

REVISED

**DELTA STEWARDSHIP COUNCIL
Thursday, October 25, 2012
Ramada Inn and Suites
1250 Halyard Drive, West Sacramento, California**

MEETING SUMMARY

Thursday, October 25, 2012, 9:00 a.m. – 4:30 p.m.

1. Welcome and Introductions

The meeting was called to order at 9:01 a.m., October 25, 2012, by Chair Phillip Isenberg, with the Council acting as a committee until a quorum was established. Chair Isenberg did not present a Chair's Report and moved directly to the Executive Officer's report.

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

Roll call was taken and a quorum was established at 9:27 a.m. The following members were present: Patrick Johnston, Hank Nordhoff, Randy Fiorini, Phillip Isenberg, and Don Nottoli. The following member was absent: Gloria Gray.

4. Executive Officer's Report (Information Item)

Christopher Knopp presented the Executive Officer's Report. Mr. Knopp made two personnel announcements – Jessica Pearson had been appointed as the Council's Legislative Director and Policy Advisor. The Council has received approval from Department of Personnel Administration for two CEA positions - Deputy Director of Science and Deputy Director of Planning and Implementation. Mr. Knopp stated it was his intention to move forward in advertising and filling the positions.

Mr. Knopp discussed the schedule for the day and stated that the agenda was relevant to the overall task in achieving the coequal goals – including near-term actions, the development of an implementation committee, development of a Delta Science Plan and adaptive management. With regard to the Delta Plan, Mr. Knopp stated staff was prepared to meet the November 5 deadline for releasing the final draft Delta Plan, however, the consultant team will not be ready for release of the EIR until late November. Mr. Knopp stated he would be meeting with the consultant to discuss the matter of missing the deadline. The Council discussed the missed deadline and Mr. Stevens stated that by the November 15 meeting they would have a firm date when the draft recirculated EIR would be released.

4a. Legislative and Legal Update

There was no Legislative Update, however the “End of Session Wrap-Up of Delta and Water Policy Legislation” was included in meeting materials.

Chief Counsel Chris Stevens introduced the Council’s new legal intern, Janelle Krattiger. Ms. Krattiger is a second year law student from UC Davis Law School. She joined Tori Sundheim, the Council’s intern from McGeorge School of Law.

Ms. Krattiger began the Legal Update and briefed the Council on a case involving water from the Russian River being diverted for frost protection that resulted in the stranding of juvenile salmonids. Ms. Krattiger’s update is posted on the Council website at http://deltacouncil.ca.gov/sites/default/files/documents/files/Item_4a_Legal_Update_Russian_River_Update.pdf.

Tori Sundheim briefed the Council on the consolidated delta smelt cases including the Narrow Fall X2 Action Case and Settlement and the Delta-Mendota Canal Contractors Contract Renewal with the Bureau of Reclamation. Ms. Sundheim’s update is posted on the Council’s website at http://deltacouncil.ca.gov/sites/default/files/documents/files/Item_4a_Legal_Update_Tori.pdf.

Mr. Stevens stated the consolidated smelt cases are brought to the Council’s attention because it is long-standing litigation that has branched out over time. The cases are still pending on appeal with the 9th Circuit Court. This litigation and issues will be monitored as they are directly relevant to the Delta Plan.

4b. Quarterly Contracts Update

This report was for the third quarter, July – September 2012.

5. Adoption of the October 25, 2012 Meeting Summary (Action Item)

Chair Isenberg asked if there were any questions, suggestions or comments from the Council or the public regarding the October 25, 2012 Meeting Summary. Chair Isenberg requested staff double check the paragraph that summarized the deferral of formal action on Agenda Item 7 and try to make it clearer. Council Member Nordhoff noted in three places during public comment, questions had been asked and were captured in the summary, but the responses to the questions were not captured. He wondered why they were not included. Chair Isenberg explained the difficulty for staff in trying to capture the back and forth dialog and Chris Stevens reminded the Council the webcast is considered the official minutes of the Council meeting. However, in this example, Dr. Goodwin answered the question, and staff could have better characterized that the question was answered. Mr. Stevens stated that in future summaries, when a question is answered or clarification is provided staff will try to capture the essence of the comment and response.

Chair Isenberg asked if there were any other questions or comments – there were none.

Motion: (Offered by Fiorini; seconded by Nottoli) to approve the October 25, 2012 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/102512/> Agenda Item 5. Archive Segment Number 4 of 27 at 06:20.

