



DELTA WETLANDS PROJECT

September 30, 2011

Mr. Phil Isenberg, Chair
Delta Stewardship Council
980 Ninth Street, Suite 1500
Sacramento, CA. 95814

RE: Fifth Staff Draft Delta Plan Comments

Dear Chairman Isenberg and Members,

The following are our comments on the Fifth Staff Draft Delta Plan. It is an update of our comments on the prior Drafts, reflecting the progress that has been made. We continue to be impressed by your open process and the opportunity to participate in the drafting of the Delta Plan in a meaningful way. And, we appreciate the incorporation of many of our suggested changes in the Fifth Staff Draft.

Best Available Science/Adaptive Management

The discussion of best available science and adaptive management included in Chapter 2 provides a conceptual framework that makes a lot of sense for large scale resource management projects such as the Delta Plan and BDCP. The examples cited in Chapter 2 are similarly large programs, with many parts and projects that interact in complex ways. Application of these concepts on a project level, however, will not always make sense because of how specific projects are developed and financed. Further, the environmental regulatory approvals for a project may constrain the range of potential adaptive management.

For example, it may be possible for CDFG to acquire property in the Delta for a wildlife preserve without identified funding for future and continuing adaptive revisions to the structure and purpose of the preserve. In that case, adaptive management would consist of a follow-on project with separate sponsorship, structure and financing. It should be possible

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for the initial acquisition of land for the wildlife preserve to take place as a discrete project. That is not to say that long term financing and adaptability aren't important, only that comprehensive programs may require multiple, incremental actions, and that in assessing individual actions, we shouldn't let "perfect be the enemy of the good."

The Fifth Staff Draft includes some of the changes that we requested that make application of adaptive management more flexible and project specific. Other suggested changes were not included, and we continue to believe that they would make the policy clearer and more workable at the project level.

The discussion on page 39 of the Fifth Staff Draft acknowledges the need for a tailored application of adaptive management to specific projects. We recommend that the discussion be expanded to acknowledge that some project features may be fixed by regulation, permit or financing and are not adaptable:

Ecosystem restoration and water management covered actions should include an adaptive management plan ~~that considers all nine steps of this framework~~appropriate to the scope, purpose, regulatory terms and conditions, and financing of the covered action. Some covered actions will have limited scope and adaptive management will take the form of subsequent projects rather than alterations to the covered action. Most covered actions will have some adaptive elements and some will include extensive adaptive management elements. Therefore, adaptive management, when applied at the project level, ~~however, they~~ need not be rigidly included and implemented in the order described here. The intent is to build logical and transparent information flows and decision points into management actions that increase management options and improve outcomes, not to add a new layer of rigid processes and bureaucracy.

G P1 on pages 60 and 61 of the Fifth Staff Draft incorporates some of our suggested changes but retains language that we believe is too broad. We recommend that it be modified to conform with the discussion on page 39.

G P1 Certifications of consistency with the Delta Plan must address the following:

- ◆ All covered actions must be fully transparent by disclosing all potentially significant adverse environmental impacts and mitigations of those adverse impacts.
- ◆ As relevant to the purpose and nature of the project, all covered actions must document use of best available science (as described in Chapter 2) and information.
- ◆ Ecosystem restoration and water management covered actions must include adequate provisions appropriate to the scope, purpose, regulatory terms and conditions, and financing of the covered action to assure

continued implementation of adaptive management consistent with the Delta Plan. This requirement shall be satisfied through:

- a) an adaptive management plan appropriate to the scope, purpose, regulatory terms and conditions, and financing of the covered action that describes the approach to be taken ~~for each of the nine steps of to implement the an~~ adaptive management framework ~~of generally described in~~ Chapter 2, and
- b) documentation of access to adequate resources and delineated authority by the entity responsible for the implementation of the proposed adaptive management process.

ERP Conservation Strategy

We continue to be concerned about the misuse of the ERP Conservation Strategy as a prescriptive policy for land uses in the Delta. A careful reading of the Strategy makes it clear that it was developed as a set of alternative conservation tools that could be applied opportunistically with willing partners, not as a rigid set of regional land use controls. It constitutes a set of sensible but not exhaustive recommendations, not a specific land use plan based on best available science that should be used to preclude other sensible and beneficial land uses that support the coequal goals.

For Example, a habitat management plan developed by the CDFG would likely include site specific land uses that provide the best match between existing resources and public needs, but may not follow the ERP Conservation Strategy in every detail. Specifically, hunting, boating and ecotourism are not part of the ERP Conservation Strategy for deeply subsided islands, but could be part of a habitat management plan that supports the coequal goals in a more complex and beneficial way.

Accordingly, we recommend the following modifications to the Fifth Staff Draft to use the ERP Conservation Strategy in an advisory rather than a prescriptive manner.

ER P2 Habitat ecosystem restoration actions shall, except where dictated by site conditions, or where a superior and more beneficial alternative is proposed, be consistent with the habitat type locations shown on the elevation map in Figure 5-2, and accompanying text shown in Appendix D, based on the Conservation Strategy for Restoration of the Sacramento-San Joaquin Delta Ecological Management Zone and the Sacramento and San Joaquin Valley Regions (DFG 2011), with minor alterations.

The Delta Stewardship Council may amend the Delta Plan to incorporate revised figures and text from the Ecosystem Restoration Program's Conservation Strategy as the strategy is revised.

ER P3 Actions other than habitat restoration, including new or amended local or regional land use plans, shall demonstrate that they have, in consultation with the Department of Fish and Game, avoided or mitigated where feasible, the adverse impacts to the opportunity for habitat restoration at the elevations shown in Figure 5-2. This policy does not apply within the following areas, defined as of January 1, 2012:

- Incorporated cities and their spheres of influence
- The Clarksburg Growth Boundary
- The Contra Costa County Urban Limit Line
- The Mountain House General Plan Community Boundary

ER P4 State and local agencies constructing new levees, or substantially rehabilitating or reconstructing existing levees in the Delta shall evaluate and, where feasible, incorporate alternatives (including use of setback levees) that would increase the extent of floodplain and riparian habitats. When available, criteria developed under RR R4 shall be used for determining appropriate locations for setback levees. Setback levees in the west and central Delta and on heavily subsided Delta islands are presumptively infeasible and need not be evaluated.

Flood Insurance

Flood insurance is not always available or appropriate for non-residential land uses.

For Example, flood insurance may not be available for habitat areas and, in any event, it may be better for a habitat island to invest in levee improvements than flood insurance.

Accordingly, we recommend the following revisions to RR R6

- RR R9 The Legislature should require, where appropriate, available and affordable, an adequate level of flood insurance for individuals, businesses, and industries in flood prone areas, excluding agriculture, protected habitat and uses that include intentional or non-destructive flooding.

Agricultural Acreage Performance Measure

The suggested outcome performance measures in Chapter 8, at line 19 on page 200, provide that, “Total agricultural acreage and gross revenue in the Delta will be maintained or increased in the future.” There are many places in the Plan, and specifically in Chapter 8, where it is clear that agriculture is and will continue to be the defining center of the Delta economy. But, this measure is inconsistent with other Plan objectives, is unrealistic, and is unreasonably restrictive on land use decisions by Counties and individual land owners. We recommend that it be deleted.

Again, thank you for your open process and this opportunity to provide comments and suggestions.

Sincerely

A handwritten signature in black ink, appearing to read "Anson B. Moran". The signature is fluid and cursive, with the first letter of each name being capitalized and prominent.

Anson B. Moran
General Manager

CC: Joe Grindstaff
Chris Stevens