

**DRAFT 2/26/13 – SUBJECT TO CHANGE**  
**For Review and Adoption by the DSC at the March 28-29, 2013 Meeting**  
**DELTA STEWARDSHIP COUNCIL**  
**February 21, 2013**  
**Park Tower Plaza**  
**980 9<sup>th</sup> Street, 2<sup>nd</sup> Floor Conference Room, Sacramento, CA 95814**

**MEETING SUMMARY**

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**February 21, 2013, 9:30 a.m. – 4:30 p.m.**

**1. Welcome and Introductions**

The meeting was called to order at 9:33 a.m., February 21, 2013, by Chair Phillip Isenberg.

**2. Roll Call – Establish a Quorum (Water Code §85210.5)**

Roll call was taken and a quorum was established. The following members were present: Hank Nordhoff, Patrick Johnston, Randy Fiorini, Phillip Isenberg, and Don Nottoli. Absent: Gloria Gray.

**3. Chair's Report**

Chair Isenberg had nothing to report and moved directly to the Executive Officer's Report.

**4. Executive Officer's Report (Information Item)**

Executive Officer Christopher Knopp updated the Council on personnel appointments—Cindy Messer, Deputy Executive Officer for Planning, Dr. Rainer Hoenicke, Deputy Executive Officer for Science; and Terry Smith, manager in the Administrative Division. Mr. Knopp then gave a brief Delta Plan update. Finally, Mr. Knopp discussed relevant reports about the delta smelt take at the CVP and SWP pumps and stated the CVP and SWP had curtailed pumping to 2,000 cfs, and later increased to 4,000 cfs. Mr. Knopp explained that the CVP and SWP have the joint pumping capacity of 15,000 cfs, although they normally operate at 11,000 cfs. After curtailment of the pumping there has been no salvage of adult fish at pumps and if that continues, pumping may increase.

**a. Legislative Update**

The Legislative Update was presented by Jessica Pearson, who made brief remarks on the new two-year legislative sessions that are now under way. Ms. Pearson explained that the deadline for introducing bills was February 22 and briefed the Council on the bills included in the Council's tracking report. Ms. Pearson discussed the state budget

and the sequester at the federal level that is expected to take place in the next week, affecting our federal partners.

### **b. The Legal Update**

Chris Stevens, Chief Counsel, asked the Council's legal interns, Tori Sundheim and Janelle Krattiger to give a brief litigation update. Ms. Sundheim reported on the consolidated delta smelt cases and a request made by the U.S. Fish and Wildlife Service and the Department of Water Resources for a three-year extension of the Smelt Biological Opinion due in December 2013. Next, Janelle Krattiger discussed legislative efforts to reform CEQA; what it means, the pros and cons of potential reform and principles for maintaining the current CEQA model. Ms. Krattiger and Ms. Sundheim's updates are posted on the Council website at:

[http://deltacouncil.ca.gov/sites/default/files/documents/files/Item\\_4a\\_Legal\\_Update\\_7.pdf](http://deltacouncil.ca.gov/sites/default/files/documents/files/Item_4a_Legal_Update_7.pdf)

### **5. Adoption of the January 24, 2013 Meeting Summary (Action Item)**

Chair Isenberg asked if there were any questions, suggestions or comments from the Council or public regarding the January 24, 2013 Meeting Summary – there were none.

Chair Isenberg requested under Item 3b, page 1, Hearing to Receive Public Comments on the Proposed Rulemaking Package, Conduct Hearing - staff add the webcast timestamp for the public testimony that was provided during the hearing as well as the link for the official transcript of the hearing.

