



CALIFORNIA CENTRAL VALLEY
FLOOD CONTROL
ASSOCIATION

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Testimony by Melinda Terry, Executive Director of the Central Valley Flood Control Association to the Delta Stewardship Council Independent Science Board
September 13, 2013
Regarding ISB 9/12/13 Delta Boat Tour

First, thank you for taking the time to go out into the North Delta to see a portion of its 300,000 acres firsthand. The Delta tidal estuary is a complex system, unique in many ways due to both natural and man-made conditions and cannot be understood by reading reports from an office or even comparing to other environmental regions you may have previously worked on. And thank you for allowing me to be one of the members of the public to attend. Tours provide a great opportunity for participants to learn more about the environment being studied and each other's viewpoints.

Like many residents in the Delta who have lost faith in the State's Delta planning efforts, I still had hope that based upon the impressive credentials of each member of the ISB, your diversity in expertise, and being comprised of individuals from areas outside of California that this entity would have the ability to think independently, be open-minded and unbiased, and be interested in hearing from experts on all sides of the complex issues upon which you will be making recommendations. Unfortunately, there was no diversity of viewpoints represented in the presenters that were chosen to lead yesterday's tour, resulting in a special interest promotional event instead of a search for a broad spectrum of knowledge, experience, and planning objectives for the future of the Delta and leaving me with the impression that the ISB members and staff accept those biased and financially motivated views as gospel.

I therefore, personally no longer have faith in this body to meet those expectations to receive equal respect, time, and consideration of views that differ from what appears to me to already have been decided. If you had planned your event to include presenters representing Delta landowners, flood management agencies, or cities and counties trying to assure their people, property, and prosperity are protected from flood events, have access to sufficient water supplies of good quality, are eligible for federal emergency response and remediation funding, and access to affordable flood insurance rates, or from other interested stakeholders such as recreation and NGOs, then you would have heard a much different future for the Delta.

Special interests are inherently prone to only promoting the things they want you to hear and excluding "Inconvenient Truths" that do not fit with their entity's goals and objectives. That's our job. It's your job to try and wade through the competing opinions and ultimately rise above the special interests in favor of a more objective and scientific approach to environmental issues

that have plagued the Delta for decades. But you cannot do that if you limit the input you receive to choir members who are all singing the same song. Most disturbing for me yesterday was listening to a representative of an entity with a financial interest in only promoting management actions that benefit his employer, the Metropolitan Water District, which is the largest purchaser of Delta export water from the State Water Project (SWP) recommend sacrificing a functioning system of levees in order to gain habitat credits required pursuant to jeopardy findings by fishery agencies in Biological Opinions (BiOps) for killing fish at existing SWP/CVP export pumping facilities and incidental take approval in BDCP for additional export pumping facilities in the North Delta in order to maintain the ability to export water from the estuary to other regions of the state.

Flood facilities providing public safety, productive agricultural activities, and habitat can be compatible, yet that's NOT what you heard yesterday. Instead you heard the intent to not only plan and hope that levees fail to avoid the pesky time it takes for permitting a habitat project, but advocating for the state to not invest in improving Delta levees to a FEMA required standard pursuant to a MOU agreement between DWR and FEMA reduce risk of floods from overtopping. Meeting this FEMA standard not only protects current land uses and generations of family farms, it also allows for reduced flood insurance rates and federal financial assistance in the event of flood damage.

If you had the chair of the Central Valley Flood Protection Board (CVFPB), the engineer or a trustee from a Delta RD, a farmer whose family has been farming on their Delta property since the Civil War era, or a County Supervisor where agriculture revenues will be lost and potential for increased flood risk to people and property they represent, you certainly would have heard a different story. Right now flood control managers, local elected officials, county planning departments, business community, farmers, and environmentalists are in process of drafting regional flood plans as part of the Central Valley Flood Protection Plan. Despite what you heard yesterday, these regions and the CVFPB are planning to improve the system, not let it collapse.

