



Making San Francisco Bay Better

April 15, 2011

Phil Isenberg, Chair
Delta Stewardship Council
980 Ninth Street, Suite 1500
Sacramento, California 95814

SUBJECT: Comments on the Second Draft of the Delta Plan

Dear Chair Isenberg:

Thank you for the opportunity to comment on the Second Draft of the Delta Plan, released on March 18, 2011.

Although the San Francisco Bay Conservation and Development Commission (Commission) has not reviewed the Second Draft Delta Plan, the following staff comments are based on the McAteer-Petris Act, the Suisun Marsh Preservation Act (Marsh Act), the Commission's *San Francisco Bay Plan* (Bay Plan), the *Suisun Marsh Protection Plan* (Marsh Plan), the Commission's federally-approved coastal management program for the San Francisco Bay, and the federal Coastal Zone Management Act (CZMA).

Jurisdiction. The Commission's permit jurisdiction includes all tidal areas of the Bay up to the line of mean high tide or, in areas of tidal wetlands, up to five feet above mean sea level, including all areas formerly subject to tidal action that have been filled since September 17, 1965; and the shoreline band that extends 100 feet inland from and parallel to the Commission's Bay jurisdiction. The Commission also has jurisdiction over certain managed wetlands adjacent to the Bay, salt ponds, and certain waterways, and the Suisun Marsh.

Commission permits are required for placement of fill, construction, dredging, and substantial changes in use within its jurisdiction. Permits are issued when the Commission finds proposed activities to be consistent with its laws and policies. In addition, federal actions (including plans), permits, projects, licenses and grants affecting the Commission's coastal jurisdiction are subject to review by the Commission, pursuant to the federal CZMA, for their consistency with the Commission's federally-approved coastal management program for the Bay.

The Marsh Act grants the Commission regulatory authority to issue marsh development permits in the primary management area of the Suisun Marsh, defined as water-covered areas, tidal marshes, diked wetlands, seasonal marshes, and certain lowland grasslands specified on the Marsh Plan Map. The Marsh Act also established a secondary management area composed principally of upland grasslands and cultivated lands, also specified on the Marsh Plan Map, to serve as a buffer between the primary management area and developed lands outside the Marsh. Within the secondary management area, local governments issue marsh development permits pursuant to a local protection program certified by the Commission, and these permits can be appealed to the Commission.

From our review of the Second Draft of the Delta Plan, the staff has identified the following issues within the Commission's jurisdiction: governance, habitat protection and restoration, fresh water inflow, climate change, adaptive management, dredging, water quality, public access and recreation, and mitigation.

Governance. Governance Recommendation 2 of the Second Draft Delta Plan states, "The Council supports extension of the geographical responsibilities of the Delta Protection Commission and the Delta Conservancy to match those defined as the Delta in Water Code section 85058. This extends the geographic scope of the Delta Protection Commission and Delta Conservancy to the legal Delta and Suisun Marsh." The Delta Conservancy already covers the Suisun Marsh, but extending the DPC's authority over the Marsh would overlap with BCDC's jurisdiction and authority. This could create unintended conflicts, so unless there are a compelling reason and clear public policy objectives that could be advanced by such duplication, we recommend that the Council remove this recommendation to extend the DPC's authority in Suisun Marsh.

Habitat Protection and Restoration. The Delta Plan must comply with the Delta Reform Act of 2009, which requires including "measures that promote...[d]iverse and biologically appropriate habitats and ecosystem processes." The Delta Plan must include the following subgoals: "Restore large areas of interconnected habitat...Promote self-sustaining, diverse populations of native and valued species by reducing the risk of take and harm from invasive species...Restore habitat necessary to avoid a net loss of migratory bird habitat..." These goals should be explicitly incorporated into the ecosystem restoration policies of the Delta Plan.

Our Commission's laws and policies call for protecting the diversity of habitats in the Suisun Marsh, restoring tidal habitats, and protecting fish, other aquatic organisms and wildlife, particularly threatened and endangered species and their habitats.

