DRAFT 7/2/12 – SUBJECT TO CHANGE
For Review and Adoption by DSC at August 23-24, 2012 Meeting

DELTA STEWARDSHIP COUNCIL
June 28-29, 2012
Ramada Inn and Suites
1250 Halyard Drive, West Sacramento, California

MEETING SUMMARY

Thursday, June 28, 2012, 10:00 a.m. – 4:30 p.m.

1. Welcome and Introductions

The meeting was called to order at 10:02 a.m., June 28, 2012, by Chair Phillip Isenberg.

2. Roll Call – Establish a Quorum (Water Code §85210.5)

Roll call was taken and a quorum was established. The following members were present: Patrick Johnston, Gloria Gray, Felicia Marcus, Randy Fiorini, Phillip Isenberg, and Don Nottoli. Absent: Hank Nordhoff

3. Chair's Report

Chair Isenberg announced the U.S. Supreme Court issued a health care decision and the Governor signed budget trailer bills that will be reviewed by Mr. Miller. He also announced that this would be Council member Marcus' last Council meeting as she was joining the State Water Resources Control Board as a member. Chair Isenberg thanked Ms. Marcus for her service to the Council.

4. Executive Officer's Report (Information Item)

Joe Grindstaff began the Executive Officer's Report by introducing Jessica Davenport who joined the Council as a Land Use Planner. Ms. Davenport comes to the Council from the San Francisco Bay Conservation and Development Commission where she worked as a Coastal Planner and Bay-Delta Analyst.

Mr. Grindstaff updated the Council on a public meeting conducted by the Natural Resources Agency on June 20, 2012, where a new Preferred Program Alternative for the Bay-Delta Conservation Plan Conveyance Facility was identified and key elements of the project presented.

4a. Legislative Update

The Legislative Update was presented by Curtis Miller. Mr. Miller began his report by updating the Council on the budget that was signed the night before as well as the Natural Resources Agency trailer bills that are pending signature.

4b. Adopt Positions on Legislation Affecting Council Interests

Mr. Miller presented Item 4b and recommended the Council take a position of opposition on both bills. Mr. Miller heard Council members' comments and provided clarification. Chair

Isenberg stated his reasoning for opposing the bills and said he would be meeting with Assemblymember Buchanan, author of AB 1095 next week where he will state his opposition. He also recommends the Council take a position of opposition.

Public Comment – Agenda Item 4b:

Tom Zuckerman, Central Delta Water Agency, stated the version of AB 1095 that was posted on the Council website with the meeting materials was outdated and requested the Council postpone the discussion of AB 1095 to June 29, 2012.

Steve Herum, Port of Stockton, requested to comment on SB 1495. Mr. Herum, however, was not present when public comment was called. Staff was to notify Mr. Herum that the item would be postponed until the July meeting.

After public testimony, the Council, without a formal vote postponed consideration of AB 1095 to June 29, 2012 and postponed discussion of SB 1495 until the July 26-27, 2012 meeting.

4a. Legal Update
The Legal Update was taken out of order and heard after the Legislative Update. Tori Sundheim, presented the Legal Update, which was posted on the Council website at http://deltacouncil.ca.gov/sites/default/files/documents/files/Item_4a_Legal_Update_5.pdf

4c. Staff Comments Regarding Scope of EIS on the Coordinated Long-Term Operation of the Central Valley Project and the State Water Project
Mr. Grindstaff presented Item 4c and discussed the June 27, 2012 staff letter that was sent to Janice Pinero of the Bureau of Reclamation. The letter was included with the members' handouts, and posted on the Council website at http://deltacouncil.ca.gov/sites/default/files/documents/files/Item_4c_3.pdf.

5. Adoption of June 14-15, 2012 Meeting Summary (Action Item)

Chair Isenberg asked if there were any questions, suggestions or comments from the Council or the public regarding the June 14-15, 2012 Meeting Summary. Chair Isenberg requested Chief Counsel Chris Stevens review the language used in the Closed Session narrative. He also requested staff clarify on page 3, item 7, in the first paragraph, last sentence that the motions included on page 5 are from page 5 of the May 24, 2012 Meeting Summary. Council member Nottoli clarified that on June 14, 2012, he arrived at 10:45 a.m., during the Closed Session of the Council meeting, not at the beginning of the Council meeting as stated on the summary. He also noted that Lisa Kirk, who made a public comment on June 15, 2012, had been incorrectly identified as Linda.

Chair Isenberg asked if there other questions or comments and, as there were none, it was moved (Marcus) and seconded (Fiorini) to approve the June 14-15, 2012 meeting summary as amended. A vote was taken (5/0: Marcus, Gray, Fiorini, Isenberg, Nottoli) and the motion was adopted. *The video showing this vote can be found at 2:49 of this video: http://dsc.videossc.com/archives/062812/.*

The revised meeting summary was posted on the Council website at http://deltacouncil.ca.gov/sites/default/files/documents/files/Item_5_Revised_Meeting_Summary_1.pdf

6. Delta Plan (Water Code §85300 (a)) (Action Item)
a. Finalize Direction to Staff Regarding Preparation of Final Draft Plan

General Note: Discussion of the draft Delta Plan agenda item started on June 28 and continued on Friday, June 29, 2012.

