

**Alternative Strategic Plan Element  
Bay Delta Governance and Finance  
April 28, 2008  
State and Federal Water Contractor Staff Discussion Paper**

**Purpose**

This discussion paper is the second version of a paper developed by staff of leading SWP and CVP contractors active in Delta resource issues for the past two decades. This version of the paper provides additional detail as requested by the Blue Ribbon Task Force and is formatted in accordance with the BRTF's Invitation to Participate in Developing Alternative Elements of the Strategic Plan.

**Blue Ribbon Task Force Findings**

The Governor's Blue Ribbon Task Force (BRTF) has determined that current governance of the Delta system cannot achieve the Delta Vision and has proposed two new institutions to improve management of the Delta. One institution would address the BRTF's two co-equal priorities of water supply and ecosystem restoration and another would address land use decisions, shaping Delta landforms to be consistent with the BRTF's Vision.

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Creating new governance institutions to address Bay Delta problems will be difficult at best. A strategic approach that maximizes use of existing institutions, with modifications and consolidations to improve efficiency and address shortcomings, is the path to success. Models for which there's no broad base of support or have fatal structural flaws should be avoided.

The BRTF identified five areas needing governance reform for which there is broad agreement among the stakeholder and agency community:

1. *"Integrating the two critical co-equal values of ecosystem and water system functions into policies and investment choices, while incorporating the other values society seeks through the Delta.*
2. *Shaping land forms and land uses with the Delta and critical nearby areas consistent with this vision.*
3. *Integrating management of Delta-relevant water systems and ecosystem protection and improvement projects, including the authority to adjust rapidly to achieve the stated goals.*

4. *Shaping decisions in the Delta watershed which affect Delta water flows (quantity, timing and quality)*
5. *Establishing policies which improve water uses across California, including conservation, system efficiencies and improvements that lead to regional self-sufficiency, and permit the reasonable exchange of water among users.”*

## Summary of Proposal

Our proposal is focused on the governance reform needs the BRTF identified, above. This model builds on the success of the Vision process and provides continuity in achievement of the Vision over time. The form of the revised governance structure is shown in **Figure 1** and is summarized here, noting the major changes to the current governance structure:

- Creation of a permanent Bay-Delta oversight body (Bay-Delta Council) to provide for a continuing Delta Vision and promote consistent actions from regulatory and implementing agencies.
- Explore creation of a Consolidated Water System Operator, combining the ownership and operation of the State and Federal Water Projects in a combined, public agency of the state, regulated under existing resource protection law consistent with all other public water agencies.
- Creation of a Delta Conservancy to acquire lands and water for ecosystem restoration purposes.
- Creation of an independent science panel to advise all agencies on sound science necessary to address Vision objectives and assess Delta ecosystem needs and responses.
- Provision of additional power to the existing Delta Protection Commission to develop model land use ordinances and regulatory guidelines defining the state land use interest in the Delta consistent with the Vision which would be binding on local government general plans.

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## Proposal Detail and Discussion

### 1. Create a New Permanent Entity to Assure Vision implementation.

The Delta Vision process has been a widely lauded effort that has brought attention to seemingly intractable resource problems spanning jurisdictions of many agencies for which a successful collective response has been elusive. In order for the Vision to be achieved, some entity must be charged with assuring continuity between the Vision and the actions taken by individual state, federal and local entities. We propose that the BRTF model be made into a permanent presence as a Bay-Delta Council, continuing their oversight and strategic planning role to achieve the co-equal objectives of water supply and ecosystem health. State legislation to create a Delta Vision Council would

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be offered to continue to carry out the objectives of the Governor's Executive Order S-17-06 and the ongoing aspects of Water Code section 139.2, 139.4, and 79473, as well as coordinating the Vision with the Habitat Conservation Plan and Natural Communities Conservation Plan to be adopted out of the Bay Delta Conservation Planning process.

