

DEPARTMENT OF WATER RESOURCES

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July 2, 2010

Mr. Joe Grindstaff
Acting Executive Officer
Delta Stewardship Council
650 Capitol Mall
Sacramento, California 95814

Re: DWR's Comments on the Delta Stewardship Council's June 14, 2010 First Draft Interim Plan

Dear Mr. Grindstaff:

The Department of Water Resources (DWR) is pleased to provide the following comments and set of specific recommendations in response to the June 14, 2010 Delta Stewardship Council (Council) Draft Interim Plan. DWR will continue to work with the Council and staff during this process to help develop clear objectives for the Interim Plan that can frame actions and recommendations for Delta activities, projects and programs.

General Comments

The Draft Interim Plan, states: "No state or local agency should undertake or approve a project that is potentially a covered action until the Delta Plan is adopted, unless the project is included in the specific exclusions enumerated in SB x7-1." (pg. 22) In addition, the Interim Plan states: "The Council will not consider and act on "conceptual" proposals nor will the Council issue "in concept" approvals." (pg. 23)

Stopping all work on covered actions until the Delta Plan is adopted and eliminating conceptual designs from consideration would have the practical effect of limiting many legislatively mandated and discretionary actions that are needed to maintain the health, safety and welfare of Delta communities and state-identified resources.

For example, on-going maintenance of Delta levees has long been recognized as an activity worthy of consistent state and local investment. Furthermore, a suite of ecosystem restoration actions are emerging from vigorous on-going efforts of state and federal agencies. In addition, it is necessary to carry out on-going monitoring and research and maintain water quality through the construction of temporary barriers in the south Delta.

Therefore, DWR encourages the Council to focus on the specified goals of the Interim Plan: namely, to develop “recommendations for early actions, projects, and programs,” in a way that is consistent with its research needs and program development objectives in furtherance of the 2012 Delta Plan.

Those goals should be linked to specific, measurable objectives, and those objectives used to develop criteria through which the Council can provide meaningful recommendations to the entities with the authority and responsibility to implement early actions and other on-going activities. Such an exercise would also provide a significant benefit for the development of the 2012 Delta Plan. In addition to being a deliberate planning exercise, it should also be a prioritization activity that helps the Council clarify which activities can yield the most significant benefits for the public and private investments. Further, this activity would help identify specific quantifiable (and implementable) measures of performance that go beyond those developed by the Delta Vision process. Finally, this process can and should be an iterative and interactive process with the public and public agencies actively engaged to the extent practicable in all aspects of program review and drafting.

Specific Comments

DWR provides the following specific comments and on the attached spreadsheet.

1. Clarify the difference between “Recommendations” and “Consistency determinations”

SB x7-1 instructs the Council, through its Interim Plan, to provide “recommendations for early actions, projects, and programs,” while establishing a process for the Council to determine “consistency” with the Delta Plan once that plan has been adopted in 2012.

In the introduction, the Plan states, “The Interim Plan...is not a regulation and needs no environmental review documents.” (pg 2) However, the First Draft Interim Plan is ambiguous on the process that the Council is establishing for its implementation. On the one hand, it states that the “Council will be asked to comment on many projects and plans affecting the Delta that are undergoing environmental review...” While it is not clear who will ask the Council for its comments, it is clear that the Council is well within its purview to provide recommendations and review of early actions in the Delta. (See page 5)

On the other hand, the First Draft Interim Plan seems to set up a format where “activities covered” by the 2012 Delta Plan would be subject to new procedural requirements (see page 7) and state and local agencies proposing to undertake activities in the Delta would specifically undertake “requests for recommendations” from the Council through a process that appears analogous to a future consistency certification process. (See page 22)

The Council must determine and articulate its pre-2012 role prior to the adoption of a Final Interim Plan. That plan should be specific and clear about the procedural requirements for projects undertaken prior to the adoption of the 2012 Delta Plan. If it seeks to establish a de facto consistency certification process rather than produce "recommendations" to state and local agencies, such a process would potentially require environmental review and compliance with the Administrative Procedures Act.

2. Clarify the differing roles of SB x7-1 policy objectives in the structure of Interim Plan and 2012 Delta Plan.

It is reasonable and appropriate for the Council to structure the Interim Plan and 2012 Delta Plan around common policy objectives (pg. 2). However, there are important differences between Interim Plan and the 2012 Delta Plan. Specifically, whereas the Interim Plan provides recommendations, the Delta Plan will provide a framework for a consistency certification and appeal process. Since these two outcomes are different, it will be essential to identify the specific objectives and criteria common to both efforts, and use those criteria in making recommendations during the period covered by the interim plan.

