

**Draft 9/28/2010 – SUBJECT TO CHANGE
FOR REVIEW AND ADOPTION BY DSC AT 10/28-29/2010 MEETING**

**DELTA STEWARDSHIP COUNCIL
September 23-24, 2010
MEETING SUMMARY**

DAY 1: Thursday, September 23, 2010, (10:00 a.m. – 5:00 p.m.)

1. Welcome and Introductions

The meeting was called to order at 10:00 a.m., September 23, 2010, 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 for the meeting: Phillip Isenberg, Randy Fiorini, Gloria Gray, Felicia Marcus, Don Nottoli (arrived at 11:00 a.m.), Patrick Johnston (arrived at 10:20) and Hank Nordhoff.

3. Chair's Report

Chair Isenberg noted the letter from Ray Seed, an engineering professor from UC Berkeley, which was included in the supplemental materials, regarding emergency response. Isenberg urged the Council to review the correspondence that is posted at http://www.deltacouncil.ca.gov/docs/correspondence/Raymond_Seed_091610.pdf

Also, included in the meeting materials were letters from the Legislature regarding their request that the Council direct the Delta Independent Science Board to conduct an assessment of stressors and the Council's response to the requests. Chair Isenberg suggested later in day that the Council spend time having a focused discussion on how to address stressors. The correspondence and responses are posted at http://www.deltacouncil.ca.gov/delta_council_meetings/september_2010/Item_3.pdf

Chair Isenberg also announced that the Senate confirmation hearings for all Council members have been completed.

4. Appointment of Executive Officer and Lead Scientist (Action Item)

At its April 1, 2010 meeting the Council approved resolutions designating Joe Grindstaff as Interim Executive Officer and Dr. Cliff Dahm as Interim Lead Scientist.

Chair Isenberg presented this action item, which would remove the "interim" designations based upon six months of competent performance. Removing the "interim" designation will not affect pay, benefits, etc.

Chair Isenberg asked if there were questions from the Council or public. As there were none, it was moved (Gray) and seconded (Nordhoff) to appoint Messrs. Grindstaff and Dahm to the positions of Executive Officer and Lead Scientist. A vote was taken and the motion was passed (5/0).

5. Executive Officer's Report

Chair Isenberg stated the State Water Plan highlights were provided to the Council. The Plan is available on the Department of Water Resources' website at <http://www.waterplan.water.ca.gov/cwpu2009/index.cfm>

Following the Legislative and Legal Update, the Council discussed "stressors". Chair Isenberg, Grindstaff and the Council discussed how best to proceed with requesting the ISB input on stressors. The Council would like to (1) a comprehensive listing of potential stressors in the Delta; (2) an approach to prioritization; (3) suggestions from the ISB on process; and (4) to be involved in drafting a potential charge for ISB.

a. Legislative and Legal Update

Curt Miller provided a brief legislative update on the summary of bills staff is tracking and a brief summary on AB 2092, which failed on the Senate floor, and SB 1450. Grindstaff summarized the budget trailer bills which are on hold pending resolution of the state budget. One would require the Council to develop a finance plan by October 2010.

Chair Isenberg also updated the Council on Proposition 26, an initiative constitutional amendment that would expand the definition of a tax (requiring a 2/3 legislative vote), and then make it more difficult to raise revenues through fees.. This proposition could impact the Council's recommendation on financing plan for the future.

Chris Stevens introduced Rebecca Coleman, a legal extern from McGeorge School of Law, who provided the Council with the a Delta related litigation update. http://www.deltacouncil.ca.gov/delta_council_meetings/september_2010/Item_5a_Legal_Update.pdf

b. Zero Based Budget Update

Joe Grindstaff discussed the Zero Based Budget the Legislature requested the Council prepare for this coming year. Grindstaff stated staff plans to come to the Council, at the October meeting, asking their recommendation on what should be submitted to DOF. DOF is also requesting that all the people, positions and programs that were involved with CALFED submit on a zero based budget basis. Council is making staff recommendations on these budgets to the DOF in two weeks.

c. Discussion of Communications and Engagement Plan

Grindstaff noted the draft communications and engagement plan included in the meeting materials, however, Keith Coolidge was attending the BDCP Steering Committee meeting and this agenda item was held over to Friday.

Chair Isenberg called for public comment on the Executive Officer's report – there was none.

6. Adoption of August 26-27, 2010 Meeting Summary (Action Item)

Grindstaff explained the challenge staff had trying to summarize the public comments from the August meeting as being the reason they were included in the supplemental materials. Because the Council members did not have sufficient time to review the meeting summary, Grindstaff requested the adoption of the meeting summary be held over to the October meeting to allow the Council time to review them.