Council Members Nottoli and Gray requested the opportunity to see a final redline draft of the Delta Plan that incorporates all of the Council's directed changes before it is circulated for CEQA and APA rulemaking purposes. The schedule was discussed and Counsel Stevens provided clarification on the CEQA and rulemaking processes. Action on this request was considered on the second day of the meeting.

Council Consent Checklist: Discussion and Action Taken

Counsel Stevens explained that pursuant to paragraph 10 of the Council's meeting procedures, action items of a routine nature may be bundled together as a single consent calendar item provided that any member may remove items from the consent calendar for separate consideration.

Chair Isenberg asked members if there were any items they wished to be removed from the consent Checklist, and discussed separately as part of, or after, the Council Action Checklist.

Council Member Marcus requested the following items be removed from the Consent Checklist: 81, 107, 181, 196, 240, and 304.

Council Member Gray requested that the following items be removed from the Consent Checklist: 43, 145, 85, 179, and 275.

Council Member Nottoli requested that the following items be removed from the Consent Checklist: 80, 278, and 288.

These items were removed from the Consent Checklist, to be discussed separately at the appropriate time as part of, or after, the Council Action Checklist.

Chair Isenberg suggested that the Council reserve a vote on the Consent Checklist until the end of the second day, to allow members a future opportunity to remove and vote separately on remaining consent items.

Council Action Checklist: Discussion, Motion/Vote, and Action Taken

Council Staff Members Dan Ray, Cindy Messer, Martha Davis, and Jessica Pearson reviewed each item on the Council Action Checklist (Item 6a Attachment 2) http://deltacouncil.ca.gov/sites/default/files/documents/files/Item_6a_Attach_2_Council_Action_Items_June_26_2012.pdf) and requested Council's direction or approval on the staff proposed changes included in the checklist. During discussion of each item, Council members requested clarification and provided their comments.

The following are the motions and votes for the Council's actions on each of the items contained in the Council Action Checklist as well as a summary of public testimony on each item. Full comments may be viewed and listened to via the archived webcast at:

http://dsc.videossc.com/archives/062812/. In all cases, public testimony occurred prior to a vote by the Council.

Chapter 2, Item #1 – Administrative exemption for temporary water transfers

Motion (Offered by the Chair)**:** Return to 5th staff draft version (Option 2); Reference WR R15 (Improve Water Transfer Procedures); Grant exemption until 12/31/14; Return issue to Council no later than September, 2014 for consideration of further action; If Council does not take action, the exemption expires 12/31/14. The proposed language for Option 2 is posted on the Council website at http://deltacouncil.ca.gov/sites/default/files/documents/files/Item_6a_Attach_2_Council_Action_Items_June_26_2012.pdf.

Public Comment:

Dale Hoffman-Floreke, Department of Water Resources, joined the staff during the discussion of Chapter 2, Item #2, "temporary water transfer administrative exemptions." Ms. Hoffman-Floerke stated that the department looked forward to working with the Council on the implementation of the Delta Plan and had submitted written comments that are posted on the Council website at http://deltacouncil.ca.gov/sites/default/files/documents/files/DWR%20061312.pdf and http://deltacouncil.ca.gov/sites/default/files/documents/files/DWR_062012.pdf. Ms. Hoffman-Floreke answered Council members' questions and provided clarification. Chair Isenberg requested Ms. Hoffman-Floreke provide information on the efforts of DWR, including identification of the authority and responsibility of DWR in reviewing and accepting water management plans provided to DWR by urban and agricultural water agencies.

Greg Zlotnick, State and Federal Contractors Water Agency, requested clarification regarding a statement made that the expectation was that 2% of proposed one year water transfers would likely escape the covered action jurisdiction because there wouldn't be a significant impact.

Vote: 6/0 (Johnston, Gray, Marcus, Fiorini, Isenberg, Nottoli), and the motion was adopted.

The video showing this vote can be found at http://dsc.videossc.com/archives/062812/ Agenda Item 6 Index 3. Archive Segment Number 6 of 81 at 22:57.

Chapter 2, Item #2 - GP 1: Detailed Findings to Establish Consistency with the Delta Plan

Motion (Offered by Johnston; seconded by Fiorini)**:** Approve staff proposed changes. The proposed language for GP1 is posted on the Council website at http://deltacouncil.ca.gov/sites/default/files/documents/files/Item_6a_Attach_2_Council_Action_Items_June_26_2012.pdf.

Public Comment: None

Vote: 6/0 (Johnston, Gray, Marcus, Fiorini, Isenberg, Nottoli), and the motion was adopted.

The video showing this vote can be found at http://dsc.videossc.com/archives/062812/ Agenda Item 6 Index 4. Archive Segment Number 7 of 81 at 2:50.

Chapter 2, Item #3 – Clarify meaning of term "proposed action" vs. "covered action"

Motion (Offered by Johnston; seconded by Fiorini)**:** Approve staff recommendation with the understanding that staff would insert a clarifying paragraph in the Delta Plan as a sidebar. The proposed language is posted on the Council website at http://deltacouncil.ca.gov/sites/default/files/documents/files/Item_6a_Attach_2_Council_Action_Items_June_26_2012.pdf.

Public Comment:

Greg Zlotnick, State and Federal Contractors Water Agency, requested clarification regarding covered actions and the differences between "a policy" and "a provision" of the Plan.

Vote: 6/0 (Johnston, Gray, Marcus, Fiorini, Isenberg, Nottoli), and the motion was adopted.

