

--REVISED--
DELTA STEWARDSHIP COUNCIL
January 24, 2013
Ramada Inn and Suites
1250 Halyard Drive, West Sacramento, California
MEETING SUMMARY

Thursday, January 24, 2013, 9:30 a.m. – 4:30 p.m.

1. Welcome and Introductions

The meeting was called to order at 9:30 a.m., January 24, 2013, by Chair Phillip Isenberg and immediately began the hearing on the Delta Plan Proposed Rulemaking Package.

3. Hearing to Receive Public Comments on the Proposed Rulemaking Package

The hearing to receive public comments on the Proposed Rulemaking Package convened at 9:30 a.m., January 24, 2013. A certified shorthand reporter was present to record the entire rulemaking hearing for inclusion and response in the Rulemaking Record, as appropriate.

a. Explanation of Hearing Process

Chris Knopp, Executive Officer of the Delta Stewardship Council acted as the “hearing officer” and began by explaining the purpose of the hearing as well as “ground rules” for the hearing. Those wishing to make public comment were asked to fill out the speaker request forms and were taken in order of receipt of the forms.

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

Shortly after convening the hearing, Chair Isenberg noted the presence of a quorum, and stopped the hearing to take roll. A quorum was established at 9:50 a.m. The following members were present: Patrick Johnston, Gloria Gray, Randy Fiorini, Phillip Isenberg, and Don Nottoli. Absent: Hank Nordhoff.

b. Conduct Hearing

The Council heard testimony from 19 members of the public. After the last person provided testimony, and as no further public testimony was forthcoming Chair Isenberg thanked the last speaker and closed the rulemaking hearing at 11:20 a.m.

The video showing the public testimony can be found at <http://dsc.videossc.com/archives/012413/> Agenda Item 3 Index 1, Archive Segment 2 of 39 at 9:32 through Agenda Item 3 Index 17, Archive Segment 19 of 39 at 19:26. The transcript for the public testimony is posted on the Council website at <http://deltacouncil.ca.gov/sites/default/files/documents/files/1-24-13%20Hearing%20Transcript.pdf>

Following a five minute break, the Council meeting was called back to order at 11:40 a.m. by Chair Isenberg.

4. Executive Officer's Report (Information Item)

Mr. Knopp began the Executive Officer's Report by updating the Council members on the Governor's budget and the Council's budget and the shortfalls the Council will face. Mr. Knopp explained how the shortfalls will be addressed. Chair Isenberg and Mr. Knopp discussed projections for the programmatic activities and the sources of funding for Council activities including federal funds, bond funds, and reimbursable funds.

Mr. Knopp also briefly updated the Council on the Delta Plan and announced that the Council's consultant had changed the project manager for the Delta Plan and, after meeting with the new team, Mr. Knopp felt they will be able to meet the schedule the Council has set.

Mr. Knopp briefly commented on the Implementation Committee discussions with other agencies that have occurred related to implementing the Delta Plan.

Mr. Knopp stated two reports have been released by the State Water Resources Control Board. One report is looking at flows and water quality on the San Joaquin River and the other is a summary of recent workshops held by the Board on flow standards in the Delta. More on the reports will be heard at the March meeting.

Mr. Knopp updated the Council on two vacancies – Deputy Director for Science and Deputy Director for Planning. Interviews are almost complete and Mr. Knopp expects to make a selection soon.

a. Legislative Update

The Legislative Update was presented by Jessica Pearson. Ms. Pearson provided the Council with the Bill Tracking Report which has been posted on the Council website at http://deltacouncil.ca.gov/sites/default/files/documents/files/Item_4a_Leg_Update_0.pdf

Ms. Pearson reported that 39 of the 120 legislators are new members and the Legislature is officially in session. Eighty bills have been introduced with four bills of interest of the Council thus far. The four bills are placeholder bills related to revisions of the water bond that is currently expected for the November 2014 ballot (originally set for the 2010 ballot).

Ms. Pearson discussed the state budget, stating the Controller had identified an \$800 million shortfall in November. However there were reports of revenues spiking which may mean a budget surplus for the first time due to this incoming revenue.

Committee assignments were made. Senator Fran Pavley continues to chair the Senate Natural Resources Committee and Assemblymember Ben Hueso, from San Diego, will Chair the Assembly Water, Parks, and Wildlife Committee.

b. Legal Update

The Legal Update was presented by the Council's legal interns, Tori Sundheim and Janelle Krattiger. Ms. Krattiger reported on two cases, Yuba County Water Agency's challenge to the National Marine Fishery Services' Biological Opinion (adopted 2/2012) and Westlands Water District's \$1 million claim that was rejected in US Court of Federal claims. Following Ms. Krattiger's update, Ms. Sundheim reported on the consolidated fish cases - smelt and salmonid.

The Legal Update is posted on the Council website at http://deltacouncil.ca.gov/sites/default/files/documents/files/Item_4a_Legal_Update_6.pdf

b. Quarterly Contracts Update

Mr. Knopp noted the inclusion of a table that listed the current status on agreements for the 4th Quarter, October 2012 – December 2012.

