

Preliminary Draft Charter
Delta Methylmercury Total Maximum Daily Load
Stakeholder Group
Version – July 16, 2009

Section 1 - Project Purpose and Background

The Central Valley Regional Water Quality Control Board's (Water Board) Delta Methylmercury (MeHg) Total Maximum Daily Load (TMDL) was initiated by the Water Board's 1990 303(d) listing of the Delta for mercury. The Water Board identified the Delta as impaired by mercury because Delta fish have elevated levels of MeHg that pose a risk for human and wildlife consumers. The Water Board's development of a water quality attainment strategy to resolve the mercury impairments in the Delta has two components: the MeHg TMDL for the Delta and the amendment of the Water Quality Control Plan for the Sacramento River and San Joaquin River Basins (Basin Plan) to implement the TMDL program.

The TMDL development and Basin Planning and amendment process involves:

1. Technical analysis of the extent of impairments and methyl and total mercury sources;
2. Identification of a range of possible water quality objectives that correspond to safe levels of MeHg in fish tissue that are protective of humans and wildlife that consume Delta fish;
3. Identification of a range of possible implementation program (Implementation Plan) options and corresponding source reductions strategies needed to attain safe fish tissue MeHg levels;
4. Environmental analysis of the potential impacts of reasonably foreseeable methods of compliance with the recommended implementation program to comply with the California Environmental Quality Act (CEQA).

Items 1 and 2 above are collectively referred to as the "TMDL Report. For the purpose of this Charter, the TMDL Report and Implementation Plan are collectively referred to as the TMDL. A draft TMDL report was first released for public review in August 2005. A revised draft TMDL report and draft Basin Plan amendment staff report was released in June 2006 for scientific peer review. In February 2008 updated versions of the proposed TMDL were released for public review. This was followed by a Water Board hearing in April 2008 at which, based on significant stakeholder input, the Water Board agreed to start a comprehensive and inclusive stakeholder process to reconcile increasing differences of opinion regarding the scale and efficacy of the proposed TMDL. In Summer 2008, the Water Board created an interagency agreement with the California State University Sacramento, Center for Collaborative Policy (CCP) to act as a third-party neutral and convene the stakeholder process. In Fall 2008, CCP conducted a standardized Stakeholder Assessment, through which they interviewed over 50 stakeholders.

From the Assessment, CCP identified issues that can be easily resolved, issues that appear intractable but may benefit from negotiations, and related information. With this information, CCP proposed an approach for stakeholder involvement in the TMDL process. This Charter describes the proposed purpose, roles, responsibilities, rules and process that the proposed TMDL Stakeholder Group (Stakeholder Group) may fulfill.

The purpose of the Stakeholder Group is to provide input on matters related to the development of the TMDL. Specifically, the Stakeholder Group will advise and provide comment to Water Board staff (Staff) on the development of the TMDL and associated documents.. Presuming TMDL approval by the Water Board, State Water Resources Control Board (SWRCB), and US Environmental Protection Agency (EPA), the Stakeholder Group (and this Charter) may be modified to address TMDL implementation, rather than initial steps to develop the TMDL.

Stakeholder Group participants are expected to review and evaluate TMDL program components and implementation measures. They are expected to comment on all aspects of the TMDL. The proposed recommendations will be used by Staff to develop a TMDL Report and Basin Plan Amendment. Given the expeditious Stakeholder Group schedule, it is understood that the Implementation Plan will be flexibly designed to adapt to future information needs and with future information sources.

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Section 2 – Draft Schedule and Milestones (TO BE EXPANDED)

Date	Program Element	Deliverable (Responsible Party)
December 2008	Kickoff meeting. Review outcomes of Stakeholder Assessment Report. Introduction of bifurcated process.	•
January 2009	Review key issues	•
February 2009	Formation of various Workgroups (see below)	•
		•
July 2009	Staff prepare Preliminary Draft Basin Plan Amendment (BPA)	•
July – December 2010	Staff and Stakeholder Group refine BPA	•
January 2009	Board hearing to review staff Delta MeHg TLDL recommendations	•

Section 3 - Stakeholder Group Organization

No stakeholder group can be completely inclusive. Time, budget, and size considerations mandate that a stakeholder group must be a representative and manageable cross-section of interests rather than a collection of all parties.

