

Draft report re. Sec. 85300(e)
March 12, 2012

Ms. Diane Boyer-Vine
Legislative Counsel
State Capitol, Room 3021
Sacramento, CA 95814

Mr. Gregory Schmidt
Secretary of the Senate
State Capitol, Room 3044
Sacramento, CA 95814

Mr. E. Dotson Wilson
Chief Clerk of the Assembly
State Capitol, Room 3196
Sacramento, CA 95814

Dear Ms. Boyer-Vine and Messrs. Schmidt and Wilson:

I am pleased to transmit this report on the status of adoption of the Delta Plan as required by Section 85300(e) of the Water Code. Distribution has been made by the Delta Stewardship Council pursuant to Government Code Section 9795. This report can be found at deltacouncil.ca.gov.

Sincerely,
S/

Sacramento–San Joaquin Delta Plan

Purpose

This report was prepared by the Delta Stewardship Council (Council) in accordance with Section 85300(e) of the Water Code which states:

The council shall report to the Legislature no later than March 31, 2012, as to its adoption of the Delta Plan.

Preparing and adopting the Delta Plan (Plan) has taken longer than expected, primarily because of the complexity of preparing and analyzing comments on the programmatic EIR. As a result, the Council estimates certifying the EIR in May, 2012 and publishing the Plan in June, 2012. A detailed chronology of Council activities since April 2010 is attached as Appendix 1.

Background

In November 2009, the California Legislature enacted SBX7 1, which took effect on February 3, 2010. One portion of this legislation is the Sacramento–San Joaquin Delta Reform Act of 2009 (Act). The Act requires the following major actions:

1. Appointment to the Delta Independent Science Board, Water Code Sec. 85080
2. Adoption of an Interim Plan, WC Sec. Sec. 85084
3. Adoption of Administrative Procedures, WC Sec. 85225.30
4. Consultation with local, state and federal agencies, WC Sec. 85300 (b)
5. Comment on certain state agency environmental impact reports for projects outside the Delta, WC Sec. 85210 (j)
6. Consult with the Water Resources Control Board on their appointment of a Delta Watermaster, WC Sec. 85230(a)
7. Consider, and if 'feasible and consistent with the objectives of the Delta Plan...' the Council shall, at its discretion, include recommendations received from the Delta Protection Commission in its economic sustainability plan, Public Resources Code Sec. 29773 (b)
8. Develop, adopt, and commence implementation of the Delta Plan by January 1, 2012, WC Sec. 85300 (a).

To date, the first seven actions have been completed or, in the case of 'consultation', commenced and continuously underway. Action 8, development, adoption and immediate implementation of the Delta Plan is not yet completed, although five staff draft plans and a Draft Environmental Impact Report on the fifth staff draft have been

prepared and distributed for public comment. The Council is the California Environmental Quality Act (CEQA) lead agency for this EIR. Numerous meetings and briefings with legislators and staff, state and federal agency personnel, and the general public have been held over the past year.

Delta Plan Development

Following an extensive outreach effort to stakeholders and the public, five staff draft plans were released between January and August 2011 using a transparent and open public process. The Fifth Staff Draft Delta Plan released in August 2011 consists of 12 regulatory policies and 61 recommendations, as well as other background information.

Over the next several months the Council will undertake the process of reviewing comments and recommendations on the Fifth Staff Draft Delta Plan and Delta Plan Draft EIR in preparation for completion and adoption of a final Delta Plan.

Stakeholder and Public Comments

To date, the Council has received over 150 letters including 1500 individual comments on the Fifth Staff Draft Delta Plan. Multiple comments have been submitted by most of the organizations and many of the individuals. Council staff has considered every comment in light of the policies and recommendations included in the fifth staff draft and these comments will inform preparation of the sixth, or final, staff draft. In addition, many persons have appeared at the Council meetings and offered information and opinions on the draft.

Developing the EIR

The Delta Plan Draft Program EIR (Draft PEIR) was released on November 4, 2011, for a 90-day public comment period (45-days longer than required by state law). Although not required by state law, the Council also held six EIR hearings to take oral testimony, which was transcribed for the official record by a court reporter. The comment period closed on February 2, 2012.