Following the conclusion of the Executive Officer's Report, Chair Isenberg asked if there were any members of the public who wished to comment – there were none.

5. Adoption of the December 13, 2012 Meeting Summary (Action Item)

Chair Isenberg asked if there were any questions, suggestions or comments from the Council or the public regarding December 13, 2012, Meeting Summary. Chair Isenberg requested a web address for the Water Supply and Demand study be added to Chair's Report on page 1 and on page 5, to check the portion of public comment for Audrey Patterson where we referenced a quote by DSC Counsel Chris Stevens. Chair Isenberg stated he believed the quote had been misstated and asked for a correction.

Chair Isenberg asked if there other questions or comments and, as there were none, it was moved (Johnston) and seconded (Nottoli) to approve the December 13, 2012, meeting summary as amended. A vote was taken (4/0: Johnston, Fiorini, Isenberg, Nottoli) and the motion was adopted.

The revised meeting summary was posted on the Council website at http://deltacouncil.ca.gov/sites/default/files/documents/files/Item_5_Amended_Meeting_Summary.pdf

6. Report from the Delta Watermaster (Water Code §85230) (Information Item)

Craig Wilson, Delta Watermaster, briefed the Council about his recent report on Term 91: Stored Water Bypass Requirements and provided a PowerPoint presentation on the report that explores the enhanced use and more vigorous enforcement of diversion curtailments as a means to achieve flow standards. The PowerPoint is posted on the Council website at [http://deltacouncil.ca.gov/sites/default/files/documents/files/Item_6_PowerPoint_Update_from_Watermaster%20\[Compatibility%20Mode\].pdf](http://deltacouncil.ca.gov/sites/default/files/documents/files/Item_6_PowerPoint_Update_from_Watermaster%20[Compatibility%20Mode].pdf)

Throughout Mr. Wilson's report, he answered Council members' questions and provided clarification. Chair Isenberg asked if there were any members of the public who wished to speak.

Public Comment – Agenda Item 6

John Mills, Offices of John S. Mills, spoke on the role of the Council under Term 91. Mr. Mills stated it is important to understand that Term 91's underlying purpose is to help meet water quality objectives by ensuring that when water is released from storage reservoirs like Lake Shasta, Lake Oroville, and Folsom Lake to meet water quality

objectives in the Delta, it is not intercepted by downstream water diverters. The first thing that needs to happen is for the State Water Resources Control Board to identify illegal diverters, those that have no basis to divert, those that are diverting when they are not allowed, and those that are diverting more than their current rights allow. The Council should recommend that the Water Board address this issue first, and stop the illegal diversions. Mr. Mills stated that Term 91 was initially intended to be an interim measure while the State Water Resources Control Board did a comprehensive analysis of water rights on a watershed-by-watershed basis, diverter-by-diverter basis. Some streams are 2, 3 or 4 times overappropriated. In 1978, the Water Board began a comprehensive analysis of the water supply and demand in the Sacramento-San Joaquin system. However, that analysis was never completed, and Term 91 became a permanent solution to this problem. Term 91 is over-applied across the system, and this is inadequate as this Term 91 curtailment is imposed on some water users where there is still available water within their watershed or on their particular stream. The Council should recommend that the State Water Board complete this supply and demand analysis and enforce existing water rights, before recommending that they expand Term 91 to all water diverters.

Tom Zuckerman, Central Delta Water Agency, suggested that the analysis of the Delta situation that Mr. Wilson presented was not complete. Mr. Zuckerman explained how there was always water in the Delta that goes up and down with the tides and the question is how much of it is supplied by the ocean through the tides pushing salt water into the Delta and how much is supplied by the natural tributaries to the Delta. Mr. Zuckerman felt it is difficult to engage in the discussion of shortage of water when it's really a question of water quality. Mr. Zuckerman's pointed out that when the CVP was authorized to transport water from the Sacramento River system through the Delta to meet the needs of the users on the lower part of the San Joaquin River in replacement of the water that was being diverted at Friant, one of the obligations was to control the intrusion of salinity in the Delta. However, the problem is the accumulation of salts in the soil through years of irrigation and the discussion of trying to determine what is appropriate water quality relates to that. Prior to the installation of the CVP, Shasta Dam, and the SWP, the pattern of water flow through the Delta was different – the water quality was better in the early part of the irrigation season and at times during dryer years there was salinity intrusion in the Delta but the average water quality during the season was okay. But since that time, the water quality deteriorated earlier in the season and improves later in the season due to the water projects' effects. The obligation to provide better water quality in the summers under the water quality control plans is in partial compensation for the fact the water quality deteriorates earlier in the season. The accumulation of salts and leeching issues also come into play. Mr. Zuckerman stated he felt it was important for the Council to understand that there is another dimension to the discussion -- about when people in the Delta should be or should not be diverting water that is being provided from storage because in their view it is part of the original physical solution that established the need for water quality standards in the Delta in the summer.

