

# I109 Sacramento transcript

**No comments**

- n/a -

Delta Stewardship Council 11/17/2011

STATE OF CALIFORNIA  
DELTA STEWARDSHIP COUNCIL

MEETING OF THE DELTA STEWARDSHIP COUNCIL

Sacramento County  
Sheraton Grand Hotel  
1230 J Street  
Gardenia Room  
Sacramento, California 95814  
NOVEMBER 17, 2011  
1:00 P.M.

Reported by: Debbie Razavi, CSR No. 9989

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1 APPEARANCES:  
2  
3 PHIL ISENBERG  
4 Chairman  
5 RANDY FIORINI  
6 Council Member  
7 FELICIA MARCUS  
8 Council Member  
9 GLORIA D. GRAY  
10 Council Member  
11 DON NOTTOLI  
12 Council Member  
13 JOE GRINDSTAFF  
14 Executive Officer  
15 CHRIS STEVENS, ESQ.  
16 Legal Counsel  
17  
18 Public Speakers:  
19 Burt Wilson  
20 Mark Rentz  
21 Jim Verboon  
22 Becky Linvill  
23  
24  
25

**No comments**

- n/a -

1 BE IT REMEMBERED, that on November 17, 2011,  
2 commencing at the hour of 1:00 P.M., at the Sheraton  
3 Grand Hotel, 1230 J Street, Gardenia Room, Sacramento,  
4 California, before me, DEBBIE RAZAVI, Certified  
5 Shorthand Reporter in and for the county of Sacramento,  
6 State of California, the following proceedings took  
7 place:

8  
9 (The following proceedings were held on the  
10 record.)

11  
12 MR. ISENERG: Ladies and gentlemen, the Delta  
13 Stewardship Council is called back to order.

14 We are now on our agenda item ten which is  
15 the first of several hearings we will be conducting to  
16 receive public comment on the Environmental Impact  
17 Report.

18 Mr. Stevens, there are a couple of people  
19 who were not here this morning that have just shown up  
20 so maybe you can just restate your understanding and  
21 direction to the Council and to the staff and all that  
22 on the process.

23 MR. STEVENS: That's right. I will be happy to.  
24 Thank you, Mr. Chair.

25 As we said before, the people in the

**No comments**

- n/a -

1 audience are probably aware because they are here to  
2 provide testimony on the EIR, the Delta Stewardship  
3 Council did issue a Draft Program Environmental Impact  
4 Report on November 4th. It was for a 60-day comment  
5 period ending January 3rd; however, at the meeting a few  
6 minutes ago, the Council took action and directed staff  
7 to add an extra 30 days to that comment period, so staff  
8 will be providing -- totalling 90 days, we will be  
9 providing supplemental notice to that effect.

10           As the Chair said, this is the first of two  
11 currently scheduled, although we may schedule some  
12 additional opportunities to provide oral testimony, this  
13 is the first of two that were scheduled. And when we  
14 talk about the opportunity to provide testimony on the  
15 EIR, I think that that requires a bit of clarification.  
16 We talk about a hearing, but, in effect, this is going  
17 to be an opportunity to provide one-way testimony in the  
18 presence of a court reporter whose sitting over to my  
19 left, and those comments we are inviting are comments on  
20 the environmental assessment that is contained in our  
21 Draft Environmental Impact Report that was issued on  
22 November 4th. What we are not inviting comment at this  
23 time, and comment is not appropriate on the policies  
24 that are contained in the Fifth Staff Draft, substantive  
25 comments on the policies. There's a separate process

**No comments**

- n/a -

1 for the stakeholders and the public to comment on that.  
2 And this hearing, again, is a one-way communication from  
3 members of the public that will allow then staff to take  
4 comments and provide responses in the form of written  
5 responses in a final Environmental Impact Report which  
6 will then be presented back to the Council for its  
7 review and discretion as to whether or not they wish to  
8 certify that document. So when we refer to the hearing  
9 that we are currently sitting at right now scheduled  
10 from 1:00 to 4:30, what we are talking about is an  
11 opportunity for the public, again, to provide testimony  
12 before a court reporter. This will be part of the  
13 administrative record on the Draft EIR, that should be  
14 comments on the environmental assessment contained in  
15 the EIR. Again, we will then as required by CEQA  
16 provide responses to the comments in the final  
17 Environmental Impact Report.

18 So with that I turn it back over to the  
19 Chair.

20 MR. ISENBERG: Ladies and gentlemen, as with all  
21 testimony to the Council, it would be appreciated if you  
22 fill out and print in clear blocks your name, if you  
23 represent an organization or organizations, and identify  
24 the focus of your issues if it's possible to do so.