Several options for public testimony were discussed, including requesting speakers submit written summaries of their comments. Following discussion of the best way to capture public comments, it was agreed that staff will not be required to prepare a summary of comments. The speaker may, at his or her discretion, provide a summary, either in advance, when the testimony is given, or subsequent to testimony. Submitting statements is optional and statements will be posted at the earliest opportunity. If the person wishing to speak does not submit a written statement, the comment portion of the Request to Address the Council (speaker request form) should be filled out and that statement will be used in the meeting summary.

After the conclusion of agenda item 6 Chair Isenberg skipped to agenda item 10, Update on BDCP. After the conclusion of the agenda item 10, the Council recessed for lunch and after lunch, returned to agenda item 7, Lead Scientist Report.

10. Update on BDCP

This item was taken out of order and moved up to Thursday, September 23, after agenda item 6. Grindstaff began this agenda item by introducing Lester Snow, Secretary for Natural Resources and David Nawi, Director of the Pacific Region for the Department of Interior, who discussed BDCP.

Snow discussed main three topics – several basic schedule issues that are not clearly understood about BDCP, BDCP principal meetings and associated correspondence, and better need for communication between the Council and BDCP. Snow also distributed a September 23, 2010, letter he wrote to Senator Lois Wolk, regarding her concerns about ongoing meetings among principals who are signatories to the BDCP.

Snow suggested that a Council staff member attend the BDCP meetings, and also requested a point person at the Council be assigned to deal with BDCP issues, and when information is being requested, state who is asking for the information. The last request is of critical importance to Snow – having a clear point of contact for the Council and a clear point of contact for BDCP to help track requests for information.

David Nawi stated that the federal government is glad to provide whatever support and assistance we need. Nawi feels it is of critical importance to find a solution for the water problems the State is facing and realizes that will be difficult. One way of defining success would be to achieve the co-equal goals. He also discussed the approval and process of the Habitat Conservation Plan. He stated the federal agencies will be bound by the best science, in going forward. Following the presentation, the Council asked questions and requested clarification.

The next portion of this agenda item was presented by Keith Coolidge and the ARCADIS consultants, Larry Roth and Lucas Paz, who provided the Council with PowerPoint

presentation for their second BDCP update. Also submitted to the Council was a summary list of unresolved issues to day and the panel discussed with the Council how best to proceed with resolving/investigating issues with BDCP.

Public Comment on Agenda Item 10 was provided by:

Gary Bobker, The Bay Institute, agrees with consultant findings, emphasizes role of DSC and other regulatory/decision-making bodies in setting objectives, request follow-up letter to BDCP, and recommend further work by consultants on remedies.

Pete Kutras, Delta Counties Coalition, commented on principal group process, requested clarification on Snow's comments regarding Delta counties "in the room" and the Wolk letter.

Greg Zlotnick, State and Federal Contractors Water Agency, had several comments on the ARCADIS report.

Spreck Rosekrans, Environmental Defense Fund, commented on inappropriate near term water project operations criteria.

Mark Rentz, Association of California Water Agencies, commented on issues raised by consultant that are being addressed. New information created by ongoing analysis often delays final decisions.

Following the public comment, Member Fiorini summarized the instructions from the Council as follows:

The Council should designate a staff member to attend the BDCP Steering Committee Meetings and point person for communications. The designee is Keith Coolidge and alternate representative is Kevan Samsam, for both attending meetings and coordinating communications. Finally, BDCP is asking that the Council identify the information that is is requesting. Fiorini suggested this would be a good time to update the matrix and create another category for the purpose of tracking resolved issues. He further suggested adding more specificity on the matrix, as to when information is unavailable, what the information is that is being requested and a response from BDCP as to what the information will be available. Grindstaff stated that he also thought those changes would improve the matrix.

Isenberg would like the consultants to prepare a critique of the issues document and also to prepare the next scoping letter for the next meeting.

Following the discussion, the Council recessed for lunch at 1:00 returning from lunch at 2:00.

7. Lead Scientist's Report

Lauren Hastings introduced Sam Harader, who presented the Lead Scientists' Report for Cliff Dahm, who is traveling in Japan. The report included reminders of the upcoming Science Board (ISB) inaugural meeting and the Bay Delta Science Conference. The Science Conference will be held Sept. 27-29, 2010, at the Sacramento Convention

Center and the Delta ISB meeting will be held Sept. 30-Oct. 1, 2010, in the Delta Room at 650 Capitol Mall, Sacramento. The update also included a follow-up to the State Water Boards' Delta Flow Criteria report to expand on the role of the Science Program and the Delta Environmental Flows Group in the Boards' flow criteria development process, summarizing the group's five key points and recommendations.