More specifically, the Marsh Plan policies state, in part:

The diversity of habitats in the Suisun Marsh and surrounding upland areas should be preserved and enhanced wherever possible to maintain the unique wildlife resource....

Where feasible, historic marshes should be returned to wetland status, either as tidal marshes or managed wetlands. If, in the future, some of the managed wetlands are no longer needed for private waterfowl hunting, they should be restored to tidal or subtidal habitat, or retained as diked wetland habitat and enhanced and managed for the benefit of multiple species....

Ongoing large-scale efforts to restore Bay wetlands have great potential to benefit the entire estuary, including species of concern, yet these projects could inadvertently be adversely affected if Delta management actions, such as restoring Delta islands, result in the capture of large volumes sediments that would otherwise flow to the Bay, particularly given decreased suspended sediment loading in the estuary and future sea level rise. To address this problem, we request that the Delta Plan include policies requiring regional sediment management for the Delta that integrates parallel regional sediment management efforts in the Bay.

The Bay Plan's dredging policies encourage the reuse of dredged material in wetland restoration projects, as appropriate, and support efforts to fund the additional costs associated with transporting dredged material to project sites. We suggest that the Delta Plan encourage the coordination of use of dredged material in the Bay and Delta as part of a regional sediment management strategy.

The ecosystem restoration policies in the Second Draft Delta Plan do not yet contain statements of support or specific goals related to habitat diversity, tidal habitat restoration, or regional sediment management, including the reuse of dredged material. Our staff urges the Delta Stewardship Council to incorporate these principles and the relevant Marsh Plan and Bay Plan policies into the Delta Plan policies in order to ensure that wetland restoration in the Bay and Delta are coordinated to maximize public benefits.

Fresh Water Inflow. The Second Draft Delta Plan does not currently address the need for adequate freshwater inflow to the Suisun Marsh and the Bay.

The Bay Plan and Marsh Plan policies call for adequate freshwater inflow to the Bay and Suisun Marsh. Bay Plan findings state, in part, that "conserving fish, other aquatic organisms and wildlife depends, among other things, upon availability of ...proper fresh water inflows, temperature, salt content, water quality, and velocity of the water."

The Bay Plan's fresh water inflow policies state, in part:

Diversions of fresh water should not reduce the inflow into the Bay to the point of damaging the oxygen content of the Bay, the flushing of the Bay, or the ability of the Bay to support existing wildlife....

High priority should be given to the preservation of Suisun Marsh through adequate protective measures including maintenance of freshwater inflows....

Water Supply and Quality Finding 2 in the Marsh Plan states, "Today the most important factor in Marsh water quality is salinity. Slough salinities are presently determined by fresh water inflow, which dilutes the saltwater carried into the Marsh by tidal action from the ocean. The most important source of fresh water inflow to the Suisun Marsh is the outflow from the Sacramento-San Joaquin River Delta."

The Marsh Plan recognizes that the Suisun Marsh, located where salt water and fresh water meet and mix, contains "the unique diversity of fish and wildlife habitats characteristic of a brackish marsh."

Marsh Plan policies state, in part:

There should be no increase in diversions by State or Federal Governments that would cause violations of existing Delta Decision or Basin Plan standards....

Water quality standards in the Marsh should be met by maintaining adequate inflows from the Delta.

To address these policies, we recommend that the Delta Plan include policies that address the fresh water flow needs of the entire estuary, not just the Delta. This includes the need for peak flows that transport sediment and nutrients to the Bay, increase mixing of Bay waters, and create low salinity habitat in Suisun Bay, San Pablo Bay and the upper part of central San Francisco Bay. Changes in water project operations that may result from the Delta Plan could affect the future extent to which tidal restoration in the Suisun Marsh results in brackish marshes versus salt marshes. Flows needed to support ecosystem processes as well as the recovery of individual species in the Bay and Suisun Marsh should be addressed in the Delta Plan.

