

## MEMBERS

DAVE COGDILL  
VICE CHAIR  
JOHN BENOIT  
DENNIS HOLLINGSWORTH  
BOB HUFF  
CHRISTINE KEHOE  
MARK LENO  
ALEX PADILLA  
S. JOSEPH SIMITIAN  
PATRICIA WIGGINS  
LOIS WOLK



California Legislature

Senate Committee  
on  
Natural Resources and Water

FRAN PAVLEY  
CHAIR

BILL CRAVEN  
CHIEF CONSULTANT  
DENNIS O'CONNOR  
PRINCIPAL CONSULTANT

MARIE LIU  
CONSULTANT

PATTY HANSON  
COMMITTEE ASSISTANT

STATE CAPITOL  
ROOM 4035  
SACRAMENTO, CA 95814  
TEL (916) 651-4116  
FAX (916) 323-2232

May 26, 2009

President Pro Tempore, Darrell Steinberg  
State Capitol Room 205  
Sacramento, CA 95814

Speaker of the Assembly, Karen Bass  
State Capitol Room 219  
Sacramento, CA 95814

Pro Tem Steinberg and Speaker Bass:

Last March, you asked Assemblymember Huffman and I to co-chair two bipartisan bicameral working groups to address problems with the Delta. Assemblymember Huffman took the lead for the working group addressing the Delta plan; I took the lead for the working group addressing Delta Governance. This is my report on the results of the Delta Governance Working Group.

The purpose of this working group was to recommend a proposed governance structure – not to make decisions on canals, conveyances or dams. The Delta Governance Working Group met over eight Wednesday afternoons. Regular participants included Senators Cogdill, Simitian, Wolk, and me, and Assemblymembers Arambula, Huffman, and Salas. Other members attending one or more meeting were Senator Dutton and Assemblymembers Buchanan, Fuller, and Nielson.

I structured each of our meetings as follows. Each meeting had a theme. First, I would recap the previous meeting and describe the current meeting's agenda. For each of the first six meetings, we invited a guest speaker to share their insights into some aspect of the day's theme. The speaker would typically give a short presentation, followed by questions of the working group members. After the speaker, we would often have an oral report from one of the working group members on some study or report they had

volunteered to read. Then, we would move on to a more in depth discussion of the day's theme.

The themes and speakers for each of the eight meetings were:

Week 1

Theme: What are Governance & Stewardship?

Speaker: James Mayer, Former Executive Director of Little Hoover Commission  
*What Lessons Are To Be Learned From CalFed?*

Week 2

Theme: What Governance Functions Do We Need To Incorporate Into Our Plan?

Speaker: Karen Scarborough, Undersecretary, Natural Resources Agency  
*Status of Bay Delta Conservation Plan (BDCP) Governance Discussions*

Week 3

Theme: Delta Protection Commission & Straw Proposal #1

Speaker: Former State Senator Patrick Johnston  
*Delta Protection Commission, History and Outlook*

Week 4

Theme: Federal Government Participation & Straw Proposal #2

Speaker: Betsy Rieke, Former Assistant Secretary of the Interior for Water and Science  
*Role of the Federal Government in the Delta*

Week 5

Theme: Governance Issues of SWP, CVP, & Conveyance & Straw Proposal #3

Speaker: Lester Snow, Director of DWR  
*Governance Issues of SWP, CVP, & Conveyance*

Week 6

Theme: Funding the Delta Plan & Straw Proposal #4

Speaker: Dean Misczynski, Former Director of the California Research Bureau  
*Governance Issues with Beneficiaries Pay*

Week 7

Theme: Review of Governance Proposals & Initial Guiding Principles

Speakers: Sen. Wolk – Straw Proposal #1  
Sen. Simitian – Straw Proposal #2 (presented by Alan Gordon)  
Sen. Cogdill – Straw Proposal #3 (presented by Erin Guerrero)  
Sen. Pavley – Straw Proposal #4

Week 8

Theme: Guiding Principles on Governance

Speaker: None

Through the working group, a number of products were created. Staff created an extensive reading list of studies, reports, and other materials helpful to understanding the governance challenges presented by the Delta. The reading list was the basis for many of the oral reports made by members of the working group.

Senators Wolk, Simitian, Cogdill, and me each developed and presented a straw governance proposal, which are attached. While the working group did not embrace any one of the straw proposals, each provided additional insight into specific issues associated with Delta Governance. Moreover, while each proposal was different, there were remarkable similarities as well.