8. Adoption of "I. Administrative Procedures Governing Appeals; II. Statutory Provisions Requiring Other Consistency Reviews; and III. Other Forms of Review or Evaluation by the Council" (Water Code §85225.30) (Action Item)

Chris Stevens presented this item and was joined by Dan Siegel and Christie HenkeVosberg of the Office of the Attorney General. At the August meeting, the Council reviewed a third draft that focused on appeals of "covered actions." Stevens described the final (fourth) draft provided to the members noting it had been revised to include comments received and would also be adjusted to reflect Council action on BDCP Standard of Review. The Council, in deciding to delay its vote on the procedures until September, directed staff to prepare for its consideration a range of possible standards of review for use by the Council on an appeal of a Department of Fish and Game determination that the BDCP meets the statutory requirements for inclusion in the Delta Plan.

The Council reviewed the draft with Stevens, asking questions, requesting clarification of language and making comments.

After Council discussion on the three options, outlined in the staff report and attachments, most were in agreement that Option 2B (preponderance of the evidence; giving "weight" to DFG reasoning and factual findings).was most appropriate; however, Nottoli supported Option 1 (de novo, or "fresh look" review) and therefore couldn't support a motion using Option 2B.

After the discussion Chair Isenberg called for public comment on this item. Public Comment was provided by:

Pete Kutrus, Delta Counties Coalition, had four points in support of de novo review– 1) Reference Coalition letters of August 17 and September 15 http://www.deltacouncil.ca.gov/docs/correspondence/081710_Delta_Counties_Coalition.pdf and http://www.deltacouncil.ca.gov/docs/correspondence/Delta_Counties_Coalition_091510.pdf 2) De novo is customary administrative review unless Statue specifies differently. Section 85225.25 specified a "substantial evidence" standard of review for state/local "covered action" appeals, not BDCP; 3) DSC is the final arbiter; 4) Reference item 10 discussion supports de novo.

Greg Zlotnick, State and Federal Contractors Water Agency, commented on various paragraphs of proposed procedures.

Ryan Bezerra, Bartkiewicz, Kronick & Shanahan, commented on Sections 4b and 4c.

Mark Rentz, Association of California Water Agencies, supports language in Paragraph 2; concerns with ability to rule on own appeal in paragraph 18; need to define role as an

appellant body to determine whether DFG “correctly determined” – i.e., acted appropriately or its decision was factually reasonable.

After Council discussion and public comment, the motion was divided into two motions: Member Fiorini moved to adopt the package of appeal procedures – excluding the standard of review for a BDCP appeal. It was seconded (Marcus) a vote was taken (7/0) and the motion was passed.

The next motion was to adopt the standard of review using option 2b, moved by Member Fiorini and seconded (Johnston). A vote was taken (6/1) and the motion was passed. Council also instructed staff to make non-substantive and other conforming changes to the document.

9. Presentation and Discussion of Water Supply and Demand (taken out of order – held over to Friday, September 24)

10. Update on Bay Delta Conservation Plan (taken out of order, moved up to the morning - presented after agenda item 6)

11. Update from Delta Protection Commission

Mike Machado, the new Executive Director of the Delta Protection Commission, gave the status report on the DPC activities including the development Economic Sustainability Plan, the review of Primary Zone and the National Heritage designation. At the conclusion of the presentation, Machado answered questions and took comments from Council.

Chair Isenberg and the Council feel it would be helpful to form working groups in reviewing the Resource Management Plan and the Economic Sustainability Plan.

12. Update on FloodSAFE and Central Valley Flood Protection

Joe Grindstaff introduced Dale Hoffman-Floreke, Deputy Director for Integrated Water Management, Department of Water Resources, who presented the FloodSAFE briefing which included an overview of the Department’s flood management activities as they relate to the Delta. She introduced Gary Bardini, Chief, Division of Flood Management and Ken Kirby, the Executive Advisor to DWR on FloodSAFE activities. Hoffman-Floreke referenced the publications included in the members’ materials and the FloodSAFE website: www.water.ca.gov/floodsafe The panel answered questions and took comments from the Council.

Gary Bardini spoke on Emergency Preparedness and Ken Kirby spoke on the Regional Conditions Report and cost sharing strategies that they hope to bring to the Council in December.