The revised meeting summary was posted on the Council website at http://deltacouncil.ca.gov/sites/default/files/documents/files/Item_5_Revised_Meeting_Summary_2.pdf

6. Delta Science Program

6a. Lead Scientist's Report on Recent Activities and Findings (Water Code §85280) (Information Item)

The Lead Scientist's Report was presented by Dr. Peter Goodwin. Dr. Goodwin presented a PowerPoint for his update. The presentation was on the activities at the 7th Biennial Bay-Delta Science Conference. Dr. Goodwin discussed one of the topics of the conference, "Atmospheric rivers, levees, and floodplains in the Bay-Delta system." Dr. Goodwin's presentation showed how atmospheric rivers are expected to become 10-15 percent more common and more intense this century and explained how they cause more intense storms and higher snowlines, resulting in greater flood risks and changes in flows that influence the salinity in the Bay-Delta.

Next, Dr. Goodwin discussed the State Water Resources Control Board's workshop, Analytical Tools for Evaluating Water Supply, Hydrodynamics and Hydropower, which is scheduled for November 13-14, 2012. Dr. Goodwin stated the Delta Science Program is organizing an invited panel to begin the workshops. He will report on the panel at the November 15 Council meeting.

The latest issue of the San Francisco Estuary and Watershed Science has been released and is a special edition on the use of conceptual models as a key tool for science based adaptive management. The journal is available online at http://escholarship.org/uc/jmie_sfews.

Dr. Goodwin's PowerPoint is posted on the Council website at http://deltacouncil.ca.gov/sites/default/files/documents/files/Item_6a_Lead_Scientist's_Report_PowerPoint.pdf

6b. Development of Science Plan

Dr. Goodwin briefed the Council on the development of the Delta Science Plan. Dr. Goodwin's presentation highlighted elements of the Plan such as linking large policy questions and management action to the science, the structure and organization of science, data sharing, modeling and visualization and effective communication. His presentation emphasized the Delta Science Plan should be the foundation of a scientifically based adaptive management program.

Chair Isenberg requested Dr. Goodwin present a summary of what would be covered by the Delta Science Plan at the next meeting. Dr. Goodwin agreed to provide the list for the Council's consideration and action.

The video showing Chair Isenberg's request can be found at <http://dsc.videoss.com/archives/102512/> Agenda Item 6, Index 4. Archive Segment Number 8 of 27 at 20:37.

Throughout Dr. Goodwin's report, he answered Council members' questions and provided clarification.

Public Comment – Agenda Item 6:

Burt Wilson, Public Water News, commented on BDCP and Science for the Delta Plan EIR, and requested clarification as to what the Delta Science Plan's relationship was to the EIR. Chair Isenberg requested Mr. Stevens explain the legal relationship of the Science Plan that is being developed to the EIR on the Delta Plan. Mr. Stevens stated there was no relationship at this time and he presumed that what is developed in the Science Plan will inform the next updates of the Delta Plan. The EIR is studying the environmental impacts of the policies and recommendations contained in the Delta Plan. Council Member Fiorini also responded to Mr. Wilson's question stating there was one linkage – the EIR that is being prepared is to review the policies that are set forth in the current draft and one of those policies is recommending the establishment of a Delta Science Plan. It also describes what the elements of the Science Plan should be. Mr. Wilson also requested clarification as to when and where "science driven water exports" will be revealed. Council Member Fiorini stated he felt it was the Council's job to make sure best available science was brought to both plans and they will evolve over time. Council Member Fiorini and Dr. Goodwin discussed adaptive management and how it should be conducted in response to Mr. Wilson's request for clarification. Mr. Wilson stated the slogan, "One Delta One Science" sounded suspicious to him and Dr. Goodwin explained the intent of the slogan to be a common approach to best available science. Then, Mr. Wilson asked Dr. Goodwin if the Science Plan was going to be involved in the science of the twin tunnels in the Delta. Dr. Goodwin responded "yes" that their involvement was to conduct an independent review of BDCP. Finally, in the interest of time, Chair Isenberg suggested if Mr. Wilson had more questions, that it would be helpful to put his specific questions in writing and send them to the Council for response.

Greg Zlotnick, State and Federal Contractors Water Agency, stated he appreciated the discussion and support the desire of having a discussion at the next meeting on what the Council would like to see in the Delta Science Plan. He felt the value of the Council is to shape the Science Plan based on the Council's charge. Mr. Zlotnick noted that while reviewing the objectives and principles on Attachment 1, financing was missing and he felt that funding prioritization was critical and the issue of finance and funding was not mentioned specifically in either the objectives or principles. Mr. Zlotnick reminded the Council of a request made by Council Member Fiorini back in June for an inventory of projects and funding. Mr. Zlotnick feels the inventory is an important step to know what is being done, and where and what is being spent. He also feels the prioritization of the funding is important and referring to Attachment 1, his issue with the way it is written now is it sounds like "just prioritize what everybody is doing." Although it might be implied, it doesn't say "and maybe there are some things that are being done now that we don't need to pursue anymore because they are not addressing the key questions." Mr. Zlotnick stated these activities may have a funding stream that might not expire for a while and feels those financial resources should be better prioritized. For example on Attachment 1 under the Objectives, the fourth bullet, Mr. Zlotnick suggested adding "and funding" so it would read "the prioritization of research and funding..." And under the Guiding Principles, Mr. Zlotnick suggested adding something that says "financially responsible" as well.