The suite of 12 binding regulatory policies and 61 nonbinding recommendations contained in the fifth staff draft released in August 2011 is what the Draft PEIR calls the "Proposed Project" or "Project." CEQA requires that the lead agency use its independent judgment to formulate and evaluate, in an EIR, a reasonable range of alternatives to the project that could "feasibly attain most of the basic objectives of the project and avoid or substantially lessen any of the potential adverse environmental impacts of the project." Consequently, the Draft PEIR also describes five alternatives of the Proposed Project, which are analyzed at the same level of detail as the Proposed

Project. In addition to the "No Project Alternative" (which assesses the environment as if no Delta Plan is adopted), the Draft PEIR includes four alternatives that are based upon, and informed by (but not taken verbatim from), comments and alternative proposals received from various stakeholder groups, communities, and other interested persons.

The degree to which the alternatives meet the "project objectives" or are "feasible", as defined in CEQA, will be assessed by the Council, consistent with CEQA, following release of the Draft PEIR, but prior to consideration of final adoption of the Plan.

The Draft PEIR is programmatic in nature due to the broad nature of the Delta Plan. Future environmental documents would be completed by other agencies when they implement projects that are subject to consistency reviews by the Council, or which are encouraged or otherwise influenced by the Delta Plan. The Draft PEIR is not intended to provide project-level clearance for any specific project.

Written comments on the Draft PEIR were received from 202 organizations and individuals and 42 commenters provided oral testimony at six public hearings held around the state between November 2011 and January 2012. Written comments totaled approximately 5,100 pages.

All comments are being reviewed by staff. Comments and responses will be published in the Final EIR in early Summer 2012. Following publication of the Final EIR, the Council will consider the Final EIR for certification.

CEQA requires that a Draft EIR be revised and recirculated for public review, in whole or in part, whenever significant new information is added to a Draft EIR that materially changes the previously-reported potential adverse environmental effects of the project. Given the large volume of comments on the Draft Delta Plan and Draft PEIR, it is possible that recirculation (in whole or in part) may be in order for transparency purposes, even if not legally required. We are evaluating this process, however, and have made no determinations at all either way. Recirculation of the Draft PEIR would likely delay Delta Plan adoption.

Delta Plan Content

The California Delta of today is the result of centuries of natural and manmade actions and reactions, and government historically has worked to treat individual problems rather than adopt a system-wide approach. Dozens of agencies, task forces, and working groups have struggled to find the right combination of policy, science and structure needed to address what California now calls the coequal goals.

The Council was created to develop a legally enforceable, long-term management plan for the Delta to achieve the coequal goals of protecting and enhancing the Delta ecosystem, and providing for a more reliable water supply for California in a manner that protects and enhances the Delta as an evolving place. To accomplish this, we are applying a common sense approach based on the best available science to preserve

opportunities for habitat restoration, increase the diversity and efficiency of California's water supplies, enhance floodplains and improve the Delta's levee system, and preserve the Delta's unique character.

Parts of the Plan will become legally enforceable policies. The remainder will consist of non-binding recommendations. Together, the Plan's regulatory policies and recommendations will make up a comprehensive, long-term management plan for the Delta and the Suisun Marsh that furthers the achievement of the "coequal goals" established by the Act, as required by WC Sec. 85300. *"Coequal goals" means the two goals of providing a more reliable water supply for California and protecting, restoring, and enhancing the Delta ecosystem. The coequal goals shall be achieved in a manner that protects and enhances the unique cultural, recreational, natural resource, and agricultural values of the Delta as an evolving place.*" WC Sec. 85054.