The video showing this vote can be found at http://dsc.videossc.com/archives/062812/ Agenda Item 6 Index 6. Archive Segment Number 9 of 81 at 0:50.

Chapter 3, Item #4 – WR P1: Reduce Reliance on the Delta, Clarify reduced reliance

At the suggestion of the Chair, and without objection, the Council decided to continue and formal action on Chapter 3, Item #4, WR P1 to Friday, June 29, 2012, but to take public comment as summarized below.

The video showing this action can be found at http://dsc.videossc.com/archives/062812/ Agenda Item 6 Index 27. Archive Segment Number 30 of 81 at 20:49.

Public Comment:

Glen Peterson, Metropolitan Water District of Southern California and Las Virgenes Municipal Water District, commented on the language regarding reduced reliance in the Delta Plan. Mr. Peterson stated he supported the Ag-Urban Alternative language.

Tina Cannon-Lehey, Consultant for Assemblymember Jared Huffman read a letter from the Assemblymember to the Council. It has been posted on the Council website at http://deltacouncil.ca.gov/sites/default/files/documents/files/Huffman_062812.pdf

David Aladjem, Downey Brand, for North Delta Water Agencies, thanked the Council for working with the Ag-Urban Coalition but felt more time was needed to develop language that is currently in the policy. He felt it was still overbroad and unclear.

Gary Bobker, The Bay Institute, stated that §85021 didn't call for reducing relative reliance and felt there was a lack of clarity in the policy.

Mark Rentz, Association of California Water Agencies and the Ag Urban Coalition, offered the alternative language for WR P1 because the current language states "one or more water suppliers" which ignores §85021. He said the approach must focus on regional efforts. He asked to strike "at a minimum" language in paragraph 3. Compliance with appropriate laws should satisfy any applicable Council policy. Mr. Rentz also opposed baselines (2010; 2012) in the staff proposal. He felt it ignored all investments/actions previously taken to improve urban and agricultural water use efficiency and consideration. It has been posted on the Council website at http://deltacouncil.ca.gov/sites/default/files/documents/files/ACWA_062712.pdf

Douglas Headrick, San Bernardino Valley Municipal Water District, agreed with the Ag-Urban alternative language. The water district has submitted Urban Water Management Plans and Mr. Headrick wanted to ensure the water future in the service area was secure and requested a change in the language for WR P1.

Deven Upadhyay, Metropolitan Water District of Southern California, gave background on MWD and also supported the Ag-Urban language. He commented on reduced reliance and WR P1.

Janet Goldsmith, Placer County Water Agency, thanked the staff for responding to stakeholder comments. The agency supported Mr. Huffman's comments and also supports the Ag Urban language or MWD's language. Ms. Goldsmith requested clarity in that "net water use" means "per capita."

Ryan Bezerra, Bartkiewicz, Kronick & Shanahan, representing the upstream agencies, cited §85021 and stated that he felt the policy (WR P1) needed to be clarified on how to upstream agencies would comply. Mr. Bezerra would like to see the metric removed as he felt it was inconsistent with the Delta Reform Act.

John Mills, for Upstream Watershed Agencies, agreed with Mr. Bezerra and Ms. Goldsmith. Mr. Mills felt the use of incentives would be helpful and expressed willingness to work with staff to improve the language in the policy.

Dan Masnada, Castaic Lake Water Agency, stated his agency was doing everything it could to increase water supply through recycling.

Dan Flory, Antelope Valley East Kern Water Agency, stated he supported Mr. Masnada's comments. Mr. Flory felt the agency used water efficiently and supported the Ag-Urban language.

Following Mr. Flory's public comment, the Council recessed for lunch at 2:10 p.m. and resumed the meeting at 2:55 p.m. to continue public comment on Chapter 3, Item #4, WR P1.

Ron Davis, Lobbyist for Eastern Municipal Water, thanked the Council for working with the stakeholders in developing the policy. Mr. Davis gave background information on Eastern Municipal Water District stating it had an impressive history of water use efficiency. Eastern Municipal Water District submitted comments that are posted on the Council website at http://deltacouncil.ca.gov/sites/default/files/documents/files/Eastern%20MWD%20061312.pdf

Melinda Terry, North Delta Water Agency, made general comments on WR P1. Ms. Terry stated NDWA also had an impressive record in water efficiency.

Barry Nelson, National Resources Defense Council, stated it was important to acknowledge that different water users had different tools available. He thought there was confusion on two issues. He suggested clarification on 7X1 and clarification on the application. Mr. Nelson suggested separating the broad goal from the narrow application.

Osha Meserve, Local Agencies of the North Delta, felt a distinction should be made regarding "in and out of the watershed." Written comments were submitted that have been posted at http://deltacouncil.ca.gov/sites/default/files/documents/files/LAND_070912.pdf

Audrey Kelm, San Joaquin Tributaries Authority, supported the Ag-Urban alternative language.

Greg Zlotnick, State and Federal Contractors Water Agency, said written comments from San Luis Delta Mendota Water Authority had been sent in. They are posted at http://deltacouncil.ca.gov/sites/default/files/documents/files/SLDMWA_062712.pdf
Mr. Zlotnick stated the CVP Contractors supported the Ag-Urban language.

Chapter 3, Item #5 - WR P2: Transparency in Water Contracting, Clarify transparency language regarding new and amended water contracts

Motion (Offered by Johnston; seconded by Marcus)**:** Approve staff recommendation. The proposed language is posted on the Council website at http://deltacouncil.ca.gov/sites/default/files/documents/files/Item_6a_Attach_2_Council_Action_Items_June_26_2012.pdf.

