

**Department of
Conservation &
Development**

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**Contra
Costa
County**



Catherine O. Kutsuris
Director

May 6, 2011

Honorable Phil Isenberg, Chair
Delta Stewardship Council
Via e-mail to:
deltaplancomment@deltacouncil.ca.gov

RE: Third Staff Draft Delta Plan dated April 22, 2011

Dear Chair Isenberg and Council Members:

Contra Costa County staff has reviewed the Third Staff Draft Delta Plan (April 22, 2011) and offers the following comments.

Chapter 1—The Delta Plan

1) Page 10, line 20. We still disagree with the statement that regulatory and legal constraints on water allocations threaten the state's economy. The plan document provides no source or justification for this statement. It is a prejudicial statement that seems intended to make "reliable supply" a more important goal than "ecosystem health." As we mentioned in our comments on the Second Draft, academic research by the University of the Pacific has demonstrated that regulatory restrictions have not significantly harmed the economy of the Central Valley. If the Delta Stewardship Council (DSC) truly embraces the co-equality of the co-equal goals, then the statement about the economy is inconsistent with that and should be stricken. If the DSC has technical sources for this statement, the source document(s) should be referenced in the plan for peer-review.

Chapter 3—Governance: Implementation Of The Delta Plan

2) We believe that Habitat Conservation Plans (HCPs) or Natural Community Conservation Plans (NCCPs) adopted by local land use agencies in the Delta should serve as part of the foundation for the Delta Plan, as suggested on page 16, and that actions of permitting agencies pursuant to these HCPs and NCCPs should be exempt from the certification requirements of the Delta Plan. Contra Costa County is one of the local agencies that developed, approved and is implementing the *East Contra Costa County HCP/NCCP*. The plan was developed through an exhaustive and comprehensive public planning process involving local, state and federal agencies and stakeholders. The *East Contra Costa County HCP/NCCP* provides a coordinated, regional approach to conservation of natural resources in eastern Contra Costa County, including

a portion of the Delta area. The individual goals of the HCP/NCCP include permanent protection of biologically rich habitat, providing certainty and efficiency in the permit process for both regulators and applicants, and fair compensation to willing landowners for permanent resource protection on their land. This seems entirely consistent with the goals and purpose of the Delta Plan.

In 2007, state and federal regulatory agencies approved the HCP/NCCP, approved the Implementing Agreement, and issued regional permits to the local permitting agencies. Nothing in the Delta Reform Act authorizes the DSC to pre-empt the authority of state and federal regulatory agencies to implement provisions of related Endangered Species statutes and related agreements with local permitting agencies. Under state statute, NCCP permittees are not be subject to any changes in the standards they must comply with. Therefore, it is imperative that the Delta Plan not impose any new requirements on NCCP permittees. The DSC should incorporate the *East Contra Costa County HCP/NCCP* as a foundation for the Delta Plan without further delay and exempt activities covered by the HCP/NCCP from the certification process under the Delta Plan. We suggest the same for other jurisdictions that have approved HCP/NCCPs.

4) Page 37, lines 11-16. The definition of significant impact is vague enough that there likely will be frequent challenges on it. The evaluation of whether an action will “affect the achievement of one or both of the coequal goals”, for example, is highly subjective without any qualification, thresholds, or methodology. The suggested checklist on Page 39 makes not mention of the need to coordinate such determinations with existing checklists used for a project’s compliance with the California Environmental Quality Act (CEQA). Such checklists already address agricultural resources, biological resources, and hydrology which overlap with the Delta Plan subject matter. We cannot evaluate this chapter without having the checklist so we can understand the certification process being proposed.

7) Page 39, lines 17-18. Identifying best available science, and adaptive management, and using them in decision-making on projects, is overkill for a small project like a localized creek restoration. We still believe there needs to be size or scale limits on the projects that fall under this. As stated earlier, actions of permitting agencies pursuant to their HCP/NCCP should be entirely exempt.

Chapter 4—A More Reliable Water Supply For California

8) Page 45, lines 20-30. This section provides a very good discussion of the variety of planning and improvements that are needed in the Delta. In doing so, it provides even more justification to delete the reference to economic impacts mentioned in Comment # 1 above.

Chapter 6 – Improve Water Quality to Protect Human Health and the Environment

9) Page 81 and 82 identify selenium compounds as adversely affecting environmental water quality. However, the list of performance measures that the DSC will use to assess progress in environmental water quality does not specifically include selenium compounds. Much of the selenium is directly related to lands on the west side of the San Joaquin Valley served by the State Water Project. The Delta Plan’s performance measures should specifically include measuring selenium compounds. Such data will be helpful in providing future guidance to state agencies to help improve environmental water quality in the Delta.