In general, the Fifth Staff Draft Delta Plan outlines an approach, and a series of actions that need to be taken so that California can continue to prosper and protect its natural environment. Here is the approach taken:

Achieving a reliable water supply for California, and a protected, restored and enhanced Delta ecosystem, is linked by law and science. One cannot be achieved without the other. For decades, California has been deadlocked over water and Delta policy. This deadlock was cracked by the 2009 water/Delta package of bills, but key planning efforts --- the Delta Plan, BDCP, Central Valley Flood Protection Plan, and others --- must echo that legislation in clear and consistent actions. Failure to have state and relevant local agencies comply with the coequal goals makes it inevitable that federal and state courts will increasingly fill the void. Here are the key steps:

- **Decreased reliance on Delta water to meet future statewide water supply needs through investment in regional supplies, conservation and water use efficiency is the law.** It is also consistent with the best available science, WC Sec. 850231. This statutory direction is based on the understanding that much of the water to satisfy new needs will primarily come from conservation and water system efficiency and largely, but not exclusively, in urban areas. The 'reliability' of a water system is based on adjusting the demand to the supply available, and making the system itself fully efficient, with the lowest possible damage to the environment.
- **The Bay Delta Conservation Plan (BDCP) will be incorporated into the Delta Plan if it meets the test of the 2009 legislation,** as certified by the Department of Fish and Game. The department's determination may be appealed to the Council, WC Sec. 85320.
- **Establishment of new Delta water flow objectives by the State Water Resources Control Board by June 2014, and Delta watershed flow criteria for high-priority tributaries by 2018 is essential for water quality, the Delta ecosystem, and successful completion of BDCP.** The State Water Resources

Control Board must approve a point of diversion proposed by BDCP prior to construction of a new Delta water facility. In addition, those who seek to receive water from the State Water Project and the federal Central Valley Project must agree to pay the cost of the environmental review and mitigation and provide reimbursement of property tax or assessments levied by local agencies, as defined, WC Sec. 85089.

- **Recommended action to adopt Delta levee standards will be developed in 2013.** Until then:
 - Protection and enhancement of Delta flood protection, through expansion of existing and identified flood bypass systems, will protect life, property and state interests in the Delta, which include a reliable water supply for California and an improved and protected Delta ecosystem, WC Sec. 85306.
 - Setback levees.
 - No development in floodways.
 - Creation of a new, five-county Delta Flood Risk Management and Emergency Response Assessment District.

Enforcement of the Delta Plan is consistent with the statute and primarily based on the definition of “covered actions of state and local agencies”, which are required by statute to be consistent with the Delta Plan, WC Sec. 85057.5, 85225-85225.30.

The Fifth Staff Draft Plan is organized as follows:

Chapter 2, Science and Adaptive Management for a Changing Delta, is required by statute as part of the Delta Plan and adaptive management is the tool that helps to adapt and change as circumstances change. Adaptive management is also a tool that measures success with meeting the coequal goals. This chapter carefully explains the importance of science to the Delta and provides examples of the successful use of science in decision making.

Chapter 3, Governance: Implementation of the Delta Plan, describes the Council’s processes and procedures with respect to its appellate role with regard to BDCP, the consistency determination process established by statute, and the various other duties imposed by law, including the key Delta Plan Implementation Committee, WC Sec. 85204.

Chapters 4 through 8 are policy chapters:

- ◆ Chapter 4, A More Reliable Water Supply for California
- ◆ Chapter 5, Restore the Delta Ecosystem
- ◆ Chapter 6, Improve Water Quality to Protect Human Health and the Environment
- ◆ Chapter 7, Reduce Risk to People, Property, and State Interests in the Delta
- ◆ Chapter 8, Protect and Enhance the Unique Cultural, Recreational, Natural Resources, and Agricultural Values of the California Delta as an Evolving Place

Chapter 9 is a Finance Plan framework for funding flood management, water supply, and ecosystem projects, current and potential future funding sources, and recommendations to the Legislature from the Council for future funding strategies.

Delta Related Plans

As provided in the Delta Reform Act, the Council will incorporate or consider other plans that affect the Delta.

Bay Delta Conservation Plan: The Bay Delta Conservation Plan (BDCP) is a project considering large-scale improvements in water conveyance and large-scale ecosystem restorations in the Delta under the state Natural Community Planning Act and the federal Endangered Species Act. When completed, and if it meets certain statutory requirements, it must be incorporated into the Delta Plan (WC Sec 85320).

This plan, when completed in the Fall 2013, will provide for the recovery of endangered and sensitive species and their habitats in the Delta in a way that also will provide for the protection and restoration of water supplies. It is being prepared through a voluntary collaboration of state, federal, and local water agencies, state and federal fish agencies, environmental organizations, and other interested parties.