25 We have one request. We will take them in

**No comments**

- n/a -

1 order in which they are received, and the first was from  
2 Mr. Burt Wilson.

3 Mr. Wilson, good to see you again.

4 MR. WILSON: Thank you for this opportunity.  
5 What I have to say may violate some of the rules which  
6 you just laid down, but that's too bad.

7 Number one, on the preface of coequal  
8 goals, the coequal goals are not coequal. They are what  
9 is a logical fallacy in any school of rhetoric. They  
10 appear to be logical at first glance but underneath they  
11 are mutually exclusive. You cannot save the delta by  
12 taking more water from the delta. Delta water  
13 diversions are what brought on the crisis today.

I109-1

14 Number two, moving forward, line 32, Water  
15 Legislation in 2009. The Delta Plan is a creation of a  
16 state legislature which has been written into law in the  
17 form of the State Water Code. This says, in effect,  
18 that the State knows what's best for all the people of  
19 California on this sensitive issue. The original water  
20 plan was supposed to be a statewide ballot issue in 2010  
21 but was taken off the ballot. Now the State is not  
22 allowing the people to vote on the cost of it or any  
23 part of it. This is deplorable. With the Delta Plan  
24 skirting the democratic process it projects the feeling  
25 that something nefarious is going on, that it's really

I109-2

### **Response to comment I109-1**

This is a comment on the project, not on the EIR.

### **Response to comment I109-2**

This is a comment on the project, not on the EIR.

1 in the best interest of the southland water districts  
2 and contractors of big ag. We need a statewide  
3 referendum on at least the conveyance systems to be  
4 proposed by the Delta Plan. If conveyance and its costs  
5 were on the ballot in 1982, they should be on the ballot  
6 in 2012.

I109-2

7 Number three, Chapter 2, Science and  
8 Adaptive Management. Let's face it, the adaptive  
9 management is just a fancy pseudonym for crisis  
10 management. This is an admission that you really don't  
11 know what will happen when you build conveyance systems  
12 that are subject to earthquakes and other environmental  
13 dangers. In this respect you protect the delta. No  
14 conveyance systems should be built.

I109-3

15 Number four, Chapter 3, line 27,  
16 Incorporation of Another Plan Into The Delta Plan. In  
17 my opinion, if there is anything that makes the Delta  
18 Plan look like a Rube Goldberg cartoon it's the  
19 existence of the Bay Delta Conservation Plan. The BDCP  
20 which has never been able to get its act together is  
21 wasting time and money in hopes the DSC will give it its  
22 blessing. The whole situation is contrary to good  
23 management.

I109-4

24 Number five, Chapter 4, A More Reliable  
25 Water Supply For California. This heading "A More

I109-5

### **Response to comment I109-3**

This is a comment on the project, not on the EIR.

### **Response to comment I109-4**

This is a comment on the project, not on the EIR. In addition, the proposed BDCP is a reasonably foreseeable future project that is being evaluated by the Department of Water Resources as the CEQA lead agency. The cumulative impacts of the proposed Delta Plan, in combination with the impact of the proposed BDCP, are described in EIR Sections 22 and 23. The Delta Plan must be reviewed at least once every five years and may be revised as the Council deems appropriate pursuant to Water Code section 85300(c). Hence, the Delta Plan would be amended when the BDCP is ready for incorporation. See Master Response 1.

### **Response to comment I109-5**

This is a comment on the project, not on the EIR. In addition, Section 3 of the EIR addresses water resources, including water supply reliability.

1 Reliable Water Supply For California" has gone through  
2 many changes. At first in the Delta Commission  
3 Committee it was merely "A More Reliable Water Supply."  
4 Later "For the State" was included. This is merely DSC  
5 code for sending more water south. The whole EIR plan  
6 is built around sending more water to the southland.

I109-5

7 Number six, Chapter 9, Finance Plans, line  
8 20. The beneficiaries' pay option is simply crazy.  
9 This would give all the water agencies and water  
10 contractors the ability to raise water rates with  
11 impunity. It is clear that the DSC does not want to  
12 incur public wrath with a bond issue because it wouldn't  
13 pass, so instead of raising taxes to pay bonded  
14 indebtedness, they want to push it off onto the water  
15 agencies and contractors so they will have to raise  
16 rates and incur the public wrath. This is another  
17 aspect of the Delta Plan that defies comprehension,  
18 unless one understands that the DSC is trying to skirt  
19 the democratic process in California and keep costs away  
20 from a public vote.

