



MAVEN'S NOTEBOOK

A water, science and policy blog

Notes from Metropolitan's Special Committee on the Bay-Delta: An update on the status of the Implementation Agreement, plus Metropolitan prepares to comment on the BDCP's EIR and a briefing on the Design and Construction Enterprise

Categories: Maven's Minutes

by Maven

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"We are tantalizing close to a draft Implementing Agreement at this point in time," Director Cowin told Committee members.

At the May 27th meeting of Metropolitan Water District's Special Committee on the Bay-Delta, Metropolitan staff briefed the comments that Metropolitan will be submitting on the Bay Delta Conservation Plan as well as the BDCP's Design and Construction Enterprise. At the end of the meeting, DWR Director Mark Cowin gave a brief update on a number of issues, including the long-awaited Implementation Agreement.



EXHIBIT 9-1

Metropolitan comments on the Bay Delta Conservation Plan's environmental documents

Steve Arakawa, Manager of Bay-Delta Initiatives, began by reminding that back in 2007, the Board adopted the Delta Action Plan Framework and Delta conveyance criteria that established the direction that staff has been following. In 2008, the Board adopted Delta governance principles, and in 2009, as the Delta Reform Act was taking shape, the board weighed in on that as well, he said. The board has also been involved in funding and cost sharing agreements, beginning in 2006 through 2011.

Robert Horton from the legal department then briefly reviewed the basics of the environmental documents, explaining that the California Environmental Quality Act (CEQA) and the National Environmental Policy Act (NEPA) were designed to be full-disclosure statutes. *"Both state and federal law require that the action agencies and the responsible agencies such as Metropolitan disclose all the potentially significant impacts of a project, look at a range of alternatives and mitigation for any significant impacts, and then give the public and other responsible agencies an opportunity to comment on the document,"* he said. *"Then the agencies that are adopting the document or certifying it will have to then respond to those comments."* He noted that the draft document went out in December of 2013, and the public comment period will be closing on June 13.

Under the state law, CEQA, if there is feasible mitigation, you're required to adopt it, he said. *"The agency that approves the project will have to adopt it, and any agency responsible for implementing it would be required to implement it,"* he said. *"On the federal side, although federal agencies aren't by statute required to adopt feasible mitigation, the co-federal lead agencies in this case have adopted regulations that pretty much require that if they don't adopt feasible mitigation, they would have to explain why."*

The BDCP is notoriously long and the environmental documents notoriously even longer, in part because the impacts of 15 different project alternatives were analyzed, he said. The document also contains two baselines: A CEQA existing conditions baseline, which is set at 2009 when the Notice of Preparation was issued, and a NEPA future conditions baseline, which looks at the impacts of the project plus climate change and sea level rise in 2060, he explained. *"So you not only have 15 project alternatives and a no-action alternative, but you have two baselines that you're comparing,"* he said. *"This has to be one of the most studied projects in history."*

“Metropolitan’s role is going to be as an applicant for the Endangered Species Act and Natural Community Conservation Planning Act permits, and the SWP is part of our critical water supply,” said Mr. Horton. *“Metropolitan has adopted policies to achieve a comprehensive fix for the Delta that gives long term, 50 year regulatory stability, and so in light of those objectives, and Metropolitan’s role in the process and because it will have to rely on this document as well, it’s crafting comments to ensure that the project is implementable, supportable, and that the the CEQA/NEPA document is defensible in the face of litigation, and that it will meet the needs for Metropolitan and it’s member agencies in terms of both supply and cost. ... We want to make sure that that accurately represents the best science and policy available.”*

Steve Arakawa then described the areas of comment that will be included in the comment letter from Metropolitan. He also noted they are working jointly with other state and federal water contractors in coordinating the review and comments and so to the degree appropriate, Metropolitan will be providing support to the letters of other contracting entities in those specific detailed comments.