Most important, the working group developed a set of Delta Governance Principles. It is important to note that the governance principles reflect the opinions of those in the room when the principle was discussed. This means that the governance principles chiefly reflect the thoughts of the Senate and Assembly Democrat members of the working group. While Senator Cogdill was present for a part of the discussion on one of the two days where the governance principles were discussed in depth, no Assembly Republicans were present.

That said, the governance principles are based on the following four broad organizing principles:

1. The current governance structure for the Delta is not meeting the needs of anyone.
2. The state should establish two primary goals for the Delta, restoring the Delta ecosystem and creating a more reliable water supply for California, while recognizing the unique values of the Delta. (While there is broad support for the concept, the precise language is still being refined.)
3. There is a need to create a new governance structure.
4. The new policy and governance structure should be composed of the following elements.
  - A Delta Council or Commission
  - A Delta Plan
  - A Delta Conservancy
  - An enhanced or modified Delta Protection Commission
  - A Delta financing strategy, which could include fees, revenue bonds, and/or GO bonds

The detailed Delta Governance Principles are attached.

Finally, while not a part of our charge, there has been a great deal of discussion of what the components of a comprehensive water package might be. Director Snow, in a presentation made at our fifth meeting, suggested that a comprehensive water package would contain the following elements:

- Legislation establishing Delta Commission or Council.
- Legislation establishing Delta Conservancy.
- Legislation establishing Delta Plan.
- Legislation establishing an enforceable statewide water conservation program.
- Legislation placing a water bond on the ballot.

My opinion is that a truly comprehensive water package would contain some additional elements. Based on the findings of both the Blue Ribbon Task Force and the Delta Vision Committee, the presentation by Director Snow, and conversations with working group members and others, I believe that a comprehensive water package should also include, at a minimum:


- Legislation requiring statewide groundwater monitoring, as discussed in both the Blue Ribbon Task Force and the Delta Vision Committee reports, and
- Legislation requiring improved water rights management, water use reporting, and water rights enforcement per the Delta Vision Commission, also as discussed the Blue Ribbon Task Force and the Delta Vision Committee reports.

Personally, my recommendation for moving forward is as follows:

- Use the guiding principles as the framework for new legislation. Have committee staff, working with your staff, begin drafting the legislation. Consider asking the Governor to establish a Special Session on Delta Water Problems as a mechanism to hear the bills through a full committee process.
- Create a transitional period, with guidelines, for the new governance council or commission. Use money currently budgeted for the California Bay Delta Authority, Cal Fed program, and DWR to finance operations of the new council from January 1, 2010 to June 30, 2010. The Delta governance principles list identifies some of the actions necessary for the transition period, I would be happy to provide you with a more comprehensive list.
- Establish a Delta Conservancy through legislation.
- Adopt, through legislation, the two primary goals for the Delta, restoring the Delta ecosystem and creating a more reliable water supply for California, while recognizing the unique values of the Delta.
- Begin evaluating feasibility and desirability the conveyance utility concept to administer the ongoing operations of the Delta.
- Revised Delta Protection Commission through legislation.
- Create a Delta Zone Management Plan consistent with the federal Coastal Zone Management Act for Federal participation and consistency review.
- Establish a National Heritage area for the Delta.
- Adopt a comprehensive water package as described above.

Finally, I want to acknowledge the hard work and dedication of the working group members and their staff. This process would not have been nearly as productive without their willingness to constructively engage in these difficult issues.

Sincerely



Fran Pavley, Chair  
Senate Committee on Natural Resources and Water

Cc: Senator Cogdill  
Senator Simitian  
Senator Wolk  
Senator Dutton  
Assemblymember Arambula  
Assemblymember Huffinan  
Assemblymember Salas  
Assemblymember Buchanan  
Assemblymember Fuller  
Assemblymember Nielson