The Delta Reform Act assigns three roles to the Council relative to the BDCP: 1) consult with the lead agency, the Department of Water Resources (DWR), on development of the Delta Plan; 2) act as a responsible agency under the California Environmental Quality Act (CEQA) in development of the Environmental Impact Report (EIR); and 3) act as an appellate body for any appeal of the Department of Fish and Game's determination that the BDCP has met requirements spelled out in the Act.

In addition, the Act requires the Delta Independent Science Board to review the draft EIR and submit its comments to the Council and the Department of Fish and Game. In July 2010 the Council retained an independent consulting firm (not currently or previously involved in the BDCP process) to assist with its roles in BDCP.

Economic Sustainability Plan for the Sacramento-San Joaquin River Delta: The Delta Reform Act (WC Sec 85301 et seq) requires the Delta Protection Commission (DPC) to develop and submit this plan to the Council for consideration and possible incorporation into the Delta Plan, Public Resources Code Sec. 29759. *"If the council, in its discretion, determines that a recommendation of the commission is feasible and consistent with the objectives of the Delta Plan and purposes of this division, the council shall adopt the recommendations."* (WC Sec 85301(d)). The proposal must include recommendations on potential federal designation of the Delta as a National Heritage Area, and a regional economic sustainability plan, including detailed recommendations for administration of the Delta Investment Fund, created by the Delta Reform Act. Other required elements include recommendations for public safety, including flood protection; economic goals, including recommendations on agriculture and its infrastructure and legacy communities in the Delta; recommendations to DWR concerning its periodic

update of the flood management plan for the Delta; and identification of ways to encourage recreational investment along key river corridors, as appropriate.

DPC submitted its Economic Sustainability Plan on January 27, 2012.

2012 Central Valley Flood Protection Plan: DWR released the Central Valley Flood Protection Plan (CVFPP) in January 2012, for possible adoption by the Central Valley Flood Protection Board (CVFPB) in July 2012. The plan is described as a reconnaissance study, and it is expected that the plan will be updated every five years thereafter. As the first edition of this long-term planning document, the 2012 CVFPP describes a vision for improving integrated flood management in the Sacramento-San Joaquin Valley for those areas currently protected by the State Plan of Flood Control (SPFC). Adoption of an actionable plan is not expected for several more years.

The CVFPP proposes a system-wide approach to address:

- Physical improvements in the Sacramento and San Joaquin River basins
- Urban flood protection
- Small community flood protection
- Rural-Agricultural area flood protection
- System improvements
- Non SPFC levees
- Ecosystem restoration opportunities
- Climate change considerations

It should be noted that the geographic scope of the coverage of the CVFPP only covers those portions of the Delta covered by the SPFC. The Delta Reform Act (WC Sec 85306) states:

The council, in consultation with the Central Valley Flood Protection Board, shall recommend in the Delta Plan priorities for state investments in levee operation, maintenance, and improvements in the Delta, including both levees that are a part of the State Plan of Flood Control and nonproject levees.

The Council staff has consulted with DWR throughout the drafting of the Delta Plan, and many key recommendations of the CVFPP are already reflected in the fifth staff draft. Staff will continue coordination with DWR and will review the CVFPP, including soliciting CVFPB recommendations as to how the Council may respond to CVFPB plans for the SPFC.

State Water Resources Control Board Bay-Delta Plan Update: See the discussion above. The Council supports the work plan of the board and views completion of new Delta and watershed flow standards and criteria to be essential.

Coordination with Other Planning Efforts

As it prepares the Delta Plan, the Delta Stewardship Council is coordinating with other planning underway in the region.

Metropolitan Transportation Plan: The Sacramento Area Council of Governments (SACOG) is updating this plan to account for a new state law that requires transportation plans to include a sustainable communities strategy. Although the Delta Plan is not yet adopted, the Council staff has been working with SACOG staff to ensure that the land use strategy proposes for the Delta is consistent with achievement of the coequal goals, as provided in Water Code Section 85212.