I109-6

21 Lastly, Page 124, the Bay Delta  
22 Conservation Plan which should really be called the Bay  
23 Delta Conveyance Plan because that's the focus of the  
24 organization. The water delivery systems in California  
25 are already the State's biggest power. Whose going to

I109-7

### **Response to comment I109-6**

This is a comment on the project, not on the EIR. In addition, the proposed Delta Plan analyzed in the EIR includes Chapter 8, Funding Principles to Achieve the Coequal Goals. As stated on page 308 of the Final Draft Delta Plan, "[t]he Council proposes to initiate development of a finance plan following adopting of the Delta Plan." The Guiding Principles for the future finance plan are described on pages 308 to 309, and three funding recommendations are stated on page 310. Please refer to Master Response 2. The Delta Plan must be reviewed at least once every five years and may be revised as the Council deems appropriate pursuant to Water Code section 85300(c).

### **Response to comment I109-7**

Please refer to the response to comment I109-4.

1 pay for that? I see this as a political move by the  
2 DSC, the inclusion -- not inclusion of the Bay Delta  
3 Plan or any conveyance system in this environmental  
4 report to avoid scrutiny by the people of California and  
5 to influence a positive response to this EIR. There  
6 needs to be more light shined on the BDCP and more  
7 transparency applied to their conveyance options.

I109-7

8 Thank you.

9 MR. ISENERG: Thank you, Mr. Wilson.

10 Any other blue forms? No.

11 Anyone else like to speak on this issue?

12 Yes, Mr. Rentz, if you could please come  
13 forward and I will collect your blue form up here if you  
14 don't mind.

15 MR. RENTZ: Good afternoon, Mr. Chairman,  
16 Council members. Mark Rentz from the Association of  
17 California Water.

18 First of all, my apologies. I was unable  
19 to attend earlier today. It's my understanding that you  
20 did extend the comment period, so my appreciation to you  
21 for that.

22 And we are delving into the massive  
23 document as everybody and so the comments I present  
24 today are initial comments based on very initial review,  
25 and we will provide you with more detailed comments.

I109-8

## **Response to comment I109-8**

Comment noted.

1           Also for the record and for those who are  
2 not aware, I'm here today speaking on behalf of the AG  
3 Coalition. Just as a piece of background, the AG  
4 Coalition consists of more than 80 water agencies,  
5 agricultural business and water organizations and local  
6 governments located both above, within and below the  
7 delta. It's an expansive group of water experts that  
8 came together and spent a long time deliberating and has  
9 come together to provide a unified perspective on  
10 addressing California's urgent water challenges, the  
11 reason we are all here today. It is dedicated to the  
12 current advancement of both the coequal goals and the  
13 State water supply and restoration of the Bay Delta  
14 ecosystem.

I109-8

15           As you all know, again, for the record, we  
16 did submit a 50-plus page alternate plan that you have  
17 included in the Draft EIR. We appreciate that as a  
18 stand-alone alternative.

19           I'm providing today some very general basic  
20 comments based on my quick review of what I can get  
21 through on the DEIR, but as you know, throughout the  
22 course of our deliberations that we have had an  
23 opportunity and appreciate the opportunity to come  
24 before you and share with you our thoughts and comments  
25 on the various iterations of the Draft Plan. There have

I109-9

**Response to comment I109-9**  
Comment noted.

1 been several policy concerns that we have raised time  
2 and time again, and we still feel they have not been  
3 addressed in either the Plan so consequently they have  
4 not been addressed in the DEIR, and that's what some of  
5 my comments are today.

I109-9

6 But as the coalition met and discussed  
7 about our preliminary review of it, we were quite  
8 disappointed with the Draft Environmental Impact Report  
9 for many reasons which I would like to share with you  
10 now, a couple of them.

11 First of all, we are quite surprised that  
12 we have a 2,200 page plus environmental analysis, yet  
13 the analysis does not include any type of assessment of  
14 the Staff's Draft Delta Plan or any of the alternates in  
15 the context of the coequal goals, yet this is the very  
16 basic objectives that were set forth in the legislation  
17 that gave rise to the Delta Stewardship. So it's hard  
18 for us to understand how this environmental document and  
19 environmental analysis can really fulfill its  
20 responsibilities under CEQA to provide an environmental  
21 analysis in any context of these most basic objectives  
22 absent that analysis. So that's one of our very  
23 preliminary concerns and significant concerns.

I109-10

24 On the other hand, we took great effort to  
25 as we developed our 50-page alternate plan, it was a

I109-11

### **Response to comment I109-10**

Please refer to Master Response 3.