3.1 - Participant Selection

The Stakeholder Group will represent a comprehensive cross-section of stakeholders directly affected by the TMDL, and regulatory stakeholders directly responsible for enforcing water quality statutes. These stakeholders will be invited to participate in the process and to provide formal letters of interest and commitment to the Water Board Executive Officer (EO). The letters of interest should ideally come from the highest level of authority possible within the participant's respective organization and should confirm the organization's intent to fully participate in the process. To the extent possible, the Stakeholder Group will be limited in size to a group of representatives that will act on the behalf of their interest groups. Specific distribution of the numbers of stakeholders representing each interest will be decided by the EO, with the advice of the neutral facilitator from CCP. Whenever possible and acceptable to affected stakeholders, Stakeholder Group participants should represent multiple similar organizations as a means to ensure representation while maintaining a feasible Stakeholder Group size. Stakeholder Group participants are expected to have some knowledge and understanding of the current Delta MeHg TMDL. Proposed interest groups to be represented are presented in Attachment A

Due to the necessary timeframe to develop the TMDL, and the specific recommendations that will be developed at each meeting, it is not optimal to add new participants to the Stakeholder Group once started. Should a stakeholder request inclusion to be a participant on the Stakeholder Group after the process has started, (rather than participating as a public meeting attendee) they are expected to do the following:

1. Contact the Water Board Project Manager, Patrick Morris, (916) 464-4621, pmorris@waterboards.ca.gov, and identify an interest to become a Stakeholder Group participant.

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- 1 2. Attend the next available meeting and describe to the Stakeholder Group, their desire to become a
2 participant. Stakeholder requests should include a description of the following:
3
4
 - 5 • Rationale of the stakeholder niche not currently filled by an existing participant.
 - 6 • Description of how the stakeholder is reasonably and directly affected by the Program.
 - 7 • Willingness to commit the resources and time necessary to be an active participant on the
8 Stakeholder Group.
 - 9 • Willingness to accept all Stakeholder Group recommendations to-date and an understanding that
10 previously agreed on items will not be revisited based on his or her interests.

11 3. The Stakeholder Group and Water Board staff will discuss the stakeholder request. Final determination
12 of inclusion will be provided by the EO with advice from the neutral third party facilitator.
13

14 **3.2 - Participant Responsibilities**

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16 Participants on the Stakeholder Group will attend meetings; report back to the organization(s) they represent;
17 and communicate the interests, concerns, and recommendations of their organization(s) and constituents to
18 the Stakeholder Group. Participants should attend every meeting or arrange for alternates (see below) to
19 attend on their behalf. If possible, participants should notify Water Board staff in advance of anticipated
20 absences. All Stakeholder Group meetings will be open to the public and will be publicized to encourage
21 public attendance. However, the Stakeholder Group will always represent a select group of representative
22 stakeholders within this larger public meeting context. Public comments will be received at each meeting so
23 that Stakeholder Group participants are informed by the larger populace. The Stakeholder Group will take
24 such public comments as advice to their deliberations and recommendation process.
25

26 Alternates: Stakeholder Group participants may need an Alternate due to their respective schedules and
27 the pace of the Stakeholder Group meetings. Alternates will be identified by each participant requiring
28 one. When a participant must miss a meeting, they will notify the facilitator and Water Board project staff
29 as soon as feasible before a meeting and will coordinate the attendance of their Alternate. Participants
30 are encouraged to use the same Alternate every time to ensure the highest degree of institutional
31 memory about the process. The facilitator will meet (in person or via telephone) with the participant and
32 Alternate to ensure shared understanding of the participant's perspectives about any items due for
33 discussion at the pending meeting.
34

35 **3.3 - Participant Replacement/Succession**

36
37 If a participant is no longer able or willing to attend meetings, said individual will notify the Water Board staff in
38 writing of his/her resignation and will recommend a replacement. The facilitator will coordinate new participant
39 orientation after their appointment. All participants should maintain a comprehensive record of their activities
40 and personal work to be passed along to a replacement, if necessary. The facilitation team will also do so.
41