The revised meeting summary is posted on the Council website at:

[http://deltacouncil.ca.gov/sites/default/files/documents/files/Item\\_5\\_Revised\\_Meeting\\_Summary\\_3.pdf](http://deltacouncil.ca.gov/sites/default/files/documents/files/Item_5_Revised_Meeting_Summary_3.pdf)

**Motion:** (Offered by Nordhoff; seconded by Johnston) to approve the January 24, 2013, meeting summary as amended.

**Vote:** (5/0: Nordhoff, Johnston, Fiorini, Isenberg, Nottoli) and the motion was adopted.

*The video showing this vote can be found at: [http://dsc.videoss.com/archives/022113/Agenda\\_Item\\_5;Archive\\_Segment\\_Number\\_6\\_of\\_39\\_at\\_00:58](http://dsc.videoss.com/archives/022113/Agenda_Item_5;Archive_Segment_Number_6_of_39_at_00:58).*

### **7. The BDCP and the Delta Plan (Water Code §852320) (Information Item)**

Agenda Item 7, the Bay Delta Conservation Plan Implementation Structure was taken out of order and heard after Item 5, Adoption of the January 24, 2013 meeting summary. The item was presented by the Council's Chief Deputy Executive Officer Dan Ray who gave a brief overview before introducing Dr. Gerald Meral, Deputy Secretary for the California Natural Resources Agency. Dr. Meral briefed the Council on highlights of the Draft BDCP Implementation Structure, including its provisions for governance and oversight of adaptive management. Dr. Meral explained how the governance structure of the BDCP (Chapter 7) had been heavily vetted and felt there was a good balance

between all the interest groups; however the biggest challenge was to develop a structure the federal government could accept. Dr. Meral described how the proposed governance would work and discussed the Authorized Entity Group and the Permit Oversight Group, explaining how the two were equal but had different roles, which he described. Dr. Meral also discussed adaptive management and the adaptive management structure included in Chapter 3. Dr. Meral provided the Council members with a copy of the BDCP Blog, "BDCP: Based on Science, Environmental Research, and Economic Realities". The handout is posted on the Council website at: [http://deltacouncil.ca.gov/sites/default/files/documents/files/Item\\_7\\_Attach\\_2\\_BDCP\\_BASED\\_ON\\_SCIENCE\\_ENVIRONMENTAL\\_RESEARCH\\_AND\\_ECONOMIC\\_REALITIES\\_MERAL\\_BLOG.pdf](http://deltacouncil.ca.gov/sites/default/files/documents/files/Item_7_Attach_2_BDCP_BASED_ON_SCIENCE_ENVIRONMENTAL_RESEARCH_AND_ECONOMIC_REALITIES_MERAL_BLOG.pdf)

Throughout the presentation of Agenda Item 7, Mr. Ray and Dr. Meral answered Council members' questions and provided clarification.

## **6. Delta Plan (Water Code §85300(a)) (Information Item)**

At the conclusion of Item 7, the Council circled back to Agenda Item 6, Update on the Delta Plan, presented by Cindy Messer. Ms. Messer provided the Council with an informational update on the schedule, process and critical steps and milestones to finalize the Delta Plan, its regulations and the Final Programmatic EIR. At the March meeting, comment themes and draft responses will be presented for Council consideration/review discussion and final direction to staff. For the May meeting, staff plans to prepare and publish a Final EIR for possible certification by the Council and a redline version of the Final Delta Plan to use as the Council considers adoption of the plan and associated regulations. After the May meeting, staff will prepare a clean version of the Final Delta Plan that incorporates final formatting and graphics. At that time the Rulemaking Package will be submitted to OAL for approval. Following Ms. Messer's discussion of the schedule, Chris Stevens, Chief Counsel, reminded the Council of the deadline given by the Legislature to develop the Delta Plan as well as the crisis the Delta is facing. Mr. Stevens also stated the comments that have been received, for the most part, are not raising new issues. The comments are helping to refine what the Council has already come up with and the staffs' task will be to tee up the issues that need to come before the Council for direction/refinement. It is anticipated that the March meeting will be used to discuss these issues that need more refinement and there could be a possibility of a 15-day public review of those revisions.

Throughout the presentation of the Delta Plan Update, Ms. Messer and Mr. Stevens answered Council members' questions and provided clarification.