Public Comment: None

Vote: 6/0 (Johnston, Gray, Marcus, Fiorini, Isenberg, Nottoli), and the motion was adopted

The video showing this vote can be found at http://dsc.videossc.com/archives/062812/ Agenda Item 6 Index 27. Archive Segment Number 30 of 81 at 21:58.

Chapter 3, Item #6 - WR R15: Improve Water Transfer Procedures, Proposed water transfer workgroup and 2014 deadline

Motion (Offered by Gray; seconded by Nottoli)**:** Approve staff recommendation consistent with the changes to item 1 above; add language changes for consistency; require identification and recommendation of measures by July 1, 2014. The proposed language is posted on the Council website at http://deltacouncil.ca.gov/sites/default/files/documents/files/Item_6a_Attach_2_Council_Action_Items_June_26_2012.pdf.

Public Comment: None

Vote: 6/0 (Johnston, Gray, Marcus, Fiorini, Isenberg, Nottoli), and the motion was adopted.

The video showing this vote can be found at http://dsc.videossc.com/archives/062812/ Agenda Item 6 Index 27. Archive Segment Number 30 of 81 at 23:00; 25:49.

Chapter 4, Item #7 - ER P2: Restore Habitats at Appropriate Elevations, Clarify Use of Figure 4-3 and Appendix H when Determining Appropriate Habitat Restoration Actions Based on Elevation

At the suggestion of the Chair, and without objection, the Council decided to continue any formal action on Chapter 4, Item #7, ER P2, to Friday, June 29, 2012, but to take public comment as summarized below.

The video showing this action can be found at http://dsc.videossc.com/archives/062812/ Agenda Item 6 Index 29. Archive Segment Number 32 of 81 at 7:38.

Public Comment:

Tom Zuckerman, Central Delta Water Agency, commented on appropriate use of land and spoke on the notion of a floating easement. Mr. Zuckerman felt the policy would limit where habitat restoration projects would be done.

Chapter 4, Item #8 - ER P3: Protect Opportunities to Restore Habitat, Proposed Additional Priority Habitat Restoration Area in Western Delta and ER R1: Prioritize and Implement Projects that Restore Delta Habitat

At the suggestion of the Chair, and without objection, the Council decided to continue any formal action on Chapter 4, Item #8, ER P3 and ER R1 to Friday, June 29, 2012.

The video showing this action can be found at http://dsc.videossc.com/archives/062812/ Agenda Item 6 Index 29. Archive Segment Number 32 of 81 at 14:02.

Public Comment: None

Chapter 7, Item #15 - RR R9: Limitation of State Liability, Legislature Should Consider Possible Constitutional as well as Statutory Changes with regard to Flood Liability *(Item taken out of order)*

At the suggestion of the Chair, and without objection, the Council decided to continue any formal action on Chapter 7, Item #15 to Friday, June 29, 2012, but to take public comment as summarized below.

The video showing this action can be found at http://dsc.videossc.com/archives/062812/ Agenda Item 6 Index 34. Archive Segment Number 37 of 81 at 0:42.

Public Comment:

Tom Zuckerman, Central Delta Water Agency, requested a delay of the agenda item.

Chapter 8, Item #16 – Development of DSC Recommended Finance Plan and Necessary Elements *(Item taken out of order and heard after discussion of Chapter 7, Item #15 on June 28, 2012)*

Motion (Offered by Johnston; seconded by Fiorini): Adopt staff recommendation of three (3) new recommendations in this discussion, and include Felicia Marcus' suggestion to expand the definition of the independent agency to include non-governmental organizations, or comparable entities, as potential independent entities to conduct the inventory of current State and federal spending on programs and projects that do or may achieve the coequal goals. The proposed language is posted on the Council website at http://deltacouncil.ca.gov/sites/default/files/documents/files/Item_6a_Attach_2_Council_Action_Items_June_26_2012.pdf.

Public Comment:

Mark Rentz, Association of California Water Agencies, stated he felt the recommended language was a good approach.

Vote: 6/0 (Johnston, Gray, Marcus, Fiorini, Isenberg, Nottoli), and the motion was adopted.

The video showing this vote can be found at http://dsc.videossc.com/archives/062812/ Agenda Item 6 Index 33. Archive Segment 36 of 81 at 1:38.

Chapter 5, Item #9 - DP P1: Locate New Development Wisely, Confirm Boundaries of Appropriate Development Locations and Legacy Communities

At the suggestion of the Chair, and without objection, the Council decided to continue any formal action on Chapter 5, Item 9 to Friday, June 29, 2012, but to take public comment as summarized below.

The video showing this action can be found at http://dsc.videossc.com/archives/062812/ Agenda Item 6 Index 36. Archive Segment 39 of 81 at 06:48.

Public Comment:

Mike Machado, Delta Protection Commission, provided the Commission's perspective and hoped the Council would respect the growth boundaries established by the Delta Protection Act of 1992. Mr. Machado stated the counties located in the Delta were in the process of updating their general plans to make (the boundaries) consistent with the Resources Management Plan.

