

Proposed Approach:

Two primary options have been considered. One is to expand the roles and responsibilities of the Delta Protection Commission, including revising its statutory authority as needed, to achieve the above objectives. The second is to retain the current statutory boundaries and responsibilities of DPC and use other means to achieve state interests in and around the Delta. In either case, the DPC would remain the lead organization in ensuring local and regional land use decisions are consistent with the state interests identified in the Plan. Without changing DPC's existing enabling legislation, sufficient latitude likely exists to strengthen DPC's role in coordinating and ensuring consistency between the Plan and local/regional land use, while supporting local economies and natural resources. Consistent with recommendations from DPC itself, the composition of the Commission should be expanded to include broader representation of State interests.

Basis in the Vision:

Insert language from Vision

Basis for Proposed Strategy(ies) and Outstanding Issues:

- Several options were originally identified to address land use coordination and consistency with State land use goals; the primary options included expanding the roles, responsibilities and authorities of DPC, a new entity which might be better suited to ensure land use consistency with the Plan, and a Delta Regional Council of Governments.
- In keeping with the stated direction in the Vision to use existing entities where possible, the recommendation is to rely on the DPC to undertake the tasks necessary to achieve the stated objectives
- It is not the intent of this recommendation to expand the DPC into the realm of making local land use decisions; rather it should review and comment on local and regional Plans to note how they should be modified, if necessary, to comply with the Plan; this authority will need to be added to the DPC through legislative action
- Clarity is needed on the process by which DPC would review local and regional land use plans for consistency with the Plan, and how disagreements with its findings could be resolved; most likely the latter will be resolved by the entity charged with oversight of the Plan.

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DELTA CONSERVANCY

Objectives:

- ◆ Purchase land as needed to implement the Plan
- ◆ Acquire agricultural and conservation easements to support ecosystem restoration and water reliability goals
- ◆ Utilize easements and other incentives to promote sustainable agriculture in the Delta
- ◆ Support regional and statewide recreation interests which bolster local economies
- ◆ Work closely with the co-equal goals entity to support ecosystem restoration activities

Vision Recommendations:

Proposed Approach:

Establish a free-standing Delta Conservancy, along with either a Delta Land Trust or a close working relationship with existing land trusts, to integrate and ensure state interests are met while addressing local needs and interests consistent with the Delta's designation as a unique and valued area. In the interim, while the Delta Conservancy is being established, enter into an agreement with the State Coastal Conservancy (SCC) to provide the services of a Conservancy. The SCC could utilize a council of local stakeholders during this period to ensure local representation on conservation projects.

Basis in the Vision:

Insert language from the Vision

Basis for Proposed Strategy(ies) and Outstanding Issues:

- Several options were originally identified to meet the stated objectives, including; a Delta Conservancy under the State Coastal Conservancy, a free-standing Delta Conservancy, combining the conservancy functions with the DPC, combining the conservancy functions with the co-equal goals entity and a free-standing non-profit
- The free-standing Delta Conservancy is recommended because it can provide a Conservancy with significant regional stakeholder involvement while still being required to meet State interests (as an entity under the Resources Agency)
- The Delta Land Trust, as a 501(c)3, will provide additional means to raise and distribute funding to achieve State interests
- Combining the Conservancy function with the DPC was considered by some as problematic due to the potential for conflicts of interest for an agency also responsible for land use decisions
- Combining the Conservancy with the co-equal goals entity could also be considered, but the free-standing Conservancy model has been used successfully in numerous locations throughout California, whereas combining it with the co-equal goals entity represents an approach with no track record of success; also, reporting requirements for Conservancies are extensive and may detract from the objectives of the co-equal goals entity

DELTA SCIENCE AND ENGINEERING TEAM

Objectives:

- ◆ Ensure scientific principles are incorporated into the development and implementation of the Plan
- ◆ Oversee scientific and engineering adaptive management activities
- ◆ Oversee and analyze proposed science, restoration and engineering projects in support of the co-equal goals
- ◆ Propose scientific and engineering alternatives to meet Plan objectives and goals

Vision Recommendations:

Proposed Approach:

Establish a technical team similar to the current Delta Independent Science Board (ISB). The Team will support the Council and act as an advisory body to the Council. The Team will meet on a regular basis and a hands-on approach to designating science and technical initiatives needed to support achieving the co-equal goals. They will also design and oversee the adaptive management program, including monitoring, evaluation and recommendations based on the results. The Team should be comprised of ecosystem scientists, engineers, social scientists, economists and representatives of other fields of expertise considered necessary to its charge.