As envisioned, a Delta Vision Council would meet periodically for roughly six months every three years to 1) assess progress toward the Vision and identify areas and implementing agencies needing attention and improvement, 2) modify the Vision as justified by progress and evolving circumstances, 3) recommend any additional legislative action necessary to achieve the Vision. State legislation would require regulatory and implementing agencies to conform their activities in executing their duties under existing statutes to the maximum extent feasible with the Vision, and require those agencies to respond to critiques of those actions by the Council. The Council would retain a small, permanent staff to monitor the activities of regulatory and implementing agencies toward Vision achievement, as shown in **Figure 1**. The staff would also provide labor needed to staff the periodic review of the Vision and to provide institutional memory for the Vision through changes in Council membership.

The Council's role in affecting federal agency action is a challenge for any institutional framework formed under state law. Rather than seek federal legislation to try to accomplish this, which would likely raise serious sovereignty and precedent issues, we propose that the Council would invite the participation of the Secretary of the Interior or his/her designated representative, to sit as an ex-officio members of the Council, who acting as a federal liaison could then help assure that Interior agencies federal activities would conform to Vision objectives and act as the federal liaison to other federal agencies .

The Delta Vision Council would function in an organic fashion, meaning it would have the ability to suggest further institutional change should an oversight and coordination role prove

insufficient in Vision achievement. It would also monitor external change affecting the Delta and evaluate how the Delta's biological environment continues to evolve in response to modifications, intentional and otherwise.

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We believe that this oversight function is necessary and is an achievable improvement over creation of a new entity as proposed by the BRTF that would either duplicate or trump the regulatory functions of current regulatory entities, or add yet another layer of approvals necessary for positive action. We know of no example of any single entity with operational authority which has attempted to achieve the two coequal objectives of water supply and ecosystem restoration. Such

an entity would have even more serious conflicts of interest than now inherent in the existing Department of Water Resources, which has statewide water planning functions and operation of a large water project which serves only a portion of the State and is regulated by other State agencies of the Executive Branch. Separating water supply delivery and ecosystem health responsibilities avoids this conflict and substitutes it with creative tension. Nearly all water supply and ecosystem protection functions in other states are organized on this basis.

The current BRTF governance model likely faces an insurmountable barrier to implementation: a constitutional barrier of a state-sponsored entity having jurisdiction over federal entities. An oversight entity, such as the Delta Vision Council, on the other hand, would be more easily implemented as it does not trample existing legislative authority or face constitutional barriers. While some would say an advisory role is too impotent, we differ. The BRTF's work has been a great catalyst in defining the Delta's problems in a comprehensive fashion, in moving sets of solutions forward, and providing objective guidance to the Legislature and Governor. A continued oversight role, with the potential for further regulatory scrutiny should agencies and others not cooperate in implementing the Vision is surely an incentive for cooperation and a significant step in the right direction. Costs for such an entity would be modest, and staff for the entity currently exists within the State payroll supporting Delta Vision and CALFED.

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## **2. Operation and Oversight of a New Consolidated Water System Operator**

A Coordinated Water System Operator (CWSO) could significantly improve system efficiencies and flexibility, while reducing costs. The administration of the two projects, including current contracts, assets, liabilities and operating requirements would be divested to the CWSO. The CWSO would function under the direction of a Board of Directors that represents the direct

customers of the CWSO. The CWSO is envisioned as an independent special district, subject to all state and federal laws and regulations currently pertaining to the SWP and the CVP.