### **Response to comment I109-11**

Please refer to Master Response 3 for a discussion of alternatives, including proposals that informed each alternative.

1 commitment to the advancement of the coequal goals.  
2 That was no easy commitment given the array of  
3 participants in that development, and we were committed  
4 to an integrated, systematic and scientific approach  
5 that addressed the potential relationships between the  
6 various -- between and among the various equal system  
7 stressors in the delta and promotes coordinated  
8 activities, actions amongst the dozens of agencies that  
9 have statutory regulatory responsibilities within the  
10 delta, and that the DEIR from our perspective failed to  
11 accurately describe our plan from that perspective and  
12 it failed to analyze our plan in this context, both the  
13 context of the coequal goals and the foundational  
14 cornerstones that we laid out in the plan about an  
15 integrated, comprehensive approach and a coordinated  
16 effort amongst the agencies.

I109-11

17           Some of our initial thoughts on the DEIR's  
18 environmental analysis is we do not believe the Delta  
19 Plan will restore the environment faster, better than  
20 the alternate plan. As we read the Delta Plan, the  
21 ecosystem tools are flow objectives that lead to a more  
22 natural flow regime in the delta, yet there's no  
23 definition that we could find at least preliminarily in  
24 the DEIR or the Delta Plan as to what constitutes  
25 natural flow regimes. And there's no discussion as to

I109-12

## **Response to comment I109-12**

Please refer to Master Response 5.

1 the environmental effects in the DEIR which is its  
2 charge as to the effects both in and beyond the delta  
3 associated with such an approach. So again, we think  
4 that that is a significant environmental analysis that  
5 is lacking.

I109-12

6 Second of all, we don't believe that the  
7 Delta Plan will improve supply, water supply reliability  
8 statewide, obviously the cornerstone coequal goals of  
9 your mission. The Delta Plan concludes that water would  
10 continue to be available but at a reduced amount. The  
11 Delta Plan assumes without any demonstrated basis that  
12 the significant impact would be mitigated, in other  
13 words, water supply throughout the State would develop  
14 alternative water supplies. Well, the analysis is yet  
15 to discuss how that will happen and whether it's  
16 feasible and what the environmental impacts may be  
17 associated with such a proposal, therefore, the  
18 environment analysis in the EIR is incomplete.

I109-13

19 Finally, we believe the DEIR analysis as to  
20 how the Delta Plan will best coordinate its efforts to  
21 achieve its goals is not accomplished. Again, as I  
22 mentioned, this is one of the cornerstones of the  
23 analysis we did. This is what we think is one of the  
24 most crucial roles that this Delta Stewardship Council  
25 can provide and that's to help facilitate more

I109-14

### **Response to comment I109-13**

The Delta Plan assumes that water supply agencies would be encouraged to reduce reliance on the Delta water through implementation of local and regional water supplies, including water use efficiency, water recycling, desalination, water transfers, and groundwater conjunctive use programs to meet water demands projected in existing general plans. As discussed in Section 3 of the EIR, such programs should offset reductions in water diverted from the Delta. The potential for secondary impacts associated with the potential for reduced water supplies for some users is discussed in Master Response 5.

### **Response to comment I109-14**

Please refer to Master Response 3.

1 appropriate and coordinate actions amongst all these  
2 agencies that have responsibility in part or in whole in  
3 the delta to ensure that as we move forward given our  
4 limited resources that we all have, whether you're  
5 government, water agencies or the private sector, NGO's  
6 that we are working in a manner that is coordinated that  
7 most effectively and efficiently uses those resources.  
8 The Staff Delta Plan doesn't address that issue and the  
9 DEIR ignores this is one of the key cornerstones of our  
10 plan.

I109-14

11           That is our preliminary assessment. We  
12 will provide you more details. We appreciate this  
13 opportunity today.

14           I guess in closing the one thing I would  
15 encourage each of you Council members is to please take  
16 the time to look at our 50-page alternate plan that we  
17 put forward. We think the fact that we brought together  
18 the extensive knowledge to formulate this plan is a  
19 great tool, a great advantage for you which we hope that  
20 in reading and studying our plan you will see is an  
21 opportunity that you should take advantage of.

I109-15

22           Thank you for your time.

23           MR. ISENBURG: Thank you, Mr. Rentz.

24           We should probably note for the court  
25 reporter that our colleague Mr. Fiorini is seated in the

## **Response to comment I109-15**

Comment noted.

1 audience feeling, perhaps, that the atmosphere is more  
2 rarified there and, perhaps, he is getting a new  
3 perspective on things.