Without objection from the Council, Agenda Item 9, Lead Scientist's Report was taken out of order and heard after the conclusion of the Delta Plan Update, Agenda Item 6.

## **9. Lead Scientist's Report**

Dr. Peter Goodwin presented the Lead Scientist Report. Dr. Goodwin provided a handout, "By the Numbers", created by Emily Mortazavi, a California Sea Grant Fellow

working with the Delta Science Program. The one-pager developed by Ms. Mortazavi is a sampling of current Delta Water and environmental information. "By the Numbers" is posted on the Council website at:

[http://deltacouncil.ca.gov/sites/default/files/documents/files/Item\\_9\\_Attach\\_1\\_By%20the%20Numbers%20Feb2013\\_lec\\_esm.pdf](http://deltacouncil.ca.gov/sites/default/files/documents/files/Item_9_Attach_1_By%20the%20Numbers%20Feb2013_lec_esm.pdf)

Next, Dr. Goodwin briefed the Council on the development of a computer-based decision support tool, Delta Ecological Flows Tool, which will be used to help with the assessment of the effects of various water and ecosystem management alternatives on Delta focal species and habitats. Dr. Goodwin also provided brief remarks on studies on the performance of levees under earthquake conditions and the behavior of peat soils during an earthquake. These studies are being conducted by a UCLA research group headed by Professors Scott Brandenberg and Jonathan Stewart.

Dr. Goodwin briefed the Council on the Science Plan update, beginning with the process, using a PowerPoint that is posted on the Council website at:  
[http://deltacouncil.ca.gov/sites/default/files/documents/files/Item\\_9\\_LS\\_Presentation.pdf](http://deltacouncil.ca.gov/sites/default/files/documents/files/Item_9_LS_Presentation.pdf)

Dr. Goodwin stated he hoped to have a draft Delta Science Plan available for Council members to discuss at the April meeting.

Throughout the update of Agenda Item 9, Dr. Goodwin answered Council members' questions and provided clarification.

Following the Lead Scientist's Report, the Council recessed for lunch at 12:23 p.m. and resumed the meeting at 1:23 p.m.

## **8. Lower San Joaquin River Flow Objectives and Southern Delta Water Quality Report (Information Item)**

Mark Bradley, Senior Engineer with the Delta Stewardship Council, led the presentation of Agenda Item 8 and introduced Dr. Jay Lund of the Delta ISB and Les Grober of the State Water Resources Control Board. Mr. Bradley began by providing a brief overview and background. Mr. Grober, who is overseeing the revisions of the Water Quality Control Plan for the Bay-Delta described Phase 1 of the substitute environmental document that updates the flow objectives to protect fish and wildlife in the San Joaquin River and its salmon-bearing tributaries and salinity objectives to protect agriculture in the southern Delta and establishing a program of implementation for the objectives. Mr. Grober briefed the Council on the schedule for the proposals and then Mr. Bradley briefed the Council on the DSC staff's reaction to the proposed revisions, stating the proposal was generally consistent with the coequal goals. Mr. Bradley went through the staffs' initial comments, noting that as they continue to review the substitute environmental documents, the comments will be refined and final staff comments will be provided to the State Water Board by March 29, 2013. Following Mr. Bradley, Dr. Jay Lund gave the Delta ISB's perspective on its review as it was one of the topics of discussion at the Delta ISB meeting. The ISB was impressed overall with the document.

Throughout the presentation of Agenda Item 8, Mr. Bradley, Dr. Lund and Mr. Grober answered Council members' questions and provided clarification.

