# Discussion Paper
# Bay Delta Governance
# March 7, 2008

## Purpose

This discussion paper was developed by representatives of several California water interests to aid the State Water Project and Central Valley Project water users and other stakeholders in ongoing discussions, including Delta Vision, regarding resolution of long-standing Sacramento-San Joaquin Bay Delta issues. It is intended to highlight the need for effective governance and adequate funding of any adopted plan addressing new water conveyance and ecosystem restoration needs in the Delta.

## Blue Ribbon Task Force Findings

The Governor's Blue Ribbon Task Force (BRTF) has determined that current governance of the Delta system is not working 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.

The BRTF's deliberations on governance were brief and unsystematic. Public deliberation was limited to a review of governance models where related resource management issues are being addressed: Chesapeake Bay, Everglades and the Colombia River. The Stakeholder Coordination Group was told to be prepared to work on Governance, but no specific work on the subject was initiated. Before efforts to legislate a new governance model are proposed, a systematic effort must be undertaken to analyze what functions are missing from our current governance system, what functions exist but are not working well, and an alternatives analysis to offer solution options should be conducted that incorporates understanding of the practical ability to make sweeping changes. The BRTF should recall the recent experience of the Governor's California Performance Review Process, which recommended broad changes in California governance at the state level, issued with great fan-fare, only to disappear quietly beneath the tides of bureaucratic inertia and funding limitations. It appears that none take issue with the conclusion that the system does not work correctly. However it is equally true that most if not all stakeholder groups have not embraced the BRTF's solution, either because it raises more questions than answers, or is deemed legislatively unrealistic.

This paper attempts to take a systematic approach to the question of governance and offer a different alternative that addresses known deficiencies, building upon the findings of the BRTF.

The BRTF identified five areas needing governance reform:

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.

Accepting that these policy statements fairly state needs that are not being adequately addressed, we also believe that some additional guiding principles should be incorporated into governance modifications.

These principles are stated in terms of outcomes and are in no particular order or priority:

- Results in a sustainable healthy Delta ecosystem with attention to water quality and the needs the ecosystem, with particular attention to species of concern.
- Results in an adequate and reliable water supply for State Water Project and Central Valley Project water users.
- Results in effective and efficient implementation of Delta restoration projects and construction of new Delta conveyance facilities that promote ecosystem restoration and high quality, reliable water supplies.
- Recognizes that, while the entire state benefits from a healthy Delta, not all parts of the state have the same level of concern or interest in the Delta. In that context, a successful outcome is one that 1) provides assurances that the interests of those in the so called “areas of origin” will be respected and protected and 2) equitably addresses the effect that any action under a sustainable plan or implementation strategy will have on Delta agricultural and in-Delta communities.
- Provides system flexibility to respond to varying water years, changing water demands, environmental water management needs, and emerging water issues such as the effects of regional climate change and the rise in sea level. Additional statewide surface and groundwater storage may be required to provide the necessary level of operational flexibility to protect environmental and consumptive water supply needs.
- Results in an equitable sharing of project capital costs.

- Results in a reliable source of funding for ongoing operation, maintenance, and replacement needs for environmental restoration and infrastructure projects and facilities.
- Construction and operation of facilities as well as restoration activities will be subject to all current and future regulatory requirements, with any new governance structure streamlining compliance processes rather than adding more layers and complexity.
- Processes and decisions are transparent to project participants and other stakeholders, including the public at large.

Regarding each of the BRTF's five areas needing reform we offer an alternative model to address these needs.

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.

The BRTF recognized the tension in the Delta between consumptive uses of water and the needs of the natural environment and seeks better integration of the two. We know of no examples in the United States of a successful single-entity that attempts to do this.
The prospects are slim that a single entity set up to integrate each of these values will do either well. It is more likely that such an entity would become caught between of two sets of interest groups and subject to paralysis.. That outcome, over the long run, suits no one. It is better to have individual entities perform each function in an environment of creative tension, with one performing the utility function of providing water supply within a regulatory framework that ensures environmental protection.

The export water supply function 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 these two entities 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, respectively. 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 the largest water delivery system in the state.

Water supply functions, including the construction and operation of new conveyance for the Delta should be consolidated into one public utility, owned and operated by the public agencies to whom both these systems contract to deliver water, accountable ultimately to the ratepayers who fund operations. This would allow the more efficient use of existing infrastructure (conveyance and storage). It could allow for consistent price signals in the marketplace, with water being delivered at the cost of that function, free of distorting signals.

This utility model is commonplace across the United States in both the energy and water supply sectors.