42 **3.4 - Water Board Responsibilities**

43
44 Water Board staff, the facilitation team and Stakeholder Group participants will work collaboratively to develop
45 agenda topics and other materials related to the development of the TMDL. Water Board staff will circulate
46 draft agendas at least one week prior to scheduled Stakeholder Group meetings. Other meeting materials will
47 be distributed as early as possible before a scheduled Stakeholder Group meeting.
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1 Summaries of Stakeholder Group discussions and recommendations will be recorded at all meetings by
2 Water Board staff and/or neutral facilitation team staff. The summaries will be distributed to Stakeholder
3 Group participants and made available to the public on the TMDL project website (www.deltamehgtmdl.net/),
4 and the Water Board's website
5 (www.swrcb.ca.gov/rwqcb5/water_issues/tmdl/central_valley_projects/delta_hg/index.shtml) . Meeting
6 information and TMDL updates will also be circulated via email on the Water Board's email listserv.
7

8 Water Board members will be informed of the progress of the Stakeholder Group in a variety of ways,
9 including, but not limited to: bi-weekly staff briefings to the EO from the Program Manager, subsequent EO
10 reports and informational items at Water Board meetings as needed, attendance at Stakeholder Group
11 meetings by Board members when possible, public comment at Board meetings by Stakeholder Group
12 participants. If needed, a Water Board workshop and/or subcommittee can also be convened.
13

14 Water Board staff will be responsible for the following:

15
16 *Stakeholder Group Input and Products:* Stakeholder Group members will make a substantial investment of
17 time and resources to develop recommendations for the TMDL.. This time commitment is in addition to
18 any investment participants make in the formal review and comment process as part of the adoption of the
19 TMDL by the Water Board, SWRCB, and EPA. To ensure all participants positively benefit from this
20 process, Water Board staff and the EO will make the following commitments:
21

- 22 1. Thoughtfully and objectively consider all Stakeholder Group comments and recommendations;
- 23 2. Communicate all Stakeholder Group participants' recommendations and associated rationale to
24 Water Board members;
- 25 3. Address the stated interests of Stakeholder Group participants to the extent allowed by the Water
26 Board's legal mandates.

27
28 At a minimum, Stakeholder Group products, recommendations, and feedback will be described in the
29 revised Basin Plan staff report ([see definition in Appendix A TBD](#)).

30
31 *Program Coordination:* TMDL project staff will communicate and coordinate Stakeholder Group ideas
32 and alternatives with other Water Board programs and local, state, federal, and tribal agencies. Staff will
33 consider all Water Board Programs in general, but will focus coordination efforts with the Total Maximum
34 Daily Load (TMDL), and Basin Planning Programs. Coordination efforts will include: enlisting the help of
35 other program staff to comment on Stakeholder Group products, MeHg presentations at Stakeholder
36 Group meetings (as needed), and regularly scheduled coordination meetings among staff.
37

38 **3.5 - Consultant Responsibilities**

39
40 Facilitation services will be provided to support the Stakeholder Group process. The facilitator and
41 facilitation team serves as a "professional neutral" whose primary responsibility is to ensure an open
42 process where all participants' interests, views and opinions are heard and thoughtfully considered.
43 Specific responsibilities of the facilitator include:

- 44 • Design and conduct a consensus-seeking process where the Stakeholder Group can best assist the
45 TMDL process.
- 46 • Facilitate meetings and generate draft agendas and meeting summaries.
- 47 • Capture the range of views and ideas presented by participants and report on where there are areas
48 of agreement and differences.
- 49 • Develop preliminary draft proposals that reflect participants' discussions and project opportunities
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- Assure that Stakeholder Group participants have seven days to respond to information or requests submitted between meetings.

3.6 - Meeting Methods

The goal of the Stakeholder Group is to develop consensus recommendations for Water Board staff to incorporate into the TMDL, and for stakeholders to incorporate into a “Memorandum of Intent, and a related TMDL Implementation Workplan.. All Stakeholder Group participants must be in agreement for a “consensus” determination (see Section 3.7). The timeframe of the process, and the fact that final decisions on the TMDL are made by the Water Board, SWRCB, and EPA limits the responsibilities of the Stakeholder Group to an advisory capacity. Consensus may not be feasible and is not required by the stakeholders. Therefore, the Stakeholder Group will *seek* consensus, rather than be mandated to *achieve* consensus on all topics. The decision to proceed with a recommendation absent a consensus will be based on discussions between Water Board staff and the Stakeholder Group; however, final determination on whether to continue seeking consensus will be made by Water Board staff and the EO. If consensus is not reached on a given topic, the range of recommendations supported by the different interests will be documented for staff and Water Board consideration. Any reports developed for the Water Board by staff or the stakeholders will describe Stakeholder Group consensus recommendations and non-consensus items .