## **10. Delta Independent Science Board Report**

The Delta ISB Report was presented by Dr. Jay Lund in Dr. Norgaard's absence. Dr. Lund reported on the Delta ISB's teleconference on February 1 and its meeting on February 14-15. During the teleconference and ISB meeting, items discussed included the review of Chapter 7 of the BDCP; review of the Water Board's substitute environmental document; and the draft format for the Delta ISB's report on habitat restoration and climate change program review. Dr. Lund stated the Delta ISB has revised its Operating Guidelines and elected its principle officers (a Past Chair, Chair, and Chair-Elect, all two year terms). Dr. Norgaard will move to the Past Chair, Dr. Collier will act as the Chair, and Dr. Lund will act as the Chair-Elect.

Throughout the Delta ISB Report, Dr. Lund answered Council members' questions and provided clarification.

## **11. Stakeholder Proposed "Portfolio Based" Conceptual Alternative for the BDCP**

Dan Ray opened the discussion of Agenda Item 11. Mr. Ray began by introducing the panel assembled for the presentation the "Portfolio Based Alternative": Jonas Minton, Planning and Conservation League; Greg Gartrell, Contra Costa Water District; and Dennis Cushman, San Diego County Water Authority. Each of the panelists provided brief remarks about the conceptual alternative they've proposed to BDCP. The Portfolio – Based Conceptual Alternative for the Bay Delta Conservation Plan features a smaller North Delta diversion facility and tunnel, additional investments in Delta levees, reduced Delta habitat restoration, and improvements in storage, conservation, recycling and other local water supplies south of Delta.

Throughout the discussion of Agenda Item 11, Mr. Minton, Mr. Gartrell, Mr. Cushman and Mr. Ray answered Council members' questions and provided clarification.

## **12. Public Comment**

Chair Isenberg asked if there were any members of the public who wished to provide public comment.

*The video showing the Agenda Item 12, Public Comment, can be found at: <http://dsc.videosscc.com/archives/022113/> Agenda Item 12, Index 1; Archive Segment Number 26 of 39 through <http://dsc.videosscc.com/archives/022113/> Agenda Item 12, Index 13; Archive Segment Number 38 of 39 at 02:40.*

Burt Wilson, Public Water News Service, requested to comment on Agenda Item 7 – the implementation and funding of BDCP. Mr. Wilson expressed concern about the use of water that was exported from the Delta. Mr. Wilson stated the state and federal water contractors were providing the funding for BDCP, asked who was overseeing them,

posing a hypothetical question about them selling the surplus water for fracking and development in the high desert east of Los Angeles, and urged the Council do something about it.

Melinda Terry, North Delta Water Agency and the California Central Valley Flood Control Association, requested to comment on Agenda Items 10 and 11 - BDCP governance and stakeholder participation. Ms. Terry stated that to avoid litigation once the implementation phase of BDCP has begun, an entity and process should be built into the Governance structure to hear claims from anyone who was harmed by any of the project's 22 conservation measures. Ms. Terry also discussed mitigation issues, the Authorized Entity Group and its membership, and opportunities for state funding. Ms. Terry responded to Mr. Nordhoff's comment about elevating levees and stated that was being done now and discussed how the counties are enforcing the National Flood Insurance Program. Ms. Terry encouraged the Council to discuss cost-benefit analysis that she stated has not been peer reviewed.

Bob Whitley, Contra Costa Council. Mr. Whitley stated he was very satisfied personally with the content and process of the Delta Plan, particularly the importance of levees and levee safety, and felt what had evolved was a good document to move forward. Mr. Whitley then requested to comment on Agenda Item 11. Regarding BDCP, Mr. Whitley explained why the Contra Costa Council signed on to the portfolio alternative. Mr. Whitley discussed the concept of beneficiary pays and stated the ratepayers were going to be the underwriters of the project and was concerned as to what the consequences would be to the rate payers. Mr. Whitley predicted that because of adaptive management there will be some restraints on the operations of the facility causing it to be underutilized a percentage of time. Mr. Whitley requested the evaluation as to what the probability of utilization the ratepayers are going to have to pay as a fixed cost. Mr. Whitley felt that with a smaller facility, the utilization rate of the facility would increase and the benefit to the ratepayers would be greater. Mr. Whitley would like to see a process similar to what is done by the PUC when they analyze the size of a project. They asked BDCP to include in their environmental documentation the different array of alternative sizes so it is available at the time the decisions are made.