Examples of things you did not hear on yesterday's tour, but would have if you had included a broader spectrum of presenters include:

- The Delta is not a blank slate. Conversion of the primary land use in the North Delta from agricultural production to conveyance and aquatic habitat for purposes of exporting water will have devastating economic consequences. Yolo County recently released a report that inundation of the Yolo Bypass for purposes of complying with BiOp's mitigation requirements due to jeopardy caused by the operation of CVP/SWP existing pumping facilities past the planting season could result in a \$9 million revenue loss to the county if not done in a way to protect agricultural production planting requirements.
- The conveyance of water through the Delta was established almost a hundred years ago as part of a government-sponsored flood control system for public safety and to encourage reclaiming lands for farming, and became a convenient water export conveyance system much later when state and federal governments built reservoirs and water export pumps and aqueducts. Flood protection still remains the primary function and purpose of the levees and bypasses that are part of the State Plan of Flood Control as well as many of the reservoirs that also provide water supply, yet that is NOT what you heard from yesterday's presenters.

- There have been less levee failures over last thirty years thanks to levee investments by federal project authorizations by Congress, state funding from flood protection funding approved by voters in bond measures, and through local cost share contributions. Contrary to the views expressed on yesterday's tour, the Delta levees are generally in good condition, and the risk of levee failure has been steadily decreasing during recent decades due in large part to the establishment of the Delta Levee Maintenance Program (commonly referred to as the Subventions Program) in 1973 and the Delta Levees Program in 1988. For example, there are 1,100 miles of levees in the Delta, and during the last decade there were only two levee failures—Jones Tract (2004) and Fay Island (2006)—and the 100-acre Fay Island district was in the process of improving its levees at the time of the flood. It is important to note that the Delta's 1,100 miles of levees held despite this decade having the seventh-highest water year on record for the combined Sacramento-San Joaquin River system (2005-06).
- Earthquakes were once again cited as a substantial risk to Delta levees yesterday, with predictions of a major quake being likely sometime in the next few decades and the multiple flooding of most islands all but inevitable. However, there has never, in the 160-plus years of since the lands were reclaimed in the Delta for farming and managed for flood protection been a documented failure of a levee due to an earthquake. During the 1989 Loma Prieta earthquake (MW 6.9), some levees showed cracks, but none failed. They also survived the 1906 San Francisco quake.
- The reduced safety to neighboring levees where open-water aquatic habitat is created on formerly reclaimed islands can result in increased flood risks and levee maintenance costs from the strong and prolonged battering forces of wave fetch that occurs during high tide and flood events combined with strong winds you heard about yesterday. Additional threats to levee stability created by open-water habitat is erosion and seepage to neighboring islands like Ryer Island experienced the last time Prospect Island was filled with water after a levee breach, but that wasn't mentioned yesterday either.
- The State Legislature mandated the development of a Central Valley Flood Protection Plan, which is currently being implemented by DWR and the Central Valley Flood Protection Board and is in the process of having local regions develop a long term plan to assure the system lasts another 100 years.
- The HMP levee criteria that was denigrated by the MWD presenter yesterday as an inappropriate criteria for DWR and the Delta Plan to recommend investing in is a requirement of FEMA pursuant to a MOU and is important to maintaining not only affordable flood insurance from the National Flood Insurance Program, but is also necessary for our state to receive federal recovery funding for levee failures during and after flood events.

The problem with hearing from only sponsors and proponents of projects is that you are not learning the whole story and making decisions in a bubble, and that bubble will burst when you are confronted by reality. A reality where Congressional members representing the Delta region have invested a great deal of political capital to gain approval for federal funding for the Central Valley's flood protection system and expects those investments to last beyond the next election and flood event. Cities, counties, and RDs have even formed JPAs for purposes of improving the ability to finance and expedite flood protection projects over the last couple of decades. A reality where California voters have approved bond money to improve levees and levee systems for public safety and expect reduced risk of flood, not habitat projects to allow the export of water from the Delta. A reality where zero benefit to the Delta equals zero chance of success

because Delta residents are more likely to sue you than cooperate with you. I guarantee you that the Supervisors, State Legislators, and Congressional Members representing the Delta have quite a different viewpoint about flood protection priority over habitat creation for purposes of exporting water.