Delivery of water supply from upstream reservoirs and exported via the Delta is currently split between the Central Valley Project run by the United States Bureau of Reclamation and the State Water Project, administered by DWR. While the USBR and SWP coordinate their operations, their funding structures and customer bases are different. Additionally, their infrastructure endowments contrast, with the federal project having large amounts of upstream storage and the SWP having greater amounts of conveyance capacity. The SWP administration is also hampered by State contracting regulations, uncompetitive salary classifications and a long-standing blurring of DWR's ability to focus on its statutory duties, being both the designated state-wide water resource planning entity and operator of a critical water delivery system for the state. Divestiture and consolidation would also reduce conflict within the state's Executive Branch with two state agencies, the Department of Fish and Game and the State Water Resources Control Board regulating their sister agency, DWR. Divestiture and consolidation would also reduce conflicts at the federal level between USBR as a project operator and USFWS, both within the Department of the Interior, and the NMFS and Army Corp of Engineers, within the Commerce Department and Defense Department, respectively. With a consolidated public agency of the state, regulatory agencies would be free to exercise their resource protection responsibilities, as they do over other private and public utilities.

A consolidated public water agency such as a CWSO would allow the more efficient use of existing infrastructure (conveyance and storage). It could allow for consistent price signals in the marketplace with costs for water directly reflecting the cost of ownership and operation of the utility. This model is commonplace across the United States in both the energy and water supply sectors.

A CWSO would be regulated by the State Water Resources Control Board, which has the legal authority to address needed governance areas #3-5 as listed by the BRTF in their Vision and noted above. The SWRCB is empowered to regulate the beneficial and reasonable use of the state's water supplies, consistent with the public trust, and maintains reserve jurisdiction to alter water rights statewide to achieve its responsibilities. If additional resources, in the context of changing circumstances, are necessary to more effectively exercise this authority, those are expected to be less than those otherwise needed for a wholly new entity.

***Key to allowing for proper functioning of the SWRCB in its role for fulfilling the Delta Vision is adoption of an ecosystem vision.***

Key to allowing for proper functioning of the SWRCB in its role for fulfilling the Delta Vision is adoption of an ecosystem vision. This ecosystem vision must contain a Delta hydrodynamic regime grounded in an ecosystem restoration plan that seeks to integrate water supply functions of the Delta

with ecosystem health, resilient over the long term, particularly in light of expected climate

change impacts to hydrology, sea-level and water temperature. With such a plan the SWRCB has all the needed authority to order a flow pattern balanced between consumptive needs and ecosystem needs and can access water right holders to achieve that pattern. To date, the lack of such a consensus plan has left the SWRCB without a clear direction in which to more effectively exercise its considerable authority over water supply and quality in the Delta. The SWRCB has the ability to address the reasonableness of current water diversion points and order changes. It can also address the reasonableness of water uses and order alterations, consistent with water rights law.

Once an ecosystem vision has been developed out of Delta Vision, with adequate resources the SWRCB should be better able to exercise its statutory duties in that regard.

### 3. Create a Delta Conservancy

Ecosystem restoration as defined by the Delta Vision and further defined under the Vision's Strategic Plan, needs a new entity for implementation. To date, restoration efforts in the Delta have been largely pursued by entities that did not have restoration as their primary focus. The restoration was often a form of mitigation for another activity. Large, comprehensive, landscape-level restoration in the Delta recognizing diversity of habitat needs, and biological connectivity is necessary. A Delta Conservancy with the power to use public and private funds and purchase lands and water supply for restoration will be necessary. Land restoration can be integrated with flood protection needs and strategic levee investment, guided by an ongoing, evolving Delta Vision.

***Land restoration by a conservancy can be integrated with flood protection needs and strategic levee investment, guided by an ongoing, evolving Delta Vision.***

A Delta Conservancy could coordinate with regulatory agencies requiring mitigation for other projects in the Delta, allowing for greater restoration value for a given level of investment. Both the state of California and the federal government should share program costs. California's share of capital costs could be funded by general obligation bonds supplemented with existing restoration payments by SWP contractors and DWR (e.g., Four Pumps Agreement) and the federal government could fund capital costs from existing Central Valley Project Improvement Act restoration funds, direct appropriations, or other appropriate sources. A conservancy could also manage a mitigation bank, allowing for additional capital funding. Ongoing operations costs could be paid through a combination of sources including an endowment, state and federal appropriations, a portion of ongoing funding streams noted above.