Chapter 5, Item #10 – DP P1, DP R3, RR P2, ER P3: Bethel Island and Legacy Communities, Current Map of Bethel Island Needs Revision to Indicate Legacy Community Boundary. Modify Policies and Recommendations as Needed

At the suggestion of the Chair, and without objection, the Council decided to continue any formal action on Chapter 5, Item #10, Bethel Island, to Friday, June 29, 2012, but to take public comment as summarized below.

The video showing this action can be found at http://dsc.videossc.com/archives/062812/ Agenda Item 6 Index 37. Archive Segment 40 of 81 at 10:04.

Public Comment:

Jody Mazzarella, Bethel Island resident, stated Contra Costa County was sending a letter to ask to postpone the discussion of "legacy" boundary lines until the July or August meeting. The letter to which Ms. Mazzarella referred was received by the Council and posted at http://deltacouncil.ca.gov/sites/default/files/documents/files/letter%20bethel%20island%20decision%20june%2027%202012.pdf.
Ms. Mazzarella gave a historical perspective of the different land uses and residents on the island.

7. Public Comment

Chair Isenberg asked if there were any members of the public wishing to address the Council on issues not on the agenda and comments were provided by:

Marguerite Naillon, Contra Costa Water District, Written comments were submitted and are posted at http://deltacouncil.ca.gov/sites/default/files/documents/files/CCWD_062712_0.pdf.

Linda Dorn, Sacramento Regional County Sanitation District, commented on the water quality policy in chapter 6. Written comments were submitted and are posted at http://deltacouncil.ca.gov/sites/default/files/documents/files/SRCSD_070312.pdf.

Following the Public Comment period, Chair Isenberg reaffirmed that the following items had been pulled from the Consent Checklist at the Council members' requests – Marcus: 81, 107, 181, 196, 240, 304; Gray: 85, 179, 275, 43, 145; Nottoli: 80, 278, 288.

The meeting adjourned for the day at 5:20 p.m.

Friday, June 29, 2012, 9:00 a.m. – 3:30 p.m.

8. Call to Order

The meeting was called to order at 9:04 a.m., with Chair Isenberg presiding.

9. Roll Call – Establish a Quorum (Water Code §85210.5)

Roll call was taken and a quorum was established. The following members were present: Patrick Johnston, Gloria Gray, Randy Fiorini, Phillip Isenberg, and Don Nottoli. Absent: Hank Nordhoff and Felicia Marcus. Ms. Marcus notified the Council that she broke her wrist Thursday evening and was having it treated today and would not be able to attend the meeting.

10. Delta Science Program
10a. Lead Scientist's Report (Water Code §85280)

Dr. Goodwin provided a brief update for the Council on highlights from the UC Davis Center for Biology and Aquaculture Seminar and on the recently completed report for the Independent Review Panel Report for the BDCP Effects Analysis Review – Phase 2. The Panel had 17 recommendations for revising the BDCP Effects Analysis documents. The Panel's report is posted on the Council website at http://deltacouncil.ca.gov/event-detail/6144. Following Dr. Goodwin's update, Chair Isenberg asked if there were any questions or comments from the public – there were none.

4b. Adopt Positions on Legislation Affecting Council Interests *(Continued from Thursday, June 28, 2012)*

Mr. Miller returned to the Council to give a report on AB 1095 (Buchanan), which was amended on June 27, 2012. Mr. Miller updated the Council on the process of taking a position on a bill and gave a description and analysis of the bill, and stated that another set of amendments were pending. Mr. Miller suggested the Council postpone taking a position on the legislation until the next amendments were completed.

Chair Isenberg suggested that the timing of the bill hearing (set for next week) meant that the Council procedure for interim bill position should be utilized. Under that approach, the Chair and Vice Chair, if in agreement, could take a Council position on legislation. The amended staff report for AB 1095 was handed out to the Council members and is posted at http://deltacouncil.ca.gov/sites/default/files/documents/files/Item_4b_AB%201095%20_Buchanan_%20amended%2006-27-12%20DSC%20leg%20report%2006-29-12.pdf.

Public Comment – Item 4b:

Tom Zuckerman, Central Delta Water Agency, requested the Council meet with the City of Stockton once the amendments are received and reviewed, but before the Council takes a position on the AB 1095.

11. Delta Plan (Continuation of Agenda Item 6a from Thursday, June 28, 2012)

Chair Isenberg reaffirmed the items held over from the Council Action Checklist (Agenda Item 6a, Attachment 2): WR P1 (Chapter 3, Item #4); ER P2, ER P3, and ER R1 (Chapter 4, Item #7 and #8); Bethel Island discussion (Chapter 5, Item #9), and RR P1 (Chapter 7, Item #11). Chair Isenberg also noted items on the Checklist that the Council hadn't reviewed before recessing on the previous day - Chapter 5, Item #10; Chapter 7, Items 11-15; and Chapter 8, Item #16.

Chair Isenberg reaffirmed items withdrawn by members on the Council Consent Checklist (Agenda Item 6a, Attachment 1), including: 81, 107, 181, 196, 240, 304 (at the request of Council Member Marcus); 43, 145, 85, 179, and 275 (at the request of Council Member Gray); and 80, 278, 288 (at the request of Council Member Nottoli) and indicated they would be considered after completion of Council review and action on the remaining Council Action Checklist items.

Chapter 5, Item #9 - DP P1: Locate New Development Wisely and Legacy Communities, Confirm Boundaries of Appropriate Development Locations and Legacy Communities
(Item Continued from June 28, 2012)

Mr. Dan Ray summarized the issue and, at 9:40 a.m., the action was delayed for one hour to allow staff to contact Contra Costa County to determine its position on the issue. The Council agreed to take up the agenda item at 11:00 a.m.