Full Stakeholder Group meetings are expected to occur approximately once a month. Stakeholder Group meetings will not occur based on a quorum but rather, will proceed with the available participants. Decisions will be made as ajenized. With the exception of administrative-type decisions (e.g. meeting logistics), no TMDL decisions will be made by the Stakeholder Group if the topic and decision milestone have not previously been communicated via the agenda to the full Group. The facilitator may periodically ask for a “conditional agreement” in a meeting without having memorialized this request in advance. A conditional agreement will reflect a non-binding survey of the Stakeholder Group participants present and will be asked when a general sense of direction is needed from the Group to proceed with some next level discussions or actions.

Workgroups. Workgroups will be created as needed to address specific topics (i.e., geographic, technical, policy, etc). In general, the goal of Workgroups will be to discuss and refine a topic and provide a range of recommendations (or single recommendation if feasible) to the larger Stakeholder Group for its consideration and decision process. Workgroup composition will consist of any willing and interested Stakeholder Group members and other volunteers / stakeholders as reviewed and approved by the Stakeholder Group (see decision-making process). All Workgroup meetings will be open to the public (whether in person or via conference call options). Agendas and meeting notes will be posted on the Delta TMDL websites.

Workgroups will seek consensus but will not spend significant time negotiating unanimous agreements. Because of their advisory role, consensus is not required. Time spent to achieve consensus will be at the discretion of the workgroup and their facilitator (if present). Workgroup work products will present recommendations for Stakeholder Group consideration. All work products should include a description of the steps taken, and the discussions held by the workgroup to create the recommendation(s). In the event that multiple and/or conflicting recommendations are created and can not be resolved to a unanimous conclusion, the workgroup is expected to memorialize the range of recommendations they create and to describe the steps taken to resolve differences. In these circumstances, the workgroup should avoid identifying majority or minority numerics of specific proponents. However, it is reasonable (with the approval of all workgroup members) for recommendations to be attributed to a specific stakeholder type(s). This approach should also be practiced by the full Stakeholder Group as it develops its documents. Workgroup work products will be presented to the full Stakeholder Group membership

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1 and will be publicly available on the Delta TMDL websites. Workgroups may follow (at the discretion of all
2 workgroup members) the standard document development protocols used for full Stakeholder Group
3 documents (e.g. preliminary draft, draft, draft final, final – as described below).
4

5 **3.7 - Decision-Making Protocols**
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7 The consensus decision rule is based on principles of “consensus with accountability”. Consensus with
8 accountability requires all participants to try to reach consensus while at all times supporting and expressing their
9 self-interest. In the event a participant must reject a proposal, that participant should provide a counter proposal
10 that legitimately attempts to achieve their interest, and the interests of the other participants. The Stakeholder
11 Group will not vote and will not seek to identify numeric “winners and losers” on key topics. Rather, the
12 Stakeholder Group will seek mutually acceptable and beneficial conclusions.
13

14 In seeking consensus on an interim or final recommendation, participants will voice their opinions with specific
15 proposals along the way, rather than waiting until a final recommendation has been developed. At all times,
16 participants will ensure that they are providing input commensurate to their prescribed role and constituency
17 regarding the TMDL. The basic decision-making process will be as follows:
18

19 Straw Polls: Participants will use straw polls to assess the degree of preliminary support for an idea before it is
20 submitted as a formal proposal for final consideration by the Stakeholder Group. Participants may indicate only
21 tentative approval for a preliminary proposal without fully committing to its support. This method will be used
22 when the facilitator seeks a conditional agreement (as described in Section 3.6)
23

24 Draft and Final Decisions: The Stakeholder Group will use the following three levels to indicate participants’
25 degree of approval and support for any proposal being considered and to determine the degree of consensus.
26