# **Straw Governance Proposals:**

**#1**

**Delta Stewardship Model  
Senator Wolk**

**#2**

**California Delta Ecosystem and Water Council  
Senator Simitian**

**#3**

**Delta Governance Principles  
Senator Cogdill**

**#4**

**Interim Water Council or Commission  
Senator Pavley**

Delta Science and Engineering Board and Program

### Delta Stewardship Council

9 members, 8 appointed by the governor and the chair of the DPC

- Goal: The Delta ecosystem and a reliable water supply for California are the primary goals for sustainable management of the Delta, which is a unique and valued area, warranting recognition and formal legal protection by the state of California. Note: How does this fit with public trust?
- Responsible for adoption of Delta Stewardship Plan
    - Due on July 1 2011
    - Update plan by July 1 2017
    - First plan based on Resources Management Plan and Central Valley flood Protection Plan and other plans
    - Includes, in the first update, a consideration of water rights actions taken by the SWRCB to achieve accurate accounting of real water in the Delta.
  - Hears appeals from the DPC regarding the consistency of major infrastructure projects in the Delta Plan
  - Assume responsibility for any conservation plan developed for the Delta by Conservancy
  - Uses adaptive management to update the Plan
  - Determines consistency of the BDCP and any major infrastructure changes with the Stewardship plan, Timing?
  - Funding Authority
  - Storage projects that provide a net improvement in ecosystem and water quality conditions in the Delta.
  - Sets Performance Goals. Annual reports to the Legislature.

### Delta Protection Commission Existing

- 5 County representatives
  - 3 city representatives
  - 5 reclamation districts
  - 3 Public appointments by Governor
  - 2 Senate and Assembly appointees (Ex officio)
- Replaces state representatives with secretaries of Resources and Cal EPA
- Review all of its plans and proposals to be consistent with Stewardship plan
  - Review and certify all city and county general plans for consistency with Delta Stewardship plan
  - Determine Consistency of major water, road, railroad, utility and levee infrastructure projects in Delta with Delta Stewardship Plan including upfront project review. May be appealed to Council.
  - Develop specifics to meet goal #2 with a year

### SWP/ Water Master/ Water Utility New

- Day to day water management
- Transparent
- Consistent with Delta Stewardship Plan
- Who controls?

### Conservancy SB 458

- 11 voting members
- 4 non voting members
- Develop strategic plan consistent with Delta Stewardship Plan
- The Sacramento-San Joaquin Delta Conservancy will support efforts that advance both environmental protection and the economic well-being of Delta residents in a complementary manner. These efforts will include: enhancing habitat and habitat restoration; protecting agriculture and working landscapes; increasing recreation and public access; promoting tourism and economic vitality in the delta; promoting Delta legacy communities; and protecting historical and cultural resources.

## **CALIFORNIA DELTA ECOSYSTEM AND WATER COUNCIL (CDEW)**

- Independent Agency not housed within Resources or Cal-EPA
- 7 members, 5 appointed by Governor, 1 each by Speaker and Pro-tem
- 8 year terms, no reappointment
- Chair appointed by Governor (full time)
- Executive Director appointed by Council (full time)
- Council develops the plan according to parameters established by the legislature

## **DELTA SCIENCE ADVISORY PANEL**

- CDEW appoints 12-20 scientists of various backgrounds to advise the Council, the Conservancy, and the JPA

## **CALIFORNIA DELTA WATERSHED CONSERVANCY**

- 11 members including local government and community representatives
- Implement Bay Delta Conservation (BDCP) Plan, Habitat Conservation plan
- Buy water and land from willing sellers