At 11:00 a.m. Cindy Messer reported back to the Council on her discussions with Supervisor Peipho regarding the Legacy Community designation for Bethel Island. It was the County's position that the entire island should be included as a Legacy Community and they requested the issue be postponed to allow the County's planning team time to explore its options. Bethel Island as a Legacy Community and allow the County to bring up the issue, separately at a future date.

Original Motion (Offered by Fiorini): Approve the staff proposal but delete the reference of Bethel Island as a Legacy Community and allow the County to bring up the issue, separately at a future date.

Substitute Motion (Offered by Nottoli; seconded by Gray)**:** Hold over decision of Item #9 to July 12, 2012.

Public Comment:

Lisa Kirk, Bethel Island resident, urged the Council to include Bethel Island as a legacy community. Ms. Kirk submitted written comments that are posted at http://deltacouncil.ca.gov/sites/default/files/documents/files/Kirk_062912.pdf.

Jody Mazzarella, Bethel Island resident, urged the Council to include Bethel Island as a legacy community. Ms. Mazzarella submitted written comments that are posted at http://deltacouncil.ca.gov/sites/default/files/documents/files/Mazzarella_062912.pdf.

Vote: Following public comment, the Original Motion was rescinded by Mr. Fiorini.

The video showing this action can be found at http://dsc.videossc.com/archives/062812 Agenda Item 11 Index 23. Archive Segment Number 69 of 81 at 13:29.

Vote: 5/0: (Johnston, Gray, Fiorini, Isenberg, Nottoli), and the Substitute Motion was adopted.

The video showing this action can be found at http://dsc.videossc.com/archives/062812/ Agenda Item 11 Index 23. Archive Segment Number 69 of 81 at 2:26; 9:28; 11:44; 15:37.

Chapter 5, Item #10 – DP P1, DP R3, RR P2, ER P3: Bethel Island and Legacy Communities, Current Map of Bethel Island Needs Revision to Indicate Legacy Community Boundary. Modify Policies and Recommendations as Needed *(Item Continued from June 28, 2012)*

Original Motion (Offered by Fiorini)**:** Approve the staff proposal but delete the reference of Bethel Island as a Legacy Community and allow the County to bring up the issue, separately at a future date.

Substitute Motion (Offered by Nottoli; seconded by Gray)**:** Hold over decision of Item #10 to July 12, 2012.

Public Comment: None

The Original motion was rescinded by Mr. Fiorini.

The video showing this action can be found at http://dsc.videossc.com/archives/062812 Agenda Item 11 Index 23. Archive Segment Number 69 of 81 at 13:29.

Vote: 5/0: (Johnston, Gray, Fiorini, Isenberg, Nottoli) and the Substitute Motion was adopted.

The video showing this action can be found at http://dsc.videossc.com/archives/062812/ Agenda Item 11 Index 23. Archive Segment Number 69 of 81 at 2:26; 9:28; 11:44; 15:37.

Chapter 4, Item #7 - ER P2: Restore Habitats at Appropriate Elevations, Clarify Use of Figure 4-3 and Appendix H when Determining Appropriate Habitat Restoration Actions Based on Elevation *(Item Continued from June 28, 2012)*

Motion (Offered by Fiorini; seconded by Nottoli)**:** Approve staff recommendation with the modification on Appendix H to clarify the source and the title of the document and delete the unnecessary partial paragraph that appears on the top of the first page (page 30). The proposed language is posted on the Council website at http://deltacouncil.ca.gov/sites/default/files/documents/files/Item_6a_Attach_2_Council_Action_Items_June_26_2012.pdf.

Public Comment: None

Vote: 5/0 (Johnston, Gray, Fiorini, Isenberg, Nottoli), and the motion was adopted.

The video showing this vote can be found at http://dsc.videossc.com/archives/062812/ Agenda Item 11 Index 3. Archive Segment No. 49 of 81 at 8:44.

Chapter 4, Item #8 - ER P3: Protect Opportunities to Restore Habitat, Proposed Additional Priority Habitat Restoration Area in Western Delta and ER R1: Prioritize and Implement Projects that Restore Delta Habitat *(Item Continued from June 28, 2012)*

Motion (Offered by Johnston; seconded by Fiorini)**:** Approve staff recommendation with the addition of the word "Significant" at the beginning of the policy. "*Significant Impacts to the opportunity to restore habitat…"*

Public Comment:

Melinda Terry, California Central Valley Flood Control Association, stated she felt that the policy and recommendation contained language that seemed to be an overreach and was moving into the direction of "takings."

Tom Zuckerman, Central Delta Water Agency, stated he had an opportunity the night before to consult with an eminent domain attorney. He stated the attorney felt policy/recommendation was a regulatory taking. Mr. Zuckerman cautioned the Council that the policy/recommendation may be the cause of unintended legal liability issues with which the State will need to contend.

Vote: 4/1 (Johnston, Gray, Fiorini, Isenberg in support, Nottoli opposed), and the motion was adopted.

The video showing this vote can be found at http://dsc.videossc.com/archives/062812/ Agenda Items 11 Index 7. Archive Segment Number 53 of 81 at 5:40.