27	Thumbs Down:	I do not agree with the proposal. I feel the need to block its adoption and propose an alternative.
28		
29	Thumbs Sideways:	I can accept the proposal.
30		
31	Thumbs Up:	I think this proposal is the best choice of the options available to us.
32		
33	Abstention	At times, a pending decision may be infeasible for a participant to weigh in on. Examples could include but not be limited to: a topic that has statutory implications that an agency representative can not be on record conflicting with; a participant can not get a consensus of his/her partners and therefore can not offer a proposal or opinion; and other similar conditions.
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40 The goal is for all participants to be in the ‘Thumbs Up’, or Thumbs Sideways’ levels of agreement. The
41 Stakeholder Group will be considered to have reached consensus if all participants are at those two levels. If any
42 participant is at a ‘Thumbs Down’ level, that participant must provide a counter proposal that legitimately attempts
43 to achieve their interest and the interests of the other participants. The Stakeholder Group will then evaluate how
44 best to proceed. Participants that abstain from particular proposals are encouraged to explain why abstention is in
45 their best interest.
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1 The Stakeholder Group will not revisit previously agreed to recommendations, alternatives or evaluation
2 measures unless new information is brought to light that would likely affect the outcome of the Group's previous
3 work.
4

5 **3.8 - Communication protocols**

6 Stakeholder Group participants and their Alternates serve as conduits for two-way information exchange with their
7 constituencies. Constituents wanting to provide input to the process are encouraged to channel their concerns
8 and suggestions through their individual participants on the Stakeholder Group. Stakeholder Group participants
9 will make a concerted outreach effort to communicate regularly with their agencies or constituencies to keep them
10 informed about the process and the issues under discussion.

11 Stakeholder Group participants will in no way be prohibited from speaking with the media, but must indicate that
12 they are providing their individual perspectives and are not speaking for the group. Participants should neither
13 characterize the positions and views of any other party nor should they ascribe motives or intentions to the
14 statements or actions of other Stakeholder Group participants.
15

16 A list of Stakeholder Group participants will be made available to the public on the Water Board's website. The
17 list will include the following information: participant name and represented interest(s). Should an interested
18 party have focused comments for a Stakeholder Group participant, the individual(s) will be encouraged to work
19 through Water Board staff to convey the comments to the appropriate Stakeholder Group participant(s).
20

21 Meeting Summaries will be prepared and distributed to Stakeholder Group participants by the facilitator and Staff
22 within 7 business days following each meeting. Summaries will identify the meeting participants, major issues
23 discussed, decisions made, and actions to be taken. Participants will have 5 business days to review DRAFT
24 summaries and provide comments to the facilitator (and other participants if desired). The facilitator will revise
25 summaries and send a DRAFT FINAL version to the Stakeholder Group within 2 additional business days. Any
26 conflicts between two or more participant's summary reviews will be resolved by the facilitator with the
27 participants in question. DRAFT FINAL Summaries will be reviewed at the next Stakeholder Group meeting. The
28 facilitator will call for any further revisions by participants to ensure the correct characterization of all comments.
29 New comments will be addressed by the facilitator with the participant at the next meeting. If no comments are
30 received, the Summary in question will be entered into the project record as a FINAL document.
31

32 Meeting Action Items will be prepared and distributed to Stakeholder Group participants by the facilitator and Staff
33 within 2 business days following each meeting.
34

35 **Section 4 - Information Publication**

36
37 Materials will be prepared / provided on a regular basis to support the Stakeholder Group process. These include
38 the following materials and general sequence for development and distribution (subject to flexibility as agreed on
39 by the Stakeholder Group).
40

41 **4.1 - Document Development.**

42 Documents being developed for and by the Stakeholder Group will follow a general sequence of completion. All
43 the following stages of a document will be dated to ensure that users have the most current version
44

- 45
- 46 ○ **Informational** documents prepared for the Stakeholder Group will be initially distributed in DRAFT
47 format. These documents are for information purposes only. They may be subject to comments and
48 revisions by Members and will be finalized to FINAL stage at some point in the Forum process.
49

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- 1 ○ **Decision** documents prepared by the Stakeholder Group will be initially distributed in PRELIMINARY
2 DRAFT format. These documents will reflect ongoing work by the Group that will eventually be
3 revised to DRAFT status. All DRAFT and PRELIMINARY DRAFT documents are for discussion
4 purposes only.
- 5
- 6 ○ DRAFT **decision** documents will be revised through Stakeholder Group discussions. When a
7 DRAFT document reflects an appropriate level of completion by the Group, it will be retitled as DRAFT
8 FINAL.
- 9
- 10 ○ All **decision** documents will remain in a DRAFT FINAL stage until they are ratified by the Stakeholder
11 Group as completed, at which point a document will be retitled as FINAL.
- 12
- 13 ○ FINAL documents may be revised at the discretion of the Stakeholder Group. Generally speaking,
14 FINAL documents should only be revised if new information is identified that makes the conclusions
15 of the Forum insufficient. FINAL documents that are revised will be titled REVISED FINAL.
- 16