4           Okay. Do we have other speakers? Is there  
5 anyone else that would like to talk to the Council on  
6 the Environmental Impact Report? Yes, sir.

7           MR. VERBOON: Thank you, Mr. Chairman.

8           MR. ISENBURG: This is Jim Verboon. You have  
9 been here many times before representing his position to  
10 the Council. Thank you again for coming.

11           MR. VERBOON: You're welcome.

12           As a salmon fisherman and a farmer I am  
13 very interested in talking here.

14           One of the things that the EIR, I think,  
15 needs to address is, I think, to properly look at the  
16 environment, the point of diversion for the State and  
17 federal pumps is Sherman Island and the confluence of  
18 the two rivers rather than down the delta because the  
19 water comes from the Sacramento River, it is transported  
20 to the pumps being the San Joaquin River so where  
21 exactly is that point of diversion at today. And I  
22 would profess that that point of diversion is Sherman  
23 Island with the confluence of the rivers.

24           And another interesting thing is that I  
25 would like the Delta Plan to consider some diversions

I109-16

I109-17

## **Response to comment I109-16**

Comment noted.

## **Response to comment I109-17**

The Delta Plan and the other alternatives only included recommendations for completion of the BDCP but not conveyance alternatives. The proposed BDCP is a reasonably foreseeable future project that is being evaluated by the Department of Water Resources as the CEQA lead agency. The cumulative impacts of the proposed Delta Plan, in combination with the impact of the proposed BDCP, are described in EIR Sections 22 and 23. The Delta Plan must be reviewed at least once every five years and may be revised as the Council deems appropriate pursuant to Water Code section 85300(c). Hence, the Delta Plan would be amended when the BDCP is ready for incorporation. Please refer to Master Response 1.

1 and interconnections between the San Joaquin River and  
2 the Sacramento River upstream to potentially existing  
3 facilities, Snodgrass Slough, the deep water channel  
4 that brings water upstream from the pumps. It would  
5 give you potentially a downstream positive flow  
6 100 percent of the time, either that or it's going to  
7 bring solidity farther up to where the pumps are going  
8 to shut off so you are not going to pump the amount of  
9 water through there.

I109-17

10 So anyway, those are the two things that I  
11 kind of wanted to reiterate.

12 If there are any questions I would be happy  
13 to answer.

14 MR. ISEBERG: Thank you very much, Mr. Verboon.

15 Is there anyone else that would like to  
16 talk to the Council on the Environmental Impact? Is  
17 there anyone else? Going once. No?

18 Here we are. Yes, ma'am. Please come  
19 forward and identify yourself. Before you get out of  
20 here, if you would fill out a blue form for us so our  
21 court reporter could check the spelling of your name and  
22 get everything accurate. Thank you. Yes, ma'am.

23 MS. LINVILL: My name is Becky Linvill. I'm an  
24 environment scientist. My focus is on water quality  
25 issues.

I109-18

## **Response to comment I109-18**

Comment noted.

1 I want to thank you for the opportunity to speak  
2 here today and thank you for the Draft EIR which is  
3 looking at both coequal goals. I would like to  
4 emphasize my support for both of those goals. I think  
5 both are extremely important to the State, especially  
6 given the current situation and given our future  
7 situation with the potential for the Bay to rise. My  
8 understanding is that the City of San Francisco is  
9 planning for a 13-inch rise by the year 2050, and I see  
10 in your Draft EIR that that amount may change to  
11 55 inches by the end of the century, so that's a huge  
12 issue.

1109-18

13 I would also like to request information in  
14 the EIR on daily tidal water levels and how the low  
15 tides and the high tides affect that. I heard recently  
16 that in Sacramento Harbor the water levels can change up  
17 to five feet in one day. And my understanding is that  
18 south of the deep water channel it's influenced less by  
19 the tides, but at the northern end of the deep water  
20 channel there's a huge influence there, and my suspicion  
21 is that there would be other areas in the delta where  
22 the tides would affect water levels differently. So I  
23 would like information on that and how any proposed  
24 water conveyance systems would affect the Sacramento  
25 Harbor as well as how does that affect water flows for

1109-19

### **Response to comment I109-19**

The level of detail in the existing conditions section of Section 3, Water Resources, and Section 21, Climate Change and Greenhouse Gas Emissions, is adequate for the programmatic analysis provided by this EIR. See Master Response 2. In addition, Section 21 does address sea level rise, although not at the local level of detail referenced in this comment.

I109-19

1 the salmon that are migrating up the Sacramento River.