Chapter 7, Item #11 – RR P1: Prioritization of State Investments in Delta Levees and Risk Reduction, Many Delta reclamation districts want the PL 84-99 levee standard to be recommended as the desired minimum standard for levees and want the Delta Plan to recommend State funding for improvements to that level

At the suggestion of the Chair, and without objection, the Council decided to continue any formal action on Chapter 7, Item 11 to July 12, 2012, but to take public comments as summarized below.

The video showing this action can be found at http://dsc.videossc.com/archives/062812/ Agenda Item 11 Index 15. Archive Segment Number 61 of 81 at 01:21.

Public Comment:

Melinda Terry, California Central Valley Flood Control Association, agreed that levees and dikes are at risk of seepage more often than overtopping. Ms. Terry stated the HMP standard wasn't sufficient and the goal was achieving PL 84-99. Ms. Terry spoke on standards required by FEMA for federal reimbursement. Ms. Terry suggested a recommendation would be different than a policy. Ms. Terry also expressed concern over a lack of funding for a fourth priority.

Tom Zuckerman, Central Delta Water Agency, discussed the different levee standards required by the Army Corps of Engineers and FEMA. Mr. Zuckerman felt that the HMP standard wasn't sufficient for Risk Reduction. Mr. Zuckerman also gave an analogy comparing the HMP standard to an HMO policy and the Delta participating in a wellness program. Mr. Zuckerman urged the Council not to abandon the wellness program for the Delta.

Eric Ringelberg, Local Agencies of the North Delta, submitted written comments posted at http://deltacouncil.ca.gov/sites/default/files/documents/files/LAND%20062212.pdf

Mike Machado, Delta Protection Commission, spoke on the Commission's Economic Sustainability Plan's linkage of economic sustainability and the dependability of the levee system.

Chapter 7, Item #12 - RR P1: Prioritization of State Investments in Delta Levees and Risk Reduction, State policy on investments for Delta risk reduction projects, including levees should include an analysis of appropriate cost-sharing ratios. *(Item Continued from June **28, 2012)***

Motion (Offered by Gray; seconded by Fiorini)**:** Approve staff proposed changes developing language to address cost-share ratios within prioritization studies including direction to staff to revise language per Charles Gardiner's suggestion, and adjust if consistent. The proposed language is posted on the Council website at http://deltacouncil.ca.gov/sites/default/files/documents/files/Item_6a_Attach_2_Council_Action_Items_June_26_2012.pdf.

Public Comment:

Charles Gardiner, Delta Vision Foundation, suggested strengthening the language in RR P1 and felt it should be more specific in terms of cost sharing and the timing of the levee prioritization process. The DVF submitted comments that are posted on the Council website at http://deltacouncil.ca.gov/sites/default/files/documents/files/DVF_070612.pdf.

Vote: 5/0 (Johnston, Gray, Fiorini, Isenberg, Nottoli), and the motion was adopted.

The video showing this vote can be found at http://dsc.videossc.com/archives/062812/ Agenda Item 11 Index 17. Archive Segment Number 63 of 81 at 2:36.

Chapter 7, Item #13 - RR P3: Protect Floodways, Clarify analysis needed to permit encroachment in floodway

Motion (Offered by Gray; seconded by Johnston)**:** Approve staff recommendation to add clarifying language: standard for encroachment on floodway and scientifically sound hydraulic analysis with notation by staff to clarify ability to mitigate. The proposed language is posted on the Council website at http://deltacouncil.ca.gov/sites/default/files/documents/files/Item_6a_Attach_2_Council_Action_Items_June_26_2012.pdf.

Public Comment:

Greg Zlotnick, State and Federal Contractors Water Agency, clarified the intent of "mitigate" and requested narrative be added to clarify the analysis. He also requested the Flood Board language be amplified. Written comments were submitted and are posted on the Council website at http://deltacouncil.ca.gov/sites/default/files/documents/files/SFCWA_062512.pdf.

Vote: 5/0 (Johnston, Gray, Fiorini, Isenberg, Nottoli), and the motion was adopted.

The video showing this vote can be found at http://dsc.videossc.com/archives/062812/ Agenda Item 11 Index 17. Archive Segment Number 63 of 81 at 5:28.

Chapter 7, Item #14 - RR P4: Protect Floodplains. Clarify analysis needed to permit encroachment in floodplain

Motion (Offered by Gray; seconded by Nottoli)**:** Approve staff proposed changes to add clarifying language and consistent with changes to Item #13 above. The proposed language is posted on the Council website at http://deltacouncil.ca.gov/sites/default/files/documents/files/Item_6a_Attach_2_Council_Action_Items_June_26_2012.pdf.

Public Comment: None

Vote: 5/0 (Johnston, Gray, Fiorini, Isenberg, Nottoli), and the motion was adopted.

The video showing this vote can be found at http://dsc.videossc.com/archives/062812/ Agenda Item 11 Index 17. Archive Segment Number 63 of 81 at 6:02.

Chapter 7, Item #15 - RR R9: Limitation of State Liability, Legislature should consider possible constitutional as well as statutory changes with regard to flood liability
(Item Continued from June 28, 2012)

Motion (Offered by Johnston; seconded by Fiorini)**:** Approve staff recommendation that the Legislature should consider statutory changes to address potential state flood liability, and recommend adoption of state immunity similar to what federal agencies have under federal law.