17 **Section 5 – Stakeholder Group Ground Rules**

18
19 All Stakeholder Group participants, the facilitator, and public participants of a meeting agree to:

- 20
- 21 ● Arrive promptly to all meetings and be prepared for the meeting agenda.
- 22 ● Stay for the duration of the entire meeting.
- 23 ● Turn cell phones to silent.
- 24 ● Minimize actions that could be distracting to participants discussions. Should meeting attendee behavior
25 become distracting to participants, those individuals should speak with the facilitator to intervene.
- 26 ● Participate in a problem-solving approach based on respectful and constructive dialogue, where the
27 interests of all participants and the public are considered in developing proposals and recommendations.
- 28 ● Openly discuss issues with others who hold diverse views; acknowledge and seek clarification of others'
29 perspectives; and verify assumptions when necessary.
- 30 ● Assure that all participants are heard and that one person speaks at a time. Refrain from side
31 conversations.
- 32 ● Keep commitments once made.
- 33 ● When appropriate, distinguish between personal vs. organizational perspectives.
- 34

35 All Stakeholder Group meetings are open to the public and observers are welcome. All public participants are
36 expected to abide by the Ground Rules described above. Periods for public comment will be scheduled into each
37 meeting agenda.

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Attachment A
Proposed Stakeholder Group Participants

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<u>STAKEHOLDER / STAKEHOLDER TYPE</u>	<u>PROPOSED MEMBERS</u>
Private Habitat Conservation Advocates	
Ducks Unlimited	Rudy Rosen
Nature Conservancy	Sally Liu
Delta Dredging	
Port of Sacramento	Tom Sheeler
Port of Stockton	Jeff Wingfield
US Army Corps	TBD
Environmental Justice Caucus	PROPOSED: 3 Rotating Participants to be selected by a Environmental Justice Caucus
Environmental and Public Health Advocates	
Clean Water Action	Andria Ventura
Environmental Justice Coalition for Water	TBD
Regional Water Treatment Dischargers (POTW)	
Central Valley Clean Water Association	Debbie Webster
City of Vacaville	Tony Pirondini
Sacramento Regional County San. Dist	Terrie Mitchell
Public Health Agencies	TBD
Regional Watershed Issues	
Tulyome / Sierra Club - Yolano Group	Bob Schneider
Regional Agricultural Representatives	
California (CA) Rice Commission	Paul Buttner
California Farm Bureau	Kari Fisher
Northern California Water Assoc	Bruce Houdesheldt
Delta Agricultural Representatives	
South Delta Water Agency	John Herrick
Regional Stormwater Agencies	
Sacramento Urban Area	Dave Tamayo
Stockton Urban Area	Jeff Willet
Reservoir Utility Managers	
PG&E	Rex Bell

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1	Delta County Governments	1 Rotating Representative appointed by
2		Delta Counties Coalition
3		
4	Delta Environmental Advocates	
5	California Sportfishing Protection Alliance	Richard McHenry
6	Potential – Restore the Delta	Barbara Barrigan-Parrilla
7		
8	CA Dept. of Fish and Game Water Branch (DFG)	Tim Stevens
9		
10	CA DFG CALFED	TBD
11		
12	CA Dept of Water Resources, Division of	Marianne Kirkland
13	Environmental Services	
14		
15	CA Central Valley Flood Protection Board	Dan Fua
16		
17	DWR Division of Flood Management	Mark List
18		
19	CA State Lands Commission	Steve Mindt
20		
21	Central Valley RWQCB	Patrick Morris
22		
23	US EPA Region 9	Diane Fleck
24		
25	US Fish and Wildlife Service	Tom Maurer
26		
27	Bay Delta Conservation Plan	Karla Nemeth
28		
29	POTENTIAL TOTAL	35

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**Appendix A
Definitions
TO BE DEVELOPED**

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