3. Correct factual errors and ambiguous or unclear language.

DWR has identified several items that require correction in the First Draft Interim Plan. These are included in the attached spreadsheet.

4. Utilize the Interim Plan to establish roles and responsibilities and illustrate funding needs for a diverse set of overlapping authorities and responsibilities.

The First Draft Interim Plan states:

"Working relationships will have to be established with other agencies. Areas of overlapping jurisdiction and competencies will have to be sorted out. ... Critically, SB x7-1 provides no long-term financing for the Delta Stewardship Council... Equally important, no funding streams are identified for any projects of these entities." (pg. 14)

One of the most important benefits of the Interim Plan will be to clearly describe the Council's roles and responsibilities in relation to the other state and local agencies in the Delta. A final Interim Plan should establish an interim process to explore and define its relationships with agencies for developing a more refined decision making process. A critical aspect of this relationship-building will be identifying the long-term funding needs and sources that could be used to meet those needs.

5. Adequately describe decision-support tools

On its face, the proposed framework's six "tools" (pg. 15) seem to provide a basis for organizing the information that will underpin the objectives and criteria that would be central to the decision-making apparatus in the 2012 Interim Plan. If that is the intent, it should be more clearly articulated in the Draft Interim Plan. The discussion appears to be focused more on form rather than function of these "tools" with statements such as, "an effective graphic for each tool can be used to communicate effectively with those relevant to the work of the Council..." (pg. 15) Further, maps and graphics alone cannot clearly describe the nuanced considerations regarding the interactions of levee stability (pg. 16), land uses (pg. 18), and other needs. A broader discussion is merited on the methods by which these proposed "tools" would be assembled and deployed in a decision support role. To that end, each of these topics described as "tools" could better be described as discrete plans.

6. Role of Flood Management Activities

DWR's Division of Flood Management and FloodSAFE programs look forward to working with the Council to more fully incorporate flood management issues in the Interim Plan. Because DWR has responsibility for managing and reducing statewide flood risk from both statewide and regional perspectives, it will be important to ensure DWR and the Council have coordinated approaches and standards for integrated water management and flood management. Some specific recommendations are included in the attached spreadsheet, but DWR will also be working directly with the Council to provide additional information on flood management, levee maintenance, emergency response and related activities in the Delta.

We look forward to working closely with the Council to provide additional, more specific input in the future as the Plan is refined and finalized.

Sincerely,



Mark W. Cowin
Director

Attachment

Page	Reference	Comment
6	General comment on background within discussion of the policy objectives on page 6.	The background section should describe the historical evolution of the Delta, focusing on the importance of local-state-federal cooperation and long implementation timelines.
7	Activities covered (e.g., Sections 85057.5, 85210(j) but see also sections which preserve existing statutes, Section 85301 or 85322, or exclude an activity, Section 85057.5(b), and consultation and consistency requirements, Section 85300(b))	Seems to be poised for “consistency” determinations based on the interim plan, though that isn’t provided for in the statute.
8	Section 805020 (a): Manage the Delta’s water and environmental resources and the water resources of the state over the long term...	The background section should describe the historical evolution of the Delta, focusing on the importance of local-state-federal cooperation and long implementation timelines.
10	Some past and pending development projects in the secondary zone are in locations that could compromise flood protection for existing Delta islands and residents by constraining floodways and limited flood-fighting options.	There is no citation for such a statement. Additionally, this concept is unfamiliar to DWR staff.
10	Significant areas of the Delta are held as conservation lands. These include Jersey Island, Twitchell Island, and most of Sherman Island (which are owned by the state)...	Jersey Island is not conservation land owned by the state as indicated on Page 10. Instead, it is owned by Ironhouse Sanitary District, and its primary use is understood to be agriculture and discharge of secondarily treated wastewater. Also, while Sherman and Twitchell Islands are largely in state ownership, the uses of those islands are at best described as “multi-benefit” uses including as they do agriculture, habitat restoration, mitigation sites for levee work, warehousing of emergency supplies, and private infrastructure such as gas wells and distribution systems.
11	... the Delta also possesses extraordinary assets that could be the basis of new ventures, and even new regional industries, that grow and diversify the Delta’s economy for the future.	The draft should balance the description of assets and values in the Delta with a characterization of the significant near and long-term risks to Delta agriculture and infrastructure caused by land subsidence and levee instability.
17	Table 2-2	There is not a FEMA 200-year standard.