### 4. Institutionalizing Sound Science

A governance model needs to institutionalize sound science, housed in an entity that is insulated from accusations of institutional bias, where peer-reviewed analysis can be conducted toward identifying scientifically reasoned options for achieving Vision objectives. CALFED has

made progress on this need and that function within CALFED could be absorbed into either the function of the Delta Vision Council or exist without direct ties to the Council.

Competing theories on Delta ecosystem, water management, levee integrity and other Delta problems could be vetted within the Science Program and the Program could serve as a forum for defining questions needing further evaluation.

Few barriers exist to providing this function, as it already largely exists within CALFED. Additional resources to evaluate questions related to the Vision objectives may be necessary but are not large in the context of the costs of inaction or action on any major issue.

## 5. Improving Land Use Planning

The Delta Protection Commission was established to play a larger guiding role in managing land use in the Delta. Its powers and representation could be expanded to incorporate Vision objectives. The Commission should update their Land Use and Resource Management Plan. The Governor's Office of Planning and Research and State Architect should be charged to develop model Delta land use guidelines outlining important statewide objectives consistent with Vision objectives that would be made binding for local governments.

Since the Delta Protection Commission currently exists, modestly expanding its role consistent with the Vision should be achievable. Further, having ultimate land use authority retained by local land use jurisdictions avoids a political fight over state vs. local land use control that would otherwise occur, involving major parties now not concerned with Delta issues.

## 6. Real Time Delta Management

Water quality objectives set by the SWRCB will need to recognize the new understanding of the native Delta ecosystem that calls for a more variable salinity environment. The current water delivery systems through the Delta compromise the ability to mimic historic natural conditions, as they conflict with water quality needed for human consumption and agricultural production. If a dual or isolated conveyance is constructed, more natural hydrologic regimes are available and water quality objectives can be set, accordingly.