While I respect the professional qualifications of the presenters at yesterday's tour and appreciate their enthusiasm for their work, their presentations were not balanced and failed to acknowledge or represent any viewpoints beyond conclusions already made by special interests with financial motivations about physical changes to be implemented in the Delta for purposes of maintaining their ability to export greater amounts of water from the Delta's over-subscribed ailing estuary. Their motives are not altruistic and not intended to benefit the Delta residents, economy, or unique values of Delta as Place as described in the Delta Reform Act, but are promoting habitat creation in order to comply with required mitigation in the BiOps for fish kills at SWP/CVP un-screened water pumping facilities that have been determined by fishery agencies to be leading to jeopardy of several fish species and for the approval of incidental take permits for new SWP/CVP pumping facilities in the North Delta under the BDCP.

Are you willing to bet the lives of people that modifying the State Plan of Flood Control to create habitat projects in order to continue exporting water from the estuary is the higher priority for Delta management? Are you willing to bet that CVP/SWP will not have to pay damages over \$400 million as DWR did when they settled the \$800 million Paterno lawsuit if habitat projects are determined to be the cause of levee failures in the Delta? My point is, there are two sides to every story and you only heard one side yesterday. I would recommend when you are having presentations at your meetings or on your tours to be sure to have presenters from other stakeholder groups that may have different viewpoints than the proponents of projects or plans that benefit their interests.

Failure of the ISB to assure its decisions are based on understanding the viewpoints of various Delta stakeholders, particularly those who live and work in the Delta and whose lives and safety are protected by the levee system that has protected them for the last 100 years, will result in the ISB becoming another state entity that lacks credibility in the eyes of the public. I would advise you to ask yourselves what you are not being told before you make conclusions and decisions that will affect the management of the Delta ecosystem. I am worried that by listening only to one side you have fallen into the trap of not even knowing what you don't know or should know in order to ask the right questions.

The first ACWA dinner that I attended in 2008 when I started my job illustrates this point best. Being new, I unknowingly sat at a table with the Executive Director of the second largest water purchaser from the SWP, the San Diego County Water Authority, and the General Managers of the water districts in that service area. When I asked them why their agencies would want to pay millions of dollars for a 21st century water project with a 42-mile unlined surface conveyance facility after recently spending millions of dollars to line the All-American Canal to save 68,000 acre feet of water a year, they looked at me flabbergasted. To my surprise they were shocked to hear that the current design of the BDCP conveyance facilities was essentially the same as the Peripheral Canal: an earthen canal with 30-foot high dirt levees, wider than the Panama Canal, and probably subject to losing greater annual amounts of water in a week due to seepage and evaporation than the All-American did in a year. They had incorrectly assumed, as most Californians did, that the BDCP conveyance canal would be of similar size and structure as the

concrete-lined California Aqueduct. Why didn't the second largest purchaser of SWP project water exported from the Delta know that the BDCP conveyance facilities designed at that time was unlined? Because they only received briefings on the project from DWR and MWD, neither of which had told them such details. So, my advice to all of you on the ISB is what I gave those San Diego water agencies – you need to start asking the right questions, but you won't know the right questions to even ask unless you broaden the scope of who you listen to in regards to habitat projects being proposed to allow continued export of water from the Delta.

To maintain credibility as an independent body that will be led by science over special interests and politics, I would recommend you immediately schedule briefings and tours with in-Delta stakeholders such as flood control engineers, marina owners and yacht clubs, commercial and sport anglers, recreational hunters, wildlife enthusiasts, environmental organizations, elected officials, and farmers whose family has been productively producing crops on their land since the Gold Rush. Give them equal time to learn more about the history, unique values, and future plans they envision for their levees and communities.

