

Potential Funding Alternatives for the Bay Delta Conservation Plan Planning Process

LEGISLATIVE ANALYST'S OFFICE

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Hon. Jared Huffman, Chair

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On Resources and Transportation
Hon. Richard S. Gordon, Chair





Overview of LAO Presentation

- Bay Delta Conservation Plan (BDCP) and Delta Habitat Conservation and Conveyance Plan (DHCCP) Planning Overview.**
- Current Funding Process for BDCP Planning.**
- Policy Issues With the Current Funding Process.**
- Alternative Mechanisms for Funding BDCP Planning.**
- A Non-Funding Option to Address Policy Issues.**



BDCP and DHCCP Planning Overview

- BDCP.** The BDCP is a planning process being conducted by the Department of Water Resources (DWR) to provide the basis for the issuance of endangered species permits necessary to allow the operations of both state and federal water projects in the Delta for the next 50 years. The BDCP planning process will develop a combined Habitat Conservation Plan and Natural Community Conservation Plan (NCCP), key components of which are ecosystem enhancement above and beyond required environmental mitigation and alternative conveyance to improve water supply reliability.

- DHCCP.** The DHCCP is a program run by DWR to conduct the engineering and scientific studies required to prepare an Environmental Impact Statement/Environmental Impact Report (EIS/EIR) for BDCP that satisfy the requirements of the National Environmental Policy Act and the California Environmental Quality Act (CEQA). The DWR is designated as lead agency for the purposes of CEQA, while the state and federal water contractors that receive water from the projects are responsible parties that will use the EIR/EIS to perform some activities. Although initially separate, DHCCP has now largely merged with the BDCP planning process.



Current Funding Process for BDCP Planning

Figure 1
Total Past and Projected Expenditures on Bay Delta Conservation Plan
2005-06 Through 2012-13

	Dollars (In millions)	Percent of Total
Environmental Documentation ^a	\$83.4	35%
Preliminary Engineering/Design	76.2	32
Program Management	38.4	16
Right-of-Way	12.2	5
Operations Planning	6.6	3
Public Outreach	3.2	1
Contingency	19.7	8
Totals	\$239.7	100%

^a Includes preparation of Environmental Impact Report/Environmental Impact Statement and Natural Community Conservation Planning/Habitat Conservation Plan.



Total Planning Costs Estimated to be \$240 million. The combined total costs for BDCP and DHCCP planning processes from 2005-06 through 2012-13 are estimated to be \$240 million, to be funded entirely from State Water Project (SWP) Funds (including payments from the federal water contractors). Figure 81 breaks down the total cost of BDCP planning by category of expenditure. As shown in Figure 2, approximately \$125 million has been spent thus far on BDCP- and DHCCP-related planning activities, with an additional \$36.7 million in expenditures estimated for 2011-12.

Figure 2
Bay Delta Conservation Plan/Delta Habitat Conservation and Conveyance Plan Expenditures to Date
(In Millions)

	2006-07	2007-08	2008-09	2009-10	2010-11	2011-12 ^a	Totals
BDCP	\$1.6	\$3.4	\$2.6	\$1.8	\$3.0	— ^b	\$12.4
DHCCP	—	—	30.4	39.4	42.3	\$36.7	148.8
Totals	\$1.6	\$3.4	\$33.0	\$41.2	\$45.3	\$36.7	\$161.2

^a Estimated.
^b Bay Delta Conservation Plan expenditures included under the Delta Habitat Conservation and Conveyance Plan in 2011-12.



Current Funding Process for BDCP Planning

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- Voluntary Funding Agreements Are Sole Source of Funding for BDCP Planning.*** All BDCP/DHCCP planning expenditures have been *voluntarily* funded by the South-of-Delta contractors that receive water from the state and federal projects (including 23 of 29 state contractors). Pursuant to a series of funding agreements with DWR and the United States Bureau of Reclamation, the state and federal water contractors have committed \$140 million for BDCP planning thus far and have agreed to fund the remaining \$100 million in expected costs. Currently, BDCP costs are split evenly between the state water contractors and the federal water contractors.