Basis in the Vision:

Insert language from the Vision

Basis for Proposed Strategy(ies) and Outstanding Issues:

- The objective for this Team is to provide technical advice to development and implementation of the Plan
- The second objective is to provide an external check on the proposed scientific and engineering aspects of the Plan

PRINCIPLES OF FINANCING

Objective:

Vision Recommendations:

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- ◆ Fund the Council to fulfill implementation of co-equal goals
- ◆ Invest in sustainability of the Delta ecosystem and water supply reliability
- ◆ Create value for those who are expected to pay for projects
- ◆ Optimize existing funding sources to meet Delta Vision needs in both the short and long-term
- ◆ Identify potential new sources of funding for capital projects and ongoing vision management

Proposed Approach:

The Council must identify the projects, programs, and actions that will be required for a successful Plan implementation. The identified projects, programs, and actions will require specific types of funding. The categorical list of projects, programs, and actions includes:

- ◆ *Acquiring Ownership Interests in Lands* – the Plan will require habitat restoration efforts, flood protection, flood plain management, and development of new projects that all will require obtaining various ownership interests in land. The mechanisms to acquire land as well as the nature of the ownership interest in the land will vary according to the type of project or activity identified. As such, the financing mechanism for each project – depending on the need and the beneficiary – will differ.
- ◆ *Levee Improvements and Maintenance* – levees serve multiple purposes including flood protection, water supply reliability, ecosystem habitat, transportation (both in water and on land), utility easements, etc. The multiple purposes served by levees links multiple beneficiaries to levee improvements. Identifying the amount of benefit accruing to each beneficiary through the levee improvement is difficult. Assessing future benefits of levee improvements in the context of climate change is also difficult. Levee improvements and maintenance is necessary to provide a sustainable Delta ecosystem and reliable water supplies.
- ◆ *Floodplain Improvements* – floodplain improvements are an essential element of the Plan. The improvements have both current and future benefits as they provide, among other things, critical habitat for certain species, flood protection, and a potential buffer against climate change impacts associated with sea-level rise. Identifying beneficiaries of these improvements is difficult.
- ◆ *Emergency Management Actions* – emergency management actions in the Delta associated with flood control and seismic activities are critical components of a resilient Delta Vision. Effective emergency response in the Delta benefits all interests that use the Delta.
- ◆ *Studies and Reports for Understanding Climate Change* – climate change impacts to Delta ecosystem sustainability, water supply reliability, and flood control are not well understood. This analysis has broad-based benefit that will be difficult to identify and nearly impossible to quantify.
- ◆ *High Priority Ecosystem Revitalization Projects* – ecosystem revitalization projects include habitat restoration, food chain improvement, and reducing stressors on identified species. These projects have widespread benefits and are critical for a sustainable Delta.
- ◆ *Water Supply Reliability* including improvements in water conveyance, groundwater storage, surface water storage, conservation programs, and water recycling and reuse – water supply

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reliability activities have potential benefits to both the environment and entities that use water that impact the Delta.

Process and Principles for Financing Identified Projects:

The Council will determine as best as possible actions that are necessary to further the Delta Vision. The Council will then determine to whom the benefits accrue of projects, programs, and actions in the context of system-wide sustainability. The Council will seek voluntary payment for identified projects. Projects proposed by willing beneficiaries that further the Delta Vision will also be developed. The Council will then work with identified beneficiaries to determine who will pay for the projects, programs and actions that are not part of a voluntary payment project. Where projects, programs and actions are identified that are essential to implementing the Delta Vision, negotiation among identified beneficiaries will be needed to determine how payments will be allocated.

In determining the benefits of a project, program or action, the Council will consider the following principles:

1. Create value for identified beneficiaries
2. Make long-term sustainability the primary value for beneficiaries.
3. Broaden the base of beneficiaries and identify where possible
4. Negotiate payment for projects, programs, and actions among beneficiaries

The Council will incorporate the following financing mechanisms for projects identified in the Plan:

- ◆ State general obligation bonds
- ◆ Pay-as-you-go financing
- ◆ State general fund appropriations
- ◆ Federal appropriations
- ◆ Self-liquidating general obligation bonds
- ◆ State agency revenue bonds
- ◆ SWP and CVP contractor charges
- ◆ Joint powers authority revenue bonds
- ◆ Activity fees
- ◆ Water resource fee or charge

Basis for Proposed Strategy(ies) and Outstanding Issues:

1. How much will the Council be involved in raising fees and implementing actions that are located with projects that impact the Delta but are not located in the Delta?