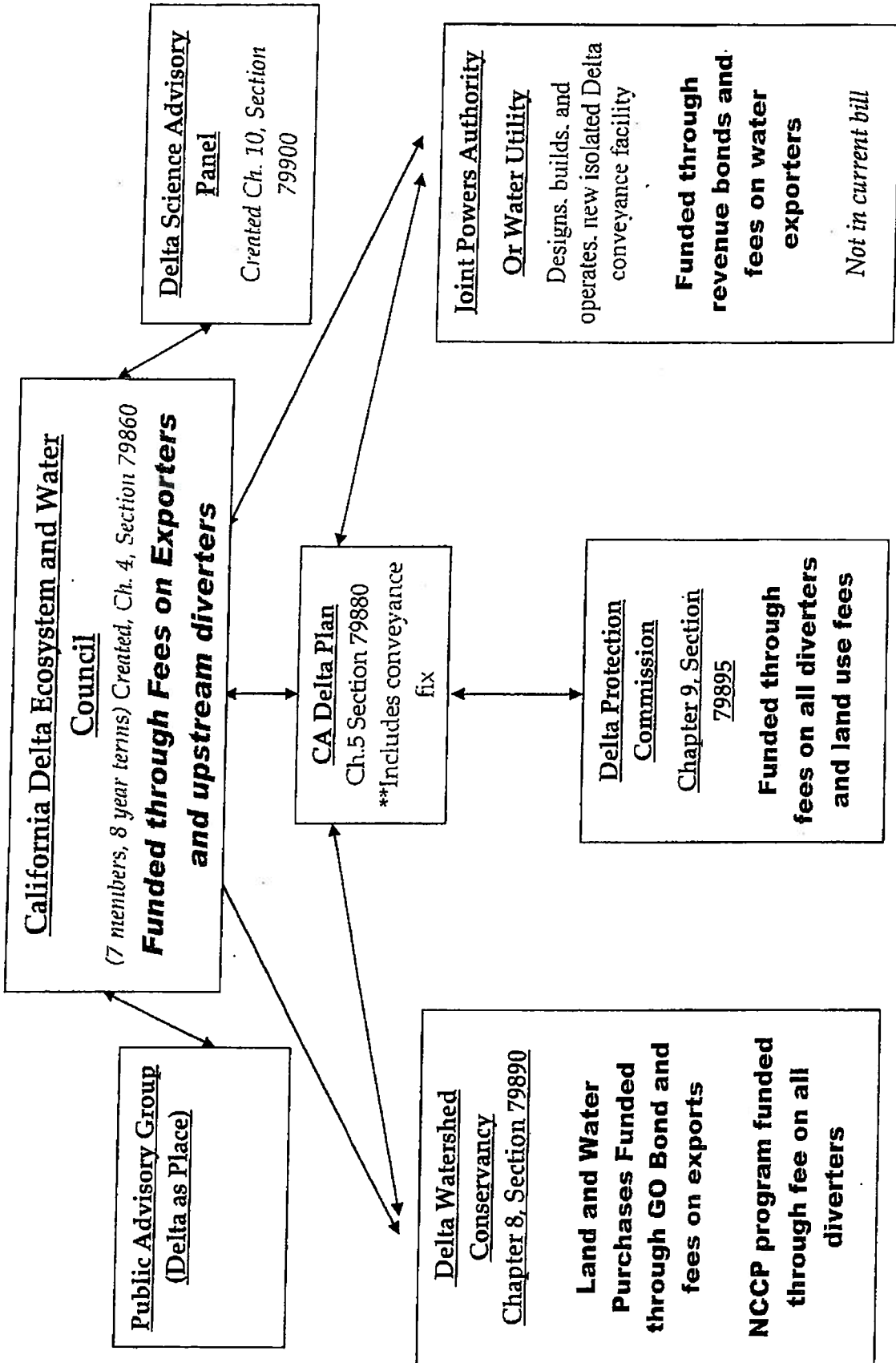
## **JOINT POWERS AUTHORITY OR WATER UTILITY**

- Members include state and federal contractors
- They are the ministerial entity that operates the pumps and hopefully dam releases (they turn the knobs)
- \*\*\*Independent Water System Operator appointed by the CDEW to implement the plan on a real time basis (still conceptual)

## **DELTA PROTECTION COMMISSION**

- Reviews local planning decisions to ensure consistency with Delta Ecosystem Plan

