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Stockton, CA 95206**

November 20, 2014

Randy Fiorini, Chair
Delta Stewardship Council
980 9th Street
Sacramento, CA 95814

RE: DSC Independent Science Board Review of BDCP EIR/EIS

Dear Chairman Fiorini,

Much has been written and said about the Delta Stewardship Council's "One Delta, One Science" approach for finding solutions to Delta problems. In theory this seems a good course, as "dueling science" does not necessarily serve the public well. However, neither is the public served when leaders ignore, or worse, misrepresent the very science we are to rely upon.

I am referring to your comments on September 23rd made to the Metropolitan Water District's Special Committee on the Bay Delta. To wit:

"As an independent state agency, regarding BDCP, one is as the responsible agency, we've commented from time to time on the progress on the BDCP. The Independent Science Board, ten internationally respected scientists who serve the Council to advise us on science matters. They reviewed the EIR/EIS document recently and had lots of good things to say about the document. They had a few comments about the need to add a little more rigor to the adaptive management component, but overall it was a very positive report submitted on the BDCP EIR/EIS."

I must point out that you did not completely present to the MET committee the depth and breadth of the serious criticism the ISB issued May 15th regarding the BDCP documents. The Counsel asked the ISB: "...do the analyses use science that is good enough, and use it well enough, for a project that is so large, complex, expensive, long-lasting, and important?" The ISB evaluation was clear:

"We find that the DEIR/DEIS currently falls short of meeting the 'good enough' scientific standard."

This statement was followed by a very clear eight-point summary and over one hundred pages describing the shortcomings the ISB found in the Bay Delta Conservation Plan EIR/EIS documents.

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Fiorini

On October 30, addressing the last session of the Bay-Delta Science Conference, Dr. Tracy Collier, lead scientist for your Independent Science Board, re-iterated the concerns of the ISB. Dr. Collier said the BDCP documents had much good science, which could be built upon, but all-in-all, it was “not good enough.”

Chairman Fiorini, if the Delta Stewardship Council expects the public to trust “One Delta-One Science” it seems to me the council members, and especially you as Chairman, should also. Such trust would have resulted in you being more forthright with Metropolitan’s Bay-Delta Committee.

Thank you for the opportunity to comment.



Rogene Reynolds
South Delta

Cc: Delta Stewardship Council Members

M. Cowin

J. Laird

K. Nemeth

T. Collier

P. Goodwin

Metropolitan Water District of Southern California, Bay-Delta Committee

that there should be a master plan for how we're going to develop Twitchell and Sherman so we can take it to the community and say this is what we intend to do in the future ..."

Mr. Cowin agrees. *"I think that's a valid criticism. We do need a long range plan that shows how our future activities on those two islands will fit into BDCP and the rest of our intentions for activities in the Delta. I would just say that it's difficult, obviously. Not all islands are created equal in the Delta. Some are more appropriate for different types of habitat and different types of activities and Sherman and Twitchell aren't necessarily the primary types of physical location and geography that would lend itself to the best types and most efficient types of restoration activities in the Delta at this point. But we do need a longer range plan for how we intend to make use of those islands. I agree with you that the continued use of agriculture on that island is something that I've questioned before. It's difficult to demonstrate that stopping agriculture will prevent any more or any less water use than native vegetation will, so it's difficult to come up with a water savings to assign to that sort of action, but all those are the challenges that keep us from getting to that long term strategic plan, but I don't deflect the criticism. I do think we need to work harder on developing that plan."*

Director Peterson responds, **"It's not an attempt to be critical ... A simple thing like gas wells. If you build a house on Twitchell Island, you have to build your house above the levee. All these gas wells are below the levee and that's going to be a liability of the state when all their electronics and everything blows out, at least getting that under control would be helpful because to me, I see those islands as liabilities and they should be assets ..."**

Director Wunderlich asks then Director Cowin to talk more about the EPA's comment letter.