- Current Funding Process Adheres to “Beneficiary Pays” Principle.*** The BDCP planning process is appropriately paid for by the contractors because they would be the primary direct beneficiaries of the improved conveyance and the regulatory assurances that are anticipated to result from the completion of the planning.



Issues Arising From Current Funding Process

- Voluntary Funding Process Creates Leverage.*** The voluntary nature of the funding agreement creates a leverage point for the contractors in the BDCP planning process. (The water contractors may pull their funding support for BDCP at any time, subject to noticing requirements.) The funding agreements include these provisions that may be seen as favorable to the contractors:

 - The DWR may not proceed with a public draft of the EIR/EIS using contractor funds without written authorization from the contractors.
 - The contractors shall be provided all draft task orders and consultant work products.
 - The parties (including DWR) shall support the contractors being listed as permittees under the federal Endangered Species Act (ESA) and the NCCP Act.

- Contract Terms Raise Policy Concerns.*** In informal discussions with staff at Legislative Counsel, we were advised that the above contractual provisions do not appear to raise any legal concerns, such as an improper delegation of the authority of a state agency. However, these provisions raise policy concerns because they may potentially allow the contractors greater editorial influence over the content of BDCP than for other stakeholders.

- Implications for BDCP Implementation Funding.*** The voluntary aspect of planning phase funding also has implications for future funding of BDCP implementation, namely the construction and operation of an alternative system of conveyance that is being evaluated under the planning process. Costs of such conveyance have been estimated at \$12 billion or higher. Funding BDCP implementation therefore cannot rely on voluntary contributions and will require amendment of long-term water supply contracts between DWR, the Bureau of Reclamation, and the contractors in order to provide the funding mechanism.



Issues Arising From Current Funding Process

(Continued)



Off-Budget Nature of Funding Reduces Legislative Oversight. Currently, SWP—budgeted at about \$1.1 billion for 2011-12—is off budget, meaning that the funds to support SWP operations and capital outlay are not appropriated in the annual budget act. As we have detailed in previous analyses, this budget status has substantially constrained the Legislature’s oversight role and has been problematic for several reasons. Most relevant to BDCP is that SWP contributes both to the causes of, and the potential solutions to, water-related problems in the Delta. But the SWP’s off-budget status makes it difficult for the Legislature to evaluate the entire water system and address the state’s water policy issues in a comprehensive way. As such, the Legislature is limited in its ability to exercise oversight and evaluate whether the costs of BDCP planning are reasonable.



Alternative Funding Mechanisms For BDCP Planning

- Contractor Funding of BDCP Planning Is Appropriate.*** As discussed above, BDCP is appropriately paid for by the water contractors who benefit from the proposed project. Any alternative mechanism should therefore keep the contractors as the ultimate source of funds.
- Several Alternative Funding Mechanisms Rejected by DWR and Contractors.*** The DWR considered and rejected two ways of funding BDCP planning as an alternative to the current voluntary process: the Delta Water Charge and revenue bonds. The contractors and DWR informed us that it was not expedient to renegotiate the long-term water supply contracts to fund the planning phase.
- Currently Infeasible Alternative Funding Mechanisms.*** We examined several alternative funding mechanisms for collecting funds from the contractors, including some previously considered by DWR. For various reasons described below, these particular mechanisms appear currently infeasible. We discuss potential legislative action further below.

 - ***Delta Water Charge.*** The Delta Water Charge is one of the means by which DWR bills the contractors for the cost of building and operating the SWP. Funding BDCP planning through this charge raises two issues that make it infeasible. First, because of the billing methodology DWR uses to calculate the charge (pursuant to the long-term water supply contracts), the department would not have adequate cash flow to fund the BDCP planning process through this mechanism. Second, this mechanism potentially raises equity concerns because the charge is paid by all contractors regardless of whether they receive water from the facilities that they fund. As a result, the BDCP planning process would be in part funded by some water contractors not directly benefitting from the alternative conveyance under discussion.