7. Near-Term Strategies for the Delta (Information Item)

Agenda Item 7 was presented by Dan Ray, Cindy Messer and Carl Lischeske. Ms. Messer began by explaining the purpose of the agenda item was to describe a number of strategies the Council supported to immediately begin for implementation of the Delta Plan.

Attachment 1 described near-term strategies in more detail and provided examples of actions that might be taken to achieve the strategies. They were compiled using the policies and

recommendations of the final draft Delta Plan, along with proposed actions by other agencies. Dan Ray walked through the list of near-term strategies discussing and giving examples of the proposed projects and programs as he requested Council feedback to determine if staff was on the “right course.”

Throughout the presentation the panel heard Council members’ comments, answered questions and provided clarification.

Public Comment – Agenda Item 7:

Mike Machado, Delta Protection Commission, supported the Chair’s remarks about looking at a group of projects that have a prospect of completion. Mr. Machado stated that in his past experience in looking at projects the state has done, too often projects are not tested to see if what we wanted to achieve has happened and if the project can be replicated to continue the success and often times they are individual projects that are dispersed instead of looking at trying to draw them together. Mr. Machado feels the principles need to include whether there is coordination and accountability with respect to the objectives of the projects and also to look at the successes or failures in the evaluation of what needs to be done. Mr. Machado gave as an example the DPC has just completed a group of working landscapes on 11 sites throughout the Delta involving public/private partnerships. The projects have been on-going for 3 years, but the continuation of the projects will depend on additional funding and the effort of private individuals on whose land the projects have been put. Mr. Machado stated if there isn’t a follow-up and encouragement, the benefit that could come from the projects will be lost. The projects included semi-seasonal and permanent wetlands and habitat restoration projects. Mr. Machado felt the projects were important to the goals of the Reform Act but they are struggling to see how to continue interest and to follow through now that they have been started. Mr. Machado also commented on the issue of beneficiary pays, stating it has been an exhaustive subject in the legislature and somebody somewhere has to be responsible for making sure it happens or it will continue to be talked about as a goal but we will never have the benefits of it to sustain the projects that are going to improve the Delta and meet the goals of the Delta Reform Act.

Doug Brown, Delta Counties Coalition (DCC), wanted to reiterate Mr. Machado’s comments and talk about the two processes that have been ongoing - the Coalition to Support Delta Near-Term Projects and the San Joaquin Valley Partnership DCC efforts. Mr. Brown stated there is overlap in the types of projects and what they were trying to achieve. Mr. Brown gave examples of the projects and Mr. Brown stated they see the opportunity to get the regulators and stakeholders together to identify a pilot approach identifying how to move the projects forward and ensure that everyone is on the same page. The Counties are in a unique position to work with both processes – a unique effort looking at larger projects in the San Joaquin Valley. As far as the types of projects that are moving forward, they combine water storage, water supply and restoration. The Counties are advocating restoration projects combined with levee projects. Mr. Brown stated they would like to see an effort to figure out ways the \$500 million that is available could be directed toward those types of projects. He felt it is important to leverage those dollars to see if a group focused in the same area could be formed to try to move forward the projects that are important to everyone.

Greg Zlotnick, State and Federal Contractors Water Agency, offered a suggestion on the list of near-term strategies, Attachment 1, 1.2.2. On third line, change “others” to “stakeholders”. Mr. Zlotnick also wanted to comment on maintenance of the SWP and stated the concerns about money and the backlog and they were somehow connected. Money is not the issue, he said. The contractors pay for the operations and maintenance of the SWP and the problem that has occurred over the years, especially during difficult budget times, is that even though there is little

or no budget benefit, furloughs and/or hiring freezes are also applied to those employees that work on the SWP. He noted they were paid for by the contractors, not out of the general fund. He said DWR and the SWP have suffered from those policies and have not been able to maintain the employee level to do the maintenance. Chair Isenberg stated Ms. Hoffman-Floreke submitted a memo for possible use in the Delta Plan on this issue. He requested staff find the memo and distribute it to the Council. Mr. Zlotnick stated the contractors created a Joint Powers Authority about 5 years ago, trying to persuade DWR that they could take on some of the obligations more efficiently and cost effectively, similar to what the San Luis Delta Mendota Water Authority has done operating and maintaining the federal Central Valley Project more effectively. Mr. Zlotnick felt that the Council should promote the concept and made recommendations it would help 1.1.1.