For the sake of the lives, property and future prosperity of the Delta I hope you prove me wrong in my current conclusions that the ISB is on the same path as other Delta planning processes that disregard the views of in-Delta residents and elected officials in a blind march forward to implement a pre-determined solution in order to facilitate the export of water from the Delta via the SWP/CVP.

In closing, I would not assume that the receipt of only a few comments on your science plan means that people, particularly those in the Delta support it. The absence of their comments could be due their perception that the ISB lacks credibility because it is the same as other government agencies, and is only going to be a rubber stamp for BDCP.

Additional Comments from Melinda Terry on the ISB's Review of BDCP

The Delta of today has managed to retain many of the valued attributes of when the area was originally settled, while at the same time modernizing enough to serve the needs of visitors who come here to get away from the hectic pace of modern civilization. There is a remoteness and serenity to the Delta that is not easy to find elsewhere. It is one of the rare places you can still ride a ferryboat or travel over a working drawbridge. The Delta of today has managed to retain many of the valued attributes of when it was originally settled, while at the same time modernizing enough to serve the needs of visitors who come here to get away from the hectic pace of modern civilization. There is a remoteness and serenity to the Delta that is not easy to find elsewhere.

There are over 100 marinas (more than 12,000 berths), waterside resorts, and RV parks for visitors and locals to enjoy. There are numerous agricultural and cultural festivals throughout the Delta that have tens of thousands of visitors every year such as the Courtland Pear Fair, Stockton Asparagus Festival, the Isleton Cajun Festival, the Taste of Delta, and many others

Besides its diverse economy, the Delta is also a complex ecosystem supporting over 230 species of birds, 45 mammal species, 52 fish species, 25 reptiles and amphibians, and 150 species of flowering plants. Many of these species are threatened or endangered and rely on the lands protected by the levees to provide important habitat vital for their survival. Although the aquatic species in the Delta have declined due to multiple stressors, the terrestrial and avian species still find it a happy home, particularly migratory birds using the Pacific Flyway to travel from Alaska to Patagonia. Many of these traveling birds rely on the Delta as a source of food and desirable breeding grounds. In fact, Wikipedia denotes the Vic Fazio Yolo Wildlife Area in the Yolo Bypass, the Suisun Marsh, and the San Francisco Bay as three of the bird's ten key rest stops. But these unique attributes and values which the Delta Reform Act refers to as "Delta As Place" will be severely compromised and destroyed by BDCP conveyance and habitat projects to export water to regions outside this vulnerable and cherished natural wonder.

On yesterday's tour, Dr. Lund responded to one of my comments/questions about BDCP's proposed new North Delta intake pumps creating reverse flows and lowered elevations of Sacramento River with: "no the intakes won't have those affects because BDCP plans to divert only 3,000-6,000 cfs." However, with all due respect to Dr. Lund -- size matters. The average size agricultural water diversion intake is probably about 30 cfs, while our urban intakes such as North Bay Aqueduct, Contra Costa Water District, or the most recently constructed Freeport facility shared by Sacramento County and East Bay MUD are all less than 300 cfs. So the one mile of diversion intakes being built within a four mile stretch on the banks of the Sacramento River, no matter how high tech and modern the fish screens, that is still a super-super-sized sucking larger than any other water diversion pumps in the Delta -- other than the ones found to be causing jeopardy in South Delta -- and larger than any diversion pumps on the Sacramento River that is part of a tidal estuary. When the BDCP design was first released, I asked what the precedent was for picking 3,000 cfs for each diversion intake in light of our existing 30-300 cfs intakes and was told the GCID intake which is much farther north, is not in a tidal estuary, and does not have smelt was the precedent for their choice.