2 Another huge concern that I have is  
3 liquefaction of soils during earthquake. My  
4 understanding from your Draft EIR information that's in  
5 Chapter 11 is that in the past the soil dropped 11 feet  
6 in Suisan Marsh during the 1906 San Francisco earthquake  
7 but it only caused a three-foot change in elevation ten  
8 miles west of Stockton. So there are changes in the  
9 soil structure throughout the delta that could be  
10 affected by an earthquake by liquefaction where the soil  
11 essentially goes liquid, and I would like more  
12 information on that potential especially if there are  
13 conveyance options that go through the west portion of  
14 the delta, through the middle of the delta and through  
15 the east part of the delta.

I109-20

16 I did not see -- I wasn't able to read all  
17 2,000 pages, but I wasn't able to see information on how  
18 deep the proposed tunnel might be and whether that would  
19 be going through soil's high organic matter content or  
20 not. So all that I have to go by is what's in  
21 Chapter 11, and that shows the soils at the surface in  
22 the organic matter of the surface. So if I just look at  
23 those maps and through my best judgment with no further  
24 information my guess is that the eastern conveyance  
25 option is more stable during the earthquake, but like I

I109-21

### **Response to comment I109-20**

The level of detail in the existing conditions section of Section 3, Water Resources, and Section 11, Geology and Soils, is adequate for the programmatic analysis provided by this EIR. Please refer to Master Response 2. The EIR did not address Delta conveyance options, as described in the response to comment I109-17.

### **Response to comment I109-21**

Please refer to the response to comment I109-17.

1 said, I don't feel like I have all of that information. 1109-21  
2 I don't know if I can get information on how deep the  
3 tunnel being proposed is today or not, but if I can I  
4 would like that information as well.  
5           And then lastly, I would like to state that  
6 a lot of the press has focused on the delta smelt and  
7 how it's an endangered species, and sometimes they seem  
8 to trivialize the delta smelt, but scientists think the  
9 delta smelt is the indicator species of the entire  
10 health of the delta ecosystem, and it's extremely  
11 important not only as an endangered species but for the 1109-22  
12 health of the entire ecosystem. And the delta is an  
13 incredible place even today even with all the changes it  
14 has been through in its history, and to see three-foot  
15 salmon migrate up the Sacramento River is really  
16 something, and I'm glad that that's one of the coequal  
17 goals. Thank you.  
18           MR. ISENERG: Thank you very much. Before you  
19 get out of here, if you would fill out one of those blue  
20 forms that are kicking at the table and hand it to the  
21 lady over there, we will have a permanent record of the  
22 correct spelling of your name.  
23           Thank you very much.  
24           Okay. Anyone else want to talk to Council  
25 on the Environmental Impact Report? Anyone else want to

**Response to comment I109-22**  
Comment noted.

1 talk to Council on the Environmental Impact Report?  
2 MR. STEVENS: I would recommend a couple things,  
3 Mr. Chair.  
4 MR. ISENBERG: Yes.  
5 MR. STEVENS: First of all, we have noted this  
6 public hearing from 1:00 to 4:30 as part of the  
7 transparency that you are all in favor of. We are  
8 committed to staying here with the court reporter until  
9 that time.  
10 MR. ISENBERG: I will stay here.  
11 MR. STEVENS: Not that any of the members are  
12 required to because this hearing --  
13 MR. ISENBERG: I will stay.  
14 MR. STEVENS: So what I would recommend, perhaps  
15 since there's nobody here now that wants to testify on  
16 the EIR that we adjourn that part and that you take  
17 public comment which is on your agenda.  
18 MR. ISENBERG: Generalized.  
19 MR. STEVENS: Generalized public comment, but we  
20 are committed to staying here. The court reporter is  
21 here until 4:30 today.  
22 MR. ISENBERG: Let's do that then.  
23 Anyone want to speak to us on the  
24 Environmental Impact Report? On the Environmental  
25 Impact Report?

**No comments**

- n/a -

1 At the suggestion of legal counsel is there  
2 any objection to closing the hearing on file item number  
3 ten at this time subject to being reopened should other  
4 parties appear between now and 4:30 which they can  
5 testify on the EIR? Any objection? Any objection?  
6 Without objection, the hearing is closed.

7 MR. STEVENS: Any folks who are left in the  
8 audience, is there anyone who wants to talk to us on  
9 anything else, now is the time.