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17	Table 2-2	Delta Levee Classifications references as FEMA 200-yr levee. This is a proposed levee standard, based on DWR's Interim Levee Design Criteria for protecting large urban areas. This is not a current FEMA standard. This table needs to be revisited in consultation with DWR, FEMA, and the USACE. A larger, more extensive levee classification table was used in some of the Delta Blue Ribbon Task force work and could be used as a starting point.
17	...pending the development of more detailed information on levee conditions and policies required under Sections 85306 and 85309...	Water Code section 85309 does not relate to levees.
18	Map of Planned Delta Uses	The trend is for mapping to be GIS-based with multiple information layers that can be readily updated and assessed over the internet. This type of computer-based mapping should also be designed to be compatible with information and GIS-based systems of other federal, state, and local agencies.
21	"To effectively meet its responsibilities and manage its work flow, the Council will develop ..." multiple items. Item four is described as, "simple decision rules, which may vary by categories of decisions".	It will be a challenging process to simplify complex decisions. It is recommended that this fourth item be removed or modified.
21	A systematic plan of outreach to agencies whose activities are related and affected by the requirements of SBX7 1 with the goal of effective communication of the activities of the Council under the act	DWR currently is engaged in multiple collaborative outreach efforts with members of the public in areas that influence the Delta, including the Delta itself. The current DSC efforts do not take into account DWR's outreach programs. DSC should work with DWR to collaborate on outreach messages and activities. Furthermore, DSC should share its systematic outreach plan with DWR's outreach programs.
21	Among the core, repetitive responsibilities of the Council, early attention will be given to its responsibilities related to reviews of proposed actions and plans.	More on DSC plans to make recommendations on proposed actions, using the interim plan. (See comment regarding pg. 4)
22	Any agency considering an action that is potentially a covered action under the Delta Plan is invited to contact the Council staff to initiate an early consultation regarding the project.	See Above. In fact on p.23, DSC suggests early consultation for "any agency considering an action that is potentially a covered action."

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22	No state or local agency should undertake or approve a project that is potentially a covered action until the Delta Plan is adopted, unless the project is included in the specific exclusions enumerated in SBX7 1.	DWR undertakes several delta actions every year, such as installation of the temporary rock barriers in the South Delta. It would not be feasible for DWR to not undertake this project pending the adoption of the Delta Plan.
22	No state or local agency should undertake or approve a project that is potentially a covered action until the Delta Plan is adopted, unless the project is included in the specific exclusions enumerated in SBX7 1.	By extension to the DSC's upstream focus, this could impact FloodSAFE programs throughout the Central Valley. Many of the current FloodSAFE programs have tight legislative deadlines. As worded, the DSC claims that the only projects exempted are described within SBX7 1.
22	No state or local agency should undertake or approve a project that is potentially a covered action until the Delta Plan is adopted, unless the project is included in the specific exclusions enumerated in SBX7 1.	The DSC reference to pre-existing projects should be removed, until such a time that it is verified by California Natural Resources Agency attorneys.
22	...unless the project is included in the specific exclusions enumerated in SBX7 1.	The next draft of the Interim Plan should include a list of the Central Valley projects and programs that are exempted from SBX7 1.
A-5	Action 3.2.3: Immediately use the Central Valley Flood Protection Plan to identify areas of the San Joaquin River within and upstream of the Delta where flood conveyance capacity can be expanded.	CVFPP will not be adopted until June, 2012, and it may or may not have a recommendation for a San Joaquin River flood bypass.
A-7	Action 5.2.2: Require the Department of Water Resources to immediately create a flood bypass along the lower San Joaquin River.	Would require DWR to immediately create a flood bypass on the lower San Joaquin River which may be infeasible.
A-24	Overall, as demands have increased, the overall water supply has remained relatively constant.	Recommend this sentence be modified.
A-25	The risks to people, property, and state interests in the Delta stem primarily from potential failures of levees that protect land areas and define water channels within the Delta...	This section focuses on levee failures. The annual high water / high wind events in the Delta have required local reclamation districts to enact emergency levee patrols and flood fights to also address levee overtopping issues. References to "potential failures" could be changed to "failures and overtopping".