## **PUBLIC ADVISORY GROUP – DELTA AS PLACE**

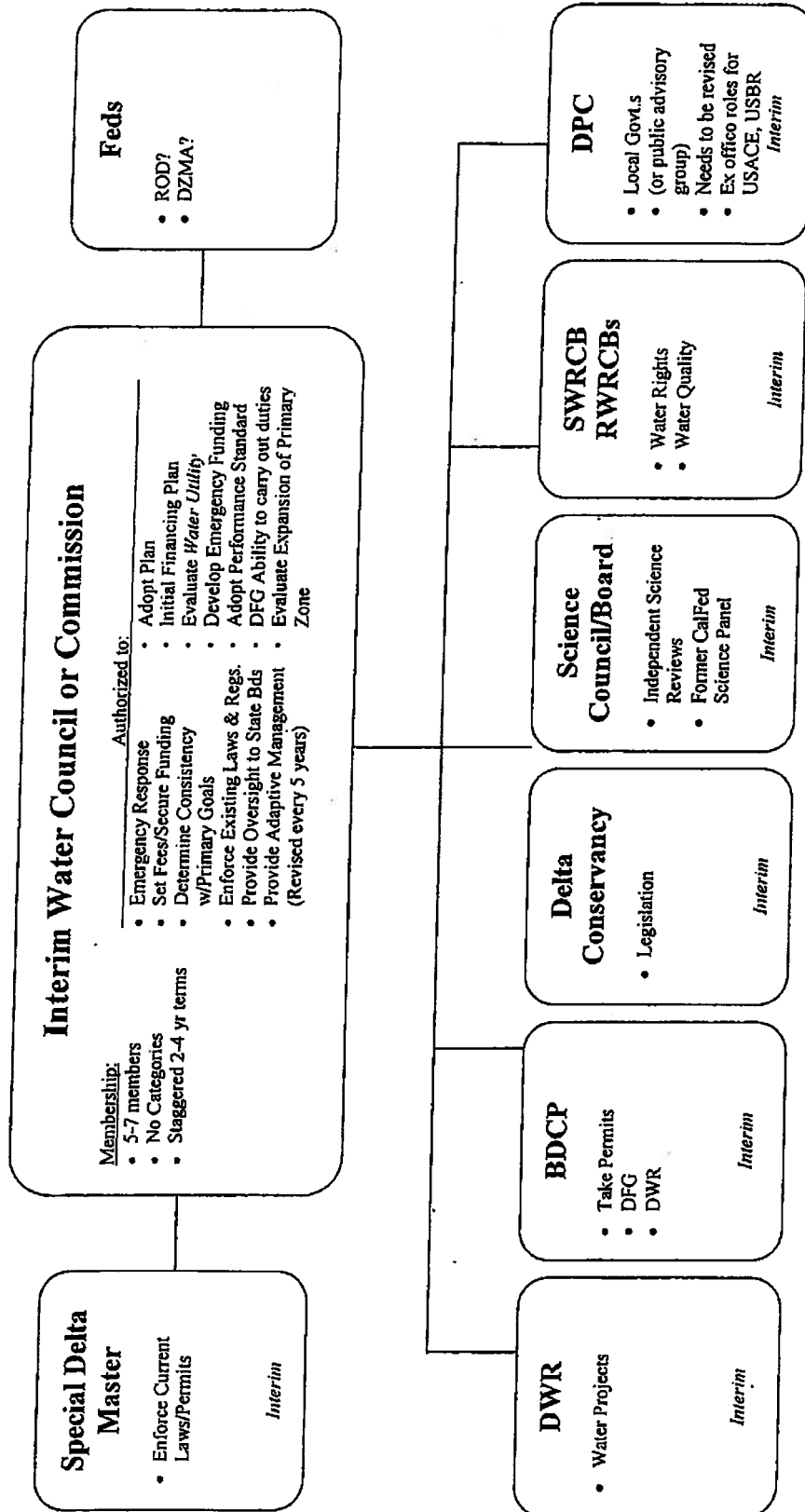


### Delta Governance Principles

- Utilize existing entities and authorities as much as possible
  - Potential New Entities
    - Delta Conservancy?
    - Establish JPA or Water Utility to implement water supply reliability actions
- Public dollars for public benefit (co-equal goal of restoring the Delta ecosystem)
  - Fees limited to those negotiated in BDCP
  - General Fund or GO bonds to support ecosystem projects
- No requirement for pre-approval for projects/actions
- Establish criteria based on significance for appeals
- Need for finality in decisions - Court challenges expedited and court of original jurisdiction should be state appellate or Supreme court
- Maintain current structure of Delta Protection Commission.
- If a conservancy is created, its authority should be limited to ecosystem restoration, but not land use.
- Other Questions/Concerns
  - What happens when there's only enough water for one of Sophie's "co-equal" children (ecosystem v. supply)?
  - Enforcement? Are current methods sufficient?

### Delta Plan Principles

- BDCP serves as basis for the Delta Plan
- BDCP is finalized and approved, without further adjustments by the Legislature
- No NCCP requirements
- Current permit structure remains status quo



==

## Delta Governance Working Group

### Guiding Principles

#### General Principles

Y N ?

- The current governance structure for the Delta is not meeting the needs of anyone
- The state should establish two primary goals for the Delta, restoring the Delta ecosystem and creating a more reliable water supply for California, while recognizing the unique values of the Delta. (While there is broad consensus for the concept, the precise language is still being refined.)
- There is a need to create a new governance structure.
- The new policy & governance structure should be composed of the following elements.
- A Delta Council or Commission
- A Delta Plan
- A Delta Conservancy
- An enhanced or modified Delta Protection Commission
- A Delta financing strategy, which could include fees, revenue bonds, and/or GO bonds

Key:

Y Yes  
 N No  
 ? No Consensus

12

## Delta Council or Commission

Y N ?