Suisun Marsh Habitat Management, Preservation, and Restoration Plan (SMP): This is a regional plan for the Suisun Marsh prepared by the Bureau of Reclamation, Department of Fish and Game, Department of Water Resources, Fish and Wildlife Service, and Suisun Resource Conservation District. The final EIS/EIR on the SMP was released in December, 2011. The SMP has not yet been reviewed by the Council. Our staff is working with the SMP agencies to assess whether it will achieve the co-equal goals and can be incorporated in the Delta Plan pursuant to Water Code Section 85350.

Next Steps

The Council is reviewing comments received on the Fifth Staff Draft Delta Plan and its Draft EIR now to provide direction to its staff on development this spring of a final draft plan. We anticipate completing that review soon. Preparation of a final EIR, including a response to the comments received on the draft EIR, is also underway. Upon completion of these documents, the Council's hearings and deliberations on a final Delta Plan will begin.

Prior to a vote on adoption of the Delta Plan, the Plan's regulatory portions will be submitted to the Office of Administrative Law (OAL). This is required under California's Administrative Procedure Act (APA). These steps, we anticipate, will be completed in spring or summer, 2012.

This report fulfills the requirement of Section 85300(e) of the Water Code concerning the status of the adoption of the Delta Plan.

(Web addresses for major documents mentioned in this report will be placed here).

Delta Stewardship Council Chronology

Organization

April 2010

1. Council sworn in April 1, 2010.
 - a. Election of Chair (April 1).
 - b. Appointment of Interim Executive Officer, Interim Lead Scientist and other interim officers of the Council (April 1).
 - c. Adoption of Council rules and election of Vice-Chair (April 22).
 - d. Conflict of Interest Code for Council adopted April 22. Final adoption completed after required public notice period ended July 12, 2010.

Delta Science Activities

2. Approval of \$8 million (Prop 84) for Science Grants (originally slated for 2009 approval, but halted by state bond freeze), April 23, 2010.
3. Selection of Independent Science Board members by Council, June 24, 2010.
4. Lead Scientist appointed – Dr. Peter Goodwin – January 26, 2012
5. DSP ACCOMPLISHMENTS TO BE INSERTED HERE

Consultation with federal, state and local agencies

6. Chair initiates consultation with appropriate federal, state and local agencies April 1, 2010, per SBX7 1. Consultation process ongoing, with continuous contacts with State Water Resources Control Board, Department of Fish & Game, DWR, US Department of Interior, NOAA and U.S. Corp of Engineers, plus multiple contacts with Delta counties/cities/special districts.

Selection of Consultants for Delta Plan and related EIR

7. Negotiation completed with successful bidder, CH2M Hill as outside consultant for Delta Plan and EIR, April 30, 2010.

Selection of Independent Consultant for Council relationship to the BDCP Process

8. Selection of ARCADIS as independent consultants for BDCP-related role, July 16, 2010.

Delta Plan and Interim Plan

9. Council adopted the Interim Plan and administrative rules after five months of public hearings, August 27, 2010
10. Public release of Staff Draft Delta Plans:
 - a. First Draft released February, 14, 2011
 - b. Second Draft released March, 18, 2011
 - c. Third Draft released April, 22, 2011
 - d. Fourth Draft released June 13, 2011
 - e. Fifth Draft released August 2, 2011
11. A Final Delta Plan adoption anticipated for May 2012.
12. Six White Papers issued:
 - a. Water Resources (12/8/10)
 - b. Delta as Place: Agriculture (12/6/10)
 - c. Delta Emergency Management (11/8/10)
 - d. Delta Land Use/Socioeconomics (11/8/10)
 - e. Delta Ecosystem (10/18/10)
 - f. Flood Risk (10/18/10)

Draft Delta Plan Program EIR/EIS

13. Public release of fifth staff draft EIR/EIS allowing a 90-day comment period November 4, 2011
14. Six statewide scoping meetings held on draft EIR/EIS

Diamond Bar – January 18, 2011.
Merced – January 19, 2011.
Concord – January 20, 2011
Sacramento - January 24, 2011
Stockton – January 25, 2011
Chico – January 26, 2011

Early Actions review completed September 23, 2010.

Five early actions were approved by the Council:

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