A combined water supply utility would continue to be regulated by the State Water Resources Control Board, which has the legal authority, if not the resources, to address needed governance areas #3-5 as listed by the BRTF in their Vision and noted above. The SWRCB is empowered to address the public interest in the beneficial use of the state's supplies and public trust, and reserves jurisdiction to alter water rights statewide to achieve its responsibilities. If an ecosystem vision can be defined that contains a Delta hydrodynamic regime grounded in an ecosystem restoration plan that seeks to integrate water supply functions of the Delta with ecosystem health, the SWRCB has all the needed authority to order such a flow pattern and can access water right holders to achieve that pattern. The SWRCB also 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.

For ecosystem restoration elements that require conversion of lands to natural habitats necessary to provide ecosystem functions, a special purpose entity designed to acquire land and restore its biological functions is required. This could be a Delta conservancy, modeled after other successful land conservancies. This entity should be empowered to purchase and maintain property and water rights, consistent with pursuing a defined ecosystem restoration mission.

2. Shaping land forms and land uses with the Delta and critical nearby areas consistent with this vision.

The Delta Protection Commission has been established to play some role in managing land use in the Delta. Its powers and representation could be expanded to address the Vision. The Commission should update their Land Use and Resource Management Plan and Governor's Office of Planning and Research and State Architect could develop model Delta land use guidelines that could be made binding for to local governments. These changes could be developed in concert with the local land use jurisdictions and Delta landowners, guided by Vision principles and findings.

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.

As noted above, the SWRCB regulating water utility systems throughout the Delta watershed can order changes that integrate water supply and ecosystem protection, provided a specific implementable ecosystem restoration plan can be defined. Heretofore, controlling Project pumping has been essentially the only tool used to address ecosystem concerns. Within the context of an overall ecosystem plan, the SWRCB has control overall diversions a well as other ecosystem stressors such as toxic and chronic discharges, surface runoff and discharge temperature problems.

4. Shaping decisions in the Delta watershed which affect Delta flows ](quantity, timing and quality)

Again, the SWRCB has these authorities. An actionable ecosystem restoration plan that contains a targeted flow regime can provide a goal toward which the SWRCB can exercise its regulatory authority. Additionally, where flow goals can be achieved through market mechanisms, a robust water supply utility and a conservancy could both bring monetary resources to bear to effect water management changes needed to support an ecosystem restoration vision that is integrated with water supply reliability goals.

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.

To the extent necessary, the SWRCB has the authority to set reasonable use standards that can result in the development of conservation goals. California has been making great strides in these goals despite the current governance systems which distort economic planning decisions. Combining the SWP and the CVP and having clear pricing signals will do much to promote further conservation and local supply development. Fixing the Delta conveyance system is the one key decision that will promote the efficient establishment of water markets. The current conveyance system is unfriendly to fishery management and is thus crippled in its ability to convey water from willing sellers to willing buyers.

**Discussion**

Forty years ago, federal and state governments were often the only entities with the financial and technical capability to plan and construct major civil works projects. In the past quarter century, this has changed. Federal and state governments have played a much smaller role in developing new water supplies for various fiscal and policy reasons. More often, local utilities and regional authorities have assumed this role. These local and regional entities have planned, financed, constructed, and operated new water storage, treatment, conveyance, conservation, and reuse projects. The associated management, technical, and financial requirements are complex and demanding. These entities have demonstrated their competence and the ability to complete these projects in a technically sound and financially efficient manner. As an example, the Metropolitan Water District of Southern California completed Diamond Valley Lake, an 800,000 acre-foot reservoir, at a cost of $2 billion. Funded completely with local money, MWD was responsible for the planning, design, construction, operation, and maintenance of this facility, including environmental compliance. About fifteen years ago, the Friant Water Users Authority and the San Luis Delta Mendota Water Authority, acting as Joint Powers Authorities, assumed responsibility for the operation and maintenance of federal CVP facilities, resulting in more efficient and effective operations. In addition, Bulletin 160, the CALFED Program, and voter approved bonds have all recognized the success of locally managed projects and