The comments will address the importance of a reliable supply to Metropolitan’s service area, the role that the State Water Project serves, and the investments that have been made, not only in the State Water Project system, but in our own distribution system and our local resources that count on SWP supplies, he said. The comment letter will also say that alternative four provides the best balance between water supply reliability and environmental protection, and that this option best contributes to the state’s coequal goals of water supply reliability and ecosystem restoration, he said.

“Other areas of comment include the fact that in many ways, there was a conservative approach used in identifying impacts, or so-called worst case impacts, and so when looking at all of the analysis, it provided that kind of disclosure which we believe helps support the decision making capability of the document,” Mr. Arakawa said.

The comments will also address the fact that a reliable water supply contributes to sound economic situation in the state of California, not only in the areas of water supply, but for the state overall, he said. *“The state’s analysis indicates that the project provides for the protection of about a million jobs over the next several years while the permit is in place, so protection of jobs, but also provides a contribution to jobs through development of the project itself,”* he said. *“When looking at the overall costs and benefits of the project, the project has a significant net benefit of up to about 5 billion, when looking at both the costs and benefits derived from the project.”*

"It's important for Metropolitan to contribute to the record that's being established through this EIR process to make sure that Metropolitan's needs and objectives are being met, and expressed in the comment letters, and also to make sure that adequate information is provided to the administrative record in all of these various areas to support the decision making that will occur out into the future," said Mr. Arakawa.

So in terms of the next steps, there is the Implementing Agreement and the Cost Allocations which are still pending, he said.

"We expect to see a draft of the Implementation Agreement out for public comment relatively shortly, probably within a week or so," said General Manager Jeff Kightlinger, noting that they will be reviewing it at the next Committee meeting. *"The cost allocation will come further down the road, probably in the fall timeframe, and all of those would be before you have the Record of Decision and the Notice of Determination, which would probably be in the spring of 2015."*

BDCP Design and Construction Enterprise

Program Manager Randall Neudeck then discussed the BDCP's Design and Construction Enterprise. The intent of the DWR staff memo was to try to set out some initial efforts for effective implementation of the BDCP, he said. It includes two offices: the first is really an interim office outlined in the BDCP Chapter 7 that will deal with conservation measures 2 through 22, including habitat restoration, other stressors, adaptive management, monitoring, research and other elements, and the other office is the Design and Construction Enterprise for Conservation Measure 1, or the conveyance improvement activities, he said. He noted that the Design & Construction Enterprise office has a defined termination date, terminating after the construction of the conveyance facilities is completed.

The intent of the Design and Construction Enterprise is not only to implement the design and construction, but really to be a separate organization within DWR, he said. He then presented a slide of an organizational chart, and described the chain of command. The program director is responsible for the design and construction elements and for staffing decisions. The Program Advisory Group is a set of technical experts who can make recommendations to the program director related to engineering, construction methods, and other issues. The program director and his office reports to a project management board, which will include a DWR representative and public water agency representatives from the CVP and the SWP. They will make

recommendations up to the DWR Director, which will have final decision on the design and construction activities.

Mr. Neudeck said that the public water agencies are looking at forming themselves under a JPA, with the goal to make recommendations to DWR director who will have final authority, and to be a part of the program management board.

"What we saw as the intent of the memo were the initial efforts to help organize this into an effective organization – two different organizations under DWR," said Mr. Neudeck.

Director Mark Cowin addresses the Committee

"This has been a challenging year as you all know for California water," began DWR Director Mark Cowin. *"One of the secondary effects of this drought emergency has been that the state and federal agencies that are working on the BDCP have had to divert a lot of attention to managing the drought emergency, and so frankly we have not had the capacity to make the kind of progress we would have like to have made otherwise in advancing the BDCP. Nonetheless, I do think we have made significant progress in a number of different areas that we know is going to be essential before we can get to essentially a go or no-go decision on this project."*

"We talked a little bit about the Implementing Agreement and that's an area that I'm extremely pleased in the progress that we've made in the last month or two in closing out some of the lingering issues on how the program would be implemented and defining the contributions and limits of obligations of the different parties that will partner in implementing the project, so I think we've had some good meeting of the minds between the state and federal agencies and state and federal water contractors," he said. *"We are tantalizing close to a draft implementing agreement at this point in time, and assuming we can close out just a couple of lingering issues, I do expect that we will be able to post a draft Implementing Agreement within the week, so that's good progress."*