Member Fiorini requested that the levees be identified on a map by priority, their importance and integrity. He also asked how the levees are prioritized - are the lowest levees brought up to standards to qualify for federal funding? The Council felt flood protection is as important as the co-equal goals.

Following the discussion public comment was provided by:

Brett Baker, Restore the Delta, commented on levee maintenance.

The meeting concluded for the day at 4:45 p.m.

DAY 2: Friday, September 24, 2010 (9:00 a.m. – 3:30 p.m.)

13. Call to Order

The meeting resumed at 9:00 a.m., with Chair Isenberg presiding.

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

The Council operated as a sub-committee with members Nordhoff and Fiorini and Chair Isenberg present. Members Gary and Marcus arrived at 9:10; Johnston at 9:15, and Nottoli at 9:20. Shortly after the meeting began and the remaining members arrived, roll call was taken and a quorum was established.

15. California Environmental Water Caucus Presentation of Alternative Plan to Meet Council Mandates

Chair Isenberg introduced the EWC. The presentation began with David Nesmith, facilitator for the Environmental Water Caucus. Nesmith began by listing the 28 member organizations of the Caucus and provided the Council with the EWC report, “California Water Solutions Now” <http://ewccalifornia.org/reports/CWSN-2.pdf> that covers 11 strategic goals for California water policy with 65 specific recommendations that were well researched by other agencies.. The presentation was based on recommendations from the report. Nick Di Croce, spoke next on water conservation, efficiency and toxic farmlands, highlighting projected water savings from efficiency measures, meeting changing water demands, and retirement of toxic farmlands.

Mike Jackson, followed with a discussion on water exports and flow. Jackson stated the EWC supports the State Water Board and DFG recommendations. He also stated that a non-structural alternative has never been looked at – one would solve the both dual goals. Jackson said the EWC will formally submit its proposal as an alternative that needs to be analyzed in the Council’s environmental document on its Delta Plan.

Mark Rockwell, Federation of Fly Fishers and the Pacific Coast Representative for the Endangered Species Coalition. Rockwell commented that this was a very controversial project and he recommended the establishment of a water solutions work group work on this project collaborative. The work group would be a way to bring in all interested groups to work through to develop a strategy to achieve the co-equal goals.

The panel answered questions and took comments from the Council. Following the discussion, Chair Isenberg called for public comment. Public comment was provided by:

Byron Buck, State and Federal Contractors Water Agency, opposed to EWC request.
Letter submitted to the Council

http://www.deltacouncil.ca.gov/docs/correspondence/092210_STATE%20%20FEDERAL%20CONTRACTORS%20WATER%20AGENCY.pdf

Mark Rentz, Association of California Water Agency, opposed to the approach by EWC – it fails to consider co-equal goals and is a prescription for economic chaos.

16. Report of DSC Committee on Interim Plan – Early Actions (Action Item)

A committee was established at the August meeting to review early actions and make recommendations to the full council for possible inclusion in the Interim Plan. The committee was made up of Chair Isenberg, Vice Chair Fiorini, with Council Member Marcus as the alternate. At the first meeting on September 14, four applications for proposed early actions were submitted for consideration, in addition to the early actions identified in the statute. Priority for consideration was given to early actions identified in the statute and listed in Table 4-1 (attachment 3). The committee reviewed the actions and made the following recommendations on five early actions:

1. Department of Water Resources Two – Gates Project

The Council should:

- facilitate a meeting between the active parties of the Two-Gates project to discuss the project goals and the approach to achieving those goals
- request the State Water Contractors provide a letter verifying the cost of the Two-Gates project and verifying the State Water Contractor's willingness to pay for the project
- request the Department of Fish and Game provide an estimate of the cost of repairing the boat scheduled to conduct fish studies this winter
- request the Department of Fish and Game describe impacts to the Two-Gates project caused by the current hiring freeze
- request the US Bureau of Reclamation clarify its position on the Two-Gates project, their intention to proceed with the project, and provide the current project schedule

2. SWRCB - Develop Flow Criteria for the Delta Ecosystem

- Include in Interim Plan

3. SWRCB - Delta Watershed Diversion Data Collection and Reporting

- Include in Interim Plan

4. SWRCB - Instream Flow Studies Schedule and Costs to Legislature

- Include in Interim Plan

5. Water4Fish - Delta Cross Channel Gates

- Take no action. The applicant has withdrawn the application so that they may address the Committee's concerns and re-submit the application at a later date.