Alternative Funding Mechanisms For BDCP Planning

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- **Transportation Charge.** The Transportation Charge is the other means by which DWR bills the contractors. Because of the way it is structured, this mechanism solves both the issues of cash flow and equity inherent to the Delta Water Charge. However, this charge appears infeasible because it only applies to certain types of SWP facilities. According to DWR and the contractors, the projects envisioned under BDCP cannot be categorized as such.
- **Revenue Bonds.** In general, revenue bonds may be sold to *retroactively* cover the planning costs associated with capital projects that will deliver a revenue stream. However, as the project resulting from the BDCP process is not yet clearly defined, revenue bonds (which require a clearly defined project before they can be sold) cannot now be used to fund the planning process.
- **Cost Recovery Under CEQA.** The CEQA contains a provision that allows a lead agency to recover reasonable costs from project proponents that the agency incurs while preparing CEQA documentation. In the case of BDCP, however, DWR is both the lead agency and the project proponent because it operates the SWP, and therefore the cost recovery provision may not apply. It is unclear whether designating the contractors as “permittees” under the ESA would make this funding mechanism feasible.



A Potentially Feasible Funding Mechanism: Upfront Funding for Cash Flow Purposes. A significant obstacle to several alternative funding mechanisms that we examined was the lack of cash flow. To address this issue, an alternative funding source could be used to front the funding until it could be repaid through revenue bonds. However, if BDCP does not proceed to the project construction phase, there would be no future source of funding to reimburse the state for the upfront costs. Two sources of upfront funding may be available:



Alternative Funding Mechanisms For BDCP Planning

(Continued)

- **Bond Funds.** Roughly \$37 million of bond funds eligible for use on BDCP remain unappropriated by the Legislature from Proposition 84. In addition, there are likely eligible Proposition 84 funds that have been appropriated but have not been expended. If enough unexpended funds are available, the Legislature could revert them and reappropriate them for the purpose of BDCP planning. This reversion could potentially delay completion of other bond-funded projects.
- **SWP Reserves.** The SWP has a number of reserve accounts that it has used to cover some costs associated with recreation on the project, with the expectation that these funds will be repaid in the future. There may be adequate reserves in these accounts to cover BDCP planning costs until revenue bonds can be sold, but it is unclear how much money is available because these funds are off budget. The Legislature could bring SWP on budget by amending statute to limit the amount of funding that may be continuously appropriated to the SWP Fund. Doing so would give the Legislature authority to appropriate SWP reserves to fund BDCP planning.



State Legislative Intent That Long-Term Contracts Be Renegotiated to Fund BDCP Planning. The Legislature could enact statute stating its intent that DWR embark on a renegotiation of the long-term water supply contracts so that BDCP planning costs could be funded by the billing authorized by these contracts. In any event, the long-term water supply contracts will need to be renegotiated in order to determine how BDCP implementation will be funded. According to DWR, as the contracts are currently structured, only the Delta Water Charge may be used to recover costs associated with alternative conveyance. We note that DWR may withdraw from the BDCP planning funding agreement at any time.



A Non-Funding Option to Address Policy Issues

- ☑ ***Statutorily Establish Procedural Safeguards.*** Rather than changing the funding mechanism for BDCP planning, the Legislature could amend statute to address its policy concerns. If the Legislature is concerned about undue influence from any party to the funding agreement, it could pass legislation that specifies procedural safeguards regarding the public availability of documentation. For instance, the Legislature could require DWR to post on its website all draft environmental documents along with subsequent revisions, as well as any draft task orders. The Legislature has required the release to the public of information in other cases where documents have an impact on the state's decision-making processes. For example, statute requires the independent appraisal reviews of land proposed for resources-related acquisition to be made public.