Mr. Cowin replies, *"To some extent, there are so many different agencies and different interests to work with on a project like this that it's hard to mind them all sufficiently, but this entire incident just underscores how important it is to devote the necessary resources to continuous interaction with all of these agencies that have a role in approving the plan ... We have had a whole lot of conversation with federal agencies since the EPA letter and we're reminded constantly that EPA isn't in the practice of writing love notes to the folks that it regulates so we shouldn't be overtaken by the tone and the depth of the letter.*

"However, it still is of great concern to us and the fundamental misunderstandings of what we're proposing are of concern to us. There are many, many comments contained in the EPA letter, but the one that concerned us the most was the suggestion that we intended to operate the project in violation of water quality law. Essentially where that misunderstanding comes from is in the analysis, which is state of the art analysis, but it's based upon a monthly timestep model which doesn't account for the daily types of decisions that we make when we operate the project, so while we have committed that we would not violate the standards that EPA is concerned about, the modeling would suggest that we would. Our response to that is that we'll deal with those challenges on a day to day basis, so essentially it's up to us to describe that in a much more clear way.

"You really would have had to get into the back appendices of the 20,000 page documents in order to gain the full appreciation of our approach to the analysis, and we need to have the short story that's clearer and more defensible up front in the document and that's our intention, but we do continue to work with the EPA to make sure we understand exactly what their concerns are and if we need to do additional analysis as part of this recirculation, aside from just telling a clearer story, we'll get that done."

Randy Fiorini, Chair of the Delta Stewardship Council

It was then Randy Fiorini, Chair of the Delta Stewardship Council, to have the floor. *"I have been greatly influenced by representatives of the Metropolitan Water Agency of Southern California. Over the years, I have gained a great appreciation for the work that goes on down here. ... One of your board members has been one who I have spent a special amount of time with over the last four years and that's your vice-chairman Gloria Gray who is with us today. Gloria was one of the inaugural members of the Delta Stewardship Council, appointed by the speaker of the Assembly, and she served for four years through a very, very hard working period of time for the Council as we developed the Delta Plan, the Delta Science Plan. Before I talk about the work that's underway, I wanted to acknowledge Gloria's service. We have prepared a certificate of appreciation ..."*

"The Delta Stewardship Council was created in 2009 in the Delta Reform Act as the legislature's desire to help create a long-term comprehensive plan to help carry out and achieve the coequal goals of water supply reliability for the state and a restored, healthy ecosystem in the Delta. A large task. It took us a little over three years to develop the Delta Plan that consists of 14 regulatory policies and 73 recommendations. It was adopted in May of 2013, and we have been working on implementing that Delta Plan since that time.

"In addition to the Delta Plan, we were also called upon to develop a science plan for the Delta that was presented to the Council in December of last year and endorsed by the Council as a vehicle to help coordinate and synthesize multiple activities related to science and the Delta. Our slogan is One Delta, One Science. Many, many activities are not well coordinated and oftentimes one agency is not aware of what another agency is doing, so we've developed a plan to help coordinate activities, synthesize the information, and make it available for the use of many of the folks that need access to information.

"Another entity that was prescribed by the legislature was to create a Delta Plan Interagency Implementation Committee. That committee met for the first time last April. It consists of ten directors and secretaries at the state level, seven agency leaders at the federal level – a high level group that came together to meet to discuss the priority issues facing their agencies. It's designed to help create a better line of communication.

"I have to confess as the chair of that committee, if I had done a better job, Director Cowin would not have been surprised by the letter from the EPA because I would have been on it and coordinated that and made sure, so we've got some work to do at that high level in terms of improving levels of communication.

"What I want to talk to you today is explain to you the five high priority areas that the Council is committed to and is working on. Most of those touch the work that you do here.

"First of all science. I mentioned we have a Delta Science Plan. It's not enough to have a plan; you have to have a way to implement it. So the Council this Thursday will be receiving from our Delta Science Program an interim Science Action Agenda. It's a two year road map for applied science in the Delta. It's posted on our website; there is a 30-day public comment period. The way this Interim Science Action Agenda was determined was by interviewing seventeen key agencies, developing a list of 315 actions that are of importance to each combined agencies, and then distilling those down into 7 priority science action areas that will serve as the roadmap for Delta science for the next two years when it is completed and endorsed.