ENVIRONMENTAL JUSTICE

Objective:

Vision Recommendations:

1. Incorporate Environmental Justice expertise into governance bodies overseeing the Delta
2. Ensure Environmental Justice issues are adequately addressed in Delta decision making processes by screening proposed actions for impacts
3. Ensure equitable benefits accrue and disproportionate impacts are prevented in disadvantaged communities

Methods:

The following issues should be evaluated as part of Delta decision making processes to ensure and document that no unintended, disproportionate impacts on disadvantaged or environmental justice communities ensue:

1. Public health impacts resulting from mercury or other water contaminants in Delta waters
2. Impacts on drinking water quality, both surface and groundwater supplies
3. Impacts on potable drinking water availability due to any proposed changes in surface or groundwater rights or changes in current patterns of use, and the potential for communities currently lacking potable water to benefit from changes in Delta policies
4. Targeted assessments of risk to low-income communities and communities of color from catastrophic events and of the potential for these communities to benefit from emergency response planning
5. Effect on employment opportunities or other community resources or the potential to improve economic conditions including job creation, resulting from any policy changes of Delta Vision
6. Any changes in the cost of domestic water and the impacts on affordability for low-income communities and communities of color
7. Ecosystem changes that may impact access to cultural resources, especially salmon and other river-related resources critical to maintaining particular Native American cultures.
8. The impacts on land-use, affordable housing and quality of life due to the proposed action(s).
9. Avoid regressive fees and taxes

Basis in the Vision:

[Insert language from Vision]

Basis for Proposed Strategy(ies) and Outstanding Issues:

This set of guidelines and key impacts to be evaluated was developed and broadly adopted by the Stakeholder Coordination Group during the preparation of options for the Delta Vision.

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PROPOSAL FOR THE CO-EQUAL GOALS ENTITY – THE CALIFORNIA DELTA POLICY AND MANAGEMENT COUNCIL
 FOR DISCUSSION PURPOSES ONLY

5/27/08

Elements Common to Any Co-Equal Entity:

(1) ensure consistency with the Ecosystem and Water Management Plan (Plan), (2) build on a robust legal foundation, (3) balance ecosystem and water supply needs, (4) have the “ability to impose fees”, (5) incorporate adaptive management, (6) have responsibility to revise the Plan, and (7) evaluate the Plan’s effectiveness at regularly scheduled intervals (e.g., every five or ten years)

Issues to be Considered Further:

(1) should the Co-Equal Goals entity be established constitutionally or legislatively, (2) should legislation be established to ensure all state agencies will conform actions to be consistent with the Plan, (3) should the entity be a one-stop shop for permitting activities associated with the Plan, (4) should water operations be taken out of DWR?, (5) should the Bureau of Reclamation divest itself from CVP operations so both the SWP and CVP can be governed by the same entity?, (6) how should the budget to implement the Plan be developed and distributed (e.g., Council sets budget priorities, Council holds budget authority for agencies involved in implementing the Plan, Council provides funds to agencies from fees it manages to accomplish priority work, Council works closely with Departments to establish budgets needed to support the Plan)?

	STRAW ENTITY 1	STRAW ENTITY 2	STRAW ENTITY 3	STRAW ENTITY 4	STRAW ENTITY 5
Council	<ol style="list-style-type: none"> 1) panel (e.g., Task Force) with no full time staff 2) report card to Legislature and Governor 3) no regulatory authority 4) no appellate authority 5) gain appropriations 6) no full-time staff 7) no incentives 8) no scientific role 		<ol style="list-style-type: none"> 1) freestanding, appointed Council with full time staff 2) ongoing, day-to-day coordination, delegation and authority over implementing the Plan 3) regulatory authority (e.g., permitting authority consistent with the Plan, enforcement) 4) conflict resolution and appellate authority 5) revenue creation (e.g., impose fees) 6) develop and employ incentives in support of achieving Plan objectives 7) work with the Delta Science and Engineering Team to coordinate scientific experimentation, monitoring and assessment 8) coordinate and oversee adaptive management and revisions to the Plan 9) ensure federal, state and local consistency with the Plan 10) provide budget reporting on expenditures associated with the Plan 		<ol style="list-style-type: none"> 1) new agency with large full-time staff 2) oversight and direct implementation 3) subsumes selected existing agencies’ authority 4) quasi-judicial authority 5) revenue creation, bonds and assessments 6) large full-time staff 7) employ incentives and audit and consequences 8) conduct scientific experimentation, monitoring, and assessment
Relationship with State and Federal Entities	<ul style="list-style-type: none"> ◆ Existing agencies utilized to achieve Plan goals 		Existing agencies retain current authorities with significantly enhanced capabilities and resources needed to work with the Council to achieve Plan goals		<ul style="list-style-type: none"> ◆ Selected existing agency roles and responsibilities are subsumed by the new entity