- Create a new council, or  
   Modify an existing council – eg California Water Commission  
   7 members, Senate confirmation of Gov. appointees  
   5 Gov + 1 Sen. & 1 Asm. Appointees  
   Staggered Terms  
   Length of terms  
   Interim – Sunset upon certification of a Delta Plan  
   Permanent – no sunset  
   Include the old CalFed science program  
   Lead Agency for Delta Plan  
   Lead Agency for implementing BDCP  
   Determine consistency of projects/programs with Delta Plan  
   Ensure laws regarding water supply, take authority, water quality, etc are enforced.  
   Open/Transparent Public decision making  
   Fee Authority  
   Revenue Bond Authority  
   Conveyance  
   Storage  
   Independent – not part of DWR or Natural Resources Agency

### Key:

Y Yes  
 N No  
 ? No Consensus

**Delta Plan**

- Achieve the two primary goals ...
- Comply with CEQA
- Harmonized with BDCP

**BDCP**

- Must be NCCP/HCP
- New Delta Council/Commission Lead Agency
- New Delta Council/Commission Certifies

**Delta Conservancy**

- Scope of authority includes Legal Delta
- Scope of authority includes Suisun Marsh
- Scope of authority includes additional areas: No consensus as to what additional areas, if any, should be included
- Membership includes majority state appointing authorities
- Membership includes representatives of 5 Delta counties
- Develop conservation plan
- Acquisitions on willing buyer/willing seller basis
- May acquire title fee simple
- May acquire easements:
  - Conservation
  - Flood
  - Agricultural
- May acquire water rights/contract rights

Key:

- Y Yes
- N No
- ? No Consensus

### Delta Protection Commission

- Adjust Membership: Reduce, details to be determined
- Jurisdiction: No consensus as to whether it would be desirable or politically feasible to adjust the boundaries of the primary and secondary zones in the Delta
- Determine consistency of projects/programs with Delta Plan: No consensus as to the detailed scope of issues to be reviewed – Might want to limit to exclude “projects of statewide significance

### Public Advisory Group

- Create to advise Delta Council: Public input is important – while there was not consensus as to the exact vehicle, it is important to have some sort of formal system
- Advice limited to impacts of twin objectives on Delta as Place

### Necessary Near Term Actions (Immediate – 2011)

- Appoint members, by 1/2010, of:
  - Delta Council
  - Conservancy
- Hire staff, by 7/2010, for:
  - Delta Council
  - Conservancy
- Transfer CalFed Science Panel to new Delta Council, by 7/2010
- Review & Expand Levee Emergency Plan – Triage rules, etc
- Review/Approve BDCP
- Ensure the SWP & CVP have “take” authority

Key:

- Y Yes
- N No
- ? No Consensus

- Begin feasibility study of creating delta conveyance utility:  
While a delta conveyance utility has some appeal, there was not consensus as to whether or not a study was necessary
- Begin developing a Delta Zone Management Plan consistent with the Coastal Zone Management Act
- Develop/Implement short term implementation plan: No consensus as to whether or not a short term implementation plan would be necessary or desirable
- Establish/Adopt fee authority
- Establish Special Master for Delta: May be needed – details need to be clarified.
- Begin identifying and developing information necessary for development of the Delta Plan – eg, water budget for Delta
- Initiate CEQA on Delta Plan
- Identify issues not in BDCP that need to be included in Delta Plan
- Identify issues not in Delta Vision that need to be included in Delta Plan
- Apply for federal designation such as a Natural Heritage Area
- Review responsibilities of various state/federal/local agencies to identify and avoid/reduce/eliminate duplicating roles
- Legislative review of Fish & Game to determine its ability to provide the appropriated level of oversight & provide recommendations for reform
- Legislative review of State Water Board to determine its ability to accomplish the following & provide recommendations for reform:

Key:

- Y Yes  
N No  
? No Consensus

- Provide accurate water rights and water use information
- Provide timely enforcement water rights laws
- Provide timely enforcement of water quality laws

**Other open/unresolved issues**

- Delete the Bay-Delta Authority
- Move SWP on budget
- Adopt revised Delta Plan: While there is a need for periodic review and revision, there is no consensus as to the frequency – range appears to be sometime with a 5 – 10 year range
- Create Water Conservation oversight Task Force

Key:

- Y Yes
- N No
- ? No Consensus

17