"The second area of priority is flows. As you know, one of the requirements for the BDCP permit will be an update of the Bay Delta Water Quality Control Plan. The State Water Resources Control Board has that authority and we have urged them to move expeditiously unto a conclusion. We've supported that with two science panels that have advised them on Delta inflow issues and Delta outflow issues and we will continue to work closely with the Water Resources Control Board to reach a successful conclusion to that process.

"Levees are the third area of priority. 150 years of levees in the Delta and we have yet to develop a comprehensive plan for levee management. We were asked by the legislature to create a levee prioritization plan. We are currently working with the Department of Water Resources, the Central Valley Flood Protection Board, the Delta Protection Commission and local agencies to help advise the state on how to prioritize state investment in Delta levees. It's an 18 month to 24 month project. We're taking as comprehensive a look as we can. We've developed an issue paper to help define what it is that we are trying to achieve. That issue paper will soon be posted on our website and will be available for review at our Council meeting on Thursday.

"We selected a consulting group that post-Katrina were hired to develop a levee plan for Louisiana, and the tool that they developed has been employed in Louisiana now for a couple of years with great success, so with that as a model, with that as a vision, we hope to develop a similar product that can be used into the future to help guide state investments in Delta levees.

"Parallel to that, the Delta Protection Commission is working on a levee assessment district. Their desire is to spread the list of beneficiaries and funding for levee work in the Delta; the examples of additional entities would include CalTrans and utilities that operate in the Delta.

"The fourth area is land use. One of the few regulatory authorities that the Stewardship Council was given is called covered actions. It really was designed to prevent doing further harm to the Delta, and under the legal construct organized by the legislature, any plan, action, or activity that is permitted by a state or local government has to be consistent with the Delta Plan. That process is in place; we had our first covered action come to us. It was a subsidence reversal project led by DWR on Sherman Island, it went without appeal and so we've had our first successful covered action. It's now underway.

"If it were to be appealed, we'd hold a special hearing, we'd review the evidence, and we'd determine whether or not it's consistent, and if it's inconsistent, we make recommendations as to how to make it consistent.

"The fifth priority area is habitat restoration. It is really the hardest thing to do in the Delta. There is such a resistance to change. Science tells us that the landscape in the Delta must change if we're going to achieve the coequal goal of a restored

healthy habitat, so we are working diligently to try and find ways to improve trust and cooperation towards some significant movement on habitat restoration front.

"In the Delta Plan, we identified six priority restoration areas that should be preserved until plans can be thought through for habitat work. The California Water Action Plan endorsed by the Governor highlights our role in assisting with habitat restoration. The most recent action we've taken is to develop another issue paper outlining what the next two years should look like in terms of land acquisition, recommendations, and streamlining of permitting. That's a huge issue to move projects along and to address some of the concerns that local agencies. Counties have offered up as a problem such as removing land from the tax rolls, so we have an issue paper that outlines some steps that we think we'll get us further down the road to success over the next two years.

"Do we have a plan? There are lots of plans in play in terms of habitat restoration. The Delta Conservancy is working on a Delta Restoration Network where they bring local agencies, state agencies, and federal agencies together to try and find common ground; the fish agencies are working on the Ecosystem Restoration Program; federally court driven is the Fish Restoration Program Agreement led by the Collaborative Adaptive Management Team – all of these activities are underway in an effort to try and restore a healthy ecosystem and our job is to help coordinate these activities and ensure that when impediments are found, that ways are found to overcome those.

"And lastly, just very briefly, other areas that we monitor that are not of the highest priority but are nonetheless priorities: the BDCP. We have two roles. As an independent state agency, regarding BDCP, one is as the responsible agency, we've commented from time to time on the progress on the BDCP. The Independent Science Board, ten internationally respected scientists who serve the Council to advise us on science matters. They reviewed the EIR/EIS document recently and had lots of good things to say about that document. They had a few comments about the need to add a little more rigor to the adaptive management component, but overall it was a very positive report submitted on the BDCP EIR/EIS.

"We also have an appellate role. We are preparing for that, anticipating that when the BDCP is permitted, that there will be an appeal. The first appeal will go to the Delta Stewardship Council and we will have to determine – there's a very narrow range that we will review and that was the permit conditions specified are fully met, and it's likely that when it is permitted, we'll be holding a hearing and the procedures for that are all spelled out.