You might be interested to know that there are 750 impacts listed in the BDCP, 217 for Aquatic with only two of them beneficial, and 182 Biological impacts with zero species benefits. Even at level of insignificance that is still some level of adverse impacts and most certainly not contributing to recovery especially when you add up 215 cumulative adverse impacts for aquatics and 182 for wildlife.

Of these 750 impacts, 48 of them are "unavoidable" significant impacts imposed on the Delta, including degraded water quality for seven different constituents and no domestic water for about six years for portions of Delta communities. This is NOT co-equal by anyone's definition. Zero benefits for the Delta equals zero chance of success. Unavoidable is unacceptable. Failure to fully mitigate leaves the Delta no choice but to litigate.

In addition, Table 9-7 on page 9-20 of Chapter 9, Alternatives, of the BDCP Plan compares the amount of increased and decreased take of covered species between the Proposed Action, Alternative 4, and the other alternatives in the Plan. The Table shows the take of covered wildlife species increases under the Proposed Action and *all* alternatives and the take of covered fish species increases in the Proposed Action and every alternative *except* the Through Delta. Of interest to you and your development of a Delta Science Plan, the Table shows that the higher amount of tidal restoration in BDCP is expected to increase the take of 26 wildlife species, so the

creation of significant amounts of the type of habitat we visited on the tour yesterday is *not* without regrets for terrestrial and avian species.

Pursuant to Water Code §85320(c), DWR is required to consult with the DSC and ISB during the development of the BDCP and the ISB is to review the draft EIR/EIS and submit comments to the Council and the CA Dept. of Fish and Game/Wildlife (DFW). Since DFW must decide whether to approve BDCP as a Natural Communities Conservation Plan (NCCP), then presumably ISB's evaluation of the BDCP should include its compliance with meeting the state's NCCPA statutes. Therefore, I would also recommend you compare the Conservation Measures (CMs) in BDCP against the projects that are listed in the FRPA/BiOps, so you are clear which CMs are actually required ESA mitigation for jeopardy findings to allow the continued operation of SWP/CVP South Delta pumps versus which CMs are in fact above what is required to meet ESA and are complying with HCP/NCCP laws to contribute to recovery. Only CMs that are actions to contribute to recovery that are not already required under ESA/CESA or existing regulatory requirements such as BiOps qualify as meeting NCCPA standards. To evaluate all twenty-two BDCP CMs you might want to create a grid chart with the BiOps mitigation CMs on one side and the remaining CMs on the opposite side. This will include determining which side CM1, the new North Delta conveyance facilities should be placed. The new North Delta intakes and tunnels are *not* required mitigation in the BiOps and according to the BDCP's Effects Analysis and Table 9-7, Chapter 9 of the Plan, the new diversion/water conveyance facilities result in the increased take of several covered species, so the project is *not* contributing to recovery – so the action is actually a Covered Measure requiring mitigation for its significant adverse impacts. Then you need to look at the CMs on the opposite side of BiOps mitigation measures and determine -- are the remaining CMs contributing to recovery. And they EACH must meet this test of contributing to recovery as standalone measures -- you can't have benefits in one measure offset adverse effects on same species and call it even. Another layer of evaluation that must be factored in is how does the BDCP fare in terms of meeting HCP/NCCP laws if *all* of the CMs determined to most likely contribute to recovery *do not* get constructed/implemented? This is a legitimate concern, which is raised in the federal fishery agency Red Flag comments, because CMs 2-22 have a high level of uncertainty in terms of covered species benefits and are only analyzed to a Programmatic level in the BDCP, which means they may never be built. But CM1 (Alternative 4) is intended to have a higher Project level of environmental analysis completed and be construction ready when BDCP is permitted, resulting in a Covered Action requiring mitigation for its species impacts will be constructed prior to all of the habitat conservation measures being implemented. Evaluating and commenting on these HCP/NCCP eligibility elements are certainly in accordance with why the Delta Reform Act requested the ISB to send its comments to the state agencies tasked with determining consistency with the NCCPA.

Thank you for your generous time and attention to the matters I have raised today.