"Another issue that we know we have to make progress on, BDCP or no, is the extension of the State Water Project water supply contracts, and again I think we've made good progress this year on that front," he said. *"We now have an agreement on terms that will be used to develop the draft amendment itself, and also be used for the CEQA compliance that we'll have to go through before we can get to signing those contract extensions, but I think that's an important element in all of this and we've made good progress on that front."*

"A third leg of the stool is this Design and Construction Enterprise," he said. "I have personally heard for a long period of time from both state and federal contractors about the importance of defining a governance structure for implementing, not only BDCP itself, but specifically Delta conveyance improvements in a way that provides for accountability and transparency, and involves the state and federal water contracting agencies in appropriate way and in partnership with the state. We've knocked our heads against this for quite awhile, at least 18 months or longer, we worked on developing the principles that you see before us today."

"To my mind, it's a good balance towards two goals of providing for accountability to ratepayers as represented by state and federal water contracting agencies, and also to provide for transparency and accountability to the public in general, and in particular, the public that would be most directly affected by implementation of these conveyance facilities," Director Cowin said.

"So just on the ratepayers side, I think the proposed organization provides for a significant role for the state and federal water contracting agencies, it provides for efficient management, a structure with clear lines of authority and accountability, we have always jointly held that as a number one principle in this," he said. "We want decision makers that are able to move quickly and keep this project on track, given its financial implications for all of us. Then finally, the structure does provide for opportunities for participation by experts from both state and federal water contracting agencies, DWR and the private sector in a way that will allow us to bring the best talent to the project and provide for a very efficient process."

"On the public side of the equation, I think this organization importantly maintains DWR's ultimate authority as defined by statute to construct and operate the SWP while still providing for an appropriate role from state and federal water contracting agencies to advise and consent on important decisions," he said. "Importantly, this structure provides for using the DWR's contracting authority and also our land acquisition processes which are extremely important to the members of the public that will be affected by Delta conveyance in particular."

"So I want to underscore something that Randall said up front," he said. "This DCE is temporary in nature and limited in scope. It is intentionally designed to provide for design and construction of the facilities associated with the BDCP. After construction is complete, this organization will go away. The broader Bay Delta Conservation Plan management will be done through the Bay Delta Conservation Plan implementation"

office that is defined with dozens of those 42,000 pages within the BDCP document itself, in great detail."

"I think this approach can serve as a model for how we interact between DWR and SWP contractors and federal contractors in the future on other projects. We've gone to great length to look at how other big infrastructure projects have been managed when there are numbers of different partners involved and hopefully we've captured some of the lessons learned in some of these principles we've put forward," he said. "So to my mind, it's innovation on governance that's equal to the innovation on BDCP will provide for State Water Project operations moving forward in equal measure."

"So that's what I wanted to say about the DCE," he said. "The memo that I put out to all staff as Randall indicated, really is just our first steps as an organization to prepare ourselves for implementation of this project so we're taking our existing resources and starting to move them into an organization that can engage both with the DCE and ultimately with the implementation office for BDCP as well."

Discussion highlights

Director Steiner asks if the federal contractors were working on their portion and playing nice with each other and us ... ?

Cowin: Yes, everybody's been playing nice, so maybe a little bit of stress brings people together. The USBR has not been a participant in this particular effort. They see their role somewhat differently, so this is primarily a partnership between DWR representing the state of CA plus the federal water contractors on one side and the state water project contractors on the other.

Director Lewinger: Can you give us a little bit of insight as to why the BOR views their role differently than DWR and why they are not part of this governance structure?

Cowin: Probably not ... it might be best to ask the BOR to give their answer to that question. I think the primary reason is that we have envisioned this facility as being state-owned; so Reclamation of course will need to have agreements with us to utilize the facility, but because they are not going to own it, that puts them in a different standing in terms of its design and construction.

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