encouraged their advancement. The practice of local or regional authorities assuming greater responsibility for planning, design, and construction of large water development projects is even more pronounced in other areas in the west. In Utah, the federally authorized Central Utah Project includes a series of dams, pipelines, reservoirs, tunnels, and aqueducts designed to help meet the agricultural and urban water needs of the state through 2020. The Central Utah Water Conservancy District (CUWCD), a political subdivision of the state, was established in 1964 to contract with the federal government in conjunction with funding, construction, operation, and maintenance of the CUP. Construction, operation and maintenance were to be performed by the federal Bureau of Reclamation. Following the reauthorization of the project in 1992 through the Central Utah Project Completion Act, CUWCD assumed responsibility to plan, design, construct, operate, and maintain all project facilities. They also administer the sale and delivery of project water and are responsible for the repayment of the federal reimbursable costs of the CUP. There are many more examples of such institutions in this country that are viewed as being very successful entities, and in many respects, they are similar to any large utility entity, public or private. The key is a focus in their mission and accountability to their financing sponsors. Such entities are regulated by resource agencies charged with protecting fish and wildlife resources and other public values such as air quality and water quality. Thus the public clearly knows who is responsible for what, and internal conflicts over balancing resource needs are eliminated. Business is conducted in public forums using established regulatory processes.

Additionally, complex environmental enhancement projects are being addressed by different institutional and management structures. These efforts are often in response to regulatory requirements such as the Endangered Species Act or the Clean Water Act. They may result in habitat conservation plans or water quality projects with specific objectives and adaptive approaches. These new processes are science-based and generally involve all interested publics. They are transparent and accountable. The financial mechanisms are diverse and equitable in nature. The institutional framework generally has greater public involvement and departs from the traditional top-down approach in favor of more collaborative processes.

As has been the case with scores of entities across the country, the Bay Delta interests have been exploring these outcome based institutional models for nearly twenty years with varying degrees of success. Like the “adaptive management” model for ecosystem restoration and conservation or the “action-oriented decision making” approach for conveyance facilities, management approaches may also be adaptive in nature. Bay Delta interests may initially designate a more limited role for these new governance institutions. With experience, confidence may increase regarding the entities ability to be effective, efficient, responsive, fair, open, and accountable. This increase in confidence may naturally lead to a greater future role. The following governance and funding options should be viewed in this adaptive light where changes in structure may evolve over time.

<u>Flood Control</u>: The institutional framework is in place to address flood control related issues including levee protection. Recent state legislation has realigned risk/reward relationships and provided guidance to local land use planning entities to more carefully consider flood threats

and impacts. The state, local flood control districts and the federal Army Corps of Engineers can continue to most effectively address these important issues. Additional adjustments may be required to functions and authorities to assure that flood control efforts support and enhance other Delta initiatives and the overall objective of a healthy sustainable Delta ecosystem.

Ecosystem Restoration: Through the Delta Visioning process, interested parties need to carefully consider the land use planning process. There has been a distinct direction for land use planning authorities over the past twenty-five years. The emerging planning models attempt to balance local jurisdictions' authority with Delta-wide land use needs and objectives. The state created the Delta Protection Commission through the Delta Protection Act of 1992. The Act states that comprehensive regional land use planning is necessary to protect the broad interest in a healthy Delta. It envisioned regional planning through the DPC with implementation by local governments. Additional authority and funding for the DPC may be required to provide the level of regional land use planning necessary for long term Delta health and sustainability. Further refinement is expected from the ongoing Delta Visioning dialogue.

Habitat conservation and restoration is a complex and wide-reaching effort in terms of geography, ecology, and jurisdiction. To date, restoration efforts in the Delta have been largely pursued by entities for which restoration was not 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 connectivity has been recognized as necessary. A new entity should be established with responsibility for the implementation and adaptive management of the Bay Delta ecosystem restoration program. This entity will focus on the aquatic and terrestrial environment of the Delta and will work with the various other agencies, entities, and interests in assuring a healthy and sustainable Delta ecosystem. It is anticipated that this entity would hold title to and manage the lands acquired in support of and in conjunction with habitat restoration. Its exact structure is yet to be determined and it could be a new state or local agency, a state authorized quasi-governmental entity, or a state authorized private not-for-profit. In determining the appropriate form of governance for implementing Delta restoration and conservation, attention should be given to the many successful "conservation-like" entities functioning in California and throughout the country. Regardless of the exact nature of the entity, the programs undertaken need to be fully funded for both capital and operation and the entity's mission and strategy for restoration should be made clear. 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 and 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. Ongoing operations costs could be paid through a combination of sources including an endowment, state and federal appropriations, and direct user fees by those entities and interests having direct benefit from or impact on the Delta.

Water Quality and Reliability: The BRTF recognized that some new form of water conveyance system is necessary to provide for reliable exports south of the Delta while improving ecosystem functions in the Delta. Also, any conveyance system must have the flexibility to not only better meet the current water needs of the Delta but also allow for changes in water operations to meet new requirements identified through adaptive management or resulting from differing future conditions such as higher peak flows or prolonged dry cycle resulting from regional climate variability or change. Additional storage may be necessary to provide the flexibility to fully meet all current and future water requirements of the Delta, including water supply and ecosystem restoration.