Climate Change. The Second Draft Delta Plan does not address climate change in its ecosystem restoration policies, but it does contain an ecosystem restoration recommendation that states, "The water supply and ecosystem should be resilient to sea level rise, increasing regulations, earthquake risks, invasive species and other stressors as time goes by." We believe more specific findings and policies on this subject are needed.

The Delta Plan should including findings stating that:

- Risk of levee breaches and wetland habitat loss in the Suisun Marsh will increase over time due to accelerating sea level rise and high rates of subsidence in the managed wetlands;
- Restoration of managed wetlands that are not yet highly subsided would create opportunities for tidally restored wetlands to accrete sediment and eventually support tidal marsh; and
- Restoration sites around the edge of the Suisun Marsh may have the potential for sea level rise resiliency, if they are allowed to flood adjacent uplands over time so that wetlands can migrate landward.

Also, the Delta Plan should include findings related to the risks to viability of proposed restoration efforts posed by climate change, including sea level rise.

The Bay Plan requires the design and evaluation of any tidal restoration project to include an analysis of the effect of relative sea level rise. The Delta Plan should include incorporate this requirement as an ecosystem restoration policy.

Adaptive Management. The Delta Reform Act states that the Delta Plan will "Include a science-based, transparent, and formal adaptive management strategy for ongoing ecosystem restoration and water management decisions."

The Second Draft Delta Plan states, "It is the policy of the Council that Delta-related plans, programs and projects that meet the definition of "covered action" (Water Code section 85057.5) shall clearly describe the use of adaptive management in planning, implementation, and decision making, unless adaptive management concepts are not applicable based on the nature of the covered action." However, adaptive management is not mentioned in the ecosystem restoration policies.

The Bay Plan's policies on tidal marshes and tidal flats state, in part:

Any tidal restoration project should include clear and specific long-term and short-term biological and physical goals, and success criteria and a monitoring program to assess the sustainability of the project. Design and evaluation of the project should include an analysis of: (a) the effects of relative sea level rise; (b) the impact of the project on the Bay's sediment budget; (c) localized sediment erosion and accretion; (d) the role of tidal flows; (e) potential invasive species introduction, spread, and their control; (f) rates of colonization by vegetation; (g) the expected use of the site by fish, other aquatic organisms and wildlife; and (h) site characterization. If success criteria are not met, appropriate corrective measures should be taken.

In other words, the Bay Plan requires an adaptive management approach for Bay tidal restoration projects. Bay Plan policies on restoration of subtidal areas contain the same requirements. To mirror this approach, the Delta Plan's ecosystem restoration policies should also require each project and program to have an adaptive management plan with specific goals, success criteria, a monitoring program, and potential corrective measures. To the extent feasible, the portion of the Delta Plan's adaptive management plan covering the Suisun Marsh should be coordinated with the adaptive management plan that is being developed for the Habitat Management, Preservation and Restoration Plan for Suisun Marsh, also known as the Suisun Marsh Plan (SMP). The goals and implementation approach for the adaptive management plan should be discussed in the Delta Plan's performance measures and targets for ecosystem restoration.

Dredging. In the Second Draft Delta Plan, Ecosystem Restoration Policy 1 expresses support for the California Department of Fish and Game's Draft Ecosystem Restoration Program's Conservation Strategy for Stage 2 Implementation, which, in turn, references the SMP. The SMP, if approved, would include a significant increase in dredging from sloughs in the Suisun Marsh.

The Draft Environmental Impact Statement/Environmental Impact Report (EIS/EIR) for the SMP, issued by the U.S. Reclamation Bureau and U.S. Fish and Wildlife Service on October 29, 2010, states that dredging from sloughs in the Suisun Marsh to maintain managed wetland levees is currently restricted to protect threatened and endangered species, and evaluates a range of dredging practices that minimize impacts on listed species, with remaining impacts to be offset by habitat restoration. In addition, the SMP Draft EIS/EIR states, "Dredging will be avoided within 200 feet of storm drain outfall and urban discharge locations, unless suitable preconstruction contaminant testing is conducted."