10 How was the atmosphere and rarefied air of  
11 the audience?

12 MR. FIORINI: I could hear better there.

13 MR. ISENBURG: I see no -- I'm sorry.

14 MR. GRINDSTAFF: If we may, I would like to  
15 follow up with the field hearing discussion.

16 I gather from all of you after you voted to  
17 go to a 30-day extension and the discussion that  
18 Mr. Nottoli brought up about the hearing in the delta,  
19 my thought was that we should schedule five hearings,  
20 five field hearings, in the north part of the state, the  
21 delta, the valley, and two in urban Southern California,  
22 so that's five hearings. And my sense was since we  
23 extended the date by 30 days we should do that after the  
24 first of the year. It gives us enough time to have a  
25 hearing in the first or second week of the year and for

**No comments**

- n/a -

1 people then to have a couple of weeks still to do any  
2 written comments. So I want to check with you and make  
3 sure that that's okay.

4 MR. ISENBERG: Here's my suggestion. You have  
5 the authorization of Council for a comment period  
6 extension for another 30 days, 90 in total. You have  
7 general support in the Council on -- what did you call  
8 these? Field hearings. You have general Council's  
9 support for two which you have previously identified in  
10 your notes in the material that was used today on the  
11 Environmental Impact Report, and I think it's fair to  
12 say we are sympathetic to additional ones. I think you  
13 want to consider for a day or two the timing, the  
14 schedule and location as opposed to ask us to formally  
15 approve those today when you may want to change them  
16 depending on --

17 MR. GRINDSTAFF: I don't have the details. We  
18 have to work on those, but I just want general consensus  
19 that that is something that we should work on.

20 MR. ISENBERG: I notice Mr. Nottoli is nodding  
21 his head yes. Any objection to that? No objection  
22 noted by six members of the Council who are here.

23 Mr. Wilson, stand up and use the  
24 microphone, if you would, please. This is Mr. Burt  
25 Wilson from Carmichael.

**No comments**

- n/a -

1 MR. WILSON: Would you describe for me the  
2 process of what's going to happen with the BDCP  
3 conveyance recommendations. Are they going to be  
4 included in the Delta Plan sometime in March and then it  
5 will be just one environmental plan after June?

6 MR. ISENBERG: Well, let's see.

7 MR. Stevens, may I simply read the statute?

8 MR. Wilson, let me tell you what the  
9 statute says about the Delta Plan and its relationship  
10 to the Bay Delta Conservation Plan. It says "The Bay  
11 Delta Conservation Plan shall be considered for  
12 inclusion in the Delta Plan in accordance with this  
13 chapter." That's the chapter of the 2009 Act on  
14 Governance, that's A.

15 B, "The BDCP shall not be incorporated into  
16 the Delta Plan and the public benefits associated with  
17 the BDCP shall not be eligible for State funding unless  
18 BDCP does all of the following."

19 MR. WILSON: They have certain requirements.

20 MR. ISENBERG: They are important requirements.

21 MR. WILSON: Yeah, I know.

22 MR. ISENBERG: The first requirement is the  
23 Natural Communities Conservation Planning Act. The  
24 second is CEQA, the California Environmental Quality  
25 Act. They must also consider including review and

I109-23

## **Response to comment I109-23**

The proposed BDCP is a reasonably foreseeable future project that is being evaluated by the Department of Water Resources as the CEQA lead agency. The cumulative impacts of the proposed Delta Plan, in combination with the impact of the proposed BDCP, are described in EIR Sections 22 and 23. The Delta Plan must be reviewed at least once every five years and may be revised as the Council deems appropriate pursuant to Water Code section 85300(c). Hence, the Delta Plan would be amended when the BDCP is ready for incorporation. See Master Response 1.

1 analysis of all of the following: A reasonable range of  
2 flow criteria, rates of diversion and other operational  
3 criteria required to satisfy the criteria for approval  
4 of Natural Communities Conservation Plan as provided in  
5 the Code section.

6 MR. WILSON: Are they going to give you a  
7 document and you are going to vet it?

8 MR. ISENBERG: When they exclude their work, and  
9 their present schedule says they will have a preliminary  
10 draft, I think is the way they are phasing it, out  
11 sometime in 2013, it's unclear when that will be  
12 formally adopted. And the law clearly says the last  
13 step in that process, by the way, is the State  
14 Department of Fish and Game must certify, approve that  
15 BDCP has met all these tests of law. And the law says  
16 "If the Department of Fish and Game approves the BDCP as  
17 a Natural Communities Conservation Plan and determines  
18 that BDCP meets the requirements of this section, and  
19 the BDCP has been approved as a Habitat Conservation  
20 Plan," that's federal law pursuant to the Federal  
21 Endangered Species Act, "that the Council shall  
22 incorporate BDCP into the Delta Plan. The Department of  
23 Fish and Game's determination that the Bay Delta  
24 Conservation Plan has met the requirements of this  
25 section may be appealed to the Council."