The construction and operation of water conveyance facilities could be the responsibility of either the state of California through the Department of Water Resources or the federal government through the Bureau of Reclamation. Both state and federal governments have a long and substantial interest in the Delta including the State Water Project and the Central Valley Project. They also have substantial interest in the water quality and the environment of the Delta through state agencies such as the California Water Resources Control Board and the Department of Fish and Game and federal agencies such as the Environmental Protection Agency and the Fish and Wildlife Service.

However, a number of factors now suggest that a new entity may be able to more effectively and efficiently fund, plan, design, and construct the appropriate conveyance facility, operate the existing SWP and CVP systems and assure regulatory compliance. This is particularly true given the uncertainty of federal funding. Such funding would be subject to the annual federal appropriation process and would need to compete with other federal priorities within Reclamation and the federal government at large. Recent history with the CALFED Bay-Delta Program illustrates the difficulty of providing for a consistent federal share in managing the Delta.

The varying and sometimes divided state and federal interests with respect to Delta conveyance facilities suggests that the effort be undertaken by an entity that is constituted specifically to address this unique circumstance. Given recent successes using joint action entities and regional and local governments to carry out historically state and federal governmental functions in similar situations, this new approach could be appropriate in this instance as well. In coming to the conclusion that a single combined supply entity is desirable a number of models were looked at, three of which are outlined here. Under each scenario construction and operation of the new conveyance facilities would be subject to all applicable federal and state laws. Funding would be provided through bonds issued by the new governance entity and repayment of these bonds would be achieved by assessing appropriate surcharges to water users or others who rely on the new Delta conveyance facilities and existing delivery infrastructure for their water supply. Operation and maintenance costs would be built into the charges for use of the facilities.

Option 1: A JPA would be created to contract with the Department of Water Resources to plan, design, and construct the water conveyance facilities that are ultimately identified to

meet the water management needs of the Delta. Upon completion of construction, the JPA would transfer the completed facilities to the Department of Water Resources for operation and maintenance as part of the State Water Project. DWR would contract with the federal government to wheel CVP water as necessary.

Option 2: A new department would be created within the Resources Agency with responsibility for all state activities associated with the operation, maintenance, and administration of the State Water Project and the new Delta conveyance facilities. This would separate DWR's statewide water resource development and planning role from operation of the State Water Project and associated facilities. The new department would design, construct, and operate the new conveyance facilities as part of the State Water Project. The new department, or the Department of Water Resources prior to the creation of the new department, could contract with the JPA as described in Option 1. DWR would contract with the federal government to wheel CVP water as necessary.

Option 3: A newly established quasi-governmental entity with an appointed or elected Board would be created with responsibility for the operation, maintenance, and administration of the State Water Project, Central Valley Project and the new Delta conveyance facilities. This would allow DWR to focus on their statewide water resource development and planning responsibilities. The new authority would focus on the effective and efficient operation of the current facilities and new conveyance, for the benefit of the public utilities and their end users, who would pay for all costs. The new authority would design, construct, and operate the new conveyance facilities. The new authority or the Department of Water Resources prior to the creation of the new authority, could contract with a JPA as described in Option 1.

**Oversight and Ownership of the Delta Vision**

The work of the Governor's Blue Ribbon Task Force has elevated the debate over Delta resource issues and established a generally lauded framework for action. The BRTF's institutional life is finite, but the need for constant attention to its Vision over the long term is infinite, and must adapt to changes seen and unforeseen. To that end, in addition to the establishment of the new and modified institutions noted above, some form of continuance or "home" for maintenance of the ongoing Vision needs to be maintained. The Resources Agency could establish a periodic (three, five year?) reporting process to assess progress in achievement of the Vision and the experience new or modified institutions are having in its implementation. A periodic independent assessment of progress will be necessary to provide for course corrections, institutional modifications and policy continuity.

**Conclusion**

The time has come to decide on a course of action that will result in a healthy Delta ecosystem and an adequate and reliable water supply for California's agricultural and urban water interests. Compelling agents of change including earthquake risk, continued subsidence , sea

level rise and non-native species invasions will degrade the system further and make maintenance of the status quo untenable. Providing for a healthy Delta ecosystem and an adequate and reliable water supply will require thoughtful and widely supported efforts to implementing the Delta Vision addressing water supply and management, water quality, habitat restoration, land use, flood control, levee protection, and other related Delta issues. The nature of the governing structures and the reliable means of funding both capital and operation and maintenance costs need to be part of any adopted strategy.