Chapter 7—Reduce Risk To People, Property, And State Interests In The Delta

10) Table 7-1 identifies a levee classification for land and resource uses. The terms for land use included in this table need further clarification. It is understood that the term “infrastructure” would include levees that function to protect water quality from excessive salinity intrusion or convey surplus water from the North Delta to the export pumps in the South Delta?

11) Page 92 describes policies that proponents of flood management investments must satisfy to be consistent with the Delta Plan. These policies should be clarified to meet the purposes of certain bond funding programs which are directed at reducing the risk of Delta levee failures that would jeopardize water conveyance. It would also be appropriate for the Delta Plan to include recommendations to address concerns expressed during the development of the Interim Plan to investigate opportunities to streamline administration of DWR’s Levee Subventions and Special Projects Programs. Hundreds of millions of dollars have been authorized for levee investments but the pace of implementation has been very slow and warrants review by the DSC.

12) Page 94, lines 31-34. This section recommends a regional Delta authority for local flood management activities. Little detail is provided on this recommendation so at a minimum, the Delta Plan should describe the information from the References/Sources to justify this recommendation. The problem statement needs to demonstrate that the lack of coordination is a local problem, and not a state problem.

The Delta Plan needs to disclose its findings with regard to financing local levee operations, maintenance and related data collection efforts, identify the objectives the DSC wants to meet with respect to local flood management activities, describe the options it examined and demonstrate why establishment of a Delta Flood Management Assessment District is the most feasible and effective action to meet that objective.

An argument can be easily made that the flood management activities in the Delta are adequate for the purposes of the property owners benefiting from those levees. However, page 93 of the DSC Flood Risk White paper clearly makes the case for the state’s interest in Delta flood management activities. State-wide economic impacts due to the disruption of water exports and

impacts to the nationally significant Delta ecosystem from more salinity intrusion are well documented. State interests are the interests most at risk from any lack of “coordination”. The Delta Plan needs to explain why local agencies should be assigned with responsibility for protecting the operation of the CVP and SWP, and the survival of an ecosystem of national significance.

The Delta Plan identifies an ambitious work plan for the Assessment District, including funding a flood management plan that would include owners of infrastructure protected by the levees. Existing statutes governing formation of assessment districts are very rigorous. Under these statutes, how feasible is it to recommend that a Delta-based district get the beneficiaries of the CVP and SWP to pay for the benefits they enjoy from the levees that protect their water from salinity intrusion and convey this surplus water to their pumps?

The Delta Reform Act of 2009 requires the DSC to include recommendations for strategic levee investments in the Delta Plan (§85305.a.) and to recommend priorities for state investments in levee operation, maintenance and improvements in the Delta (§85306). Senate Bill x7-8 authorizes DWR to spend \$202 million for flood protection projects in the Delta to reduce the risk of levee failures that would jeopardize water conveyance. State bond measures were passed in 2006 to provide potentially more funding for Delta levees. The State’s interest in the Delta warrant early actions to upgrade the levees where these interests are at most risk. Comments were made on the Interim Plan for DSC to recommend that the DWR take immediate action to upgrade its levees on the strategically located state-owned islands in the Western Delta. In June 2010, DWR reported to the Council that its levee evaluation program was evaluating all levees in the Delta. On August 3, 2010, the U.S. Army Corp of Engineers submitted comments on the Interim Plan that describing progress in federal investments in the Delta through the Delta Islands and Levees Feasibility Study (“which may investigate related issues such as water quality and water supply”) and the CALFED Levee Stability Program which is to provide short term “quick fixes” on fragile Delta levees. Last September, DWR reported to the DSC that it would be able to identify priorities for levee investments by the end of the year. Rather than recommend yet another study and plan, the Delta Plan should recommend priorities for state investments in levee operation, maintenance and improvement in the Delta pursuant to the Delta Reform Act.

Chapter 8—Protect And Enhance The Unique Cultural, Recreational, Natural Resources and Agricultural Values of the California Delta As An Evolving Place

13) Page 103, lines 14-17. The plan states there is a need for the Delta counties “to establish and implement a resources management plan for the Delta, and for the Delta Stewardship council to consider than plan...in the adoption of the Delta Plan.” Clarification is needed for the term “resource management plan.” As stated earlier, the *East Contra Costa County Habitat Conservation Plan/Natural Community Conservation Plan* governs management of resources covered by Endangered Species statutes. We also note that Section 29760 of the Public

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Resources Code requires the Delta Protection Commission to develop a “long-term resource management plan for land uses” within the Primary Zone of the Delta. Clarification should be provided as to how, or whether, these two resource management plans relate to each other. We see nothing in the Delta Reform Act to suggest that local jurisdictions in the Delta must fund and develop plans separate from General Plan to comply with the statute’s planning requirements, or to otherwise duplicate the work already assigned to the Delta Protection Commission.

Thank you for the opportunity to review the Third Staff Draft Delta Plan.

Sincerely,



Steven L. Goetz, Deputy Director
Conservation, Transportation and Redevelopment Programs

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