

April 5, 2011

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



HNTB Comment on Second Draft Delta Plan

Dear Mr. Isenberg:

We have reviewed the Second Draft Delta Plan and would like to congratulate your council and staff on their progress and thank you for this opportunity to comment. We understand there is much work to do and that you are receiving many comments on the details of your plan. Our review had a broad focus and we specifically looked at helping assure federal participation in and support of the Delta Plan.

To that end, our attached comment focuses on a suggestion that will hopefully prevent future impacts on design, operation, and maintenance of levees and other infrastructure within the Delta by implementing a Memorandum of Understanding (MOU) with the Bay-Delta Federal Leadership Committee. This suggested MOU will help ensure any future federal policy or regulation changes that impact the Delta are developed while considering the unique nature of the Delta and that those changes are enacted in a manner that is supportive of the Delta Plan.

We developed our comment primarily from our review of Chapter 7, Reduce Delta Flood Risk to People, Property, and State Interests, but we kept our recommended language fairly far-ranging and therefore applicable to all aspects of the plan. Our recommended language may be best suited for inclusion in Chapter 3, Governance Plan to Support Coequal Goals, specifically in the section entitled Policies for Council Use in all Decisions.

HNTB looks forward to future drafts of the Delta Plan and we would like to continue contributing to the development of this very important document.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Robert F. Vining".

Robert F. Vining
Vice President
Director, National Water Resources Practice

Recommended language for the Delta Plan (insert as new GP P10 into Chapter 3, the section entitled “Policies for Council Use in all Decisions”):

“The Council will sign an MOU with the Bay-Delta Federal Leadership Committee. The MOU will describe a procedure for the Delta Stewardship Council and federal agencies to review any proposed federal agency policy or regulation change that may impact the California Delta or areas affected by the Delta. The MOU will also describe the procedure to jointly work out any impacts prior to implementation of the policy or regulation change.”

Issue:

The effects of federal agencies’ national policies and regulations can significantly impact current and planned future operations in the California Delta. A natural disaster in another part of the country can result in a change in a federal agency’s national policy or regulation, or even in the enforcement of a policy or regulation. The agency’s resulting nation-wide implementation of that change can have tremendous adverse impacts on state-level plans for the Delta’s ecosystem and water supply system.

A specific example is the U.S. Army Corps of Engineers’ enforcement of its levee vegetation policy. After Hurricane Katrina the Corps reviewed its levee vegetation policy and found its own enforcement and implementation lacking. Within months the Corps drastically increased enforcement of its decades-old standard, and existing levee vegetation, seemingly condoned for many years, was now forbidden and required eradication. The resulting U.S. Army Corps of Engineers’ (USACE) *ETL 1110-2-571 Guidelines for Landscape Planting and Vegetation management at Levees, Floodwalls, Embankment Dams, and Appurtenant Structures (dated 10 April 2009)* has impacted the state of California and its local levee maintaining agencies by mandating standards that are not achievable based on the unique characteristics of California’s Central Valley Flood Protection System.

Given the resources the state of California is investing in the development of the Sacramento-San Joaquin Delta Plan, it cannot afford to have the federal government take uncoordinated actions which adversely impact its efforts. A unilaterally enacted national policy change, applying nation-wide standards that fail to recognize the unique aspects of particular geographical regions could undermine the work completed to date and efforts currently underway within the Delta.

To ensure federal government collaboration and participation in and support of the Delta Plan, the Delta Stewardship Council should seize the opportunity presented by The December 22, 2009 *Interim Federal Action Plan for the California Bay-Delta (IFAP)*.

The IFAP came about through a September 2009 Memorandum of Understanding (MOU) between the federal Secretaries of Interior, Commerce, and Agriculture, the EPA Administrator, the Chair of the Council on Environmental Quality, and the Assistant Secretary of the Army for Civil Works. The MOU established these six members as the Federal Leadership Committee to coordinate the federal response to the California water crisis and to facilitate a partnership with the State of California in addressing California’s water supply and environmental challenges. These six federal agency heads pledged the cooperation of their agencies to develop an Interim Federal Action Plan for the Bay Delta by December 2009.

The IFAP was completed and is the single document detailing a variety of federal actions and investments the Obama Administration is undertaking in a coordinated fashion to help address California's current water supply and ecological crises. The IFAP states, "The Administration is giving priority attention to these issues because the Sacramento/San Joaquin River Delta-San Francisco Bay Estuary (Bay-Delta) is among the most important estuary ecosystems in the nation." The IFAP also states, "The most important aspect of the Interim Action Plan is the Federal Government's reaffirmation of its partnership with the State of California and local authorities, and its commitment to coordinate its actions with those of the State and local authorities."

And it goes further to say, "Federal priorities are as follows: First, agencies will work in concert with the State of California and local authorities in producing the Bay-Delta Conservation Plan (BDCP) and in developing joint planning activities with the State."...

The DSC should act on the opportunity provided by the IFAP and engage the Federal Bay-Delta Leadership Committee in an MOU which provides that future changes in any federal policy or regulation, to include changes in the implementation of existing policy or regulation, will have a collaborative state and federal joint review to determine impacts on the Delta Plan, and any impacts will be worked out to state and federal satisfaction prior to implementation.

In their recent *Interim Fed Action Plan Status Update for 2011 and Beyond*, the six federal agencies said, "In addition to working with the incoming State administration, Federal agencies anticipate working closely with California's Delta Stewardship Council to advance a BDCP that fully addresses the issues identified by the Council."

Now is the time for the DSC to reach out to the federal agencies and put an agreement in place to assure federal cooperation in the implementation of the Delta Plan. USACE ETL 1110-2-571 has an expiration date of 10 April 2014. Having an MOU in place that prevents potential major levee and flood protection system design revisions in the future will help ensure better implementation of the Delta Plan.