1109-23

**No comments**

- n/a -

1 MR. WILSON: Now, when the BDCP plan is  
2 incorporated into the Delta Plan --  
3 MR. ISENBERG: If it meets the test of law.  
4 MR. WILSON: Are you then going to produce one  
5 gigantic Environmental Impact Report for everything?  
6 MR. ISENBERG: No, sir. They will have their  
7 own.  
8 MR. WILSON: They will have their own.  
9 MR. ISENBERG: Yes, sir. Yes, sir. They are  
10 required to do that.  
11 MR. WILSON: I'm glad they included the "no  
12 option."  
13 MR. ISENBERG: Mr. Stevens, correct me if I'm  
14 wrong, all projects under California law evaluated by  
15 the Environmental Quality Act must include a no project  
16 alternative as our environmental impact.  
17 MR. WILSON: It wasn't for a long time.  
18 MR. ISENBERG: Okay. So that's what the law  
19 said.  
20 By the way, that's Water Code Section 85320  
21 and it's a very important section.  
22 MR. WILSON: Thank you very much.  
23 MR. ISENBERG: Thank you, sir.  
24 Anyone else like to talk to the Council on  
25 anything?

1109-23

**No comments**

- n/a -

1 Ladies and gentlemen, we are going to take  
2 a recess, I guess is the correct way to phrase it.  
3 Mr. Stevens and the court reporter and I will hang  
4 around until our announced time of 4:30 on duty which  
5 will be assigned out in the future to others. I can  
6 assure you, the same thing happened at one or two of our  
7 scoping meetings and I didn't remember. I sat for those  
8 two.

9 Okay. Ladies and gentlemen, thank you very  
10 much. We are in recess. We will see you tomorrow  
11 morning at 9:00 a.m. for our regular meeting agenda that  
12 we are going to roll through.

13 Anything else, Mr. Grindstaff?

14 MR. GRINDSTAFF: It will be an interesting day.  
15 We have a discussion about BDCP. We have a lot of  
16 intense discussion about stressors, so I expect a very  
17 good meeting tomorrow morning.

18 MR. ISENERG: Okay. Thank you. In recess.

19 (Whereupon, the Council meeting was in recess from  
20 1:36 p.m. until 4:25 p.m.)

21 MR. ISENERG: Okay. Ladies and gentlemen, the  
22 Delta Stewardship Council is called back into order.

23 We have recessed, Madam Reporter, I think  
24 you indicated at 1:36 in the afternoon. Continuously  
25 since that time either myself, Ms. Marcus or Mr. Fiorini

**No comments**

- n/a -

1 have been here in the meeting room. The court reporter  
2 has been here. Mr. Stevens, our general counsel, has  
3 been here along with other staff. And we are even being  
4 observed by Mr. Pete Kuchars from the County Coalition  
5 who is hanging around too. No one has requested the  
6 opportunity to speak. There is no one else here.

7 This notice is for purposes of the record,  
8 and we will keep the proceeding running without  
9 additional further comment until 4:30 exactly and we  
10 will at that time announce that the meeting is adjourned  
11 to the next subsequent meeting on the Environmental  
12 Impact Report.

13 Mr. Stevens, is that a proper recitation?

14 MR. STEVENS: Yes.

15 MR. ISENBERG: Okay.

16 The hour of 4:30 has arrived and the door  
17 to the hearing room has been open and we see no other  
18 people who wish to testify on the Environmental Impact  
19 Report. The hearing is adjourned.

20 We will see you tomorrow morning for the  
21 regular meeting of Council, 9:00 a.m.

22 Thank you very much.

23 (Whereupon, at 4:30 p.m., the Council meeting was  
24 concluded.)  
25

**No comments**

- n/a -

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CERTIFICATE  
OF  
CERTIFIED SHORTHAND REPORTER

The undersigned certified shorthand reporter of  
the State of California does hereby certify:

That the foregoing Council meeting was taken  
before me at the time and place therein set forth;

That the testimony of the public and all  
objections made at the time of the hearing were recorded  
stenographically by me and thereafter transcribed, said  
transcript being a true copy of my shorthand notes  
thereof.

In witness whereof, I have subscribed my name  
this date

\_\_\_\_\_ .

\_\_\_\_\_  
Debbie Razavi, CSR, RPR  
Certified Shorthand Reporter #9989

**No comments**

- n/a -