The Commission's dredging policies state, in part, that dredging should be authorized when the Commission can find that "dredging is needed to serve a water-oriented use or other important public purpose, such as navigational safety" and "the siting and design of the project will result in the minimum dredging volume necessary for the project." The Commission's laws and policies also require that dredging and dredged material disposal be conducted in an environmentally and economically sound manner and that projects be designed to minimize and, if feasible, avoid any harmful impacts on fish, other aquatic organisms, wildlife and aquatic plants.

The Delta Plan should reference the proposed dredging program that will be included in the SMP, noting that the Commission must consult with the state and federal resource agencies, and not authorize any dredging resulting in the "taking" of a listed species unless the appropriate authorization has been issued by the resource agencies. The Commission is also authorized to require mitigation for adverse impacts of dredging that cannot be avoided or minimized. (See comments on mitigation below.) With respect to contaminant testing, the Delta Plan should note that dredging in the Suisun Marsh within 200 feet of storm drain outfall and urban discharge locations will likely require the testing specified by the Dredged Material Management Office (DMMO), and project sponsors should consult with the DMMO for the need for evaluation and determination of suitability for placement on levees or other sites. The DMMO is operated by the agencies of the Long Term Management Strategy (LTMS) for the Placement of Dredged Material in the San Francisco Bay Region.

Water Quality. Pursuant to the Commission's water quality policies in the Bay Plan, the release of pollution in Bay waters "should be prevented to the greatest extent feasible." Further, per the Bay Plan policies, the Commission would need to consult with and base its decision regarding the water quality impacts of any proposed projects in the Suisun Marsh undertaken pursuant to the Delta Plan on evaluation by and advice of the San Francisco Bay Regional Water Quality Control Board. Therefore, we request that the Delta Plan's water quality policies require that project proponents conduct early consultation with and obtain all necessary authorization from the Regional Board to aid the Commission in determining whether any projects would adversely impact the Bay's water quality.

Public Access and Recreation. The Commission's laws and policies call for providing a wide range of public access and recreational opportunities, consistent with public safety and the protection of natural resources in San Francisco Bay, including the Suisun Marsh. More specifically, the Recreation and Access Policies of the Marsh Act call for encouraging continued recreational use of privately-owned managed wetlands, i.e., duck hunting, as well as acquisition of land to provide for increased public recreational use, including fishing and nature study. The policies state that these areas should be located primarily on the outer portions of the Marsh near the population centers and easily accessible from existing roads. The policies further state that public agencies acquiring land in the Marsh for public access and recreational use should provide for a balance of recreational needs by expanding and diversifying opportunities for activities such as bird watching, picnicking, hiking, and nature study.

The Delta Plan does not currently include policies related to recreation in the Suisun Marsh. The Delta Plan should include policies that support diversifying or increasing the range of recreational opportunities in the Marsh.

Mitigation. In the event that projects and activities described in the Delta Plan would result in adverse environmental impacts on San Francisco Bay, including the Suisun Marsh, that cannot be avoided, mitigation measures will be required. The Commission's policies regarding mitigation state, in part, that "projects should be designed to avoid adverse environmental impacts to [the] Bay" and, further, that "[w]henver adverse impacts cannot be avoided, they should be minimized to the greatest extent practicable....[and] measures to compensate for...impacts should be required."

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Thank you for the opportunity to comment on the Second Draft Delta Plan. If you have any questions regarding this letter or the Commission's policies, please call me at (415) 352-3660 or email me at jessicad@bcdca.gov.

Sincerely,



JESSICA DAVENPORT
Coastal Planner

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By U.S. Mail and e-mail (DeltaPlanComments@deltacouncil.ca.gov)