7. Presentation from the 2011 and 2012 Class of Science Fellows for the Delta Science Program (Information Item)

In Dr. Goodwin's absence, Dr. Lauren Hastings, introduced the Fellows from the classes of 2011 and 2012, who provided brief presentations of their research projects

that were awarded by the Delta Science Program in conjunction with the California Sea Grant. The Fellows and their projects were selected through a rigorous external peer-review process. Dr. Hastings stated, in funding this research, the goal is to invest in knowledge that will advance understanding of the complex Delta system. A list of the Fellows that provided presentations was handed out to the Council members and is posted on the Council website at

http://deltacouncil.ca.gov/sites/default/files/documents/files/Item_7_List%20of%20Delta%20Science%20Fellows%20Making%20Presentations.pdf

Dr. Hastings introduced the Sea Grant State Fellows, Emily Mortazavi and Katie Morrice. Ms. Mortazavi will be working on issues related to sediment and Ms. Morrice will be working with the Delta ISB.

Following the presentation from the Fellows, Chair Isenberg asked if there were any questions or members of the public who wished to comment – there were none.

8. Lead Scientist's Report

Dr. Hastings presented the Lead Scientist's Report. The update covered the fall delta smelt index and its effects on water operations. Dr. Hastings gave an overview of the latest issue of the San Francisco Estuary and Watershed Science Journal. Chair Isenberg and Dr. Hastings discussed Chair Isenberg's request that the word "Delta" should be used in the title of the journal because of the Council's financial support. Lastly, Dr. Hastings presented an update of the Delta Science plan and provided Council members with a handout that has been posted on the Council website at http://deltacouncil.ca.gov/sites/default/files/documents/files/Item_8_Attach_2_DRAFT%20Outline%20Delta%20Science%20Plan_01242013.pdf

The outline contains slides Dr. Goodwin has presented in the past and incorporated input from the Council and others. Dr. Hastings stated the outline reflects the realization the Delta Science Plan is needed to provide a framework to organize and integrate Delta Science activities. The end result is to provide best available science, focus on priority management issues, and provide approaches for communicating science to support adaptive management decision-making and to provide tools for the science community to provide best available science in such a way to support adaptive management. Dr. Hastings briefly discussed the organization and structure of the draft outline.

Throughout the update, Dr. Hastings answered Council members' questions and provided clarification. Following the presentation Chair Isenberg asked if there were any members of the public who wished to comment – there were none.

9. Independent Science Board Report (Information Item)

In Dr. Norgaard's absence, Dr. Tracy Collier presented the Independent Science Board Report. Dr. Collier provided an update on the Delta ISB's January 9th teleconference and the ISB meeting held on January 16-17.

Dr. Collier stated at the January 9th teleconference Vince Resh and Liz Canul, members of the ISB, were asked to prepare a format for the ISB's report on the habitat restoration/climate change program review. The format was provided to the members

as Attachment 1. At the January 16-17 ISB meeting, they also discussed amending the operating guidelines to among other things add a Vice Chair, Chair Elect and Past Chair. The Board is being queried as to who might be interested in being the next Chair and Chair Elect which will be four-year terms. The ISB continues its review of habitat restoration efforts with information received from consultants working in the field as well as a presentation from the SFEI on using historical ecology to inform the development of habitat restoration projects which is a very important issue for the ISB.

Dr. Collier stated the ISB members are now providing individual comments on the BDCP EIR/S review directly to Dr. Norgaard. Looking at Chapter 7 of the BDCP, Dr. Collier stated the ISB submitted a letter to Department of Water Resources and Natural Resources Agency back in June stating their concern with BDCP and their intent as they read the chapter to develop another “science program” that would be coordinated with the Interagency Ecological Program. The ISB feels the coordination of IEP and DWR are very important and what the implications of that are for reaching consensus of science issues in the Delta.

Throughout the update, Dr. Collier answered Council members’ questions and provided clarification. Following the discussions, Chair Isenberg asked if there were any members of the public who wished to comment – there were none.

10. Public Comment

Jane Wagner-Tyack, Restore the Delta, stated she felt the Council has failed to act as a steward of the Delta. She felt the Delta Plan failed to deal with flow objectives honestly, assumed BDCP will be permitted and incorporated into the Plan but also felt the Plan should include proposals such as those contained in the DPC’s Economic Sustainability Plan. Ms. Wagner-Tyack also felt the Delta Plan failed to push for financial analysis of the BDCP, failed to ensure that existing water quality laws will be implemented and did not do enough to ensure reduced reliance on the Delta. Ms. Wagner-Tyack submitted written comments that are posted on the Council website at <http://deltacouncil.ca.gov/sites/default/files/documents/files/Restore%20the%20Delta%2001242013.pdf>

11. 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 – February 21, 2013, at Park Tower Plaza (Delta Stewardship Council Offices), 980 9th Street, 2nd Floor Conference Room, Sacramento, CA.

The meeting was adjourned at 1:50 p.m.