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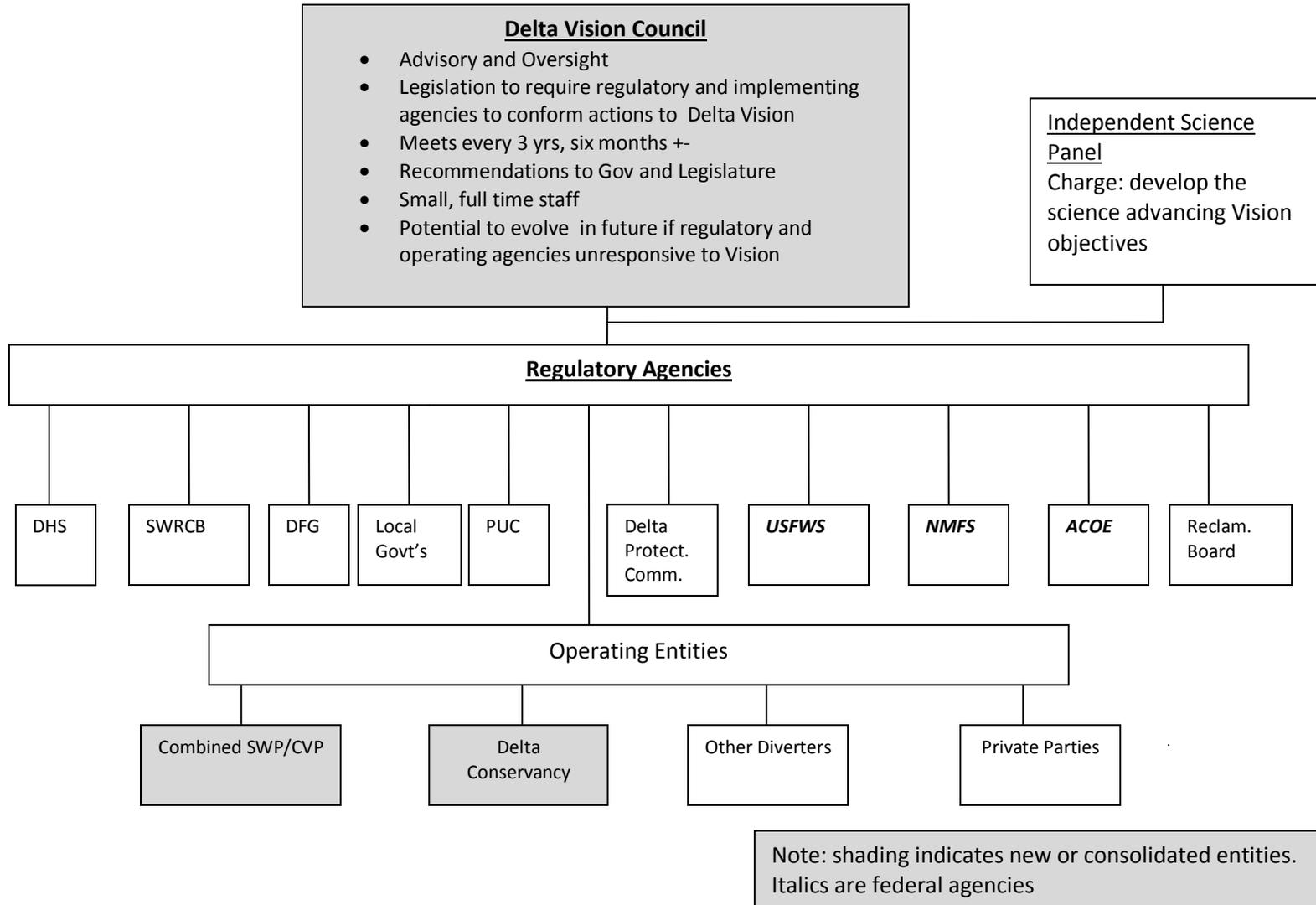
Regardless of the water quality objectives in existence at any juncture, opportunities will always exist to flexibly operate the two current water supply projects, the CVP and SWP, to provide either water quality, water supply or ecosystem enhancement, without detriment to and the possibility to enhance all these values, given circumstances that occur in most every year. Recognizing this, some type of institution, that could be delegated reasonable real-time

authority to alter water quality objectives and pumping plans, could prove useful in pursuing the Vision's primary coequal objectives of water supply and ecosystem health. Such an entity is under discussion within the BDCP process and we expect that those discussions will help further this concept.

At a minimum, an entity that translates scientific findings from the independent science entity into recommendations would be a valuable aid in reconciling often competing objectives. In other words, such an entity would make recommendations to regulatory authorities to flexibly operate and regulate the system, including exceeding baseline water quality objectives within specified ranges, to provide either a water supply, water quality or ecosystem benefit, or all simultaneously, provided it is consistent with the objectives underlying the basic water quality regulatory regime, and roughly equal benefits for the environment and water supply/quality are produced from these operational adjustments over time, consistent with Delta Vision's coequal goals of water supply and ecosystem health.

## **7. Finance**

We believe finance to be reasonably simple, following adoption of a strategic plan that identifies needed investment creating tangible value. State and federal contractors will pay full cost of conveyance improvements and any related mitigation of net environmental impacts related to construction and operation of that facility and others providing a supply and reliability benefit. Broad-scale ecosystem restoration should be publicly funded, potentially through bond funds, due to the broad public nature of the benefit. Fees, to the extent necessary to fund ongoing operations managing the Vision's objectives, should be broadly-based and equitably assessed, recognizing the impact of all diversions and other stressors in the watershed. Levee improvements should be paid for through flood control bonds and fees based on a levee investment plan that matches levee designs to the land uses protected by those levees, consistent with ecosystem restoration plans and supported by economic risk analysis. User fees would be apportioned to the beneficiaries of those investments where those investments were the most logical and cost-effective method for those beneficiaries toward protecting a given use.



**Figure 1**