Public Comment:

Tom Zuckerman, Central Delta Water Agency, tried to make his point by going back to his earlier analogy and stated that going back to a "we're not at fault type situation" at the same time the reasonable standards established over time were being "thrown out" was an inconsistent pattern. Mr. Zuckerman felt the goal was to make the patient healthy and not to exonerate the physician for his mistakes.

Melinda Terry, California Central Valley Flood Control Association, stated her opposition to the language in the policy that would give State agencies immunity with regard to flood liability as the federal agencies have under federal law.

Vote: 5/0 (Johnston, Gray, Fiorini, Isenberg, Nottoli), and the motion was adopted.

The video showing this vote can be found at http://dsc.videossc.com/archives/062812/ Agenda Item 11 Index 20. Archive Segment Number 66 of 81 at 00:00 AND completed at Agenda Item 11 Index 34. Archive Segment Number 80 of 81 at 5:40.

The Council recessed for lunch at 12:35 p.m. and reconvened at 1:10 p.m. with the Council continuing its discussion from the previous day on WR P1.

Chapter 3, Item #4 – WR P1: Reduce Reliance on the Delta, Clarify Reduced Reliance
(Continued from June 28, 2012)

At the suggestion of the Chair, and without objection the Council decided to continue any formal action on Chapter 3, Item #4, WR P1 to July 12, 2012, but to take additional public comment as summarized below.

The video showing this action can be found at http://dsc.videossc.com/archives/062812/ Agenda Item 6 Index 6. Archive Segment Number 9 of 81 at 0:55.

Public Comment:

John Mills, Offices of John Mills, felt the new policy had come quite a way in clarity and assumed Footnote 18 remained. Mr. Mills stated he felt feasibility should be determined by the water agencies.

Kim O'Hara, Los Angeles Department of Water and Power, gave background information on the agency she represented. Ms. O'Hara was concerned with a policy that could affect the ability to supply reliable water and felt the policy seemed to look at the 300 suppliers not the region as a whole. She spoke on regional self sufficiency and felt the Council should support regional reliance. Ms. O'Hara also had concerns with the language in the 5th paragraph.

David Aladjem, Downey Brand, for North Delta Water Agencies, stated he did not support the "used in Delta" language contained in the policy and offered specific language suggestions.

Audrey Kelm, O'Laughlin and Parris, thanked the Council for its efforts reworking the language for the policy and offered suggestions for clarifying language. Ms. Kelm stated that the third paragraph of the policy as written may affect the area of origin water rights.

Gary Bobker, The Bay Institute, thanked the Council for its efforts and stated unfortunately the rewritten policy wasn't responsive to the concerns raised by the Bay Institute and the Natural Resources Defense Council. Mr. Bobker requested clarification of the policy.

Brenda Burman, Metropolitan Water District of Southern California, offered clarifying language that is posted on the Council website at http://deltacouncil.ca.gov/sites/default/files/documents/files/Burman_062912.pdf. Ms. Burman spoke of regional planning.

Greg Zlotnick, State and Federal Contractors Water Agency, stated he was associating himself with Ms. Burman's comments and offered language suggestions that he felt added clarity to the WR P1.

Ryan Bezerra, Bartkiewicz, Kronick & Shanahan representing the upstream agencies, stated he seconded the comments of Ms. Kelm and Mr. Bobker. Mr. Bezerra requested clarification as to how the policy applied to the upstream agencies and to help add clarity, offered specific suggestions for language.

Mark Rentz, Association of California Water Agencies, stated he was pleased with the final draft but felt there were still significant issues like WR P1. Mr. Rentz thanked the Council for its efforts to require the policy but was concerned that some have not had a chance to comment on the new language. Mr. Rentz offered specific language suggestions for the policy.

12. Public Comment

Chair Isenberg asked if there were any members of the public wishing to address the Council on items or issues not on the agenda – there were none.

Final Action

At the conclusion of the meeting it was moved (Johnston) and seconded (Fiorini) to direct DSC Staff to:

1) Approve the Council Action Checklist (Agenda Item 6a, Attachment 2), as discussed and agreed to during this meeting, and in so doing, direct staff to include all of the proposed changes included therein in its preparation of the "Final Draft Delta Plan" with the exception of WR P1 (Chapter 3, Item #4), Bethel Island (Chapter 5, Item #9 and #10), and RR P1 (Chapter 7 Item #11) which are held over to the July 12, 2012, Council meeting.

2) Place those items removed from the Consent Checklist (Agenda Item 6a, Attachment 1) to the July 12, 2012, Council meeting agenda to be discussed and voted upon separately. These items are: 43, 80, 81, 85, 107, 145, 179, 181, 196, 240, 275, 278, 288, and 304.

3.) Approve the remaining items on the Consent Checklist (Agenda Item 6a, Attachment 1), minus the removed items noted above, and direct staff to include all of the approved proposed consent changes in its preparation of the "Final Draft Delta Plan".

A vote was taken (5/0: Johnston, Gray, Fiorini, Isenberg, Nottoli), and the motion was adopted.

The video showing this vote can be found at http://dsc.videossc.com/archives/062812/ Agenda Item 11 Index 31 Archive Segment 77 of 81 at 28:26-30:04.

13. Preparation for Next Council Meeting – Discuss (a) expected agenda items; (b) new work assignments for staff; (c) requests of other agencies; (d) other requests from Council members; and (e) confirm next meeting date – July 12, 2012, at the Ramada Inn and Suites in West Sacramento.

The meeting was adjourned at 3:00 p.m.