Regarding the Two-Gates Proposal, the Committee requests the Council accept the five points made on attachment 1, allowing staff to edit the comments to reflect updated information from DFG for boat for scientific study. This will become the Council's response to the Governor and Legislature on that portion of the early actions. Chair Isenberg asked if there were any questions from the Council, as there were none, it was moved and seconded (Isenberg and Fiorini) . A vote was taken (6/0) and the motion was passed.

The Council went thru Table 4-1, Specific Early Actions (attachment 3) and discussed each action. The next to be addressed was a proposal to evaluate effectiveness of Three Mile Slough Project. The summary statement on the matrix is accurate and a vote was taken to adopt the recommendation (6/0).

The status of the rest of the actions were discussed. The Council did not object to any of the actions, however, they did request that the Science Program should look at the eWRIMS program the SWRCB is utilizing to establish a system for watershed diversion data collection and data collection and public reporting.

9. Presentation and Discussion of Water Supply and Demand (taken out of order – held over from Thursday, September 23)

Joe Grindstaff presented a PowerPoint Presentation on California Water Supplies and Uses. After his presentation, Grindstaff introduced Armin Munevar, a consultant from CH2M Hill, who presented a PowerPoint presentation on Climate Science, Change, and Adaptation Overview. The Council asked questions about the presentations and made comments. Grindstaff and Munevar responded to the Council's comments and questions.

Following the presentations, the Council recessed for lunch at 12:23, retuning at 1:15

17. Delta Plan Development

Terry Macaulay began the discussion on the Delta Plan by giving the Council an update on the coordination activities with the local, state and federal organizations. Over the last month staff met with the Delta Counties Coalition and decided to meet on a monthly basis. The counties will host the meetings, on a rotating basis. Chair Isenberg suggested inviting Machado or his representative to sit in on these meetings. Macaulay also stated that staff is meeting with the state agencies that are involved in the various planning efforts connected with the Delta Plan on a monthly basis. Macaulay and Isenberg discussed how the information from these meetings will be shared with the Council. Regarding coordination of the federal agencies, Council staff has met with staff with NOAA and the NOAA office that handles CZMA, to understand what the processes and what the possible approaches will be. Staff will report back to the Council on that effort.

Chris Stevens took over the discussion on the Council's Roles and Responsibilities under the CEQA regarding approval of the Delta Plan (attachment 1). Stevens stated he thought that an EIR was required for the Delta Plan and had a verbal confirmation from the AG's office, however, he contacted Tara Mueller, Deputy Attorney General, Land Law Section, for a formal determination. Muller concludes that CEQA requires preparation of an EIR for the Council's adoption of the Delta Plan.

There were no members of the public wishing to speak on this item or discussion from the Council. Chair Isenberg suggested the following action: Council acknowledges receipt of the AG's memorandum regarding the Delta Stewardship Council's Roles and Responsibilities under the California Environmental Quality Act regarding Approval of the Delta Plan, Dated September 14, 2010, and on the basis of the advice contained therein,

directs staff to commence on the preparation of an EIR on the Delta Plan. It was moved (Nottoli) and seconded (Marcus). A vote was taken (5/0) and the motion was passed.

a. Preliminary Schedule

Consultant Gwen Buchholz walked through the preliminary schedule to complete the Delta Plan and the EIR, taking questions and providing clarification.

Public comment on agenda item 17a was provided by:

Greg Zlotnick, State and Federal Water Contractors Agency, had a question regarding the schedule

b. Preliminary Draft Notice of Preparation

Gwen Buchholz, went over the draft NOP, explaining the different sections, answering questions, receiving Council comments and suggestions.

Public comment on agenda item 17b was provided by:

Greg Zlotnick, State and Federal Contractors Water Agency, commented on Draft NOP.

Mark Rentz, Association of California Water Agencies, commented on preliminary draft NOP and appeal procedures regarding consistency.

c. Comment Process during Delta Plan Development

Gwen Buchholz described the comment matrix that included direct citations and comments received by the Council between August 5, 2010 and September 14, 2010. The citations were directly from letters and emails. All of the letters and emails are posted on the Council website at

http://www.deltacouncil.ca.gov/public_involvement/public_comments.html

The comments were placed into eleven categories and summarized on the matrix. The Council asked questions and suggested that staff modify the matrix in order to track the comments. The suggestion was to add a column that shows how the comment was used or not, noting the section number.

18. Public Comment

Mark Rockwell, Endangered Species Coalition, commented on the Two-Gates and Cross Channel gates closures are both "projects" designed to help fisheries and continue high pumping.

19. 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.

The next meeting is scheduled for October 27-28, 2010

The meeting adjourned at 3:00 p.m.