Tom Zuckerman, Central Delta Water Agency, commented on Agenda Items 8 and 10. Mr. Zuckerman stated he participated in hearings in the early 60s and 70s where extensive testimony was provided as to what water quality was necessary to protect the beneficial uses of agriculture in the Delta. Although, the South Delta had worse water quality than the Central Delta due to water table and soil conditions, he felt the standards were very carefully considered. Mr. Zuckerman stated there is now an effort, based on what he believes is inappropriate science to modify those water quality standards to a standard that he doesn't believe is supportive of agriculture. Regarding Mr. Zuckerman's comment on Agenda Item 10 (Attachment 2), he stated he felt the problem is that the scientists may be submerged in the Governance structure; Mr. Zuckerman drew the Council's attention to Item 10, Attachment 2, Page 2, Number 2, Structure science and monitoring for independence and urged the Council to be vigilant and bold.

Larry Ruhstaller, San Joaquin County, requested to comment on Agenda Items 7 and 11 - Governance of BDCP. Mr. Ruhstaller stated that the five Delta counties want to be a part of that governing structure rather than just part of the stakeholder group. Mr. Ruhstaller also supported the portfolio alternative and stressed regional self sufficiency and stated that all the people, Southern and Northern Californians, should practice wise use of water.

Shawn Coburn, Coburn Ranch, requested to comment on Agenda Item 11. Mr. Coburn commented on the proposed changes described by NRDC and its effect on the CVP farmers south of the Delta. Mr. Coburn provided a flyer from California Farm Water Coalition regarding BDCP that is posted on the Council website at:

[http://deltacouncil.ca.gov/sites/default/files/documents/files/COBURN\\_RANCH\\_COMM\\_EMT.pdf](http://deltacouncil.ca.gov/sites/default/files/documents/files/COBURN_RANCH_COMM_EMT.pdf)

Central and Southern California Water Stakeholders provided a letter to Secretary Ken Salazar and Secretary John Laird, et al., and other documents regarding the BDCP Development (Agenda Item 11) that are posted on the Council website at:

[http://deltacouncil.ca.gov/sites/default/files/documents/files/BURMAN\\_COMMENT.pdf](http://deltacouncil.ca.gov/sites/default/files/documents/files/BURMAN_COMMENT.pdf)

Southern California Water Committee provided a letter from Richard Atwater to Chair Phil Isenberg regarding the NRDC's alternative proposal to the BDCP (Agenda Item 11). The letter is posted on the Council website at:

[http://deltacouncil.ca.gov/sites/default/files/documents/files/SCWC\\_COMMENT.pdf](http://deltacouncil.ca.gov/sites/default/files/documents/files/SCWC_COMMENT.pdf)

Robert Pyke, Consulting Engineer, requested to comment on Agenda Items 7, 9, and 11. Mr. Pyke felt the Council should take the NRDC portfolio seriously as he felt it was a serious attempt to address the coequal goals. Dr. Pyke offered to brief and/or present information to the Council on matters involving levees and soil properties where he said there seems to be misinformation. Dr. Pyke stated that in Dr. Goodwin's report an example was given of an experiment with peat material. Dr. Pyke discussed studies that DRMS had done on peat and spoke on secondary compression of peat and stated that was the reason the levees are sinking. Dr. Pyke commented on BDCP and said he feels an increase of pressure to the levees caused by a 55 inch rise in sea level is manageable. He also noted that the threats posed by more extreme floods are correct but felt that threats of super storms that will wipe out the Delta were incorrect. Dr. Pyke also made brief remarks on the Council's future appellate and responsible agency role as well as what should be included in the reasonable range of alternatives.