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A-26	<p>Coordinate with and support DWR, in consultation with the U.S. Army Corps of Engineers and the Central Valley Flood Protection Board, in preparation of a plan to coordinate flood and water supply operations of the SWP and CVP (85309).</p>	<p>Although this appears to be a quote taken from the SBX7 1 water code revisions, the CVP is actually a US Bureau of Reclamation program. Furthermore, the CVP has no responsibility for either the SWP or CVP. The Interim Plan could focus on the actual intent of this language by changing this policy objective to "promoting local-state-federal integrated water management". Local partnerships and facilities are also crucial to California's water management system and have a significant impact on flood management, water supply, and the health of the environment in the Delta.</p>
A-26	<p>Performance Measures and Targets</p>	<p>The list of performance measures focused on "risk" within the Delta Vision Strategic Plan should be expanded to incorporate traditional flood management performance measures. The Delta Vision Strategic Plan list references a 200-year level of protection, which is actually the proposed "urban level of protection" and will not be cost effective to maintain in many areas throughout California. The Delta's non-urban areas should be treated the same as other areas within the state.</p> <p>Additional performance measures should be added to this section in consultation with DWR. Examples include: cost of annual O&M, volume of water pumped off islands / tracts, number of incidents reported & addressed, annual emergency response cost, expected annual loss, disruption of activity (water supply, agriculture, spawning, boating, etc.)</p>
A-26	<p>Development of a catastrophic failure emergency plan for the Delta levee system</p>	<p>There are multiple references to development of a catastrophic emergency plans. DWR has an interim flood emergency plan for the Delta and Cal-EMA should have general statewide plans.</p> <p>Objectives regarding general emergency plans should reference the existing work of Cal-EMA and DWR.</p>

Page	Reference	Comment
A-26	<p>Number of structures in deep floodplains (more than 10 feet below sea level or river flood stage) that are not protected by 200-year levees</p> <p>Number of people living and working in deep floodplains (more than 10 feet below sea level or river flood stage) that are not protected by 200-year levees</p>	<p>The performance measures focused on "deep floodplains" within the Interim Plan use 10 feet as the target depth. DWR is about to release a legislative mandated flood risk notification filer to over 375,000 property owners in the Central Valley at the cost of nearly \$0.5M that is using the FEMA standard 3 feet of inundation depth as a criteria to establish "deep floodplains". Areas with less than 3 feet of flooding depth are traditionally referred to as shallow flooding areas. Although much of the Delta would be subjected to potential classification as a deep floodplain, that is in fact what the Delta is.</p> <p>DSC should work collaboratively with FEMA, the USACE, and DWR to establish a consistent standard inundation depth, so as not to conflict with other pre-existing legislated requirements.</p>
A-27	<p>Therefore, levees can fail at any time for various reasons, including increased water pressure caused by island subsidence, the burrowing activities of animals, long-term erosion (from high flow events, wind-induced waves, and boat wakes), deferred maintenance, seepage through sand layers underlying levee foundations, and other causes not yet well understood. A levee on Jones Tract failed for unknown reasons during the summer of 2004.</p>	<p>We have a good understanding of the forces that cause Delta levees to fail. Recommend that the phrase "and other causes not yet well understood" be replaced with "and seismic events." And the last sentence regarding Jones Tract be removed.</p>
A-29 - 66	Appendix V	<p>The existing Delta plan and project profiles should include references to the legal source that authorized any public projects (which would address other legislative mandates).</p>
A-54	Lower San Joaquin Feasibility Study	Add Central Valley Flood Protection Board and San Joaquin Area Flood Control
A-56	West Sacramento	Include Central Valley Flood Protection Board
A-73	Central Valley Flood Protection Plan	Add Central Valley Flood Protection Board
A-73	...scheduled for adoption by the Central Valley Flood Control Board...	Change to Central Valley Flood Protection Board
A-74 -75	Delta Levees Projects and Programs	Replace "grant" with "local financial assistance"

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N/A	N/A	The full text of SBX7 1 should be included in a separate appendix and the water code responsibilities of other, long-standing state agencies should also be discussed and highlighted within the background of the Plan. This should help to establish where overlapping authority exists, but at present the Plan reads as though it takes priority.
N/A	N/A	The appendices should be expanded (and outside of the plan entered into a geospatial database) as additional programs and projects are researched.
N/A	N/A	Though the plan quotes the water code and provides a brief background into the importance and general physical characteristics of the Delta, it does not include the important historical story about how the Delta has evolved over time. This is crucial, since both Delta and statewide flood management programs historically have taken decades to plan and design. Failing to acknowledge this could lead to false expectations and conflicting prioritization of future planning efforts.
N/A	N/A	A focus of the interim work of the DSC should be interacting with state and federal water management and resource agencies and the public to develop the 2012 Plan.