Osha Meserve, Local Agencies of the North Delta, felt it was an important role for the Council to play in doing something in the near-term and not waiting around for BDCP because it is going to take too long. A lot of local agencies have concern whether BDCP will meet the coequal goals and protect Delta as a place at the same time. With respect to the two processes, she suggested looking through all the projects to see which ones rise to the top against the Council's criteria and goals and recommendations and see what can be done to advance the ones that are consistent with the Council's legislative directive. Ms. Meserve stated she was glad to see the ideas under strategy 1.1 – improving the reliability of the existing system was very important and she said she believes the in-Delta interests recognize that the existing facilities will continue to be relied upon. Ms. Meserve noted a project that was not included on the project list from the Coalition to Support Delta Projects, but she thinks should be considered by the Council and others. It was an early-action item proposed by Contra Costa Water District at the outset of the Delta Stewardship Council's planning process, the low flow fish screens in the south Delta that would improve water supply reliability and prevent shut-downs of the existing pumps during certain times of the year. Ms. Meserve stated there was a study under way that hasn't been released and she urged the Council to encourage those agencies that funded the feasibility study to release it so we could benefit from the results to see if the project is something that is feasible in the near-term and could be promoted by the Council and others. Ms. Meserve listed several other near-term projects that she felt would help habitat restoration. Ms. Meserve concluded by saying while she appreciated the Guiding Principles and Strategies on Attachment 1, with regard to 1.3.1, she questioned if it was appropriate to blindly promote the completion of BDCP as it was not clear if BDCP would promote the coequal goals while protecting Delta as a Place. Ms. Meserve stated she could see why the Council might not want to promote near-term projects that are completely inconsistent with BDCP as it is understood in its draft form but since it doesn't appear to be a near-term strategy at this point, she doesn't think it is appropriate for it to be promoted under 1.3.1 in the manner it is without any kind of limitation.

8. Delta Plan Update (Water Code §85300(a)) (Information Item)

Ms. Messer opened the presentation and briefed the Council on key points of the status of the final draft Delta Plan, the recirculation of the draft Programmatic Environmental Impact Report and the commencement of the rulemaking process. Ms. Messer also gave a description of what the final draft Delta Plan was going to look like. Chris Stevens explained that staff have been incorporating revisions and preparing the final draft Delta Plan, which will be the basis for circulating an additional volume of the draft PEIR and also for the Notice of Proposed Rulemaking and draft regulations, commencing the state rulemaking process. Mr. Stevens stated additional opportunities for public comment will occur during a concurrent 45-day written comment period on the draft regulatory package and at a special rulemaking hearing that will be scheduled at an upcoming Council meeting following the close of the written comment period.

Throughout the discussions, Ms. Messer answered questions and provided clarification for the Council members. At the conclusion of Agenda Item 8, Chair Isenberg asked if there were any members of the public who wished to comment on the item – there were none.

Following the discussion of Agenda Item 8, the Council recessed at 12:55 p.m. and resumed the meeting at 1:05 p.m.

9. Implications of U.S. Army Corps of Engineers Levee Encroachment Rules (Water Code §85210 (h)) (Information Item)

Eric Nichol opened the discussion of Agenda Item 9 and briefed the Council on the background of the USACE and the CVFPB's Central Valley Flood System Improvement Framework and the guidance it provided on levee maintenance requirements, including specific concerns about encroachments and/or erosion found by the USACE on 17 levee systems in the Central Valley. The Framework allowed the levee systems to remain active within the Rehabilitation and Inspection Program (RIP). When the Central Valley Flood Protection Plan did not address concerns on the levees to the satisfaction of the USACE, the levees were deemed no longer in compliance with rules to carry out PL 84-99 and listed as inactive. Mr. Nichol introduced the panel members and each panelist gave their agency's perspective, and discussed the activities, roles and responsibility with regard to the Corps' actions and its impact on disaster recovery assistance in the event of a flood emergency. The panel included Ryan Larson of the US Army Corps of Engineers, Len Marino, Chief Engineer for the Central Valley Flood Protection; John Christensen, FEMA; Kathy Schaefer, FEMA; and James Hartwig, Cal EMA.

Throughout the discussions, the panel answered questions and provided clarification for the Council members.

Public Comment – Agenda Item 9:

Larry Ruhstaller, San Joaquin County Board of Supervisors, commented on the PL 84-99 Program. Mr. Ruhstaller's written comments have been posted on the Council's website at http://deltacouncil.ca.gov/sites/default/files/documents/files/Larry_Ruhstaller's_Comment.pdf.

10. Public Comment

Chair Isenberg asked if there were any members of the public wishing to address the Council on issues not on the agenda – there were none.

The meeting was adjourned at 2:30 p.m.