Charles Gardiner, Delta Vision Foundation, requested to comment on Agenda Item 11. Mr. Gardner stated the Foundation is preparing detailed comments on the portfolio alternative and shared a short version of them. Mr. Gardiner stated the concept of the portfolio alternative is consistent with the Delta Vision Strategic Plan in linking actions together to have a successful solution. He felt it is critical for the state to continue to advance actions that are linked and integrated and gave suggestions to the Council on how to achieve the actions. Mr. Gardiner suggested the Council and staff take a leadership role in identifying measures that would tie conveyance to storage to develop a workable solution. Mr. Gardiner stated the Administration appears to focus on one

solution – conveyance alone – and suggested finding a way to legally link conveyance, storage, etc. Mr. Gardiner stated he felt the Council had an ability to lead implementation to go beyond that in the Delta Plan. Mr. Gardiner also highlighted recommendations contained in the Delta Vision Strategic Plan and felt it was important for a through-Delta conveyance and a linked solution, which are not in the portfolio alternative, BDCP, or the Delta Plan (activities that can increase the capacity of moving water through the Delta), an important component of a linked solution that has not been addressed. Mr. Gardiner also referred the Council to work done by CALFED on a through-Delta conveyance facility.

Terry Erlewine, State Water Contractors, requested to comment on Agenda Item 11 – calls for reducing average water deliveries for the CVP and SWP. Currently it is at 5 million acre feet and reductions would be made up by increased surface water and ground water storage south of the Delta. Mr. Erlewine stated that water supply studies and modeling have been done with the south of Delta facility on how it would work with the proposed reductions. Mr. Erlewine gave an example of how full the San Luis Reservoir would be using the portfolio approach and their studies show that San Luis Reservoir would be full less than 10 percent of the time. Mr. Erlewine felt it didn't make sense to build storage to capture non-existent water supplies.

Audrey Patterson, San Joaquin Tributaries Authority, requested to comment on Agenda Item 8 and stated they would submit written comments regarding concerns with the Council's comments to the State Water Board about the substitute environmental document. The letter is posted on the Council website at:

<http://deltacouncil.ca.gov/sites/default/files/documents/files/DSC%20letter%20re%20SE D%203.1.13.pdf>

Ms. Patterson also commented on the implementation of the South of Delta Temporary Barriers, with written comments submitted regarding their support of the construction. The letter is posted on the Council website at:

<http://deltacouncil.ca.gov/sites/default/files/documents/files/DSC%20letter%20re%20SD TB%203.1.13.pdf>

Doug Brown, Delta Counties Coalition, requested to comment on Agenda Item 11. Mr. Brown stated the agricultural community supported the Portfolio Based Alternative and he has also heard the five farm bureaus are also supportive of studying the Portfolio Based Alternative.

Karen Medders, provided a written comment regarding the method the Council uses in accepting public comments that is posted on the Council website at:

[http://deltacouncil.ca.gov/sites/default/files/documents/files/MEDDERS\\_COMMENT.pdf](http://deltacouncil.ca.gov/sites/default/files/documents/files/MEDDERS_COMMENT.pdf)

Greg Zlotnick, State and Federal Contractors Water Agency, requested to comment on Agenda Item 4 on pumping restrictions because of the smelt actions and how much water was lost. In order to comply with the biological opinion, there were restrictions on pumping that began in early December and have been going on since then. Mr. Zlotnick stated the modeling has shown that 800,000 acre feet had been lost including 500,000 acre feet in the state project and 300,000 acre feet in the federal project and

their concerns with the restrictions. Mr. Zlotnick stated they will be sending in written comments providing background information for the Council on this issue.

- 13. Preparation for Next Council Meeting – Discuss (a) expected agenda items; (b) new work assignments for staff; (c) requests from Council members; and (e) confirm next meeting date – hearing on March 28-29, 2013, at the Capitol Plaza Holiday Inn, Sacramento, CA 95814.**

**The meeting adjourned at 5:07 p.m.**