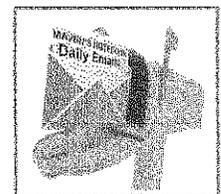
"The Governor's Water Action Plan, we are intimately involved in that, assisting in those areas where the Stewardship Council is called out and where there is an overlap with water action plan and the Delta Plan. We've offered our support for additional storage. We've offered our support for better management of groundwater, we've offered our support for the need to fund all of these activities that we talk about that are so important.

"And so with that ... "

Coming on Tuesday: An update on the status of the BDCP cost allocation discussions between contractors.

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Delta Independent Science Board

May 15, 2014

To: Randy Fiorini, Chair
Delta Stewardship Council

Charlton Bonham, Director
California Department of Fish and Wildlife

From: Delta Independent Science Board

Subject: Review of the Draft EIR/EIS for the Bay Delta Conservation Plan

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The Delta Reform Act of 2009 (§85320(c)) instructs the Delta Independent Science Board to review the Bay Delta Conservation Plan (BDCP) Draft Environmental Impact Report/Environmental Impact Statement (DEIR/DEIS) and to submit our comments to the Delta Stewardship Council and the California Department of Fish and Game. We have focused our review on the adequacy of the science and the validity of the conclusions drawn from that science. The accompanying document constitutes our legislatively mandated review.

We commend the preparers of the Draft BDCP documents for assembling and analyzing mountains of scientific information, and for exploring environmental impacts of many proposed BDCP actions. The preparers faced a bewildering array of regulatory requirements and economic, social, and political pressures.

We find, however, that the science in this BDCP effort falls short of what the project requires. We highlight our concerns in the attached report. The report, in turn, draws on our detailed responses to charge questions from the Delta Stewardship Council (Appendix A) and on our reviews of individual chapters in the DEIR/DEIS (Appendix B). Our concerns raise issues that, if not addressed, may undermine the contributions of BDCP to meeting the co-equal goals for the Delta.



**Review of the
Draft BDCP EIR/EIS
and Draft BDCP**

**Conducted by the
Delta Independent Science Board**

May 15, 2014

Summary of Major Concerns

Does the Bay Delta Conservation Plan (BDCP) Draft EIR/EIS (DEIR/DEIS) use the best available science in analyzing project alternatives and their effects? That is, do the analyses use science that is good enough, and use it well enough, for a project that is so large, complex, expensive, long-lasting, and important?

We find that the DEIR/DEIS currently falls short of meeting this “good enough” scientific standard. In particular:

1. Many of the impact assessments hinge on overly optimistic expectations about the feasibility, effectiveness, or timing of the proposed conservation actions, especially habitat restoration.
2. The project is encumbered by uncertainties that are considered inconsistently and incompletely; modeling has not been used effectively to bracket a range of uncertainties or to explore how uncertainties may propagate.
3. The potential effects of climate change and sea-level rise on the implementation and outcomes of BDCP actions are not adequately evaluated.
4. Insufficient attention is given to linkages and interactions among species, landscapes, and the proposed actions themselves.
5. The analyses largely neglect the influences of downstream effects on San Francisco Bay, levee failures, and environmental effects of increased water availability for agriculture and its environmental impacts in the San Joaquin Valley and downstream.
6. Details of how adaptive management will be implemented are left to a future management team without explicit prior consideration of (a) situations where adaptive management may be inappropriate or impossible to use, (b) contingency plans in case things do not work as planned, or (c) specific thresholds for action.
7. Available tools of risk assessment and decision support have not been used to assess the individual and combined risks associated with BDCP actions.
8. The presentation, despite clear writing and an abundance of information and analyses, makes it difficult to compare alternatives and evaluate the critical underlying assumptions.

This overview expands on these major concerns, suggests possible improvements, and states our concurrence with the major points of a recent review of the BDCP Effects Analysis. More detail and specifics are provided in two appendices. Appendix A contains our responses to specific charge questions from the Delta Stewardship Council. Appendix B evaluates most of the individual resource chapters in the DEIR/DEIS.